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SECTION 3 – HOCAK NATION CHILDREN AND FAMILY ACT

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CHAPTER I
GENERAL PROVISIONS, POLICIES AND DEFINITIONS

1. **Authority**.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. 25 U.S.C. § 3201-11, "Indian Child Protection and Family Violence Prevention

Act," mandates the prevention of child abuse and neglect.

2. **Purpose and Construction**. It is the purpose of this Children and Family Act to secure for each child coming before the Court such care, guidance, and control, preferably in his or her own home, as will serve the child's welfare and advance the interests of the Hocak Nation; 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, this Act shall be liberally construed to fulfill the following purposes:

a. To provide for the welfare, care, and protection of the children of the Hocak Nation, with priority being given to those children in need of protection.

b. To preserve unity of the family, preferably by separating the child from his/her parent(s) only when necessary.

c. To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children.

d. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community based alternatives.

e. To ensure that foreign courts are able to return Tribal children to the Hocak Nation.

f. To recognize and acknowledge the customs and traditions of the Hocak Nation with regard to raising a child.

3. **General Policies**.

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

b. 25 U.S.C. § 3201-11, "Indian Child Protection and Family Violence Prevention Act," mandates the prevention of child abuse and neglect. The mandates of this law shall be followed whenever applicable.

c. Disabled Children. The Nation has a special obligation to children for treatment and services, whether they are physically, emotionally, or mentally disabled.

d. Contempt. Any person who willfully violates or refuses to obey any Order of the Court may be proceeded against for contempt of Court.

e. Payment of Fines. Except as otherwise provided by law, all fines, penalties,

and forfeitures imposed and collected by the Act shall be paid out as the Court shall direct.

f. Termination of Parental Rights. Neither the Court nor the Legislature shall terminate parental rights.

4. **Court Records Protection**.

a. Court Records. The Court shall keep such records as may be required by the Judge. Records in children cases shall be withheld from public inspection, but the Court records shall be open to inspection by the parent(s), guardian(s), other parties in the case, the attorneys, and agencies to which custody of a child has been transferred. Records and reports of social and clinical studies shall not be open to inspection, except by the consent of the Court.

b. Confidentiality. A record of all hearings under this Act shall be made and preserved. Sealed records by Court Order are not open for inspection without a specific Court Order authorizing review. All Court records shall be confidential and open to inspection by any of the following.

(1) The child.

(2) The child's parent(s), guardian(s), or custodian(s).

(3) The child's Traditional Relatives if such relative is an interested party as defined in this Act.

(4) The child's counsel or guardian ad litem.

(5) The Court personnel directly involved in the handling of a particular case, so long as they are not conflicted out by familial relationship or as a mandatory reporter.

(6) Any other person by Order of the Court, having legitimate interest in the particular case.

c. Medical records shall only be disclosed pursuant to the Health Insurance Portability and Accountability Act (HIPAA), and as minimally necessary.

5. Children and Family Services and Law Enforcement Records.

a. Central Report Registry. CFS and the local law enforcement agency shall maintain a central registry of reports, investigations, and evaluations made under this Act. The registry shall contain the information furnished by tribal personnel, including CFS workers, probation officers, caseworkers, and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Court orders the individual's records be kept on file

beyond the date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only upon approval of the Executive Director of the Department of Health and Social Services, the Court, and agencies licensed or regulated by the Nation. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

b. Law enforcement and CFS records and files concerning a child shall be kept separate from Court records and files. All law enforcement and CFS records are confidential and shall not be open to inspection to anyone but the following:

(1) The child.

(2) The child's parent(s), guardian(s), or custodian(s).

(3) The child's counsel or guardian ad litem.

(4) Law enforcement and CFS personnel directly involved in the handling of the case.

(5) The Court personnel directly involved in the handling of the case, so long as they are not conflicted out by familial relationship or as a mandatory reporter.

(6) Any other person by order of the Court.

c. Medical records shall only be disclosed pursuant to the Health Insurance Portability and Accountability Act (HIPAA), and as minimally necessary.

6. **Definitions**. As used in this Children and Family Act, the singular includes the plural and the plural the singular, and the masculine the feminine, when consistent with the intent of this Act. The following definitions shall apply:

a. "Abandon" means the failure of the parent(s), guardian(s), or custodian(s) to provide reasonable support and/or to maintain regular contact with a child, or otherwise maintain a parental relationship. Placement of a child by mutual consent of Traditional Relatives does not constitute abandonment.

b. "Abuse" means the infliction of physical, emotional, or mental injury on a child, or the sexual abuse or exploitation of a child, including failure to thrive.

(1) Abuse includes any case in which:

(a) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and

(b) such condition is not justifiably explained or may not be the product of an accidental occurrence.

(c) when used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcoholic beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(d) manufacturing of methamphetamine under any of the following circumstances:

1 when a child is physically present while the manufacturing takes place;

2 in the child's home, on the premises of the child's home, or in a motor vehicle that is located on the premises; or

3 when a reasonable person should have known the manufacture would be seen, smelled or heard by a child.

(2) Any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

c. "Adjudication" means judgment by the Court, incorporated in an Order, that the facts alleged in a petition (i.e., blood tests for paternity) have been proven or substantiated.

d. "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

e. "CFS" means the Hocak Nation Children and Family Services.

f. "Capias Order" means an Order issued by a judge requesting that the Sheriff take someone into custody, and hold the person until he or she may be brought into court.

g. "Child" means a person under the age of majority and who is not married, an infant, or a fetus.

h. "Child Placement Family" means an individual(s) approved to receive children for placement under the laws of the Nation; or an organization receiving children for placement in this or another state that is approved by the State.

i. "Child Placement Home" means the physical location approved by CFS that offers the least restrictive setting deemed appropriate for the proper care of the child.

j. “Children and Family Services Worker” means the assigned social worker, law enforcement personnel, or any person who performs the duties and responsibilities set forth in this Act.

k. “Clan Representative” means a Hocak man who is the representative of one of the clans of the Hocak Nation and who is recognized as such by the Traditional Court of the Hocak Nation.

l. “Consent Decree” means an enforceable court Order based upon an agreement between the child of age twelve (12) or older; the parent(s), guardian(s), or legal custodian(s); and the person filing the Child/Family Protection Petition, where the parties agree to a set of terms and conditions applicable to the child(ren), the parent(s), guardian(s), or legal custodian(s), and where the failure to fulfill such terms and conditions will lead to a hearing upon the Child/Family Protection Petition as if the consent decree had never been entered into.

m. “Court” means the Hocak Nation Trial Court.

n. “Custodian” means a person or CFS who has legal and/or physical custody of a child.

o. “DOJ” means the Department of Justice, which is the legal department created to protect the legal rights and interests of the Ho-Chunk Nation by providing expert legal advice and competent representation for all branches of the Nation on those matters that concern the Nation’s interests and welfare.

p. “Disposition” means the requirements that describe the desired behaviors and attitudes of a person as an outcome of following the Dispositional Order.

q. “Domicile” means a person’s permanent home or usual place of habitation. The domicile of a child is that of the custodial parent or guardian.

r. “Emergency Placement Home” means a home which has been approved by CFS to accept emergency placements of children at any hour of the day or night.

s. “Expert Witness” means a witness qualified by knowledge, skill, experience, training, or education to provide a scientific, technical, or other specialized opinion about the evidence or a fact.

t. “Foreign Court” means any non-Hocak Court, which exercises judicial authority over cases and controversies and is entitled to full faith and credit and comity under tribal, federal, and state rules of law.

u. “Grandparents’ Rights” mean the inherent rights, invoked when children are in need of protective services, of a child’s Hocak grandparents to have an active role in advising the Court about the child’s welfare, care, and protection at all stages of

development according to Hocak custom.

v. "Guardian Ad Litem" means a person appointed by the Court to represent the best interest of the child before the Court.

w. "Guardian of the Person" means a person appointed by the Court to maintain the care, custody, and control of the person of a minor child.

x. "Guardian of Property" means a person appointed by the Court to manage the property of a child.

y. "Hocak Child" means any unmarried person who is under age eighteen and is either an enrolled Hocak Tribal member or is eligible for Hocak Tribal membership and is the biological child of a Hocak Tribal Member.

z. "Independent Living Skills Program" means the program that provides and facilitates a wide range of services to Native American Youth between the ages of fifteen (15) and twenty-one (21) that enhance their capabilities to live a successful independent life.

aa. "Indian" means any member of a federally recognized American Indian Tribe, Alaska Native, or a member of regional corporation as defined in 43 USC § 1606.

bb. "In-Home Placement" means the placement of the minor child in the home of the parent(s), guardian(s) or custodian(s), while under the continued supervision of the Court.

cc. "Informal Agreement" means an out-of-court agreement with the child of age twelve (12) or older, the parent(s), guardian(s), or custodian(s) and other parties when CFS has determined that the interests of the child do not require filing of a Child/Family Protection Petition.

dd. "Legal Custody" means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.

ee. "Local Law Enforcement Agency" means the tribal, state, or federal law enforcement agency that has the primary jurisdiction and responsibility for an investigation regarding alleged child abuse in the location where the abuse occurs.

ff. "Nation" means the Hocak Nation.

gg. "Neglect" means the failure of the parent(s), guardian(s), or custodian(s) to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being for reasons other than poverty. "Neglect" shall include "abandoned" children.

hh. "Neglected Child" means any child found to be in one or more of the following situations:

(1) A child whose parent(s), guardian(s), or custodian(s) has abandoned them.

(2) A child whose parent(s), guardian(s), or custodian(s) have subjected him/her to mistreatment or harm, including, but not limited to, abuse.

(3) A child who lacks necessary parental care by reason of the fault or habits of the parent(s), guardian(s), or custodian(s).

(4) A child whose parent(s), guardian(s), or custodian(s) fails or refuses to provide proper or necessary subsistence, supervision, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for their health or well-being.

ii. "Notice of Permanence" means the official warning that parent(s) receive whereby they are told that if the conditions to rectify the cause(s) of the child protection action are not met, then permanence will be sought.

jj. "Out-of-Home Placement" means a home or organization of the Nation approved by CFS to receive children for placement under the laws of the Nation or the State.

kk. "Parent" means a biological parent or a Traditional Hocak parent as described in the definition of Hocak Traditional Relatives.

ll. "Per Capita Address" means the most recent mailing and physical address provided to the Nation's Enrollment Office by the individual completing the Hocak Nation address verification form.

mm. "Permanence" means placing a child in a suitable long term home environment when reunification with his/her family is found not to be in the child's best interests, such as a temporary or permanent guardianship, as defined in this Act.

nn. "Permanency Plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child attains placement in a home or facility providing long-term stability when it has been evidenced that the parents cannot.

oo. "Permanent Guardian" means a guardian who has been granted long term guardianship status that is irrevocable unless the guardian is unsuitable as determined by the Court or the guardian petitions for revocation.

pp. "Petition" means a Child/Family Protection Petition.

qq. "Physical Custody" means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, transportation and emergency medical care.

rr. "Power of Attorney" means a written legal document authorizing a person to act as an attorney in fact or agent for another person, property, and healthcare.

ss. "Property" means property such as credits, savings or bank deposits, notes, bonds, proceeds from the sale of realty, real property, and Children's Trust Fund accounts, but does not include small monetary gifts in an amount less than $500.00.

tt. "Protective Supervision" means a court Order following an adjudication on the grounds of abuse, neglect and abandonment whereby the child is permitted to remain in the home under supervision provided by CFS or other persons designated by the Court.

uu. "Residual Parental Rights and Duties" mean those rights and duties remaining with the parent(s) after legal custody or guardianship, or both, has been vested in another person or agency, including but not limited to: the responsibility for support; the right to consent to customary adoption; the right to determine the child's religious affiliation; and the right to reasonable visitation unless restricted by the Court. If no guardian has been appointed, "residual parental rights and duties" also includes the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment.

vv. "Sealed Records" means records that cannot be accessed unless there is a Court Order.

ww. "Self-Protective Behaviors" means the behaviors present in children who have the verbal and physical capability to tell others when they are in unsafe situations (dependent upon the age and development of the child, as well as any known disabilities).

xx. "Special Needs" means children whose emotional or physical disorders, age, race, membership in a sibling group, a history of abuse, or other factors contribute to a lengthy stay in foster care or require special treatment or care.

yy. "Suitable" means willing and able to provide an approved home environment that is fit, safe, and appropriate; and where the individuals in the home can meet the requirements of the Indian Child Protection and Family Violence Prevention Act.

zz. "Temporary Guardian" means a person, other than a parent, who is assigned by a court of law as having the duty and authority to provide physical care until the child turns eighteen (18) years of age or the Court grants a revocation, removal, or termination of the guardianship.

aaa. "Traditional Arrangement" means a mutual authorization of child placement

via consultation through *najokijawasiki*, a Hocak traditional practice. Examples include, but are not limited to, the grandparents for purposes of Hocak teachings, i.e., sacred teachings, way-of-life, etc.

bbb. "Traditional Court" means the forum of Hocak Nation clan representatives, which provides guidance and assistance to the Court and other interested parties on matters of Hocak traditions and customs.

ccc. "Traditional Relatives" mean those people within the child's *wazoki* (intrinsic familial network) according to Hocak tradition.

ddd. "Transitional Plan" means the plan required to be enacted and followed prior to a child being returned to the home of the parent(s), guardian(s), or custodian(s); the establishment of such being deemed necessary to ensure a smooth transfer back into the home that keeps in mind the best interests of the child, as well as the capabilities of the child to demonstrate self-protective behaviors.

7. **Jurisdiction**.

a. General Jurisdiction.

(1) The Court shall have the authority to issue all Orders necessary to ensure the safety of children within the Hocak community. This grant of civil jurisdiction to the Court authorizes the Court to exercise its power to issue and enforce subpoenas, issue Orders of restriction, impose fines, adjudicate and punish contempt, order confinement, and issue other Orders that may be deemed necessary and appropriate (e.g., Capias Orders), in matters regarding children.

(2) Once the Court exercises its jurisdiction under this Act, its authority continues until such time as it may be terminated pursuant to paragraph d, below.

(3) The Court may exercise jurisdiction over the following persons:

(a) Enrolled members of the Nation under the age of eighteen (18) years.

(b) Persons under the age of eighteen (18) who are eligible for enrollment in the Nation.

(c) Indians, as defined in paragraph 6aa, who are under the age of eighteen (18).

(d) Children of enrolled members of the Nation or other Indians, as defined in paragraph 6aa, including adopted children.

(e) The Court, pursuant to the discretion of Children and Family Services, shall continue the jurisdiction until the date on which the child is granted a high

school diploma or the date on which the child reaches 19 years of age, whichever occurs first, if the child is a full-time student and is reasonably expected to complete the program before reaching 19 years of age.

(f) The Court, pursuant to the discretion of Children and Family Services, shall continue jurisdiction until the date on which the child is granted a high school diploma or the date on which the child reaches 21 years of age, whichever occurs first, if the child is a full-time student and if an individualized education program is in effect for the child. The Court may not enter an Order that terminates as provided in this subdivision unless the child is 17 years of age or older when the Order is entered and the child, or the child's guardian on behalf of the child, agrees to the Order. At any time after the child reaches 18 years of age, the child, or the child's guardian on behalf of the child, may request the Court in writing to terminate the Order and, on receipt of such a request, the Court, without a hearing, shall terminate the Order.

b. Concurrent Jurisdiction.

(1) The Court has concurrent jurisdiction in cases involving Hocak children who are in need of protection and services and who are subject to the jurisdiction of foreign courts.

(2) Indian Child Welfare Act cases within foreign court systems may be transferred to the Court, if the foreign court consents and upon acceptance of transfer by the Court.

(3) The case of a child, who is otherwise under the continuing jurisdiction of the Court, may be transferred to a foreign court if the foreign court consents. The Court will maintain jurisdiction of the case after acceptance of transfer of the case by the foreign court, until formal relinquishment of jurisdiction by the Court.

c. Jurisdiction Over Adults and Traditional Relatives.

(1) In any case in which a child has come within the jurisdiction of the Court, the Court shall have authority to exercise jurisdiction over adults to the extent necessary to make proper disposition of each case, including authority to punish for contempt either in or out of the Court's presence.

(2) Where the Court asserts jurisdiction over a child under this Act, the Court shall also have jurisdiction over the child's Traditional Relatives to the extent necessary to make proper disposition of each case.

(3) Consent to Jurisdiction. Any adult living off the Nation's Trust Lands who obtains custody of a child, however designated, from the Court either personally or as the result of association with an agency or institution to which custody has been awarded, shall be deemed to have consented to the jurisdiction of the Court for all purposes or actions in any way related to such custody of the child.

(4) Procedures Applicable to Adults. Except when specific procedures are otherwise specified in this Act, all matters concerning adults or the rights of any adult which come before the Court need not be handled according to procedures established by the Court, but rather may be handled in an informal manner.

d. Termination of Continuing Jurisdiction. Jurisdiction obtained by the Court of a child under this Act shall continue until the child becomes eighteen (18) years of age or the case is dismissed or the underlying Order expires; at which time the continuing jurisdiction of the Court shall terminate.

CHAPTER II
PROGRAMS AND SERVICES

8. **Program Participation and Funding**.

a. The Court is authorized to participate in any approved federal, state, tribal, public or private agency programs to carry out the purposes of this Act. This authority is subject to the approval of the Legislature.

b. The Legislature shall provide adequate funding support, as determined by CFS' program needs to ensure the health, safety, and welfare of the Nation's children. This shall include but is not limited to providing funding for emergency foster homes and emergency secure and non-secure shelter care facilities.

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

d. Child Placement Assistance. Child placement assistance payments are mailed by CFS on the 2nd Friday of each month.

9. **CFS Workers**.

a. CFS Workers shall be employed by CFS and shall execute the duties and powers enumerated in this Act.

b. CFS may cooperate with such state and community agencies as necessary to achieve the purposes of this Act. CFS may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Legislature or its designee.

c. Duties. A CFS Worker shall:

(1) Receive reports of neglected, abused, or abandoned children and be prepared to provide a temporary placement home and/or shelter care for such children.

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

(3) Upon receipt of any report or information under paragraph (1) or (2), above, shall immediately:

(a) Notify the appropriate law enforcement agency and the County Department of Social Services, if deemed necessary by CFS.

(b) Initiate an investigation within twenty-four (24) hours of the intake case assignment. The investigation will be thorough and shall include a determination of the nature, extent, and cause of any circumstance which is detrimental to the child's best interests and the names, ages, and conditions of other children in the home.

(c) Whenever CFS is informed by a police officer or any other person that a child is or appears to be within the Nation's jurisdiction, CFS shall make a preliminary investigation to determine whether the interests of the Nation or the child's safety require further action be taken. The report of the preliminary investigation shall be filed in the record system of CFS.

(4) Duty to Inform.

(a) Before offering voluntary protective services to a family, a CFS Worker shall inform the family that he/she has no legal authority to compel the family to accept such services and of CFS' authority to initiate a petition in Court.

(b) If the family declines the offered services, the CFS Worker may initiate a petition in Court alleging a child in need of protective services if CFS believes it to be in the child's best interest or refer the case to the appropriate county agency.

(5) Within thirty (30) days after a referral of a child in need of protective services, submit a final written report of the investigation and assessment, which shall be recorded in a central registry maintained by CFS.

(6) CFS shall have the duty to refer eligible youth who are in out-of-home care for at least six (6) months and who are between the ages of fifteen (15) and seventeen (17) to the Independent Living Services Program.

(7) If a child is in the custody of CFS and is believed to be incompetent, then CFS shall refer the child to the appropriate jurisdiction before the child reaches the age of majority, for the purposes of an adult guardianship.

d. Powers of CFS:

(1) After the investigation, prepare an assessment of the home environment of

the child or children in the same home and the risk to such children if they remain in the home environment, and all other relevant factors. CFS shall determine whether any of such children are in need of protective services.

(2) CFS may enter into either an informal (out of court) agreement or consent decree (court ordered) at any time with the child of age twelve (12) or older, the parent(s) or guardian(s) and other parties pursuant to the procedures set forth in this Act.

(3) Take a child into temporary custody from his/her surroundings based on reasonable grounds to believe that the child is in imminent danger due to injury, neglect, or abuse and that removal is necessary.

(a) Place the child temporarily in accordance with placement preferences in this Act in an emergency placement home, or in a facility approved by CFS.

(b) Law enforcement officials may assist CFS with the removal of a child from the custody of his/her parent(s), guardian(s), or custodian(s) when necessary.

(4) Offer the family and the child services when it is determined that any child is found to be in need of protective services.

(5) As the agency with legal custody, it shall have the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, to consent to major medical, surgical, or psychiatric treatment, to make educational decisions, and as may otherwise be granted by the Court.

10. **Medical Care**.

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

(1) Unavailability of Parent(s), Guardian(s), or Custodian(s). Parent(s), guardian(s), or custodian(s) are not immediately available and cannot be found after they have been actively sought through reasonable efforts; or

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

b. In making its Order the Court shall give due consideration to the consent of the child.

c. If the child or his/her parent(s), guardian(s), or custodian(s) are adherents of a

bona fide religious denomination that relies exclusively on prayer, through spiritual means alone, or through other methods approved by the tribal customs, traditions, or religion, then the Court shall give due consideration to such treatment in makings its Order.

d. After entering any authorization under this Section, the Court shall produce a written Order and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

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

CHAPTER III
REPORTING OF CHILD ABUSE AND NEGLECT

11. **Duty to Report**.

a. Any person who knows, or has reasonable suspicion that a child has been abused, neglected, or abandoned; or that actions are being taken or are going to be taken that would reasonably be expected to result in abuse, neglect, or abandonment of a child, shall immediately report the abuse, neglect, abandonment, or actions to CFS and/or the local law enforcement agency.

b. Persons Specifically Required to Report. Those persons who are mandated to report suspected abuse or neglect include any of the following:

(1) Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or other health care provider.

(2) Teacher, school counselor, instructional aid, teacher's aid, teacher's assistant, tutor, or bus driver employed by any tribal, federal, public, or private school.

(3) Any employee of the tribal social services or child welfare, including any attendance or truancy officer of any tribal, federal, public, or private school or home-school program.

(4) Child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker.

(5) Psychiatrist, psychologist, or psychological assistant.

(6) Licensed or unlicensed counselor such as a marriage, family, or child counselor.

(7) Person employed in the mental or behavioral health profession.

(8) Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial Orders.

(9) Protective services worker, or foster parents.

(10) Judge, attorney, court counselor, clerk of court, judicial system official or staff providing they conflict themselves out of the case.

c. Mandatory reporters shall not have ex parte communicates with Court Judges. Any additional information they may have shall be shared with CFS.

d. Anonymous Reports. Those persons reporting, except those specified in paragraph b, above, may remain anonymous.

e. Immunity From Liability A person making a report described in paragraph a, above, that is based upon their reasonable belief and which is made in good faith, shall be immune from civil or criminal liability for making that report.

12. **Penalty for Not Reporting**.

a. Any person who fails to immediately report such abuse or actions described in paragraph 25a to CFS or local law enforcement agency may be fined under this Act or disciplined pursuant to the Employment Relations Act.

b. Any person who supervises or has supervisory authority over a person described in paragraph 25b and inhibits or prevents that person from making the report described in paragraph 25a shall be fined under this Act or disciplined pursuant to the Employment Relations Act if employed by the Ho-Chunk Nation.

c. Those persons mandated to report a case of known or suspected abuse, neglect, or abandonment who knowingly fails to do so or willfully prevent someone else from doing so may be subject to a civil cause of action proceeding in the Court.

13. **Form and Contents of Reports**.

a. Form. Those persons mandated to report under paragraph 25b shall promptly make an oral report to CFS or local law enforcement agency and then follow with a written report submitted to CFS within twenty-four (24) hours.

b. Contents. The following information shall be included in the written report:

(1) Names, addresses, and tribal affiliation of the child and his/her parent(s), guardian(s), or custodian(s).

(2) The child's age.

(3) The nature and content of the child's abuse, neglect, or abandonment.

(4) Previous abuse, neglect, or abandonment of the child or his/her siblings, if known.

(5) The name, age, and address of the person alleged to be responsible for the child's abuse, neglect, or abandonment if known.

(6) The name and address of the person or agency making the report.

CHAPTER IV
INVESTIGATION AND REMOVAL

14. **Investigation**. A child abuse or neglect investigative report shall be commenced within one Court working day by CFS.

15. **Removal**.

a. Authority. If the assigned social worker investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph b, below, have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

b. Grounds. No child shall be removed from the home of a child's parent(s), guardian(s), or custodian(s) without the consent of the parent(s), guardian(s), or custodian(s) absent a specific order of the Court, except as follows:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, etc.

(2) When the parent(s), guardian(s), or custodian(s) is absent and it appears from the circumstances that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent(s), guardian(s), or custodian(s) to provide such necessities.

c. Power to Remove. CFS social workers employed by the Hocak Nation shall have the power to remove a child pursuant to this Section provided that:

(1) Reasonable grounds existed at the time of the removal to believe the removal was necessary;

(2) The person removing the child ensures the safety and well-being of the child, until such time as the Court assumes control of the matter; and

(3) The person removing the child complies with the notice provisions contained in paragraph d, below.

d. Notice to the Parent(s), Guardian(s), or Custodian(s). An Order issued by the Court shall articulate good cause for removal. The Court shall make all reasonable efforts to notify the parent(s), guardian(s), or custodian(s) within twelve (12) hours of the Court knowing that the child was removed. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s), or custodian(s) are known to frequent with regularity. If the parent(s), guardian(s), or custodian(s) cannot be found, notice shall be given to members of the traditional family of the child.

16. **Temporary Placement of Removed Children**.

a. The following community-based shelter care facilities may be used to temporarily detain removed children:

(1) An approved placement home or a home otherwise authorized under the law to provide foster care, group care, or protective residence.

(2) A facility operated by a licensed child welfare services agency.

(3) Any other suitable place, other than a facility for the care that meets the standards for emergency shelter care facilities established by CFS.

b. A child may be placed with a Traditional Relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abuser or neglectful parent(s), guardian(s), or custodian(s) without the prior approval of the Court.

c. A child alleged to be neglected or abused shall not be detained in a jail, nor other facility intended or used for the detention of alleged child abuse offenders.

CHAPTER V
ALTERNATIVES TO COURT ACTION AND INITIATION OF COURT ACTION

17. Role of the Department of Justice (DOJ)

a. Representation. The Department of Justice represents CFS. As such, the DOJ provides counsel and advice to CFS in all actions brought under this Act.

b. The DOJ is responsible for preparing and filing all initial and subsequent pleadings and motions on behalf of CFS.

c. The DOJ attorneys shall not speak directly with the parent(s), guardian(s), or custodian(s) once said persons have secured legal counsel. Communications shall be conducted on an attorney to attorney basis.

18. Informal Agreement

a. CFS may enter into an informal agreement with the child of age 12 or older, the parent(s), guardian(s), or custodian(s), and other parties when the worker has determined that the interests of the child do not require filing of a Child/Family Protection Petition and the facts of the case lead the social worker to believe the Court would have jurisdiction over the matter. This informal agreement shall be in writing and signed by the parties.

b. If at anytime during the period of the informal agreement that CFS determines the obligations imposed under the agreement are not being met, CFS may cancel the agreement and file a Child/Family Protection Petition with the Court.

c. The informal agreement will remain in effect for up to six months, from the date signed, unless the child, parent(s), guardian(s), or legal custodian(s) is discharged sooner by CFS or upon the mutual consent of the parties.

d. If, upon the expiration of the informal agreement, its express terms and conditions have not been fulfilled, CFS may then file a Child/Family Protection Petition.

19. Consent Decree

a. CFS may enter into a consent decree with the child of age twelve (12) or older, the parent(s), guardian(s), or custodian(s), and other parties anytime between the filing of a Child/Family Protection Petition and the entering of a Dispositional Order.

b. A consent decree is an enforceable court Order.

c. If at anytime during the period of the consent decree CFS determines the obligations imposed under the agreement are not being met, CFS may motion the Court to revoke the consent decree and proceed with child protection proceedings as if the consent decree had never been entered into.

d. The consent decree will remain in effect for up to six months, from the date signed, unless the child, parent(s), guardian(s), or legal custodian(s) is discharged sooner. The Court may extend a consent decree once for six additional months upon motion of the Court, or by motion of CFS, the child if age twelve (12) or older, a parent, guardian, or custodian.

e. The consent decree shall include language regarding the requirement to have a status hearing two (2) weeks prior to the expiration of a consent decree.

f. If, upon the expiration of the consent decree, its express terms and conditions have not been fulfilled, the Court shall continue forward with proceedings upon the initially filed Petition as if the consent decree had never been entered into.

g. CFS shall be provided the opportunity to file an amended Petition if circumstances have changed since the initial filing.

20. **Initiation of Court Action**.

a. Petition.

(1) A petition may be brought in the interest of a child by CFS or the parent(s) of the child. If brought by CFS, the Hocak Nation DOJ shall file the petition on behalf of the Nation. The Court has exclusive original jurisdiction over a child alleged to be in need of protection or services that can be ordered by the Court, and the child is in one or more of the following situations or circumstances:

(a) Without a parent or guardian.

(b) Abandoned.

(c) A victim of abuse including injury which is self-inflicted or inflicted by another by other than accidental means.

(d) At substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another person in the home has been the victim of abuse.

(e) A child whose parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for, control, or provide necessary special treatment or care for the child.

(f) A child who has been placed for care or adoption in violation of the law.

(g) A child who is habitually truant from school.

(h) A child who is home-schooled or participates in alternative education and fails to show acceptable academic progress as defined in the student's educational plan.

(i) A child who is habitually truant from home and either the child or a parent, guardian, or relative, in whose home the child is staying signs the petition and states that reconciliation efforts have been attempted and have failed.

(j) A runaway.

(k) Receiving inadequate care during the period of time a parent/guardian is missing, incarcerated, hospitalized, or institutionalized.

(l) A child whose parent(s), guardian(s), or legal custodian(s) neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of the child.

(m) A child whose parent(s), guardian(s), or legal custodian(s) is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of the child, based on reliable and credible information that the child's parent(s), guardian(s), or legal custodian(s) has neglected, refused, or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of another child or children.

(n) Suffering emotional damage for which the parent(s), guardian(s), or custodian(s) is unwilling or unable for reasons other than poverty to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal, or outward aggressive behavior.

(o) A child of a sufficient age and developmental level to make an informed decision signs the petition and states that he or she is in need of special care and treatment which the parent(s), guardian(s), or legal custodian(s) is unwilling to provide.

(p) A minor under the legal custody of CFS who has a child.

(q) When a parent(s), guardian(s), or custodian(s) has consistently failed to meet the conditions of an informal agreement.

(r) When another person within the home abuses the child, and the parent(s), guardian(s), or custodian(s) fails to protect the child from such abuse.

(2) Contents of Petition. The petition shall set forth the following with specificity:

(a) The name (by initials), birth date, sex, residence, and tribal affiliation of the child.

(b) The basis for the Court's jurisdiction.

(c) The specific allegations to support the grounds.

(d) A plain and concise statement of the facts upon which the specific allegations to support the grounds of the petition are based including the date, time, and location at which the alleged facts occurred.

(e) The names, residences, and tribal affiliation of the child's parent(s), guardian(s), or custodian(s), if known.

(f) If the child is placed outside of the home, where the child is placed, if safe to do so, the facts necessitating the placement, and the approximate date of the placement.

(g) The enrollment numbers of the child and parent(s) or if the child is not enrolled in the Hocak Nation a statement that the petitioner believes the child is eligible for enrollment or is a descendant of an Indian.

(h) A statement indicating if any of the facts required to be stated are not known by the petitioner.

(3) Evidentiary material accompanying a petition may come in the form of an investigative report, police report, or report(s) prepared by other health and/or social service agencies. The Court shall take judicial notice of reports submitted under this section regardless of the resolution of the case underlying the report.

(4) On the basis of the preliminary inquiry, or other report as provided above, a Department of Justice attorney may suggest a petition be filed to commence a civil proceeding or require further investigation.

b. Time Limitations. If a child has been removed from the home, the petition shall be filed with the Court no later than 12:00p.m. (Noon) of the second Court working day following the removal.

c. Health Examinations.

(1) The Court may upon the motion of a party, or upon its own motion, order that the child identified in the petition be examined by a physician, surgeon, psychiatrist, or psychologist and may place the child in a hospital or other facility for such medical examination.

(2) The Court may order an examination of a parent(s) or guardian(s) whose ability to care for the child is at issue, if the Court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the child.

d. Petition Dismissal. The Court may dismiss a petition at any stage of the proceedings after notice and after the parties have had an opportunity to be heard.

e. Consolidation of Proceedings. When more than one child is involved in a home situation that may be found to constitute abuse, neglect or abandonment, the proceedings may be consolidated, although each child will have a separate case number.

f. Amendment of Pleadings. It is the duty of the moving party to file a motion requesting the Court to consider additional or different material facts raised by evidence not alleged or in the original petition. In such event, the Court may direct that the petition be amended to conform to the evidence.

g. Legal Representation. At the commencement of the pre-hearing under this Act, the Court shall advise a parent(s) or other interested party that they may have legal representation of their own choice and at their own expense.

21. **Service of Process**.

a. Initial Summons – When Required. An initial summons is issued the first time a petition is filed or upon transfer of a case from a foreign court to the Court.

(1) After an initial petition is filed, the Court may deem it necessary to request further investigative reports in the petition. When the Court accepts the filed petition, the Court shall promptly issue a summons. The summons is to be personally served on the parent(s) of the child and any other interested party. A summons is required whether or not a person appears voluntarily or files a written waiver of service with the Clerk of Court at or prior to the hearing.

(2) Any person can waive the time requirement to respond to the petition.

b. Summons – Content Requirements.

(1) The summons shall contain the name of the Court, the title of the proceedings, and (except for published summons) a brief statement of the substance of the allegations in the petition. A published summons shall state that a proceeding concerning the child (identified by initials and date of birth only) is pending in the Court and that an adjudication will be made. The summons shall require the person or persons who have legal custody of the child to appear personally and bring the child before the Court at the time and place stated. If the person or persons so summoned are not the parent(s) or guardian of the child, then the summons shall also be issued to the parent(s) or guardian(s) notifying them of the pendency of the proceedings and the time and place set for the hearing. No summons need be issued to a parent or parents whose parental rights have been relinquished.

(2) The summons issued by the Court shall conspicuously display the words:

NOTICE – VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT. **SUBPOENAS**: "THE

FAILURE TO COMPLY WITH A SUBPOENA SHALL SUBJECT THE PERSON FAILING TO COMPLY TO THE CONTEMPT POWER OF THE COURT." THE COURT MAY FIND ANY PARTY TO THIS MATTER IN CONTEMPT OF COURT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

c. Summons – Other Persons. Summons may be issued to any person within the jurisdiction of the Court whose presence the Court deems necessary.

d. Compulsory Attendance of Witnesses. A parent(s) or guardian(s) shall be entitled to issuance of compulsory process for the attendance of a witness on his/her behalf or on behalf of the child. A guardian ad litem shall be entitled to compulsory process for the attendance of witnesses on behalf of the child(ren) or on behalf of the Nation. Should any person fail to attend a hearing after being properly served with process and be unable to provide the Court with an acceptable explanation, the Court may find such person in contempt pursuant to the Hocak Nation Contempt Ordinance.

e. Payment of Travel Expenses. The Court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this Act. A person or party must make a written request to the Court for such expense payment. The terms of travel reimbursement shall equal the amount that the Nation reimburses its employees under it employment law.

f. Service of Summons.

(1) By Whom Served.

(a) A designee selected by the Court shall make service of summons or process.

(b) A service of summons may be made by delivering a copy to the person summoned. Provided, however, that parents of a child living together at their current place of residence may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

(c) Upon order of the Court for good cause shown, service may be accomplished by publishing the contents of the summons in the *Hocak Worak* or another newspaper of general circulation in an area where the party was last known to be domiciled.

(2) Substituted Service – Jurisdiction. If the parent(s) or guardian required to be summoned by personal service under this Section cannot be found upon reasonable search, the fact of the child's enrollment or eligibility for enrollment shall confer jurisdiction to the Court as to any absent parent(s), guardian(s), or custodian(s).

(3) Time Requirement.

(a) In the case of service of an initial petition where all parties reside in the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served; service must occur no less than ten (10) calendar days before the time set in the summons for the appearance.

(b) In the case of service of an initial petition to any party residing outside the State of Wisconsin; in order to be sufficient to confer jurisdiction on the person served; service will occur within a reasonable time period before the time set in the summons for the appearance.

g. Disobedience – Contempt.

(1) Any person summoned as herein provided, whom, without reasonable cause, fails to appear, may be proceeded against for contempt of court pursuant to the Hocak Nation Contempt Ordinance, and the Court may cause a bench warrant to be issued to produce such a person in Court.

(2) Harassment and intimidation of judicial officers, Department of Health and Social Service staff, service processors, guardian ad litems, witnesses, and attorneys who are employed to carry out the goals of this Act, may be grounds for contempt. Such behavior shall be classified as an obstruction of the authority, process, or order of the Court.

22. **Warrants**.

a. Search and Seizure Warrants. If it appears to the Court upon an affidavit sworn to by a police officer or any other person, and upon the examination of other witnesses if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized police officer or CFS designee to search for the child. Upon serving such warrant, the officer or designee making the search may enter the house or premises, of necessary by force, in order to remove the child. The officer and/or CFS designee must thereupon take the child to Court, or an emergency shelter designated by the Court and based on the recommendation of the CFS social worker.

b. Arrest of Parent(s), Guardian(s), or Custodian(s).

(1) A warrant may be issued for the arrest of the parent(s), guardian(s), or custodian(s) should any of the following circumstances exist:

(a) If the summons cannot be served.

(b) If it is made to appear by affidavit or sworn statement to the Court that the person served will not obey the summons.

(c) That serving the summons will be ineffectual.

(d) That the welfare of the child requires that he/she be brought immediately into the custody of the Court.

(2) Any such warrant may be served anywhere within the jurisdiction of the Court.

CHAPTER VI
COURT REPORTS AND HEARINGS

23**. Court Reports**. The Court shall accept the filing of the various court reports no later than three (3) days prior to a hearing. These reports shall include, but are not limited to:

a. "Home Study Report" means the report that covers the potential placement family's or guardian's home environment to ensure that it is suitable.

b. "Investigative Report" means the reports submitted as evidence for filing a Child/Family Protection Petition.

c. "Dispositional Report" means the report that sets forth the conditions that must be met by the parent(s), guardian(s), custodian(s), minor child, or any other person who has been made party to the proceedings, in order for reunification of the family to take place.

d. "Status Report" means the report used by the parties to update the Court with any important changes in the circumstances of the case.

e. "Child Protection Review Hearing Report" means the report used to update the Court with any changes during the last six (6) months, as well as an update on the compliance or non-compliance with the conditions established during the dispositional hearing.

f. "Guardian ad Litem Report" means the report used by a guardian ad litem to provide the Court with notice of his/her findings and recommendations. Written reports shall be filed with the Court at least three (3) days prior to the formal trial, dispositional hearing, and child protection review hearings to assure that all relevant facts are before the Court in order to render a sound decision. An oral report may be provided at a status, reunification, and/or emancipation hearing.

g. "Expert Witness Recommendations Report" means the report filed by an expert witness to express his/her expert opinion with regards to a particular individual or facts in the case.

24. Proceedings.

a. Proceedings in children's cases shall be regarded as civil proceedings.

b. A record shall be made for all proceedings. Upon a motion, an interested party may obtain a copy of the record at their own expense.

c. If necessary, the Court may designate or appoint an attorney or lay counselor to represent a parent, child, or guardian in any proceeding under this Act.

25. Guardian Ad Litem.

a. The Court may appoint a *Guardian Ad Litem* if it deems such appointment is necessary to protect the best interests of the child.

b. A *Guardian Ad Litem* appointed by the Court will hold the following responsibilities and duties:

(1) Work as an independent fact finder who will review all relevant information, records, and documents; interview the child, parent(s), social workers, teachers, and other persons to gather the facts;

(2) Determine the interests of the child by taking into account the child's age, maturity, and culture and by monitoring his or her interest over time;

(3) Maintain communication with the child so that he or she is aware of and understands the role of the *Guardian ad Litem*;

(4) Seek cooperative resolution to the child's situation within the scope of the child's best interests and welfare and within the abilities of the identified parties;

(5) Appear at all hearings to represent the child's best interests, providing testimony where needed;

(6) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level;

(7) Request that clear and specific orders be entered for the evaluation, assessment, services and treatment of the child and the child's family;

(8) Inform the Court promptly if services are not being made available to the child and/or family, services are not achieving their intended purpose, or new developments or violations require a modification of services; and

(9) Advocate for the child's best interests in all other legal, mental health, educational, and community systems.

c. The *Guardian Ad Litem* shall, as appropriate to the case, make written and oral reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based.

26. Hearings Generally.

a. Hearings in children's cases shall be before the Court and may be conducted in an informal manner. However, all parties will conduct themselves in a manner reflecting respectfulness to the Court and other parties.

b. The general public shall be excluded and only such persons admitted as the Judge finds who has a direct relationship and legitimate interest in the case or the work of the Court.

c. The child or his/her parent(s) may be separately interviewed at any time at the discretion of the Court.

d. The hearing may be continued from time to time upon order of the Court.

e. Evidence.

(1) For the purpose of determining proper disposition of the case and for the purpose of establishing the fact of abuse, neglect, or abandonment, evidence to be considered by the Court shall include written reports and other materials relating to the child's mental, physical, and social history and condition. This is not a limit to the types of evidence that may be considered by the Court.

(2) The Court may require that the person who wrote the report or prepared the material appear as a witness.

(3) Parties requiring copies of documents already admitted into evidence must request such copies from the Court.

f. Child Witnesses. In an effort to protect the best interests of the child and to create an environment where testimony may be provided freely without fear, the Court shall permit a child to testify in closed chambers. The judge shall have the discretion to determine who may be permitted in the chambers.

27. Best Interests of the Child. In an effort to protect the best interests of the child, the Court may do any one or more of the following:

a. Place the child under protective supervision in his or her own home, upon conditions determined by the Court.

b. Place the child in the legal custody of CFS.

c. Place the child in the physical custody of a Traditional Relative or other suitable person, with or without protective supervision.

d. Authorize admittance of a child to an institution or facility for the purpose of an assessment or psychological evaluation.

e. Place the child in an approved American Indian boarding school, on a ranch, forestry camp, or other camp or similar facility for care and, if possible, for work, provided that the person, agency or association operating the facility has been approved by the Hocak Nation CFS, or has otherwise complied with all applicable Nation, state, or local laws. The child placed in a forestry camp or similar facility may be required to work on or off the grounds of such facility and may be paid wages, all subject to the approval of or under conditions set by the Court.

f. Order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he/she receive other special care, and for such purposes may place the child in a hospital or other suitable facility.

g. Appoint a guardian for the child where it appears to be in the best interests of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested.

h. The Court may make any other reasonable orders that are in the best interests of the child or are required for the protection of the public.

i. The Court may combine several of the above where they are compatible.

28. **Welfare of the Child**. In placing a child in the physical care of an institution or of a private agency, the Court shall give primary consideration to the welfare of the child, but whenever practicable, may take into consideration the cultural preferences of the child and parent(s) and shall consider other factors allowable under this Act.

29. **Placement Preferences**.

a. Whenever possible and appropriate, a child shall be placed in an approved home with Hocak Tribal members. Out-of-home placement shall be given preference in the following order:

(1) Paternal Traditional Relatives, provided these relatives are Hocak Tribal members, with priority to paternal grandparents.

(2) Other maternal Traditional Relatives, with priority to the *tega* (maternal brother) and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.

(3) Another approved Hocak family.

(4) Another approved American Indian family that is a relative of one of the child's parent(s).

(5) A Hocak owned, secure or non-secure Shelter Care Facility.

(6) A suitable American Indian family.

(7) Any other family which can provide a suitable home for Hocak children.

b. Any placement ordered by the Court shall encourage a child to maintain cultural ties with the Nation, to be informed of the tradition and customs of the Nation, and to have the opportunity to learn the Hocak language.

c. In making an out-of-home placement, the Court's determination in all cases shall be in the child's best interests. The Court shall consider family relations and the acceptance of the placement by the child(ren) and relative(s), all in accordance with the traditions, customs, and preferences of the Hocak Nation. The Traditional Court may be consulted to recommend potential placement options of children who are in out-of-home care.

d. Potential Placement Homes. In order to enable the Court to place children in a manner consistent with the preceding paragraph, CFS shall make or cause to be made a continuing survey of the Nation's members or other Indians living on or off Trust Lands to determine the availability of homes suitable for child placement and the willingness of such persons to accept and care for placed children on either a temporary or permanent basis, or both.

e. Fitness of Home. CFS shall, if necessary, determine the fitness of a home into which a child is to be placed at or immediately prior to the time such placement is needed. CFS shall, whenever possible and as needed, schedule a meeting of the child(ren)'s family for the purpose of assisting the Court in determining proper placement of the child(ren) and to allow the family to discuss what it can offer the Court in terms of placement of the child(ren).

f. The Judge and CFS may contract on the behalf of the Nation with agencies or departments of the federal government for the care and placement of children whose status is adjudicated under this Act.

30. **Scheduling.**

a. An Emergency Removal hearing shall be held regarding the removal of a child before the end of the second Court working day following the filing of the Child/Family Protection Petition.

b. If a child has not been removed from the home a plea hearing will be held within ten (10) calendar days of the filing of the petition.

c. The Court will set a date for a trial on the issues no later than thirty (30) calendar days after the plea hearing.

d. A Dispositional Hearing is to be scheduled no later than sixty (60) calendar days after the filing of the Child/Family Protection Petition.

e. The Court shall review the status of all children subject to this Act at least every six (6) months at a Child Protection Review Hearing to determine whether Court intervention shall continue. The Court may schedule the first review hearing following a Trial on the issues at any time within six (6) months.

31. **Default Judgment**

a. If the parent(s), guardian(s), or custodian(s) fails to appear at the Emergency Removal Hearing or any subsequent hearing, the Court may find the parent(s), guardian(s), or custodian(s) in default and enter a default Order of Child/Family Protection and order necessary intervention and appropriate steps which the parent(s), guardian(s), or custodian(s) must follow to correct the originating underlying problem.

b. Prior to finding a parent(s), guardian(s), or custodian(s) in default, the Court must determine that actual notice has been given or that all reasonable steps have been taken to provide notice of the hearing to the parent(s), guardian(s), or custodian(s).

CHAPTER VII
EMERGENCY REMOVAL HEARING

32. **Purpose.** The purpose of the Emergency Removal Hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.

33. **Scheduling.** If a child has been removed from the home an Emergency Removal Hearing shall be held before the end of the second Court working day following the filing of the petition.

34. **Notice**. The Court shall make all reasonable efforts to advise the parent(s), guardian(s), or custodian(s) of the time and place of the Emergency Removal Hearing. The Court shall order that the parent(s), guardian(s), or custodian(s) be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s), or custodian(s) are known to frequent with regularity. If the Court is unable to contact the parent(s), guardian(s), or custodian(s), notice shall be given to the extended family of the child.

35. **Rights of Parties.** During these hearings, the Court shall advise the party(ies) of the following basic rights:

a. The reason for the hearing.

b. Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel. In granting continuances, the Court must consider the increased length of time the child will be in out-of-home placement due to such continuances.

c. Right to confront and cross-examine those appearing against them.

d. Right to present and subpoena witnesses.

e. Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made before the end of the Emergency Removal Hearing (or Plea Hearing if the child has not been removed from the home prior to the filing of the petition) or this right will be deemed waived unless good cause is shown at a later point in the proceedings.

f. Right to a jury trial.

36. **Nature of Hearing.**

a. The hearing shall be informal in nature. However, all parties will conduct themselves in a manner reflecting respectfulness to the Court and other parties.

b. Parties shall present evidence relating to the situation.

c. Testimony. The Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony.

d. Hearsay. Hearsay evidence will be excluded at this hearing unless it is otherwise admissible based upon the Rules of Evidence.

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

37. **Possible Outcomes of the Emergency Removal Hearing.**

a. The petition may be dismissed and the child returned to the home.

b. The child may be returned to the home of the parent(s), guardian(s), or custodian(s) under the supervision of the Court and a Plea Hearing will be held within ten (10) calendar days of the filing of the petition.

c. The child may continue to be placed in an out-of-home placement and a Plea Hearing will be held within ten (10) calendar days of the filing of the petition.

38. **Grounds for Re-Hearing**. Any interested party may at any time petition the Court for a new hearing on the grounds that new evidence, which might affect the Order, has been discovered. If it appears to the Court that there is such new evidence which might affect its Order, it shall order a new hearing and enter such Order and make such disposition of the case as is warranted by all the new facts and circumstances and the best interests of the child.

39. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from the Emergency Removal Hearing shall be entered within two (2) days of the proceeding.

CHAPTER VIII
PLEA HEARING

40. **Purpose**. The purpose of the Plea Hearing is to determine whether any party wishes to contest an allegation that the minor child is in need of protection or services.

41. **Scheduling**. A Plea Hearing will be held within ten (10) calendar days of the filing of the petition, provided no continuances have been granted.

42. **Notice**. The Court shall make all reasonable efforts to advise the parent(s), guardian(s), or custodian(s) of the time and place of the Plea Hearing. The Court shall order that the parent(s), guardian(s), or custodian(s) be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s), or custodian(s) are known to frequent with regularity. If the Court is unable to contact the parent(s), guardian(s), or custodian(s), notice shall be given to the extended family of the child.

43. **Rights of Parties**. During this hearing the Court shall advise the party(ies) of the reason for the hearing and of their basic rights as provided for in section 35.

44. **Nature of Hearing**.

a. The hearing shall be informal in nature. However, all parties will conduct themselves in a manner reflecting respectfulness to the Court and other parties.

b. CFS shall put the allegation(s) against the parent(s), guardian(s), or custodian(s) on the record.

c. Pleas. The parent(s), guardian(s), or custodian(s) may contest or admit to any or all of the allegations made against them.

d. Parties shall present evidence relating to the situation.

e. Testimony. The Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony.

f. Hearsay. Hearsay evidence will be excluded at this hearing unless it is otherwise admissible based upon the Rules of Evidence.

45. **Possible Outcomes of the Plea Hearing.**

a. The petition may be dismissed and the child returned to the home.

b. The parent(s), guardian(s), or custodian(s) may contest the allegations, and the child may be returned to the home of the parent(s), guardian(s), or custodian(s) under the supervision of the Court. A trial on the issues will be held within forty (40) calendar days from the filing of the petition, provided no continuances have been granted.

c. The parent(s), guardian(s), or custodian(s) may contest the allegations, and the child may continue to be placed in an out-of-home placement. A Trial on the issues will be held within forty (40) calendar days from the filing of the petition, provided no continuances have been granted.

d. The parent(s), guardian(s), or custodian(s) may claim no contest, and the child may be returned to the home of the parent(s), guardian(s), or custodian(s) under the supervision of the Court. A Dispositional Hearing will be held within sixty (60) calendar days from the filing of the petition, provided no continuances have been granted.

e. The parent(s), guardian(s), or custodian(s) may claim no contest, and the child may continue to be placed in an out-of-home placement. A Dispositional Hearing will be held within sixty (60) calendar days from the filing of the petition, provided no continuances have been granted.

46. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from a Plea Hearing shall be entered within two (2) days of the proceeding.

CHAPTER IX
FORMAL TRIAL

47. **Purpose**. The purpose of the Trial is to determine whether the allegation(s) made in the petition are proven by a preponderance of the evidence.

48. **Scheduling**. A Trial will be held within forty (40) calendar days of the filing of the petition, provided no continuances have been granted.

49. **Notice**. The Court shall make all reasonable efforts to advise the parent(s), guardian(s), or custodian(s) of the time and place of the Trial. The Court shall order that the parent(s), guardian(s), or custodian(s) be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s), or custodian(s) are known to frequent with regularity. If the Court is unable to contact the parent(s), guardian(s), or custodian(s), notice shall be given to the extended family of the child.

50. **Formal Trial**

a. The Trial shall be informal in nature. However, all parties will conduct themselves in a manner reflecting respectfulness to the Court and other parties.

b. Concerned parties shall present evidence relating to the situation.

c. Testimony. The Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony.

d. Hearsay. Hearsay evidence will be excluded at this hearing unless it is otherwise admissible based upon the Rules of Evidence.

e. Child Witnesses. In an effort to protect the best interests of the child and to create an environment where testimony may be provided freely without fear, the Judge shall permit a child to testify in closed chambers. The judge shall have the discretion to determine who may be permitted in the chambers.

f. Burden of Proof. The petitioner has the burden of proof. The petitioner must prove that the allegations raised in the child protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

g. Findings of Fact. When a child is found to come within the provisions of this Act, the Court shall so adjudicate, and make findings of fact upon which it bases its jurisdiction over the child, and shall enter its Order.

h. Decision. The Court will determine the validity of the allegations in the petition.

51. **Possible Outcomes of the Trial.**

a. Continuance. If the Court finds that sufficient evidence does not exist to support a finding, the Trial may be continued to a specific date to allow for the presentation of further evidence, if a request for such continuance is made by a party(ies).

b. Dismissal. The petition may be dismissed and the child returned to the home if the Court determines the petitioner has failed to prove by a preponderance of the

evidence that the allegations are true.

c. Return to Home with Supervision. The Court may find the allegations of the petition to be true, but that out-of-home placement is not needed to protect the child.

(1) The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision as appropriate, known as an in-home child protection action.

(2) A Dispositional Hearing will be held within sixty (60) calendar days from the filing of the petition, provided no continuances have been granted.

d. Continued Out-of-Home Placement. The Court may find the allegations of the petition to be true and out-of-home placement to be necessary to protect the child.

(1) The Court shall order that the child may not be returned home, without specific order of the Court.

(2) Grounds. The grounds for continuing removal from the home of the parent(s), guardian(s), or custodian(s) are as follows:

(a) Without a parent or guardian.

(c) Abandoned.

(c) A victim of abuse including injury which is self-inflicted or inflicted by another by other than accidental means.

(d) At substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another by other than accidental means, based on reliable and credible information that another person in the home has been the victim of abuse.

(e) A child whose parent or guardian signs the petition requesting jurisdiction and states that he or she is unable to care for, control, or provide necessary special treatment or care for the child.

(f) A child who has been placed for care or adoption in violation of the law.

(g) A child who is habitually truant from school.

(h) A child who is home-schooled or participates in alternative education and fails to show acceptable academic progress as defined in the student's educational plan.

(i) A child who is habitually truant from home and either the child or a parent, guardian, or relative, in whose home the child is staying signs the petition and states that reconciliation efforts have been attempted and have failed.

(j) A runaway.

(k) Receiving inadequate care during the period of time a parent/guardian is missing, incarcerated, hospitalized, or institutionalized.

(l) A child whose parent(s), guardian(s), or legal custodian(s) neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of the child.

(m) A child whose parent(s), guardian(s), or legal custodian(s) is at substantial risk of neglecting, refusing, or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of the child, based on reliable and credible information that the child's parent(s), guardian(s), or legal custodian(s) has neglected, refused, or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of another child or children.

(n) Suffering emotional damage for which the parent(s), guardian(s), or custodian(s) is unwilling or unable for reasons other than poverty, to provide treatment, which is evidenced by one or more of the following characteristics, exhibited to a severe degree: anxiety, depression, withdrawal, or outward aggressive behavior.

(o) A child of a sufficient age and developmental level to make an informed decision signs the petition and states that he or she is in need of special care and treatment which the parent(s), guardian(s), or legal custodian(s) is unwilling or unable for reasons other than poverty to provide.

(p) A child under the legal custody of CFS has a child.

(q) When a parent(s), guardian(s), or custodian(s) has consistently failed to meet the conditions of an informal agreement.

(r) When another person within the home abuses the child, and the parent(s), guardian(s), or custodian(s) fails to protect the child from such abuse.

(3) A Dispositional Hearing will be held within sixty (60) calendar days from the filing of the petition, provided no continuances have been granted.

52. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from a Trial shall be entered

within thirty (30) days of the proceeding.

CHAPTER X
DISPOSITIONAL HEARING

53. **Purpose**. The purpose of the Dispositional Hearing is to determine what conditions must be met by the parent(s), guardian(s), custodian(s), minor child, or any other person who has been made party to the proceedings, in order for the cause(s) of the child protection action to be rectified and for reunification of the family to take place.

54. **Scheduling**. A Dispositional Hearing will be held within sixty (60) calendar days of the filing of the petition, provided no continuances have been granted.

55. **Notice**. The Court shall make all reasonable efforts to advise the parent(s), guardian(s), or custodian(s) of the time and place of the Dispositional Hearing. The Court shall order that the parent(s), guardian(s), or custodian(s) be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s), or custodian(s) are known to frequent with regularity. If the Court is unable to contact the parent(s), guardian(s), or custodian(s), notice shall be given to the extended family of the child.

56. **Nature of Hearing**.

a. The hearing shall be informal in nature. However, all parties will conduct themselves in a manner reflecting respectfulness to the Court and other parties.

b. CFS shall read the dispositional requirements into the record if requested by the Court and/or parties.

c. Parties shall have the right to object to any dispositional requirement, provided the parties make their case as to why or why not the dispositional requirement shall stand.

d. Testimony. The Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony.

e. Hearsay. Hearsay evidence will be excluded at this hearing unless it is otherwise admissible based upon the Rules of Evidence.

57. Dispositional Requirements/Reunification Plan.

a. CFS shall submit to the Court a list of dispositional requirements that it believes are necessary to be completed in order for a safe and successful reunification to occur. The list shall be submitted to the Court no later than three (3) days before the Dispositional Hearing.

b. The Court shall specify in its Order the necessary intervention and the dispositional requirements that the parent(s), guardian(s), or custodian(s) shall fully complete in order for the cause(s) of the child protection action to be rectified and for reunification of the family to take place.

c. The Court shall specify what steps the parent(s), guardian(s), or custodian(s) shall take to demonstrate their abilities to care for their child, set the appropriate timeframe for these steps to be accomplished, and specify to the parties what factors the Court will consider at a subsequent hearing to determine whether or not reunification shall take place.

d. The dispositional requirements may include, but are not limited to restrictions on the visitations by the parents or one parent; restrictions on the child's associates; conditions on occupation, residence, and other activities; and requirements to be observed by the parent(s), guardian(s), or custodian(s).

e. The Court shall approve a transitional plan created by CFS to fit the individual needs of the parent(s), guardian(s), or custodian(s), as well as the individual needs of the minor child, that must be followed prior to any reunification.

f. Failure to follow the Court's Order may result in his/her contempt of court.

58. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from a Dispositional Hearing shall be entered within thirty (30) days of the proceeding.

59. **Review of Cases**. An Order under this Chapter for the placement of a child with an individual or an agency shall include a specific date for review of the case by the Court, with a new date to be set upon each review.

CHAPTER XI
CHILD PROTECTION REVIEW HEARING

60. **Child Protection Review Hearing.**

a. Requirement. The Court shall review the status of all children subject to this Act at least every six (6) months at a hearing to determine whether Court intervention shall continue. The Court may schedule the first review following a formal trial on the issues at any time within six (6) months.

b. Return to Home. A child may be returned home at the Child Protection Review Hearing, unless the Court finds that the parent(s), guardian(s), or custodian(s) have not completely complied with the case plan and are failing to rectify the cause(s) for the child protection action. If the Court returns the child to the parent's home, the Court may continue supervision as appropriate. Prior to returning the child to the home, the Court shall request CFS to submit a transitional plan.

(1) Transitional Plan. CFS shall establish a transitional plan to be implemented, pursuant to Court Order, any time a child is to be returned to the home. The purpose of said plan will be to provide for a smooth and safe transition from out-of-home placement to in-home placement. The plan should be tailored to the circumstances of each case.

(2) Reunification Hearing. Upon notice that the transitional plan has been successful, CFS shall file a motion requesting a Reunification Hearing, where a date for terminating services and closing the case will be determined.

c. Continued Court Supervision. If continued Court supervision is determined to be necessary, the Court shall set forth the following in a written Order:

(1) What services have been required of the parent(s), guardian(s), or custodian(s) to help rectify the cause(s) for the child protection action.

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

(3) Whether the parent(s), guardian(s), or custodian(s) is cooperative with the Court.

(4) Whether additional services are to be offered to the parent(s), guardian(s), or custodian(s).

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

(6) When the next Child Protection Review Hearing is scheduled.

61. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from a Child Protection Review Hearing shall be entered within thirty (30) days of the proceeding.

CHAPTER XII
PERMANENCY PLANNING

62. **Purpose**. The purpose of permanency planning is to develop a plan to help reunify the child with his/her parent(s), guardian(s), or custodian(s) if possible, but if not, then to have a stand-by plan ready to be implemented quickly so as to ensure the child attains placement in a home providing long-term stability.

63. **Permanency Plan**.

a. A permanency plan shall be created and filed along with the dispositional recommendations.

b. Traditional Relatives, as identified by CFS and the parent(s), guardian(s), or custodian(s) of child(ren), may meet prior to the Child Protection Review Hearing(s) to discuss permanency plans for the child(ren).

c. The permanency plans shall include the primary permanence goal, which shall be reunification with the family.

d. The permanency plans shall also include a concurrent permanence goal, which shall be placement with a temporary/permanent guardian or placement in sustaining care. The concurrent goal shall be the result of a parent(s), guardian(s), or custodian(s) failing to fulfill the dispositional conditions required to rectify the cause(s) of the child protection action.

64. **Notice of Permanence**. During the first Child Protection Review Hearing, CFS shall file a notice of permanence. The notice shall explain permanence and take into consideration the age of the child, the length of out-of-home placement, and the history of parental contacts.

65. **Permanency Plan Review**. Every Child Protection Review Hearing shall include a review of the permanency plan.

66. **Permanence**. During the second Child Protection Review, CFS shall have the option of recommending permanence for any child, when reunification is not in the child's best interests.

67. **Types of Permanence**. The Ho-Chunk Nation does not recognize termination of parental rights (TPR) within its jurisdiction, as it is not culturally appropriate. Therefore, attaining permanence may include temporary/permanent guardianship or sustaining care.

CHAPTER XIII
CHILD PROTECTOIN GUARDIANSHIPS

68. **Purpose**. The purpose of a child protection guardianship is to provide a child with long-term stability. When it appears that reunification is not possible, the Court may appoint a guardian for the person and/or property of a child under the Court's jurisdiction.

69. **Appointment of Guardian Generally.** The Court may appoint a guardian of the person or a guardian of the property, or both, for an individual if the Court determines that the individual is a minor child and such guardianship is in the best interests of the child.

70. **Types of Guardianships**. Types of guardianships shall include:

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

b. Permanent Guardianship of the Person. The Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written Order. Permanent guardianship provides for permanent custody of the child to someone other than the parent(s), although there is no termination of the parental rights of the parent(s). There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship can only be terminated based upon the unsuitability of the permanent guardian. The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the Court.

c. Guardianship of Property. The Court may appoint a guardian of the property of a child under such terms and conditions as the Court sets forth in the written Order. The guardianship may cover all property until the child reaches eighteen (18) years of age or emancipates. It may be limited to only specific property or a specific legal action as set forth in the written Order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written Order.

71. **Guardianship Preferences and Order.** The Court shall consider the appointment of a guardian for a child from the following persons in the following order:

a. Paternal Traditional Relatives, provided these relatives are Hocak Tribal members, with priority to paternal grandparents.

b. Other maternal Traditional Relatives, with priority to the *Tega* and maternal grandparents, if the father is not a member of the Hocak Nation, or is not known.

c. Another Hocak family.

d. Another American Indian family that is a relative of one of the child's parent(s).

e. A suitable American Indian family.

f. Another family which can provide a suitable home for Hocak children.

72. **Guardianship Duties and Powers.**

a. Traditional Ways and Cultural Ties. Any appointment under this Act shall encourage a child to maintain cultural ties with the Nation, to be informed of the tradition and customs of the Nation, and to have the opportunity to learn the Hocak language.

b. Guardianship Duties. A guardian appointed by the Court shall:

(1) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in his/her own affairs;

(2) Advocate for the child's best interests;

(3) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and

(4) Notify the Court of any change in address of the guardian(s) or child.

(5) Make medical, dental, and psychiatric care decisions.

(6) Consent to marriage, if the child is still a minor.

(7) Make decisions related to education.

(8) Make decisions related to mobility and travel.

(9) Consent to military service.

(10) Consent/refuse visitation by relatives, subject to the limitation set forth in Section 82.

c. Guardianship Powers. A guardian appointed by the Court may be bestowed with the following powers:

(1) The power to manage the child's estate.

(2) The power to seek child support.

(3) The power to seek a name change, if tradition and custom permits.

73. **Limitations Placed on the Guardian.** When a guardian(s) has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court under this Act, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any

manner. The disposal of a minor child's real or personal property in any way shall subject said person(s) to contempt of court and/or to criminal and civil penalties or remedies provided by Ho-Chunk Nation law.

74. **Initiating an Action**.

a. Petition for Guardianship.

(1) Who May File. A petition for guardianship may be filed by the proposed guardian, the child if at least sixteen (16) years of age, or CFS.

(2) Contents of Petition. The petition for guardianship shall include the following:

(a) The full name, address, and tribal affiliation of the petitioner.

(b) The full name, sex, date and place of birth, residence, and tribal affiliation of the child.

(c) The basis for the Court's jurisdiction.

(d) The relationship of the proposed guardian(s) to the child.

(e) The name and address of the agency having legal custody of the child.

(f) The type of guardianship requested.

(g) To the best information and belief of the petitioner, a full description and statement of value of all property owned, possessed, or in which the child has an interest (if guardianship of property is requested).

(h) The present conditions and circumstances that warrant the appointment of the guardian.

(i) A list of people willing and able to become an interim successor guardian in the sudden event that the guardian cannot carry out his/her duties.

(3) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a Clerk of the Court.

b. Notice. Notice shall be provided in accordance with the notice procedures set forth in this Act, except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent(s) whose parental rights have been terminated by a foreign court.

75. **Additional Guardianship Procedures**

a. Appointment of a *Guardian Ad Litem*. The Court shall appoint a *Guardian Ad Litem* to protect the best interests of the child.

(1) The *Guardian Ad Litem*, in addition to the other duties laid out in the *Ho-Chunk Nation Rules for Guardian Ad Litem*, shall:

(a) Interview the proposed guardian and report to the Court concerning the suitability of each individual interviewed to serve as guardian.

(b) Meet with and observe the minor child in the proposed home setting and conduct an assessment of the home.

(c) Make written reports to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based. Written reports shall be filed with the Court at least three (3) days prior to a guardianship proceeding. Copies of all reports shall be provided to each of the parties.

(d) Attend all court proceedings related to the guardianship.

(e) Report to the Court on any matter that the Court requests.

b. Guardianship Report.

(1) Upon the filing of a Guardianship Petition, the Court shall immediately request that CFS submit a Guardianship Report on the proposed guardian(s), interim successor guardian(s), and child.

(2) The Guardianship Report shall contain all pertinent information necessary to assist the Court in determining the best interests of the child.

(3) No determination can be made on a Guardianship Petition until the report has been completed and submitted to and considered by the Court. The Guardianship Report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

76. **Guardianship Hearing Procedures.**

a. Time of Hearing. A Guardianship Hearing shall be held within forty-five (45) days of filing of a Guardianship Petition.

b. Purpose of Hearing. The Court shall conduct the hearing to determine if it is in

the best interests of the child to be placed with the proposed guardian and whether the proposed guardian is suitable to be appointed.

c. Rights of Parties. During these hearings, the Court shall advise the party(ies) of the following basic rights:

(1) The reason for the hearing.

(2) Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel. In granting continuances, the Court must consider the increased length of time the child will be in out-of-home placement due to such continuances.

(3) Right to confront and cross-examine those appearing against them.

(4) Right to present and subpoena witnesses.

(5) Right to substitution of judge. The parties shall be notified that a request for substitution of judge must be made at the outset of the Guardianship Hearing or this right will be deemed waived unless good cause is shown at a later point in the proceedings.

d. Evidence and Testimony. In determining the best interests of the child and the suitability of the proposed guardian, the Court shall examine each of the following:

(1) Length of time of the child's guardianship by the Court.

(2) Special conditions of the child.

(3) Parent communication with the child.

(4) Minor's consent to guardianship dependent upon maturity.

(5) Any report submitted by CFS and the *Guardian Ad Litem*.

(6) Order of preference of placement.

e. Closed Hearing. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's Traditional Relatives, and other persons determined to be appropriate by the Court shall be permitted to attend.

77. **Disposition of Petition.**

a. Denial of Petition.

(1) If the Court finds that the guardianship will not be in the child's best interest, or that all of the requirements of this Act have not been met, it may deny the petition and enter any other Order it deems necessary for the care and custody of the child consistent with this Act.

(2) If the Court determines that the proposed guardian is unsuitable, then the Court shall request that a petition proposing a suitable guardian be filed, shall set a date for a hearing to be held within thirty (30) days, and shall require CFS and the *Guardian Ad Litem* to investigate the suitability of a new proposed guardian.

b. Appointment of Guardian. If the Court is satisfied that the guardianship will be in the child's best interests, the requirements of the Act have been met, and the proposed guardian is suitable, then it may appoint the proposed guardian as guardian and issue an Order in accordance with Section 78 of this Act.

78. **Guardianship Orders Generally**

a. The Court shall set forth, in the written Guardianship Order, the findings of fact that supports the decision of the Court.

b. In accordance with the best interests of the minor child, the Court shall set forth, in the written Guardianship Order, which powers from Section 72 will be granted to the appointed guardian.

c. The Court shall set forth, in the written Guardianship Order, any limitations of authority to be placed on the guardian.

d. The Court shall set forth, in the written Guardianship Order, all duties that the guardian will have.

79. **Management of Property.**

a. In the event that any guardian receives any property, money, or funds of any child while acting as guardian, before taking and receiving into custody such money or funds, the Court may require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of his/her trust. The following conditions shall form the part of such bond without being expressed therein.

(1) To make an inventory of the entire estate of the child that comes into his/her possession or knowledge and to return the same within such time as the Court may order.

(2) To discharge and manage the estate according to the law and in the best interests of the child, and faithfully discharge his/her trust in relation thereto, and also in relation to the care, custody, and education of the child.

(3) To render an account of the property, estate, and money of the child and all proceeds or interests derived therefore annually and at such other times as the Court directs.

(4) At the expiration of the child's trust, the guardian shall settle the child's accounts with the Court, with the child if of the age of majority, or the child's legal representative. The guardian shall deliver all the estate, monies, and effects to the person who is legally entitled to possession.

(5) The funds of any child must be used by his/her guardian solely for the support and education of such child, and shall be expended by the guardian in a reasonable manner according to the circumstances of the child, and in such manner as can reasonably be afforded according to the income and estate of the child.

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

80. **Annual Guardianship Report.** Guardians of the person shall file an annual report on or about the anniversary of the guardianship or at such other time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and the well-being of the child.

81. **Child Support in Guardianships.** The Court may order child support to the guardian(s) pursuant to the Nation's Child Support Enforcement Code. Said person(s) with custody of the child must use disbursements for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purposes other than that described in this Act shall subject said person(s) to contempt of court and to criminal and civil penalties or remedies provided by Tribal law.

82. **Visitation Rights.** The parent(s) and the child's Traditional Relatives and Clan Members shall be granted liberal visitation rights unless deemed inappropriate by the guardian and/or Court.

83. **Co-Guardians.** If the Court appoints a guardian of the person or a guardian of the estate, it may also consider appointing the guardian's spouse as a co-guardian in an attempt to better protect the best interests of the child. In addition to having similar guardianship powers, the co-guardian will be subject to all the limitations and will have all of the duties of the petitioning guardian.

84. **Name Change**. A guardian could seek the child's name to be changed by seeking input from Traditional Court to determine if tradition and custom permits under the circumstances such a change.

85. **Judgments Inoperative After Age 18**. No judgment, Order, or decree of the Court shall be in effect after the child becomes eighteen (18) years of age.

86. **Motions to Modify Guardianship Orders.**

a. The Court may modify any Order or decree made by it; but no modification of an Order shall be made until there has been a hearing after due notice to all persons concerned.

b. The Court may hold a hearing to modify a Guardianship Order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parent(s).

(3) The guardian of the child.

(4) The *Guardian Ad Litem*.

c. The motioning party bears the burden of proving that modification of the Guardianship Order is in the best interests of the child.

d. The motioning party may seek a modification of a variety of things, including, but not limited to:

(1) Child Support.

(2) A name change.

(3) The power to manage the property of the child.

(4) A change from Temporary to Permanent Guardianship.

e. Best Interests Statement. A Best Interests Statement must be filed with the Court any time a motion is filed for modification of a Guardianship Order. CFS shall submit the written statement of its findings with regards to the best interests of the child three (3) days prior to the hearing.

f. Notice of Modification. Notice of an Order modifying a guardianship shall be given to the parent(s), guardian(s), custodian(s), and, where appropriate, to the child.

87. **Motions to Revoke Guardian.**

a. Revocation is the voluntary relinquishment of a guardianship by a guardian.

The guardianship itself continues with a successor guardian taking over the role of guardian.

b. The Court may set aside any Order or decree made by it; but no revocation of an Order shall be made until there has been a hearing after due notice to all persons concerned.

c. The Court may hold a hearing to revoke a Guardianship Order at any time upon the motion of the guardian(s).

d. The motioning party bears the burden of proving that revocation of the guardianship is in the best interests of the child.

e. Best Interests Statement. A Best Interests Statement must be filed with the Court any time a motion is filed for revocation of a guardianship. CFS shall submit the written statement of its findings with regards to the best interests of the child three (3) days prior to the hearing.

f. Notice of Revocation. Notice of an Order revoking a guardianship shall be given to the parent(s), guardian(s), custodian(s), and, where appropriate, to the child.

88. **Motions to Remove Guardian**.

a. Removal is the process to remove a guardian from his/her role due to his/her failure to perform the guardian's duties as set forth in this Act. The guardianship itself continues with a successor guardian taking over the role of guardian.

b. The Court may order the removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.

c. The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's grandparents or parent(s).

(3) The child's Traditional Relatives having a legitimate interest in the particular case.

(4) The *Guardian Ad Litem*.

(5) Upon motion of the Court.

d. The motioning party bears the burden of proving that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform

the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.

e. Best Interests Statement. A Best Interests Statement must be filed with the Court any time a motion is filed for removal of a guardian. CFS shall submit the written statement of its findings with regards to the best interests of the child three (3) days prior to the hearing.

f. Notice of Removal. Notice of an Order removing a guardian shall be given to the parent(s), guardian(s), custodian(s), and, where appropriate, to the child.

89. **Motions to Terminate Guardianship**.

a. Termination is the process whereby the entire guardianship is terminated. This can occur upon the child reaching the age of majority, the child becoming emancipated by Court Order, or a motion to terminate is granted.

b. An Order vesting legal custody of a child to an individual shall be for an indeterminate period.

c. The Court, upon motion of a party seeking termination of a Guardianship Order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its Order.

d. The Court may hold a hearing to terminate a Guardianship Order at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's parent(s).

(3) The *Guardian Ad Litem*.

e. Termination of a Temporary Guardianship of the Person. The motioning party bears the burden of proving that termination of the temporary guardianship is in the best interests of the child.

f. Termination of a Permanent Guardianship of the Person. The motioning party bears the burden of proving that the permanent guardian is unsuitable. The motion must set forth the factual allegations that support a finding of unsuitability.

g. Best Interests Statement. A Best Interests Statement must be filed with the Court anytime a motion is filed for termination of a guardianship. CFS shall perform the study and submit a report with its findings with regards to the bests interests of the child. CFS may set forth any recommendations with regards to a transitional plan that may include a visitation schedule.

h. Notice of Termination. Notice of an Order terminating guardianship shall be given to the parent(s), guardian(s), custodian(s), and, where appropriate, to the child.

90. **Successor Guardian.**

a. Appointment of an Interim Successor Guardian in the Event of Guardian's Death or Sudden Incapacitation. The Court shall select a successor guardian, from the list of possible successor guardians provided in the Guardianship Petition, upon the death or sudden incapacitation of the guardian. The interim successor guardian shall have the same powers and duties as the guardian, until a new guardian can be appointed pursuant to the procedures described below.

b. If a guardian dies, is removed by order of the Court, or revokes, the Court, on its own motion or upon receiving a motion of any interested party, shall schedule a Guardianship Hearing, so as to find a competent and suitable person to appoint as a successor guardian.

c. Procedures. The petition for appointment of a successor guardian shall be heard in the same manner and be subjected to the same requirements as provided in this Act for an original appointment of a guardian.

d. Naming of a successor guardian must occur simultaneously with the revocation or removal of the current guardian.

e. Appointment of Successor Guardian. If the Court determines removal is necessary to protect the best interests of the child, then it shall appoint a successor guardian. The successor guardians will be considered from the list provided in the original petition and a Guardianship Report submitted by CFS.

CHAPTER XIV
EMANCIPATION HEARING

91. **Purpose.** The purpose of the Emancipation Hearing is to determine whether a child that is over the age of sixteen (16), but under the age of eighteen (18), can prove to the Court that he/she is capable of functioning as an independent and responsible adult member of the community.

92. **Scheduling.** An Emancipation Hearing will be held within thirty (30) calendar days of the filing of the Petition for Emancipation.

93. **Notice.** The Court shall make all reasonable efforts to advise the parent(s), guardian(s), or custodian(s) of the time and place of the Emancipation Hearing. The Court shall order that the parent(s), guardian(s), or custodian(s) be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other locations where the parent(s), guardian(s),

or custodian(s) are known to frequent with regularity. If the Court is unable to contact the parent(s), guardian(s), or custodian(s), notice shall be given to members of the extended family of the child.

94. **Nature of Hearing.**

a. The hearing shall be informal in nature, however all parties will conduct themselves in a manner reflecting respectfulness to the Court and the other parties.

b. The minor child shall present evidence and testimony proving the following:

(1) That he/she has a steady income;

(2) That he/she has secured a residence;

(3) That he/she has secured medical insurance; and

(4) That he/she is working and/or in school.

95. **Possible Outcomes of the Emancipation Hearing.**

a. The petition may be dismissed and the child will be required to remain in his/her current home.

b. The petition may be granted and the child will be emancipated.

96. **Written Order.** The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from an Emancipation Hearing shall be entered within thirty (30) days of the proceeding.

CHAPTER XV
RELINQUISHMENTS

97. **Purpose.** The purpose of a relinquishment is to permit a parent(s), who has determined that they cannot care for a newborn that is five (5) days old or younger, to consent to a child protection guardianship for that child without penalty.

98. **Emergency Conditional Custody**. When a parent(s) determines that they cannot care for a newborn, then the parent(s), a Traditional Relative, a Ho-Chunk tribal member, or CFS may file a petition with the Court to request that Emergency Conditional Custody be given to a Traditional Relative, Ho-Chunk tribal member, or CFS.

99. **Essential Contents of the Petition for Emergency Conditional Custody.** The Emergency Conditional Custody Petition shall include the names of the parents, the date of birth of the child, and the addresses of all those involved.

a. If an address is not known, then the last known address or vicinity of residence is required to provide published notice prior to the Guardianship Hearing.

b. If a parent is unknown, then the known parent must provide a sworn affidavit attesting to that fact.

c. The petition shall be notarized.

100. **Anonymity of Parent(s).** The birth parent(s) shall be given anonymity and shall be able to request that all documents pertaining to the relinquishment and subsequent guardianship shall be sealed.

101. **Length of Custody**. An Emergency Conditional Custody Order will be valid for sixty (60) days from the date of issuance, to allow for the filing of either a Temporary or Permanent Guardianship by the Traditional Relative, Ho-Chunk tribal member, or CFS.

102. **Written Order.** The Court may upon receipt of the Emergency Conditional Custody Petition, and provided there is sufficient documentation, shall sign a standardized Order for Emergency Conditional Custody. The Order will include the sixty (60) day time limitation and provide directions for the filing for Temporary or Permanent Guardianship for the newborn or infant.

103. **Scheduling**. If a Guardianship Hearing is not able to be scheduled prior to the expiration of the Emergency Conditional Custody Order, then the Court may, upon motion of the parties or upon its own motion, grant a reasonable extension of the Order until it is able to conduct the Guardianship Hearing.

104. **Guardianship Procedures**. The Guardianship Hearing shall proceed pursuant to the child protection guardianship procedures laid out in this Act.

CHAPTER XVI
JUDGMENTS AND ORDERS

105. **Judgments Inoperative After Age 18**. No judgment, Order, or decree of the Court shall operate after the child becomes eighteen (18) years of age or in the case of when continued jurisdiction over the child arises from § 7.a.(3)(e) or (f), after nineteen (19) or twenty-one (21) years of age respectively. At the discretion of CFS, any child attaining the age of eighteen (18) years of age, who is in out-of-home placement, and scheduled to graduate from high school, and jurisdiction is not continued under § 7.a.(3)(e) or (f), may be eligible for maintenance costs until his/her high school graduation.

106. **Motions to Modify, Revoke, or Extend Court Order**.

a. The Court may modify or set aside any Order or decree made by it; but no modification or revocation of an Order shall be made until there has been a hearing after due notice to all persons concerned.

b. Notice and a hearing may be scheduled in any of the cases in which an Order may be modified. An Order to place the child in an institution or agency, to transfer the child from one institution or agency to another, or to transfer from one placement home to another, may be effected without notice and hearing to the parties by the use of the change of placement notification.

c. The Court may hold a hearing to modify, revoke, or extend a Court Order under this Act at any time upon the motion of any of the following:

(1) The child age sixteen (16) years of age or older.

(2) The child's grandparents or parent(s).

(3) The child's Traditional Relatives having legitimate interest in the particular case.

(4) The child's counsel or *Guardian Ad Litem*.

(5) The agency or person vested with the legal custody of the child or with responsibility for protective supervision.

(6) Any other person, by order of the Court, having legitimate interest in the particular case.

107. **Capias Order**.

a. A Capias Order, also referred to as a Pick Up Order, will be issued by a judge requesting that the sheriff take someone into custody, and hold the person until he or she may be brought into court.

b. The Court will then conduct a hearing.

108. **Termination and Renewal Orders**.

a. An Order vesting legal custody of a child in an individual or agency shall be for an indeterminate period.

b. The Court, upon motion of a party seeking termination of an Order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its Order. After hearing the parties, if the Court finds that continuation or renewal is necessary to safeguard the welfare of the child or the public interest, the Court shall enter its findings and reasons for denying the motion for termination.

c. If the Court finds that some or all of the terms of the Order being considered

are not necessary to protect the safety of the child or the public, the Court may terminate the Order or modify the Order in accordance with this Section.

d. Notice of an Order terminating protective supervision shall be given to the parent(s), guardian(s), custodian(s), and where appropriate, to the child.

e. Prior to attaining the age of majority, the child, custodian, or relative placement may request a hearing before termination of the Order.

f. If the Court finds that termination of an Order is necessary during a proceeding other than a Termination Hearing, it shall then schedule a Termination Hearing to occur no earlier than five (5) calendar days after such determination is made.

g. The Court shall specify in writing the facts, grounds, and laws upon which it relied to make its decision. Orders stemming from a Termination Hearing shall be entered within thirty (30) calendar days of the proceeding.

CHAPTER XVII
APPEALS

109. **Motions for Reconsideration**. A Motion for Reconsideration may be filed by a party within 10 business days after receipt of judgment.

110. **Court Appeals**.

a. Any interested party to the Court hearing may appeal a final Court Order on a specific legal issue.

b. Procedure. A Notice of Appeal to the Nation's Supreme Court may be filed from any Order, decree, or judgment of the Court. The Notice of Appeal must be in writing and filed within sixty (60) days from the entry of the written Order, decree, or judgment appealed from.

c. Record. For purpose of appeal, a record of proceedings shall be made available to the child, the parent(s), guardian(s), or custodian(s), the child's counsel, and others upon Court Order. Costs of obtaining this record shall be paid by the party seeking a copy of the record.

d. Stay Pending Appeal. The pendency of an appeal shall stay the Order or decree appealed from in a child protection or child protection guardianship case. Where the Order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

CHAPTER XVIII
TRANSFER OF CASES

111. **Transfer to Foreign Court**. In any proceedings before the Court, the Court may transfer the proceedings to any appropriate foreign court or another tribal court where the State or other American Indian tribe has a significant interest in the child, and the transfer would be in the best interest of the child.

112. **Transfer From Other Courts**. The Court may accept or decline, under the procedures set forth in this Act, transfers of child welfare cases from foreign or other tribal courts.

a. Procedures.

(1) Receipt of Notice. The agent for service of notice of foreign court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Ho-Chunk Nation Children and Family Services. The aforementioned child custody proceedings do not include custody proceedings stemming from divorce or private custody disputes between parents.

(2) Transfer Report. The CFS shall file a written Transfer Report with the foreign court and the Hocak Department of Justice.

(3) Petition for Transfer. The petition for transfer shall be filed by the Hocak Nation Department of Justice within ten (10) days of receipt of the Pre-Transfer Report.

(4) Intervention in Foreign Court Proceedings.

(a) The Nation may intervene in foreign court child custody proceedings, as defined in the Indian Child Welfare Act, at any point in the proceedings; and

(b) The Hocak Department of Justice shall file a motion to intervene within ten (10) days of receipt of the Pre-Transfer Report from CFS.

(5) Hearing(s). Upon receipt of transfer of jurisdiction from the foreign court, CFS shall file either a Child/Family Protection Petition and/or an updated report attached to the State's Petition with the Court and appropriate hearing(s) shall be held in accordance with this Act.

b. Full Faith and Credit.

(1) Foreign Court Orders. State child custody Orders of other tribal courts involving children over whom the Court could take jurisdiction may be recognized by the Court only after a full independent review of such State proceedings. The Court shall determine the following:

(a) The foreign court had jurisdiction over the child.

(b) The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed.

(c) Due process was provided to all interested persons participating in the foreign court proceedings.

(d) The foreign court proceedings do not violate the public policies, customs, or common law of the Nation.

(2) Orders of Other Tribal Courts. Court Orders of other tribal courts involving children over whom the Court could take jurisdiction shall be recognized by the Court after the Court has determined the following:

(a) That the other tribal court exercised proper subject matter and personal jurisdiction over the parties.

(b) Due process was afforded to all interested parties participating in the other tribal court proceedings.

(c) The foreign court proceedings do not violate the public policies, customs, or common law of the Nation.

(3) Tribal Interests. Because of the vital interest of the Nation in its children and those children who may become members of the Nation, the statutes, regulations, public policies, customs and common law of the Nation shall control in any proceeding involving a child who is a member of the Nation.

CHAPTER XIX
REIMBURSEMENT FOR CARE

113. **Child Placement Assistance**. The Ho-Chunk Nation through CFS provides child placement assistance to any child who is under the legal custody of the Nation under this Act. These funds are used to provide for the needs of the child. The Nation is entitled to full reimbursement from the parent(s) as a debt owed to the Nation. CFS shall request reimbursement from the Court in the same or subsequent proceedings. If CFS believes reimbursement would hamper reunification, CFS can motion the Court to reduce or eliminate the payment.

114. **Duty to Reimburse the Nation.** The parent(s) of a child under the custody of the Ho-Chunk Nation have a duty to fully reimburse the Nation for any funds expended to care for the child.

115. **Court's Role.** Upon motion of CFS, the Court shall in the same or subsequent proceedings, inquire into the ability of the parents, or any other person who may be

obligated, to reimburse the Nation for the costs associated with the care of the child. The Court shall after due notice and a hearing on the matter, require such person or persons to pay the whole or part of such reimbursement, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the Court may direct.

116. **Procedure for Payment**. No Court Order issued under this Chapter against a parent(s) or other person shall be entered unless summons has been served or a voluntary appearance is made or a waiver of service given. The summons shall specify that a hearing with respect to the reimbursement to the Nation will be held. Payment shall be made to CFS who shall transmit the funds to the Ho-Chunk Nation Treasury for deposit. If the funds are to be taken from a tribal member parents' per capita the Court shall so order and transmit a copy of the Order to the Ho-Chunk Nation's Treasury Department. The Treasury Department shall subtract the amount from the parent's per capita and place the funds in a restricted account.

117. **Enforcement of Reimbursement Orders**.

a. An Order entered under this Chapter against a parent(s) or other person shall be enforced by contempt proceedings, and shall also have the effect of a civil judgment at law. In addition to other remedies, the Court shall issue an Order to any employer, trustee, financial agency, or other person or corporation indebted to any other person ordered to make payments under this Act, to withhold and pay over to the Clerk of the Court the amount ordered by the Court to be paid to the parent(s) or other person at each regular or usual payday or day of disbursement.

b. A copy of such Order shall be served on the parents or either of them adjudged liable and either the parents or parent or the indebted party may request a hearing to determine the propriety of the Order or the extent of the indebtedness.

c. No property of the parent(s), shall be exempt from execution to enforce collection of the amounts to be paid.

Legislative History:

05/04/99	Legislature places draft Hocak Nation Children and Family Code out for public comment for 30 days.
06/15/99	Hocak Nation Children and Family Code enacted as HCC 98-002 by Legislative Resolution 06/15/99A.
05/20/02	Legislative Resolution 05/20/02A amends Section 5A of Article XXIV providing that the Court may require bond.
08/14/04	Legislature places draft Hocak Nation Children and Family Act out for 45-Day Public Review.
10/19/04	Enacted as Hocak Nation Children and Family Act (4 HCC § 3) with an effective date of 12/01/04 by Legislative Resolution 10/19/04F.
11/05/04	Restated to make technical corrections.
04/16/09	2009 Amendments introduced to Administration Committee. Motion to refer to Legislature.
04/21/09	2009 Amendments introduced to full Legislature. Purpose of the amendments was to make

the code flow in a more chronological order and clarify issues that have arisen in the children's cases.

05/05/09 Legislative Resolution 05/05/09/J amends the Hocak Nation Child and Family Act (4 HCC § 3) through the Quick Passage Procedures of the Legislative Organization Act.

06/10/09 Ho-Chunk Nation Legislature amends Section 81 to clarify the Child Support procedures used in CHIPS guardianship cases.

10/07/14 Legislature adopts Resolution 10/07/14O amending Section 7.a.(3) and Section 105 via quick passage procedure.