

TRIBAL CODE  
CHAPTER 31  
CHILD WELFARE CODE

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HISTORY NOTE:

Current Ordinance:

Adopted April 16, 1984, Resolution No. 154(84), effective immediately.

Amendments:

Amendment No. 1 adopted February 25, 1985, Resolution No. 69(85), amending ss. 31.102, 31.502, 31.506, and 31.508.

Section 31.301(1)(d) was amended February 1, 1988, Resolution No. 25(88).

Amendment No. 3 adopted May 9, 1988, Resolution No. 144(88), amending ss. 31.101(1), 31.202(15)-(18), 31.204, 31.307, 31.308, 31.309, 31.310, 31.401, and 31.402.

Amendment No. 2 adopted February 27, 1989, Resolution No. 73(89), amending s. 31.102(5) and adding ss. 31.303(1)(d) and 31.304(4).

Added Section 31.301(1)(f) victim of sexual or physical abuse, April 26, 1993, Resolution No. 126(93).

Amend definition of “Tribal Child” in Tribal Code, Chapter 31.102(14)(c) to read “*the biological child of an enrolled member of the tribe.*” Delete language, “who is eligible for membership by adoption,” November 27, 2000, Resolution No. 680(00), effective upon date of adoption by this Tribal Resolution.

Res. No. 20(05), February 14, 2005. Added section 31.301(3) jurisdiction over unborn children in need of assistance and the expectant mothers of those unborn children.

Res. No. 103(10), June 21, 2010. Amend Section 31.805 Licensing (1) and (2), and adding Section 31.809 Appeal Process.

Res. No. 328(11), November 14, 2011. Amend Section 31.301(1) adding (g) The child has demonstrated an interest in, expressed an interest in, participated in, or been the victim of gang affiliation or initiation.

#### Prior Ordinances:

A Juvenile Code, Chapter VI of the Tribal Court Code, was adopted July 27, 1981, Resolution No. 167(81). It was repealed by sec. 31.908 of the current ordinance.

#### Attorney General Opinions:

OAG 60-81, November 23, 1981, analyzes the jurisdiction of tribal courts in Wisconsin over ICWA matters.

TRIBAL CODE

CHAPTER 31

CHILD WELFARE CODE

CHAPTER I: GENERAL PROVISIONS

31.101 Purpose.

(1) This Code shall be interpreted to effectuate the following purposes:

(a) To exercise the broadest possible jurisdiction over tribal children, whether within or without the coverage of the Indian Child Welfare Act.

(b) To preserve and protect for the tribe the tribe's most precious resource -- its children.

(c) To provide for the care, protection and wholesome mental and physical development of children, preserving the unity of the family wherever possible.

(d) To divert children from the state juvenile justice system wherever possible so as to deal with tribal children committing delinquent acts in a tribal rehabilitation context.

(e) To provide a forum in which disputes regarding the care and custody of tribal children may be resolved.

(f) To respond to the needs of tribal children for care and treatment through reservation-derived programs and to keep children within a tribal context whenever possible.

(g) To the extent possible, to provide children in need of care with stable homes, attention to special needs, and services to facilitate reunification of families.

(2) This Code shall be liberally construed to the end that each tribal child shall receive such care and guidance and control, preferably in the child's own home, as will be conducive to the child's welfare and the best interest of the tribe and the tribal community.

31.102 Definitions.

As used in this Code, unless otherwise defined:

(1) "Child" means any unmarried person who is less than 18 years of age. The singular shall stand for the plural when more than one child is involved.

(2) "Child custody proceeding" means a proceeding for the determination of custody of a tribal child brought by a party other than the tribe's Child Welfare Office pursuant to Chapter IV hereof.

(3) "Child welfare proceeding" means a proceeding brought by the tribe's Child Welfare Office pursuant to Chapter III hereof.

(4) "Court" means the Lac du Flambeau Tribal Court.

(5) "Delinquent" means a child who has violated any state or federal criminal law or any ordinance of the tribe punishable by fine, imprisonment, or civil remedial forfeiture proceedings.

(6) "Guardian" means the person or agency named by the court as having the duty and authority of guardianship.

(7) "Guardian ad Litem" means a person who is appointed by the court to represent the interests of a child or an incompetent in a particular court proceeding.

(8) "Guardianship" means the duty and authority to make important decisions in matters having permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

(a) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric, and surgical treatment, and obtaining a motor vehicle operator's license.

(b) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child.

(c) The right and duty of reasonable visitation of the child.

(d) The rights and responsibilities of legal custody except when legal custody has been vested in another person.

(9) "Indian Child Welfare" or "ICWA" means Pub. L. 95-608, 92 Stat. 3069, codified at 25 USC s. 1901 et seq.

(10) "Interested party" means any person who with respect to a child who is the subject of proceedings brought pursuant to this Code is the child's parent whose rights have not been terminated, a guardian, a legal custodian, a physical custodian, the nearest relative of a deceased or absent parent whose rights have not been terminated, and any person who is an Indian custodian as defined in the Indian Child Welfare Act. Interested party shall also include the child who is the subject of proceedings if such child is over 12 years of age. With respect to a child born out of wedlock, interested party includes a person who has been acknowledged paternity pursuant to this Code, has been adjudicated to be the child's father, or who is known by the parties to be or to claim to be the father.

(11) "Legal custody" means a legal status created by the order of a court which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities and the provisions of any court order. When used without qualification, "custody" means legal custody.

(12) "Reservation" means all the land and water within the exterior boundaries of the Lac du Flambeau Indian Reservation.

(13) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(14) "Tribal child" means a child who is either:

- (a) an enrolled member of the tribe; or
- (b) eligible for enrollment in the tribe in his or her own right; or
- (c) the biological child of an enrolled member of the tribe.

### 31.103 Jurisdiction.

(1) Jurisdiction is hereby vested in the court over all matters pertaining to this Code and all proceedings instituted hereunder.

(2) The jurisdiction of the tribe and the court shall be exclusive over any matter for which exclusive jurisdiction is authorized under federal law, including without limitation those matters falling within Section 101(a) of the Indian Child



Welfare Act. The Tribe and tribal court shall have concurrent jurisdiction over all other matters related to this Code.

(3) The court shall have jurisdiction over adults in aid of its powers under this Code, and may make such orders respecting adults and children as are necessary for the welfare of a child.

### 31.104 ICWA Policy.

The following shall constitute the policy of the tribe with regard to the Indian Child Welfare Act:

(1) The tribe shall intervene in all ICWA cases involving a tribal child unless such intervention would be impracticable under the circumstances of the case.

(2) In all ICWA cases in which the tribe is the "Indian child's tribe" within the meaning of Section 4(5) of the ICWA, the tribe shall petition for transfer of proceedings to the court unless such transfer would be impracticable under the circumstances of the case.

(3) The tribe hereby establishes the following hierarchy of placement preferences should a child be placed outside the child's home:

(a) A member of the child's extended family.

(b) Another member of the child's tribe.

(c) Another Indian family.

(d) An institution for children approved by the tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(e) A non-Indian foster home located on the reservation and licensed by the tribe.

(f) A non-Indian foster home located off the reservation and licensed by the tribe.

(g) Within each placement preference category, preference shall be given to a placement on the reservation. These placement preferences

shall be applied by the court in all proceedings pursuant to this Code, and no deviation therefrom shall be made without a finding of good cause therefor.

(4) The provisions of sub. (3) constitute the establishment of a tribal order of preference pursuant to Section 105(c) of the ICWA.

#### 31.105 Procedures.

In proceedings under this Code the court shall follow the procedures set forth in the Tribal Court Code, Tribal Code Ch. 80, or adopted by the court pursuant to said Code. The proceedings followed shall be in conformity with those required to secure the rights set forth in the Indian Civil Rights Act, 25 USC s. 1301 et seq.

#### 31.106 Representation of Parties.

(1) Any interested party may be represented in any proceeding under this Code by an attorney or lay advocate authorized by the court to practice before it. Such representation shall be at the expense of the party unless otherwise ordered in the discretion of the court.

(2) If it appears that the interests of the child require it, the court shall appoint a guardian ad litem to represent the interests of the child or incompetent. The person appointed shall act as an advisor to the court and other parties concerning the welfare of the child.

### CHAPTER II: CHILD WELFARE OFFICE.

#### 31.201 Establishment.

The primary responsibility for performing the duties and responsibilities of the tribe pursuant to this Code shall belong to the tribe's Child Welfare Office. The Office shall be administered by a Child Welfare Coordinator, subject to the immediate supervision of the program director of the Family Resource Center and the direction of the Tribal Council.

#### 31.202 Duties.

The Child Welfare Office shall have the following powers, duties and responsibilities:

(1) Receive and process all notices sent to the tribe pursuant to the ICWA, intervene in ICWA proceedings, petition for transfer of ICWA proceedings to tribal

court where appropriate, and carry out all other duties and responsibilities of the tribe under the ICWA.

(2) Receive and investigate reports of suspected child abuse and neglect involving tribal children.

(3) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings.

(4) Determine whether a tribal child should be held pursuant to the emergency provisions of Chapter III, and provide crisis counseling during the intake process when such counseling appears to be necessary.

(5) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable.

(6) Make a dispositional report and recommendation to the court in child welfare proceedings, including a plan of rehabilitation, treatment and care.

(7) Supervise and assist tribal children pursuant to child welfare proceeding dispositions, offer family counseling, and make an affirmative effort to obtain necessary or desired services for the tribal child and the child's family.

(8) Accept legal custody of tribal children when ordered by the court.

(9) Investigate and make recommendations with regard to child custody in child custody proceedings, if directed to do so by the court.

(10) Initiate petitions for the termination of parental rights or investigate and report to the court on petitions to terminate parental rights brought by others.

(11) Make a home study, report and recommendation to the court with regard to adoption petitions.

(12) Investigate, inspect, and make recommendations to the Foster Home Licensing Committee on the licensing of foster homes, and monitor and supervise foster homes and tribal children in foster care.

(13) Retain counsel to assist in carrying out these duties and to represent the tribe in all matters relating to the Code.

(14) Perform any other functions ordered by the court in matters related to the Code.

(15) Develop case plans and conduct case plan reviews pursuant to dispositional orders.

(16) Negotiate agreements for services, record sharing, referral, and funding for child and family welfare services pursuant to dispositional orders.

(17) Provide measures and procedures for preserving the confidential nature of child and family service records within the Child Welfare Office.

(18) To make and file such reports as may be required by this Code and by agreements with other governmental agencies in furtherance of child and family services.

### 31.203 Other Tribal Resources.

(1) In carrying out its powers, duties, and responsibilities under this Code, the Child Welfare Office may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the tribe, both from within and without the tribe, but in particular the services available through the Family Resource Center of the Chippewa Health Center.

(2) The court may order the provision of psychiatric, psychological, therapeutic, counseling, or other social services by an appropriate department or employee of the tribe in any proceeding under this Code.

### 31.204 Case Plans.

(1) For all matters in which a dispositional order other than dismissal is entered, the Child Welfare office shall develop a written plan of service in consultation with the child, if over 12 years of age, the parent(s), guardian, or custodian, and such other child and family service providers as may be appropriate to the case. Each case plan shall be designed to achieve placement in a setting which most closely approximates a family and in which any special needs may be met, and shall include the following features:

(a) A description of the type of home or child care institution in which the child is to be placed,

(b) A discussion of the appropriateness of the placement for the particular child,

(c) A plan for assuring that:

- (i) the child receives proper care while in placement;
  - (ii) services are provided to the parent(s), child, and foster parents to facilitate the return of the child to his/her home or permanent placement; and
  - (iii) the need for services of the child in foster placement are met and that the services are appropriate.
- (2) At no less than six months intervals the Child Welfare Office shall review each case and plan, and develop written findings which address:
  - (a) Continuing need for service and/or placement.
  - (b) Appropriateness of services and/or placement to date.
  - (c) Compliance with the service plan.
  - (d) Progress made toward alleviating or mitigating the circumstances giving rise to the dispositional order.
  - (e) Projection of a likely date by which the child may be returned home, placed in legal guardianship, or placed for adoption.
- (3) Case reviews shall be conducted by a panel including at least one person who is not responsible for management or delivery of services in the case. Case review meetings shall be open to participation by the child, parents, guardian, or custodian or their representative.
- (4) The case plan and any case review findings shall be filed with the tribal court and shall be referenced in any petition for extension or modification under s. 31.309.

### CHAPTER III: CHILD WELFARE PROCEEDINGS.

#### 31.301 Child in Need of Assistance.

- (1) A tribal child is a child in need of assistance and may be the subject of a petition under this chapter if:
  - (a) The child is a delinquent.

(b) The parent or any other person responsible for the care and maintenance of the child refuses or neglects for reasons other than poverty to provide support or care necessary for the child's health or welfare or causes or fails to prevent emotional or physical harm to the child other than by accidental means.

(c) The child is abandoned by a parent or other custodian, or is otherwise left without proper care, custody or guardianship.

(d) The parent, guardian, or other custodian of the child is unable to care for, control, or provide necessary special care or special treatment for the child, or the child is habitually truant from home or school.

(e) The child is the subject of a child custody proceeding under this Code or the Indian Child Welfare Act and the case has been transferred to the tribal court.

(f) The child has been the victim of sexual or physical abuse including injury which is self-inflicted or inflicted by another other than accidental means.

(g) The child has demonstrated an interest in, expressed an interest in, participated in, or been the victim of gang affiliation or initiation.

(2) The jurisdiction of the court over a child pursuant to this chapter shall cease when such child reaches the age of 18.

(3) Jurisdiction over unborn children in need of assistance and the expectant mothers of those unborn children.

An unborn tribal child is a child in need of assistance which can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

### 31.302 Intake Inquiry.

Whenever any person gives information to the Child Welfare Office that a tribal child falls within the provisions of this chapter and is a child in need of

assistance, a preliminary intake inquiry shall be conducted to determine whether the interests of the tribe or the child require that further action under this chapter be taken.

31.303 Taking a Child Into Custody.

(1) A tribal child may be taken into the emergency custody of the Child Welfare Office by any tribal law enforcement officer or any employee of the Child Welfare Office without a court order if there is reasonable grounds to believe that:

(a) The child has committed a delinquent act and the immediate apprehension of the child is necessary; or

(b) The child has run away from his or her parents, guardian, or other custodian and is not in the care of an adequate custodian; or

(c) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal of the child from these surroundings is necessary, or

(d) The child has been detained by a law enforcement officer for violation of a tribal ordinance, is under the age of fourteen or is not in suitable condition to be released in his or her own care, and no parent or other suitable person can be located with reasonable effort who is willing and capable to take the care and custody of the child.

(2) A tribal child may be taken into the emergency custody of the Child Welfare Office upon an ex parte order of the court if made upon a satisfactory showing that the welfare of the child demands that the child be immediately removed from his or her present custody.

(3) A tribal child may be held in emergency custody for no more than 72 hours without a tribal court order, and a petition pursuant to this chapter shall be filed with the court by the next day following the taking of the child into custody, excluding Saturdays, Sundays, and holidays.

(4) When a child is taken into custody as provided for in this section, the person taking the child into custody shall immediately attempt to notify all interested parties. If the interested parties have not been notified by the time the child is delivered into the custody of the Child Welfare Office, that office shall diligently continue attempts at notification.

(5) The Child Welfare Office shall determine the appropriate level of security necessary in any emergency placement pending a hearing before the tribal court.

#### 31.304 Petition.

(1) Proceedings pursuant to this chapter shall be initiated by the filing of a petition in the court. The petition shall be filed by the Child Welfare Office. Proceedings initiated pursuant to this chapter shall be entitled: "In the interest of (child's name), a tribal child."

(2) The petition shall be verified, but may be made on information and belief. The petition shall contain the following information:

(a) The name, birth date and residence of the child.

(b) Information showing that the child is a tribal child.

(c) The name, address and relationship to the child of each interested party.

(d) A plain factual statement showing why the child is a child in need of assistance under s. 31.301(1).

(3) The petition shall be served upon each interested party of personal service or certified or registered mail. Proof of service shall be filed with the court. If the whereabouts of any interested party is unknown, substituted service shall be made in such manner as the court directs.

(4) Proceedings involving the violation of tribal regulatory ordinances and codes by children aged 14 and over shall be conducted in accordance with Chapter IV of the Tribal Court Code, Ch. 80, or such other procedure as is specified in the ordinance or code, and not be petition under this chapter.

#### 31.305 Transfer from State Court.

The court shall follow the procedures of this chapter with regard to any case transferred to the court pursuant to the Indian Child Welfare Act, provided:

(1) If the original proceeding seeks the termination of parental rights, the procedures of Chapter V shall also be followed.



(2) A new petition need not be filed if the petition filed in state court alleges facts which show the child to be a child in need of assistance under this chapter.

### 31.306 Initial Hearing; Basic Rights.

(1) As soon as practicable after the filing of a petition the court shall hold an initial hearing.

(2) At the initial hearing the court shall inform the interested parties of the following:

(a) The nature and possible consequences of the proceedings.

(b) The right to confront and question witnesses.

(c) The right to be represented by counsel at the party's own expense, and the availability, if any, of free or low cost representation of the indigent.

(d) The right to notice and an opportunity to be heard at all proceedings.

(3) After providing this information, the court shall determine whether any interested party wishes to contest the petition, whether the child should be placed outside the home pending disposition and, if so, the level of placement necessary to protect the child and the community.

### 31.307 Fact-Finding Hearing.

(1) If any interested party contests the petition, the court shall hold a fact-finding hearing to determine whether the allegations of the petition are true and whether the child is a child in need of assistance under s. 31.301(1). The hearing shall be conducted expeditiously and fairly. The hearing may be conducted in an informal manner, but the decision must be based solely upon the evidence produced at the hearing.

(2) If the court finds by clear and convincing evidence that the child is a child in need of assistance under s. 31.301(1), it shall enter an order so stating. If the court finds that the petition is not sustained, and the child is not a child in need of assistance, it shall dismiss the petition.

(3) The court shall require a showing by any person advocating an out of home placement that reasonable efforts have been made and services extended in attempts to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to return to the home.

#### 31.308 Disposition.

(1) If the petition is not contested or if the court finds the child to be a child in need of assistance at the fact-finding hearing, the court shall conduct a disposition hearing and enter a disposition order. The disposition hearing may be combined with the fact-finding hearing with the consent of the parties.

(2) The court shall order one of the following dispositions appropriate for the welfare of the child and the tribe and as minimally intrusive upon the family as is possible under the circumstances:

(a) Warn the child and/or the interested parties.

(b) Place the child under the supervision of the Child Welfare Office in the child's home upon such terms and conditions, including reasonable rules of conduct for interested parties, that are deemed necessary for the welfare of the child.

(c) Remove the child from the home and place the child in the custody of the Child Welfare Office for placement in an environment more suitable for the child's welfare, specifying the maximum level of placement and the efforts which must be undertaken to return the child to the home.

(3) A dispositional order of out of home placement shall include specific findings as to the appropriateness of returning the child to the home. If a child is removed from the home, the court may order such remedial treatment or services for the child and interested parties as will facilitate the return of the child to his or her home.

(4) A dispositional order shall specify its duration, which shall not exceed one year.

#### 31.309 Periodic Review.

(1) As a part of its dispositional order, the court may order judicial review of the child's circumstances and of the continued appropriateness of the disposition at any time or at any interval before one year after entry of the dispositional order.

(2) If the Child Welfare Office wishes to extend the court's jurisdiction over a child beyond the expiration of a dispositional order, it shall petition for an extension of the dispositional order no less than 15 days prior to the expiration of the order. The court shall thereupon hold a hearing to determine whether the dispositional order should be extended or modified. If no petition to extend an order is filed, the court shall dismiss the proceedings at the expiration of the dispositional order.

(3) Upon petition of the Child Welfare Office or an interested party, and for good cause shown, the court may hold a hearing to reconsider or modify the dispositional order at any time during the duration of the order.

(4) No less than three days prior to any hearing for the extension of a dispositional order the court shall require the Child Welfare Office to file a report, except to the extent that the petition for extension contains such information, describing and discussing the following:

(a) Continuing necessity for and appropriateness of placement.

(b) Extent of compliance with permanency plan by parties and service providers.

(c) Efforts to meet special needs of child and parents.

(d) Progress toward eliminating causes for dispositional order, returning child home, or securing a permanent placement.

(e) Projected date for return home, guardianship, placement for adoption, or other permanent placement of the child.

(f) Evaluation of permanency plan and of circumstances preventing achievement of plan goals.

(g) Proposed modifications of the permanency plan.

(5) The court shall state reasons for any extension that is ordered.

#### 31.310 Change of Placement.

(1) The Child Welfare Office may request a change of placement of a child, whether or not authorized in the dispositional order, by filing such request together with the reasons therefor with the court and providing the interested parties

with 10 days notice by ordinary mail prior to the change. If no objection to the change is filed by an interested party within the notice period, the Child Welfare Office may make the change without court order, and shall notify the court when the change has been completed. If an objection is filed within the notice period, the court shall promptly hold a hearing to determine whether the change of placement should be made.

(2) If emergency conditions necessitate an immediate change in placement of a child who has been placed outside the home, the Child Welfare Office may remove the child to a new placement, whether or not authorized by the dispositional order, without the prior notice required in sub. (1). Notice of the change shall, however, be sent to interested parties by ordinary mail within 48 hours after the change of placement. Any interested party may thereafter demand a hearing on the change of placement.

(3) At the time of any hearing for change of placement the court may require the Child Welfare Office to file a report evaluating the appropriateness of the change of placement and the effects upon the permanency plan caused by the change in placement.

#### 31.311 Closed Hearing.

Hearings conducted under this chapter shall be closed to the public, and the proceedings shall remain confidential, except upon court order for good cause shown.

#### 31.312 Cost of Support.

If a child is removed from the home pursuant to this chapter, the child's parents or other legally responsible person may be ordered by the court to pay or contribute to the costs of the child's support. Such payments shall be made to the clerk of court, who shall disburse the same to the person or organization with whom the child is placed.

### CHAPTER IV: CHILD CUSTODY PROCEEDINGS.

#### 31.401 Change of Custody by Consent.

(1) Any person having legal custody of a tribal child may initiate a change of legal custody by consent by filing with the court a verified petition containing the following information:

- (a) The name, birth date and residence of the child.

- (b) Information showing that the child is a tribal child.
- (c) The petitioner's legal relationship to the child.
- (d) The name, address and relationship to the child of the person or persons to whom custody is being transferred.
- (e) The name, address and relationship to the child of all other interested parties.
- (f) The proposed duration of the change of custody.
- (g) A consent to accept custody signed by the person or persons to whom custody is being transferred.
- (h) If the child is 12 years of age or older, the consent of the child.
- (i) Notice of a right to request a hearing by the tribal court.

(2) The court shall provide a copy of the petition to the Child Welfare Office, which shall conduct such investigation as it deems warranted. The Child Welfare Office may intervene in the proceedings and request a hearing if in its opinion the proposed change is not in the best interests of the child or the Tribe.

(3) A copy of the petition shall be sent by ordinary mail to all interested parties, and a proof of service shall be filed with the court. Any interested party may request a hearing on the petition.

(4) If no request for a hearing is received by the court within 5 days after the last mailing, the court shall make such inquiry as it deems necessary and may order the change of custody. The change of custody may be limited in duration. The order shall require the review of the change of custody by the Child Welfare Office at no less than 6 month intervals in compliance with Section 31.309 of this code.

(5) If a hearing has been requested by any interested party or the Child Welfare Office, the petition shall be treated as contested.

#### 31.402 Petition in Contested Proceedings.

(1) Any interested party may petition for custody of a tribal child. A petition for custody may also be filed by a person who is related to the child within the second degree of consanguinity. The petition shall be verified and shall contain the following information:

- (a) The name, birth date and residence of the child.
- (b) Information showing that the child is a tribal child.
- (c) The name and address of the person having current physical custody of the child.
- (d) The petitioner's relationship to the child.
- (f) The reasons why custody is being sought.

(2) The petition shall be served personally or by certified or registered mail upon all interested parties, and by ordinary mail upon the Child Welfare Office. Proof of service shall be filed with the court.

#### 31.403 Investigation.

The court may request an investigation and recommendation as to custody by the Child Welfare Office. The Child Welfare Office may without request of the court conduct an investigation and may intervene in the proceedings to protect the interests of the tribe.

#### 31.404 Hearing.

The court shall expeditiously and fairly conduct a hearing on the petition. The hearing may be conducted in an informal manner, but the decision shall be based solely on the evidence produced at the hearing.

#### 31.405 Disposition.

(1) The court may award legal custody to one of the parties to the proceedings.

(2) The court may award the legal custody of the child to the parties jointly if the parties agree and the court finds it would be in the best interests of the child. Joint custody means that both parties have equal rights and responsibilities toward the child and neither party's rights are superior.

(3) If the interests of the child demand it, the court may find that neither of the parties is a fit and proper person to have custody and may proceed as under Chapter III.

(4) A custody order shall provide for visitation by the non-custodial interested parties unless the court has found good cause to prevent such visitation.

#### 31.406 General Standards for Determining Custody.

In making a custody determination, the court shall consider all the facts in the best interests of the child and the tribe. The court shall not consider the sex of the custodian as a factor. The court shall consider the following factors in making its determination:

- (1) The wishes of the child as to his or her custody.
- (2) The interaction and interrelationship of the child with the interested parties, siblings, and any other person who may significantly affect the child's best interests.
- (3) The child's adjustment to the home, school, religion, community, and tribe.
- (4) The mental and physical health of the parties, the children, and other persons living in a proposed custodial home.
- (5) The desirability of retaining the child in a tribal context.
- (6) Such other factors as the court may in each case determine to be relevant.

#### 31.407 Standard When Contest is Between Parent and Nonparent.

When a custody contest is between a parent of the child and a nonparent, custody shall not be awarded to the nonparent unless the court shall determine by clear and convincing evidence that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

#### 31.408 Special Conditions for Nontribal Custodian.

Whenever the custody of a child is awarded to a person who is not a member of the tribe, custody shall be expressly conditioned upon the custodian apprising the child of his or her tribal heritage and raising the child insofar as is practicable to foster the child's tribal identification and the child's participation in tribal affairs and cultural heritage. Failure to abide by this condition shall constitute grounds for a change of custody. The Child Welfare Office will monitor the custodial placement to insure compliance with this provision.

### 31.409 Modification.

An interested party may petition for change or modification of a custody decree issued pursuant to this chapter. No modification shall be granted unless the court after a hearing shall determine that the party seeking the modification has shown a substantial change of circumstances.

### 31.410 Costs of Support.

The court may order the noncustodial parent or other legally responsible person to pay or contribute to the costs of the child's support. Such payments shall be made to the clerk or court, who shall disburse the same to the person having custody of the child.

## CHAPTER V:           TERMINATION OF PARENTAL RIGHTS.

### 31.501 Voluntary Termination of Parental Rights.

(1) The court may enter an order terminating the parental rights of a parent of a tribal child after the parent has given his or her consent pursuant to this section.

(2) A consent to termination of parental rights shall be executed in writing and recorded before the tribal court or another court of record. The consent shall be accompanied by a certification by the presiding judge that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent.

(3) Any consent given prior to, or within 15 days after, the birth of a tribal child shall not be valid.

(4) The consent of a minor or incompetent person to the termination of his or her parental rights shall not be accepted by the court unless it is joined by the consent of his or her guardian ad litem.

### 31.502 Grounds for Involuntary Termination.

Unless consent has been given pursuant to s. 31.501, no termination of parental rights may be ordered in the absence of a determination supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that:



(1) Continuation of the child in the home of the parents would be contrary to the welfare of the child and that reasonable efforts have been made to prevent or eliminate the need to remove the child from the home and to return the child home.

(2) The continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child, or that the parent has abandoned the child without making adequate provision for the care of the child and has not maintained parental contact with the child for over a year.

### 31.503 Petition for Involuntary Termination.

(1) A proceeding for the involuntary termination of parental rights may be initiated by the petition of an interested party or the Child Welfare Office.

(2) The petition shall be entitled: "In the interest of (child's name), a tribal child," shall be verified, and shall contain the following information:

(a) The name, birth date, and residence of the child.

(b) Information showing that the child is a tribal child.

(c) The name, address, and relationship to the child of all interested parties.

(d) A plain factual statement showing why the grounds for termination are present.

(3) Upon the filing of a petition, the clerk of court shall issue a summons to each parent whose rights are sought to be terminated setting a date for an initial hearing and commanding the appearance of the parent so summoned.

(4) The petitioner shall cause the summons and a copy of the petition to be served personally or by certified or registered mail upon each parent whose rights are sought to be terminated and upon all other interested parties. If the Child Welfare Office is not the petitioner, a copy shall also be served upon the Child Welfare Office in the same manner. Proof of service shall be filed with the court. Service shall be made at least 10 days prior to the initial hearing. If the whereabouts of a parent or other interested person is unknown, substituted service shall be made in such manner as the court directs.

### 31.504 Hearing.

The procedure for hearing petitions of involuntary termination of parental rights shall be as provided in ss. 31.304, 31.306, 31.307, and 31.311.

31.505 Investigation.

If the Child Welfare Office is not the petitioner, it shall conduct an investigation and make a report and recommendation to the court on the petition. The Child Welfare Office may intervene in any proceedings under this chapter instituted by others in order to assert and protect tribal interests.

31.506 Disposition.

(1) The court shall dismiss the petition if it finds that the petitioner has not sustained its burden of proof.

(2) If the court finds that the petitioner has sustained its burden of proof under s. 31.502, it may enter an order terminating the parental rights of one or both parents.

(3) If the rights of both parents or of the only living parent are terminated, the court shall either:

(a) Transfer guardianship and custody to a relative, the Child Welfare Office, or other appropriate person or agency pending adoptive placement; or

(b) Transfer guardianship and custody to an adoption agency licensed by the tribe, the State of Wisconsin, or another state for adoptive placement.

(4) If an order terminating parental rights is entered, the court shall:

(a) Inform each birth parent whose rights have been terminated or the provisions for filing medical or genetic information or parental identifying information with the Wisconsin Department of Health and Social Services, and of the provision for release of such information pursuant to Wis. Stat. s. 48.432 and s. 48.433.

(b) Forward to the Wisconsin Department of Health and Social Services:

(i) The name and date of birth of the child whose birth parent's rights have been terminated;

(ii) The names and current addresses of the child's birth parents, guardianship, and legal custodian; and

(iii) Any medical or genetic information which may have been obtained.

#### 31.507 Effect of Termination.

An order terminating parental rights permanently severs all rights, powers, privileges, immunities, duties and obligations between parent and child. A person whose parental rights have been terminated is not an interested party with respect to such child for any purpose under this Code.

#### 31.508 Sustaining Care.

The Court may place a child in sustaining care whenever parental rights in the child have been terminated and the court finds that the child is unlikely to be adopted or that the adoption is not in the best interest of the child. Provision for such care shall be governed by Wis. Stat. s. 48.428, which is hereby adopted by reference.

### CHAPTER VI: PATERNITY

#### 31.601 Custody of Child.

The mother of a child born out of wedlock has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

#### 31.602 Acknowledgment of Paternity.

The father of a tribal child born out of wedlock may assume parental responsibility for a child and recognize such child as his heir and offspring by executing a formal acknowledgment of paternity on a form provided for that purpose by the Child Welfare Office. The acknowledgment shall also be signed by the mother of the child.

#### 31.603 Petition to Determine Paternity.

(1) Any interested person, including the mother, the father, the child, and the Child Welfare Office, may petition the court for the determination of the paternity of a tribal child.

(2) The petition shall be entitled: "In the matter of the paternity of (child's name), a tribal child", shall be verified, and shall contain the following information:

(a) The name, birth date, and residence of the child.

(b) Information showing that the child is a tribal child.

(c) The name and address of the mother.

(d) The name and address of the person alleged to be the father of the child.

(e) The name, address, and relationship to the child of all other interested parties.

(f) The petitioner's interest in the matter.

(3) Upon the filing of a petition, the clerk of court shall issue a summons to the alleged father or, if the petition is brought by the father, to the mother or legal custodian, setting a date for an initial hearing and commanding appearance at the hearing.

(4) The petitioner shall cause the summons and a copy of the petition to be served personally or by certified or registered mail upon all interested parties. Service shall also be made on the Child Welfare Office by ordinary mail if that office is not the petitioner. Proof of service shall be filed with the court. Service shall be made at least 10 days prior to the initial hearing. If the whereabouts of an interested party is not known, substituted service shall be made in such manner as directed by the tribal court.

(5) A petition for determination of paternity brought by a party other than the child must be filed within six years after the child's birth.

#### 31.604 Initial Hearing.

At the initial hearing the court shall determine whether any interested party wishes to contest the petition. Before doing so, the court shall inform the parties of the following:

(1) The nature and possible consequences of the proceeding.

(2) The right to confront and cross-examine witnesses.

(3) The right to be represented by counsel at the party's own expense, and the availability, if any, of free or low cost representation for the indigent.

(4) The right to request blood tests.

(5) That the party contesting the petition has the defenses that the alleged father was sterile or impotent at the time of conception, did not have sexual intercourse with the mother during the period of 8 to 10 months prior to the birth of the child, or that another man had sexual intercourse with the mother during that period of time.

#### 31.605 Blood Tests.

(1) The court may, and upon request of a party shall, require the child, mother, alleged father, or any male witness who testifies or will testify about his sexual relations with the mother at a possible time of conception to submit to blood tests. The test shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components appointed by the court.

(2) The court may order such test by additional experts at the request and expense of a party as the court deems desirable.

(3) Whenever the results of the blood tests exclude the alleged father as the father of the child, this evidence shall be conclusive evidence of nonpaternity and the court shall dismiss the action. Whenever the results of the tests exclude any male witness, the tests shall be conclusive evidence of nonpaternity of that male witness. If any party refuses to submit to the blood test this fact shall be taken into account as evidence in the decision. If the action was brought by the child's mother but she refuses to submit herself or the child to the blood test, the action shall be dismissed.

(4) The fees and costs for the blood tests shall be paid by the court, but at the conclusion of proceedings the court may order either or both parties to pay the fees and costs upon a finding of ability to pay.

#### 31.606 Hearing.

If after the blood tests are made the matter remains contested, the court shall expeditiously and fairly conduct a hearing to determine paternity. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing. The hearing shall be closed to the public, and the proceedings shall remain confidential except upon order of the court for good cause shown.

31.607 Judgment.

(1) If the paternity of the alleged father is established at the hearing by clear and convincing evidence, a judgment establishing paternity and declaring the alleged father to be the father shall be entered. If paternity is not so established, the petition shall be dismissed.

(2) If paternity is established, the judgment may make provision for custody, visitation, and support as provided in Chapter IV.

31.608 Legitimization.

In any case where the father and mother of any tribal child born out of wedlock shall lawfully intermarry, such child shall thereby become legitimized, unless the parental rights of the mother were terminated prior thereto.

CHAPTER VII: ADOPTIONS.

31.701 Who May Petition.

Any person who wishes to adopt a tribal child may file a petition for adoption with the court. The spouse of any person who petitions must join the petition.

31.702 Petition.

(1) Proceedings for adoption shall be initiated by the filing of a petition with the court. Proceedings shall be entitled "In the interest of (child's name), a tribal child."

(2) The petition shall be verified and shall contain the following information:

- (a) The name, birth date, and residence of the child.
- (b) Information showing that the child is a tribal child.
- (c) The name, birth date, and residence of each petitioner.
- (d) The tribal affiliation of each petitioner, if any.
- (e) The relationship of each petitioner to the child.

(f) The name, addresses, and relationship to the child of all other interested parties.

(3) The petition shall be served personally or by registered or certified mail upon all interested parties, and by ordinary mail upon the Child Welfare Office. Proof of service shall be filed with the court.

#### 31.703 Home Study and Report.

The court shall direct the Child Welfare Office to make a home study and report and recommendation to the court on whether the best interests of the child and the tribe would be served by the adoption. In making its report and recommendation, the Child Welfare Office shall consider and apply the placement preferences contained in s. 31.104(3) and the desirability of the child remaining in a tribal context. The Child Welfare Office may intervene on behalf of the tribe to protect the tribe's interests in the child.

#### 31.704 Documentation to be Filed.

Prior to the hearing on the petition, there shall be filed with the court the following:

- (1) A copy of any order terminating parental rights in the child.
- (2) A consent to the adoption by the child's guardian or legal custodian.
- (3) A copy of the child's birth certificate, if one exists, or other satisfactory proof of date and place of birth.
- (4) The home study report and recommendation of the Child Welfare Office.

#### 31.705 Hearing.

(1) The court shall fairly and expeditiously conduct a hearing to determine whether the petition should be granted. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing.

(2) The court shall give notice to all interested parties and the Child Welfare Office at least 15 days prior to the hearing.

(3) If the child is 10 years of age or older, he or she shall appear at the hearing and consent to the adoption.

31.706 Disposition.

If the court finds that granting the petition would be in the best interests of the child and the tribe, the court shall enter an order of adoption. If the court does not so find, it shall dismiss the petition.

31.707 Special Conditions for Nonmember Petitioner.

(1) An order of adoption granted to a petitioner who is not a member of the tribe shall be expressly conditioned upon the petitioner apprising the child of his or her tribal heritage and the raising of the child insofar as possible to foster the child's tribal identity and participation in tribal affairs and cultural heritage.

(2) Failure of an adoptive parent to abide by this provision shall be grounds for voiding the adoption if a petition to void the adoption is brought within 6 years after the entry of the order of adoption.

(3) The court may order the Child Welfare Office to monitor the adoptive placement to insure that the provisions of this section are being complied with.

31.708 Effect of Adoption.

(1) After an order of adoption is entered the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) An order of adoption shall have no effect upon the adopted child's eligibility for membership in the tribe.

CHAPTER VII: FOSTER HOME LICENSING.

31.801 Application for License.

(1) Any person seeking to possess a license to operate a foster home shall apply for a license with the tribe through the Child Welfare Office.

(2) Married persons living together shall be preferred licensees and shall both be party to an application. Couples living together but not married, or married and living apart, or single persons, may also apply for a license.



(3) No applicant shall be issued a foster home license unless he or she meets the following qualifications:

(a) Is over 21 years of age.

(b) Is a responsible, mature individual of reputable character who exercises sound judgment and displays the capacity to provide good care for children.

(c) Is in such physical and mental health as will not adversely affect children or the quality and manner of their care.

(d) Has submitted to a physical examination and presents a certified statement from a physician that he or she is free from medical conditions that might endanger children.

(e) Has taken part or is willing to take part in such training programs as the tribe may arrange for or provide.

(4) A foster home licensee shall make a new application when:

(a) The current license is about to expire.

(b) The licensee plans to move from the licensed address.

(c) The licensee's legal status or relationship has changed, by divorce or otherwise.

#### 31.802 Foster Home Requirements.

(1) The home shall be so constructed, arranged, and maintained as to provide adequately for the health and safety of all occupants. It shall be of a size and space, and shall have such furniture and equipment, to accommodate comfortably both the family and foster children.

(2) The Child Welfare Office may develop more detailed standards regarding the physical facilities of foster homes.

#### 31.803 Standard for Care of Children.

The Child Welfare Office shall develop standards for care of children in foster care relating to supervision, discipline, work by children, education, moral, religious, and cultural training, nutrition, clothing, visitation by parents and other

interested parties, records to be maintained, number of children in the home, and such other factors as affect the care of children.

31.804 Investigation.

Upon receipt of an application, the Child Welfare Office shall conduct an investigation to determine whether the requirements for licensing have been met. The Child Welfare Office shall make a report and recommendation on the application to the Foster Home Licensing Committee.

31.805 Licensing.

(1) There is hereby established a Foster Care Licensing Committee. This committee shall be comprised of the Family Resource Center Director, the staff of the Indian Child Welfare Office and also two community members. *Amended by Resolution No. 103(10) June 21, 2010.*

(2) The Foster Care Licensing Committee shall act upon each application by granting a license if all application requirements are met. The Committee may grant a license subject to special conditions and limitations. *Amended by Resolution No. 103(10) June 21, 2010.*

(3) Each license shall bear the names of the persons licensed, a description of the premises licensed, the maximum number, by age and sex category, to be housed in the premises, the term of the license, and any special terms and conditions which the Committee may impose.

(4) The term of a license shall not exceed two years.

31.806 Inspection and Supervision.

(1) Supervision of foster home licensees shall be the duty and responsibility of the Child Welfare Office.

(2) The Child Welfare Office shall visit and inspect each foster home no less than quarterly. The acceptance of a license pursuant to this chapter constitutes consent by the licensee to unrestricted access to the home by the Child Welfare Office.

31.807 Revocation of License.

(1) A foster home license may be revoked by the Foster Care Licensing Committee for violation of any of the provisions of this chapter or of the regulations regarding foster homes adopted pursuant thereto by the Child Welfare Office.

(2) Written notice stating the grounds for revocation shall be provided a licensee at least 20 days prior to the effective date of a revocation. If the licensee requests a hearing in writing within that time period, the Foster Care Licensing Committee shall hold a hearing before revocation of the license. A decision on the revocation after a hearing shall be in writing, shall state the grounds therefor, and shall be based solely on the evidence produced at the hearing.

#### 31.808 Emergency Removal.

In unusual circumstances which affect the health, welfare, and safety of a child, the Child Welfare Office may remove any child from a foster home to a place of safety pending investigation of circumstances in the foster home.

#### 31.809 Appeal Process. *Added by Resolution No. 103(10) June 21, 2010.*

(1) An applicant for a license to operate a foster home who is denied a license or renewal of license may appeal the decision by the Foster Care Licensing Committee. They can request a hearing in writing to the Appeals Committee within 10 days of the decision. Any request for a hearing received more than 10 days after the notification of the decision of the Foster Care Licensing Committee shall be denied.

(2) The written request for an appeal should be sent to the Family Resource Center Attn: Appeals Committee for the Foster Care Licensing, PO Box 189, Lac du Flambeau WI 54538 or delivered to the Family Resource Center.

(3) Once the Appeals Committee receives the written request for a hearing, the committee will notify the parties in writing at least 10 days prior to schedule a hearing date.

(4) The Appeals Committee shall consist of three members and have two alternates in the case of conflicts of interest.

### CHAPTER IX: MISCELLANEOUS PROVISIONS

#### 31.901 Judgments of Other Courts.

Judgments of other courts regarding the custody of tribal children shall be treated as provided in the Uniform Child Custody Jurisdiction Act. Wis. Stat. Ch. 822, provided:

(1) The other court followed the applicable provisions of the Indian Child Welfare Act; and

(2) It is demonstrated that the other court in its decision considered and gave adequate weight to the tribe's interest in retaining the child in a tribal context.

31.902 Child Abuse and Neglect Reporting.

The provisions of Wis. Stat. s. 48.981 regarding the reporting and investigation of child abuse and neglect are hereby adopted except for the provision contained therein relating to the central registry. The Child Welfare Office is the department responsible for carrying out the tribe's duties under this section.

31.903 Records.

Records kept by the court and the Child Welfare Office relating to proceedings governed by this code, except for court records of proceedings conducted pursuant to Chapter IV, shall be confidential and the information contained therein shall not be disclosed to nonparties unless authorized by this code, necessary to carry out duties imposed by this code, or authorized by written order of the court.

31.904 State Records.

Whenever an order of the court may affect records kept by a state or subdivision thereof, such as a birth certificate, the clerk of court shall transmit a certified copy of the court order and shall attempt to see to it that the state or local record is changed accordingly.

31.905 Cooperation with State and County.

The court and the Child Welfare Office are hereby authorized to negotiate agreements with the state and any county thereof to assist in and facilitate the carrying out of the provisions of this code. Any such agreement shall require the approval of the Tribal Council by resolution before becoming effective.

31.906 Fees.

(1) Any person other than the Child Welfare Office who files a petition pursuant to the provisions of this code shall pay a filing fee of \$20 to the clerk of court at the time of filing thereof.

(2) Any person other than the Child Welfare Office who obtains an order or judgment in his or her favor under the provisions of this code shall pay a docketing fee of \$10 at the time of entry of the judgment or order. This provision does not apply to an order dismissing a petition.

(3) The cost of obtaining a certified copy of any document filed with the court shall be \$2 per document.

(4) If the court has appointed a guardian ad litem for any child or incompetent in any proceeding under this code, the court may assess the fees therefor against any party to the proceeding except the Child Welfare Office, provided that party has the ability to pay. The court may apportion the fees among the parties in such manner as the court deems equitable.

(5) The clerk of court shall charge a fee for processing any support payments ordered pursuant to this code of 2% of the amount of support paid. The clerk of court shall deduct that amount from each support payment before that payment is disbursed.

#### 31.907 Sovereign Immunity Preserved.

Nothing in this code shall be construed to constitute a waiver of the sovereign immunity of the tribe in any suit for money damages or other relief against the tribe, its officials, or its employees in connection with any matter arising from this code or from carrying out the duties and responsibilities arising therefrom.

#### 31.908 Repealer.

Chapter VI of the Tribal Court Code, entitled Juvenile Code, is hereby repealed. All other provisions of tribal law inconsistent with this code are hereby repealed to the extent of the inconsistency.