

TITLE 5  
JUVENILES AND DEPENDENTS

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**TITLE 5  
JUVENILES AND DEPENDENTS  
CHAPTER 5-1**

**MINORS IN NEED OF CARE**  
(NPTEC Amended 8/13/19 - Resolution NP 19-430)

**INTRODUCTORY PROVISIONS**

**§5-1-1 Purpose**

This chapter shall be construed to provide for the welfare, care and protection of Indian children and families on the Nez Perce Reservation and wherever they reside.

The Nez Perce Tribe Social Services Department (“Department”) shall comply with the requirements of titles IV-A, IV-B, IV-E and all other titles that are applicable under the Social Security Act (“the Act”) (42 U.S.C. Chapter 7). This includes:

- (a) Providing prevention and reunification services:
  - (1) The Department has been designated to administer or supervise the administration of the programs under the title IV-E Plan. It also administers or supervises the administration of the Child Welfare Services Plan under subpart 1 of title IV-B of the Act. The Department administers the title IV-B program. Specifically, the Child Protection and Child Welfare departments provide services to eligible families and tribal youth.
  - (2) The Department will make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety is the Tribe’s paramount concern.
  - (3) If continuation of reasonable efforts as described in section 471(a)(15)(B) of the Act is determined to be inconsistent with the permanency plan for the child, reasonable efforts are made to place the child in a timely manner in accordance with the permanency plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child.
  - (4) Judicial determination of reasonable efforts to prevent a child's removal from the home.
    - (A) When a child is removed from his/her home, the judicial determination, as to whether reasonable efforts were made or were

not required to prevent the removal, shall be made no later than 60 days from the date the child is removed from the home.

- (B) If the determination concerning reasonable efforts to prevent the removal is not made as specified above, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(b) Service Area

The title IV-E plan shall be in effect in all service areas and for all populations served by the Tribe, which includes: On and near the Nez Perce Reservation as defined by the 1855 treaty boundary.

The title IV-E program shall coordinate at the local level with the programs at the Department or local level assisted under titles IV-A, IV-B and title XX of the Act and under all appropriate provisions of Federal law.

(c) Child Support Enforcement for Certain Children in Foster Care

The Department shall take all appropriate steps, including cooperative efforts with the State or Tribal agencies administering the plans approved under titles IV-A and IV-D, to secure an assignment to the Tribe of any rights to support on behalf of each child receiving foster care maintenance payments under title IV-E.

(d) Independent Audit

The Department will arrange for a periodic and independently conducted audit, no less frequently than once every three years, of the titles IV-E and IV-B programs.

(e) Child Abuse and Neglect

The Department will report to an appropriate agency or official known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under titles IV-B or IV-E under circumstances that indicate that the child's health or welfare is threatened. Mandatory reporters are identified in §5-1-9.

(f) Case Plan

The Department shall have policies and procedures in place to ensure each child has a written case plan developed not later than 60 days from the child's removal from the home.

The case plan for each child:

- (1) is a written document which is part of the case record, in a format determined by the Department, which is developed jointly with the parent(s) or guardian(s) of the child in foster care;
- (2) includes a description of the services offered and provided to prevent removal of the child from the home and to reunify the family;

- (3) includes a description of the type of home or institution in which the child is placed;
- (4) a complete list of the case plan is detailed in the Operating Procedures Manual.

#### Specific Goals

- (5) The Department formulates for each fiscal year, a specific goal as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care receiving assistance under a title IV-E program) who at any given time during the fiscal year will have been in foster care for over 24 months. The specific foster care goals required under section 471(a)(14) of the Act are incorporated into State or Tribal law by statute or administrative regulation with the force of law.
- (6) The Department will describe the steps that will be taken to achieve the specific goal established.

Anyone wanting a copy of the foster care goals may submit such request in writing to the Department located in Lapwai, Idaho.

- (7) Personnel Administration

The Department will, in administration of its programs under this part, certify that it established and will maintain personnel standards on a merit basis as found necessary by the Secretary for proper and efficient operation of the programs.

- (8) Safeguarding Information - Minor in Need of Care Records

The Department shall protect child protection information from unlawful dissemination.

- (g) Other Federal Requirements

- (1) Annual Credit Reports

Each child in foster care under the responsibility of the Department who has attained 16 years of age receives without cost a copy of any consumer report (as defined in section 603(d) of the Fair Credit Reporting Act) pertaining to the child each year until the child is discharged from care, and receives assistance (including, when feasible, from any court-appointed advocate for the child) in interpreting and resolving any inaccuracies in the report.

- (2) Medical and Social Services

Any child who received maintenance payments or guardianship assistance is eligible for

Title XIX. The Department may provide assistance to enroll in such programs.

## **§5-1-2 Definitions**

(a) “Abandon” means the failure of the parent(s), guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of one year shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not necessarily constitute abandonment.

(b) “Abuse” means the infliction of physical, emotional or mental injury on a child; sexual abuse or sexual exploitation of a child, including treatment, exploiting or overworking a child to such an extent that his health, or emotional well-being is endangered; committing acts of domestic violence in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence.

(c) “Acknowledged father” means a man who has established a father-child relationship under the Voluntary Acknowledgment of Paternity section of this chapter.

(d) “Adjudicated father” means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

(e) “Adjudicatory hearing” means a hearing to determine the validity of the allegations in the petition filed under this chapter.

(f) “Adoption”:

(1) “Closed Adoption” means a person assumes the parenting of a child, from that child's biological or legal parent or parents, and, in so doing, permanently transfers all rights and responsibilities, from the biological parent or parents. It is intended to sever all ties between the child and his/her biological family.

(2) “Customary Adoption” means a traditional tribal practice recognized by the community and tribe which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s).

(3) “Open Adoption” means an adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.

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

(h) “Case Plan” means a plan developed by the social services worker, the child(ren) and family to remedy the problem.

(i) “Child” means a person who is less than eighteen (18) years old.

For the purposes of the title IV-E foster care, adoption assistance, and guardianship

assistance programs under section 472 of the Social Security Act, the term ‘child’ means:

- (1) an individual who has not attained 18 years of age; or
- (2) an individual who:
  - (A) is in foster care under the responsibility of the Nez Perce Tribe Social Services Department;
  - (B) has attained 18 years of age; and
  - (C) meets any of the following conditions:
    - (i) is completing secondary education or a program leading to an equivalent credential;
    - (ii) is enrolled in an institution which provides post-secondary or vocational education;
    - (iii) is participating in a program or activity designed to promote, or remove barriers to, employment;
    - (iv) is employed for at least 80 hours per month; or
    - (v) is incapable of doing any of the above described activities due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

(j) “Child care institution” means a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State/Tribe in which it is situated or has been approved by the agency of such State or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing except, in the case of a child who has attained 18 years of age, the term includes a supervised setting in which the individual is living independently.

This definition does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(k) “Child Protection Core Team” means a core team consisting of service providers from various agencies established to involve and coordinate child welfare and protection services for children.

(l) “Commence” means to file the initial pleading seeking an adjudication of parentage in the Nez Perce Tribal Court.

(m) “CSEP” means the Nez Perce Tribe Child Support Enforcement Program.

(n) “Custodian” means a person, other than a parent or guardian, to whom custody of the child has been given.



- (o) “Date child considered to have entered foster care” is the earlier of:
- (1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or
  - (2) the date that is 60 days after the date on which the child is removed from the home.
- (p) “Department” means the Nez Perce Tribe Social Services Department.
- (q) “Determination of parentage” means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under this chapter or by adjudication by the court.
- (r) “Domicile” means a person's residence in which they intend to remain indefinitely; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.
- (s) “Emergency foster home” means a foster home which has been licensed to accept emergency placements of children at any hour of the day or night.
- (t) “Extended family” means a person who has reached the age of eighteen (18) years and who is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or is considered to be extended family under the laws and custom of the Nez Perce Tribe.
- (u) “Foster home” means a home which has been licensed under this chapter.
- (v) “Foster family home” means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the State/Tribal licensing or approval authority(ies) (or with respect to foster family homes on or near Indian reservations, by the tribal licensing or approval authority(ies)), that provides 24-hour out-of-home care for children. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State/Tribal agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements.
- (w) “Genetic testing” means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one (1) or a combination of the following:
- (1) Deoxyribonucleic acid (DNA); and
  - (2) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes.

(x) “Guardian” means a person assigned as “Guardian” by a court of law, other than a parent, foster parent, or custodian having the duty and authority to provide care and control of a child.

(y) “Guardian Ad Litem” means a person appointed by the Court to represent the child's interests before the Court.

(z) “Incompetent” means a lack of ability, legal qualification or fitness to care for one’s child.

(aa) “Indian” means an individual enrolled member of a federally recognized tribe.

(bb) “Male Donor” is a male who donated sperm under the supervision of a doctor at a sperm bank or has been legally exempted from the liability of paternity.

(cc) “Man” means a male individual of any age.

(dd) “Minor” means a person who is less than 18 years old and has not been emancipated by order of a court of competent jurisdiction.

(ee) “Neglect” means the failure of the parent(s), guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being.

(ff) “Parent” includes a natural or adoptive parent but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(gg) “Parent-child relationship” means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(hh) “Paternity index” means the likelihood of paternity calculated by computing the ratio between:

- (1) The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is the father of the child; and
- (2) The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.

(ii) "Presumed father" means a person who, by operation of law under § 5-1-46 (Presumption of Paternity section) is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(jj) “Probability of paternity” means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the

child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.

(kk) “Reasonable Efforts” are efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from his or her home, and to make it possible for a child to return safely to his or her home.

(ll) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(mm) “Signatory” means an individual who authenticates a record and is bound by its terms.

(nn) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(oo) “Support” means any means of living including housing, food, clothing, health, medical needs, proper recreation, transportation expenses and others.

### **§5-1-3 Transfer of Jurisdiction**

(a) The Court may transfer any juvenile proceedings before it to an appropriate state court or another tribal court where the state or the other tribe has a significant interest in the child and the transfer would be in the best interest of the child.

(b) The Court may accept or decline transfers of minor in need of care cases from other federal, state or tribal courts.

### **§5-1-4 Agent for Service of ICWA Notices**

The Nez Perce Tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the child welfare program or its designees.

### **§5-1-5 Comity**

State court orders and those issued by 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 or tribal proceeding has been determined:

- (a) the Court had jurisdiction over the child;
- (b) the Court had subject matter jurisdiction to enter the order;
- (c) where applicable, the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, *et seq.* were properly followed;
- (d) due process was provided to all interested persons participating in the proceedings; and

(e) the proceedings do not violate the public policies, or common law of the Nez Perce Tribe.

#### **§5-1-6 Child Protection Core Team**

(a) The purpose of the child protection core team (“core team”) shall be to coordinate the resources and services of social services, juvenile and other experts in the prevention of abuse or neglect of Indian children. The core team shall be advisory in nature. Confidentiality shall be maintained by all team members at all times.

(b) The core team shall:

- (1) review and monitor all child abuse and neglect reports referred to the Department, within the last 30 days, to ensure that adequate preventive, protective, and corrective services are provided, and the best interests of the child are being met;
- (2) identify available community resources, programs and services for the prevention of child abuse and neglect;
- (3) provide a forum for consideration of and recommendations on care, treatment, placement and disposition to appropriate staff or the Tribal Court;
- (4) promote cooperation, communication, and consistency among agencies;
- (5) develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services; and
- (6) assist in the development and implementation of plans to promote the long-term well-being of children and their families.

(c) The core team shall meet as often as necessary and at least one time each month. The child caseworker shall be responsible for the coordination of core team meetings including but not limited to:

- (1) scheduling;
- (2) establishing the agenda with the participation of the other team members;
- (3) oversight of meetings and recording of the minutes of meetings; and
- (4) negotiating a memorandum of understanding with the appropriate federal and state agencies addressing participation, procedures, the purpose and function of the team and rules of order.

#### **§5-1-7 Minors in Need of Care Records**

(a) A record of all hearings under this chapter shall be made and preserved. Law enforcement records and files concerning a child shall be kept separate from the records and files

of adults. All records including law enforcement and social service reports shall be confidential and shall not be open to inspection to any person but the following:

- (1) the child;
- (2) the child's parent(s), guardian or custodian;
- (3) the prospective adoptive parent(s);
- (4) the child's counsel or guardian ad litem;
- (5) the Court, law enforcement and social service personnel directly involved in the handling of the case; or
- (6) any other person by order of the Court, upon a showing of extraordinary need.

(b) Records or statistical information may be released for the purpose of legitimate research or study upon order of the Court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

(c) Safeguarding Information Requirements of Social Security Act:

The Department has safeguards restricting use of or disclosure of information concerning individuals assisted under this plan except for purposes directly connected with:

- (1) the administration of the title IV-E plan or any of the plans or programs under Parts A, B or D of title IV or under titles I, V, X, XIV, XIX or XX, or the supplemental security income program under title XVI;
- (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plan or program;
- (3) the administration of any other Federal or federally assisted program which provides assistance (in-cash or in-kind) or services directly to individuals on the basis of need;
- (4) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency authorized by law to conduct such audit or activity; and
- (5) the disclosure of information pursuant to appropriate authorities with respect to known or suspected child abuse or neglect pursuant to §5-1-9.
- (6) the safeguards provided will prohibit disclosure to:
  - (A) any individuals or entities not included in §5-1-7(a) above; and
  - (B) any committee or legislative body, other than governmental audits (see (4) above), of any information which identifies by name or

address any applicant for or recipient of assistance under title IV-E of the Act.

(d) The Department shall have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the Department, and to prevent any such information obtained pursuant to section 471(a)(20)(B) from being used for a purpose other than the conducting of background checks in foster and adoptive placement cases.

(e) In the use of child welfare records in court proceedings, section 471(a)(8) of the Act shall not be construed to limit the flexibility of the court in determining policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to title IV-B or title IV-E of the Act, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.

#### **§5-1-8 Notice**

For purposes of this chapter, those persons entitled to be notified of minor in need of care proceedings, shall include the parent(s), guardian or custodian of the child involved. Notification shall be conducted as provided by the Rules of Civil Procedures.

The Tribe provides the foster parent(s) of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and a right to be heard in any proceeding to be held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver. Notice of and a right to be heard does not require the Tribe to make the caregiver a party to the proceeding.

### **CHILD ABUSE REPORTS/INVESTIGATION/REMOVAL**

#### **§5-1-9 Duty to Report Child Abuse and Neglect**

(a) Any person who has reasonable cause to believe that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the Indian child welfare worker and/or tribal police.

(b) Any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, Clerk of the Court, or other judicial system official who has a reasonable suspicion that a child has been abused, neglected or abandoned shall immediately make an oral report of the abuse, neglect or abandonment to the Indian child welfare worker and/or tribal police followed by a written report within five (5) business days.

(c) The following information, if known, shall be included in a written report required by this section:

- (1) names, addresses, and tribal affiliation of the child and his parent(s), guardian, or custodian;

- (2) the child's date of birth;
- (3) the nature and content of the child's abuse or neglect;
- (4) previous abuse or neglect of the child or his siblings, if known;
- (5) the name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known;
- (6) the name and address of the person making the report; and
- (7) the date and time of oral report.

(d) Any person mandated to report child abuse or neglect under this section who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil cause of action. All persons or agencies who report, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution related to such reporting.

#### **§5-1-10 Investigation and Removal**

(a) In non-emergency situations the Department case worker shall investigate reports of child abuse, neglect or abandonment within three (3) business days of receiving a report. The tribal police or case worker may remove a child provided that:

- (1) a court order is obtained; and
- (2) the person removing the child ensures the safety and well-being of the child.

(b) In the case of an emergency, the tribal police shall immediately investigate any report of child abuse, neglect or abandonment. A tribal police officer may immediately remove a child if the officer reasonably believes:

- (1) It would be contrary to the welfare of the child to remain in the home; or
- (2) the parent(s), guardian or custodian is absent, and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent(s), guardian or custodian to provide for such necessities.

(c) Upon removal of a minor child from their home by the tribal police, the officer will immediately place the child with a caseworker from the Department or the Department of Health and Welfare.

(d) For the purposes of meeting the requirements of section 472(a)(2)(A)(1) of the Social Security Act a removal from the home must occur pursuant to:

- (1) a voluntary placement agreement entered into by a parent or relative which leads to removal of the child from the home; or

- (2) a judicial order for a removal of the child from a parent or specified relative.

#### **§5-1-11 Voluntary Placement Agreements**

The Department shall have a process for Voluntary Placement Agreements under the title IV-E Plan. Parent(s) or legal guardian(s) may request voluntary placement of a minor child in out of home care under the placement and care supervision of the Department.

(a) Foster care maintenance payments are made in the voluntary placement of a child out of the home by or with the participation of the Department only if:

- (1) the assistance of the Department has been requested by the child's parent(s) or legal guardian(s); and
- (2) there is a written voluntary placement agreement, binding on all parties to the agreement, which specifies at a minimum the legal status of the child and the rights and obligations of the parents or guardians, the child and the Department while the child is in placement.

(b) If a voluntary placement agreement is entered into, such agreement shall be valid and binding upon signature of the case worker and the parent(s).

(c) Federal financial participation may be claimed only for voluntary foster care maintenance expenditures made within the first 180 days of the child's placement in foster care unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of the date of such placement, to the effect that the continued voluntary placement is in the best interests of the child.

(d) The Department shall establish a uniform procedure or system, consistent with Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

#### **§5-1-12 Notice of Removal**

Within twenty-four (24) hours of removing a child, the person responsible for such removal shall make all reasonable attempts to notify the parent(s), guardian or custodian of the removal and the reason therefor.

#### **§5-1-13 Placement Considerations and Orders of Preference**

The Department shall have placement and care responsibility for children ordered removed from their home by the Tribal Court (or another court of competent jurisdiction).

(a) The Department shall place the child in the least restrictive setting which most approximates a family, and in which his special needs, if any, are met. In addition, the placement of a child shall be conducted with the best interest of the child in mind including the consideration of:



- (1) the wishes of the child and/or the child's parent(s);
- (2) the child's adjustment to a new home, school or community;
- (3) the mental and physical health of the child; and
- (4) the need to promote continuity and stability in the life of the child.

(b) Kinship Care

The Department shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant Tribal child protection standards.

(c) Sibling Placement

The Department shall make reasonable efforts to:

- (1) place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the Department documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
- (2) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless the Department documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

(d) A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile delinquents.

(e) No child shall remain in temporary custody for a period exceeding three (3) business days, unless a minor in need of care petition is filed.

(f) Removal of Barriers to Interracial Placement.

This section shall not apply to any preferences applied based on an individual's political status as an Indian enrolled in a federally recognized Tribe.

- (1) A State/Tribal agency or any other entity in the State/Tribe that receives funds from the Federal Government and is involved in adoption or foster care placements may not:
  - (A) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color, or national origin of the person, or of the child involved;

- (B) delay or deny the placement of a child for adoption or into foster care, on the basis of race, color, or national origin of the adoptive or foster parent or the child involved; or
- (C) maintain any statute, regulation, policy, procedure or practice that, on its face, is a violation as defined in sections 471(a)(18)(A) and (B) of the Act.

## **MINOR IN NEED OF CARE PROCEEDINGS**

### **§5-1-14 Proceedings in General**

In addition to the other provisions of this chapter, in any juvenile proceedings:

- (a) the Court shall advise the party(s) of the reason for the proceedings;
- (b) parties may present evidence relating to the situation as authorized by the Court;
- (c) evidence shall be admitted in accordance with the Rules of Evidence;
- (d) the general public shall be excluded from the proceedings and the Court shall be authorized to further limit hearing attendance to only the parties, their counsel and witnesses; and
- (e) the Court shall specify in writing the facts, grounds, and, if applicable, code sections upon which it relied in issuing its order.

### **§5-1-15 Filing Minor in Need of Care Petition**

(a) After reviewing the facts and evidence presented the Nez Perce Tribal Prosecutor (“Prosecutor”) shall be authorized to file a minor in need of care petition with the Court on behalf of the Tribe and in the best interests of the child. If a child has been removed from the home, then the petition shall be filed no later than 12:00 (noon) of the second business day following the removal.

- (b) The minor in need of care petition shall set forth the following with specificity:
  - (1) the basis for the Court's jurisdiction;
  - (2) the name, birth date, sex, residence and tribal affiliation of the child;
  - (3) the specific allegations of abuse, neglect or abandonment;
  - (4) a plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;
  - (5) the names, residences and tribal affiliation of the child's parent(s), guardians or custodians, if known;

- (6) Whether or not there exists a legal document including, but not limited to, a divorce decree, stipulation or parenting agreement controlling the custodial status of the children described in this section;
- (7) The petition shall state with specificity whether a parent with joint legal custody or a noncustodial parent has been notified of placement;
- (8) If the child has been or will be removed from the home, the petition shall state that:
  - (A) Remaining in the home was contrary to the welfare of the child;
  - (B) Vesting legal custody of the child in the Department or other authorized agency is in the best interests of the child; and
  - (C) Reasonable efforts have been made prior to the placement of the child in care to prevent the removal of the child from his home or, if such efforts were not provided, that reasonable efforts to prevent placement were not required as the parent subjected the child to aggravated circumstances or the removal was an emergency removal.
- (9) if the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement;
- (10) When any of the facts required by this section are not known the petition shall so state. The petition may be based upon information and belief but in such case the petition shall state the core basis of such information and belief.

(c) The Prosecutor may omit any petition information otherwise required by this section if he has reason to believe that such information will threaten the health or safety of the child involved and he submits a written explanation to the Court.

#### **§5-1-16 Notice of Removal**

Within twelve (12) hours of the filing of a minor in need of care petition involving a child who has been removed from the home, the Tribal Court shall make all reasonable efforts to notify the parent(s), guardian or custodian of such filing.

#### **§5-1-17 Shelter Care Hearing**

When a child is taken into custody or removal is sought pursuant to the emergency provisions of this chapter, a hearing to determine whether the child shall be held according to the provisions of this section:

- (a) A shelter care hearing shall be held before the end of the second business day following the filing of the minor in need of care petition in order to determine whether:
  - (1) the best interest of the child requires further action from the Court; and

(2) the Tribal Court has jurisdiction over the case.

(b) The Parent(s), guardian or custodian of the child shall be given notice of the shelter care hearing; such notice shall include the time, place and purpose of the hearing;

(c) All parties shall be entitled to advance copies of court documents, including petitions and reports, unless otherwise ordered by the Court.

(d) During the hearing the Court shall advise all parties that they have a right to:

(1) be represented by an attorney at their own expense in all proceedings under this chapter;

(2) introduce evidence;

(3) be heard on their own behalf;

(4) examine witnesses; and

(5) be informed of possible consequences if the allegations of the petition are found to be true.

(e) If continued court intervention is determined to be necessary, the Court shall set forth in a written order determination that:

(1) Remaining in the home would be contrary to the welfare of the child; and

(2) the Department made reasonable efforts to prevent the removal of the child.

(3) Protection and custody of the child shall be with the Department.

(f) Possible outcomes of the shelter care hearing may include:

(1) dismissal of the petition and the return of the child to the home of the parent(s), guardian or custodian;

(2) granting of the petition and the return of the child to the home of the parent(s), guardian or custodian under the placement and care of the Department and the supervision of the Court;

(3) continue the child in out-of-home placement; or

(4) stipulation by the parent(s) that the child is in need of care and to voluntary placement to the placement and care of the Department.

(g) If the minor in need of care petition is not dismissed or is stipulated to by the parent(s), and the child continues in out-of-home placement, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. In any out of home placement, preference shall be given, in the absence of good cause to the contrary, to a placement with:

- (1) a fit and willing member of the child's or parents' extended family who is licensed by the Department or the State of Idaho;
- (2) the licensed foster home of an Indian family of the same tribe as the child;
- (3) the licensed foster home of an Indian family including that of a different tribe;
- (4) the licensed foster home of any other family which can provide a suitable home for the child; or
- (5) an institution for children approved by the tribe or operated by a tribe or Indian organization which has a program suitable to meet the child's needs.

(h) If the minor in need of care petition is not dismissed or stipulated to at the shelter care hearing or within 30 days thereafter, the Court will set a date for an adjudicatory hearing. Such date will be no later than 60 days after the filing of the petition or the date of the child's removal, whichever occurred first.

#### **§5-1-18 Adjudicatory Hearing**

When a petition has been filed, or when the Court has ordered the temporary custody of a child after a shelter care hearing, the Court shall set an adjudicatory hearing to be held within 60 days from the date the petition was filed or the date of the child's removal, whichever occurred first.

- (a) During an Adjudicatory Hearing on a minor in need of care petition:
  - (1) the burden of proof lies with the Tribe to establish by clear and convincing evidence that the allegations raised in the minor in need of care petition are true and that the best interests of the child will be served by continued court jurisdiction.
- (b) if the Court determines that it is in the best interests of the child and does not violate the rights of any party it may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method;
- (c) Following the Adjudicatory Hearing, the Court will either find the minor in need of care or dismiss the petition, unless the hearing is continued to a date certain to allow for the presentation of further evidence. If the Court finds the minor in need of care, it may:
  - (1) find out of home placement unnecessary but continue court intervention and supervision as appropriate;
  - (2) provided that remaining in the home would be contrary to the welfare of the child, order that the child remain out of the home absent a specific court order;

- (3) find out-of-home placement necessary, but that with the accomplishment of specified actions by the parent(s), guardian or custodian, order a subsequent review hearing to determine if the child should be returned to his home; or
- (4) issue any other order the Court deems appropriate including, but not limited to the parent(s)/guardian/custodian's responsibility for child support and/or drug/alcohol/psychological treatment costs.

(d) When a child is removed from his/her home, the judicial determination, as to whether reasonable efforts were made or were not required to prevent the removal, shall be made no later than 60 days from the date the child is removed from the home.

- (1) If the determination concerning reasonable efforts to prevent the removal is not made as specified above, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.
- (2) In any case in which the Court determines that a child may be returned home either immediately or sometime in the future, it will specify appropriate actions, and the time frames for such actions, that the parent(s), guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support or personnel to be involved.

#### **§5-1-19 Default Judgment**

If the parent(s), guardian or custodian fail to appear for the adjudicatory hearing, the Court may find such party in default, and enter an appropriate order. Prior to finding a party in default, the Court must be satisfied that reasonable steps have been taken to notify such party of the hearing.

#### **§5-1-20 Aggravated Circumstances**

Reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family if the Department obtains a judicial determination that such efforts are not required because:

(a) a court of competent jurisdiction shall determine that the parent has subjected the child to aggravated circumstances (as defined in law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse, exclusion or removal).

(b) a court of competent jurisdiction has determined that the parent has been convicted of:

- (1) murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

- (2) voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
- (3) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or
- (4) a sexual assault or a felony assault that results in serious bodily injury to the child or another child of the parent.

(c) the parental rights of the parent with respect to a sibling have been terminated involuntarily.

#### **§5-1-21 Review Hearings**

(a) In the event a minor is found to be in need of care, the Court shall hold a review hearing within six months of Adjudicatory Hearing to determine if continued court intervention and supervision is necessary. As long as court intervention continues, the Court shall hold a review hearing every six months to:

- (1) determine the safety of the child and whether placing the child in the home would be contrary to the child's welfare;
- (2) determine the continuing need for and appropriateness of the placement;
- (3) determine the extent of compliance with the case plan;
- (4) determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and
- (5) project a likely date by which the child may be returned and safely maintained at home or placed for adoption or legal guardianship.

#### **(b) Grounds for Continuing Removal**

Sufficient grounds for continuing removal from the home of a parent(s), guardian or custodian exists if there is a continued risk of harm because:

- (1) a child has no parent(s), guardian or custodian available, willing and capable to care for him;
- (2) the child, if returned to the home, would be likely to suffer a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;
- (3) the child, if returned to the home, would likely not be provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian;

- (4) The child, if returned to the home, would be sexually abused, molested or exploited;
- (5) the child, if returned to the home, would be likely to commit delinquent acts as a result of parental or caretaker pressure, guidance or approval;
- (6) the child, if returned to the home, would likely be emotionally abused or neglected; or
- (7) the child, if returned to the home would likely witness or be aware of continuing acts of domestic violence in the home.

(c) If continued court intervention is determined to be necessary, the Court shall set forth in a written order the Court's determination that:

- (1) remaining in the home would be contrary to the welfare of the child;
- (2) the continuing need for and appropriateness of the placement;
- (3) the extent of compliance with the case plan;
- (4) the extent of progress made toward alleviating or mitigating the causes necessitating the placement;
- (5) project a likely date by which the child may be returned and safely maintained at home, or placed for adoption or legal guardianship;
- (6) a determination that reasonable efforts have been made to reunite the family, but the parents, custodians, or guardians have not made sufficient progress for returning the child to the home; and
- (7) if applicable, the plan for appropriate placement, treatment, counseling or other requirements for the next review period.

#### **§5-1-22 Permanency Hearing**

(a) The Court holds permanency hearings for all children under the responsibility for placement and care of the Department.

(b) The permanency hearing takes place within 12 months of the date the child is considered to have entered foster care; and not less frequently than every 12 months thereafter during the continuation of foster care.

(c) When a court determines that reasonable efforts to return the child home are not required, a permanency hearing is held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

(d) For the purposes of this requirement, a permanency hearing shall determine:



- (1) the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, or placed for adoption and the Department will file a petition for termination of parental rights, or referred to legal guardianship, or (in cases where the Department has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed under the care and protection of the Department in another planned permanent living arrangement;
- (2) in the case of a child who will not be returned to the parent, the hearing shall consider all placement options including out of service areas;
- (3) in the case of a child placed out of the Department service area in which the home of the parent(s) of the child is located, the hearing shall determine whether the out-of- service area placement continues to be appropriate and in the best interests of the child;
- (4) in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and
- (5) in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(e) Parents should be notified when the Department removes the child from the home of his/her parents, changes the child's placement, or makes any determination affecting visitation privileges of parents.

(f) The Department may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

(g) For purposes of title IV-E, if such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made, the child becomes ineligible under title IV-E from the end of the 12th month following the date the child is considered to have entered foster care or the end of the 12th month following the month in which the most recent judicial determination of reasonable efforts to finalize a permanency plan was made, and remains ineligible until such a judicial determination is made.

(h) Concurrent planning.

- (1) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

- (2) Reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-service area and out-of-service area placements, may be made concurrently with reasonable efforts to reunify the child and family.

### **§5-1-23 Documentation of Judicial Determinations**

The judicial determinations regarding the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan, including judicial determinations that reasonable efforts are not required, must be explicitly documented in the court order.

(a) If the “reasonable efforts” and “contrary to the welfare” judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation accepted to verify that these required determinations have been made.

(b) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(c) Court orders must be based on a judicial determination that remaining in the home would be contrary to the child's welfare and/or that removal can only be ordered after reasonable efforts have been made.

(d) Trial Home Visits – If a trial home visit extends beyond six months and has not been authorized by the Court or exceeds the time period the Court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances, the judicial determinations regarding “contrary to the welfare” and “reasonable efforts to prevent removal” are required.

## **FOSTER HOMES**

### **§5-1-24 Foster Homes in General**

If a child cannot be returned home, the Court shall use the preferences in placing the child subject to the requirements and restrictions of § 5-1-13(e).

### **§5-1-25 Foster Home Licensing Procedures**

(a) The Department is the designated responsible agency for licensing and monitoring foster family homes and child care institutions (group homes). The Department is responsible for establishing and maintaining the Foster Home Licensing Manual, in compliance with model federal licensing standards for foster family homes and child care institutions. Any deviation from these standards may be made only on a case-by-case basis for non-safety standards (as determined by the Tribe) and an explanation of such deviation must be included in the record.

(b) The Department annually reviews:

- (1) the amount of the payment made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

- (2) the licensing or approval standards for child care institutions and foster family homes.

(c) The department shall accept applications for foster homes either on or off the Nez Perce Reservation. The case worker shall make or cause to be made a complete investigation and determine, within 90 days of receiving the application, whether to issue a license to the foster home authorizing it to accept minors in need of care. In addition, the case worker may, upon twenty-four (24) hours' notice, inspect a licensed foster home at any time. The case worker may examine not only the potential applicants, but also any other person who is familiar with the applicants and is familiar with the type of care they provide to children in their care, if any. In order to obtain and retain a license, a foster home must meet the following conditions:

- (1) the foster parent(s) must maintain the child's mental and physical health and the foster home must be constructed, arranged and maintained to this end;
  - (2) members of the household must be in such physical and mental health so as not to adversely affect either the health of the child or the quality of his care;
  - (3) a foster home shall not be licensed whenever any member of the household is on parole or probation or under house arrest;
  - (4) Safety and Criminal Background Check Requirements; and
- (d) Safety requirements for foster care, and adoptive home providers.
- (1) The Department shall provide procedures for criminal records checks (including finger-print-based checks of national crime information databases (as defined in section 534(e)(3)(a) of Title 28, United States Code) for any prospective foster and adoptive parent, and for every adult residing in the home, before the parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child.
  - (2) The Department does not approve or license any prospective foster or adoptive parent, nor does the Department claim Federal Financial Participation (FFP) for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the Department finds that, in any case involving a child on whose behalf such payments are to be made in which a criminal records check conducted in accordance with paragraph (d)(1) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:
    - (A) child abuse or neglect;

- (B) spousal abuse;
  - (C) a crime against a child or children (including child pornography);  
or
  - (D) a crime involving violence, including rape, sexual assault, or homicide, but not including physical assault or battery.
- (3) The Department does not approve or license any prospective foster or adoptive parent, nor claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster family home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the Department finds, in any case involving a child on whose behalf such payments are to be made in which a criminal records check conducted in accordance with paragraph (d)(1) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:
- (A) physical assault;
  - (B) battery; or
  - (C) a drug-related offense.
- (4) In order for a child to be eligible for title IV-E funding, the licensing file for a child care institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.
- (5) The Department shall check any child abuse and neglect registry for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child:
- (A) the Department shall check any child abuse and neglect registry it maintains for such information;
  - (B) the Department shall request any other State/Tribe in which any such prospective parent or other adult has resided in the preceding five years, to check any child abuse and neglect registry maintained by such other State or Tribe for such information; and
  - (C) the Department shall comply with any such request to check its child abuse and neglect registry that is received from another State or Tribe.

- (6) the foster parent(s) must have an income sufficient to care for all individuals in the foster home. The case worker may take into account any foster care maintenance payment when determining the financial ability of the foster care parent(s).
- (7) the foster parent(s) shall not subject the child to verbal abuse, derogatory remarks or threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or punishment must be administered, it shall be done with understanding and reason.
- (8) Before a child in foster care is placed with prospective foster parents, the prospective foster parents are adequately prepared with the appropriate knowledge and skills to provide for the needs of the child. As necessary, such preparation is continued after placement of the child.

(e) Any license issued shall apply only to the residence(s) where the applicant is living at the time application for a license is made but shall include a provision allowing the licensee to conduct a permanent change of residence upon inspection and approval of the new residence in accordance with this section.

(f) The foster care licensee is required to notify the case worker:

- (1) whenever a change of residence is contemplated;
- (2) within 48 hours whenever a change in the household occurs such as one of the foster care parents is convicted or accused of a major crime or if one of the foster parents moves out of the residence, or if any other person moves into the residence.

(g) Following a hearing on the record in accordance with the administrative procedures provided by this code, an order to revoke a foster home license may be issued if the home at any time does not meet the conditions listed in this section or the foster care licensee is otherwise in violation of this chapter.

(h) Fair Hearings

The Department shall have a system for granting an opportunity for a fair hearing to any individual whose claim for benefits under this plan is denied or not acted upon with reasonable promptness.

#### **§5-1-26 Foster Home Payments**

(a) Foster care maintenance payments for a child in foster care may cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel to the child's home for visitation with family, or other caretakers and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of

such institutions as are necessarily required to provide the items described in the preceding sentences.

(b) Foster care maintenance payments are made only on behalf of an eligible child who is:

- (1) in the foster family home of an individual, whether the payments are made to such individual or to a public or private child placement or child care; or
- (2) in a child care institution, whether the payments are made to such institution or to a public or private child placement or child care. Such payments are limited to include only those items that are included in the term "foster care maintenance payments" (defined in section 475(4) of the Act); or
- (3) a child of a minor parent in foster care. Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of foster care maintenance payments.

(c) Foster Care Candidates

- (1) Administrative costs associated with an otherwise eligible child who is in an unallowable facility or an unapproved or unlicensed relative home, and who is removed in accordance with section 472(a) from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), shall be considered only for expenditures:
  - (A) for a period of not more than one calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the Department.

#### **§5-1-27 Medical Needs**

In case of sickness or accident to a foster child, immediate notice shall be given to the case worker. Foster parent(s) or other persons with whom a child is placed may consent to surgery or other treatment in a medical emergency unless otherwise ordered by the Court.

#### **TERMINATION OF PARENTAL RIGHTS**

#### **§5-1-28 Termination of Parental Rights**

The parent/child relationship may be terminated either voluntarily or involuntarily. No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held. Termination of the parent/child relationship shall be initiated by the filing of a

petition for:

(a) Involuntary Termination

(1) Shall be filed by:

- (A) the tribal prosecutor; with recommendation from the Department;
- (B) a parent or other adoption petitioner, concurrent with an adoption petition; or
- (C) a parent, in accordance with the provisions for voluntary termination of his parental rights provided by this section.

(2) A petition seeking involuntary termination of the parent/child relationship must be based on the following grounds:

- (A) the return of the child to the custody of the parent(s) is likely to result in serious physical or permanent emotional damage to the child;
- (B) the party seeking termination of the parental rights will satisfy the Court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and that these efforts have proved unsuccessful; and
- (C) such efforts are unlikely to be successful in the future.

(3) Once a petition for involuntary parental rights is filed, the petition will include notice to the Prosecutor's Office.

- (A) The Prosecutor's Office will then request child support information for the child(ren) from the Nez Perce Tribe Child Support Enforcement Program ("CSEP").
- (B) The Prosecutor's Office will represent the best interests of the child(ren)/Tribe in relation to involuntary termination of parental rights.

(b) Voluntary Termination

(1) Shall be filed by:

- (A) a parent or other adoption petitioner, concurrent with an adoption petition;

(B) a parent, in accordance with the provisions for involuntary termination of his parental rights provided by this section.

- (2) Relinquishment of parental rights by voluntary termination shall be initiated by a petition signed by the parent(s) in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent(s) understand the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he does not understand English.
- (3) Once a petition for voluntary parental rights is filed, the petition will include notice to the Prosecutor's Office.

(c) A petition for termination of parental rights whether voluntary or involuntary shall include to the best information and belief of the petitioner:

- (1) full name, sex, date and place of birth, residence and tribal affiliation of the child;
- (2) basis for the Court's jurisdiction;
- (3) names, addresses, tribal affiliation, and dates of birth of the child's parents;
- (4) the name and address of the person or agency having legal or temporary custody of the child;
- (5) the grounds on which the termination is sought; and
- (6) the signature of the petitioner and the date signed.

(d) When any of the facts required by this section are unknown, the petition shall so state. After a petition for the involuntary or voluntary termination of parental rights has been filed, the Court shall set the time and place for hearing.

(e) If the parental rights are terminated:

- (1) all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control visitation or support existing between the child and parent shall be terminated unless otherwise directed by the Court or this section;
- (2) the parent(s) shall have no standing to appear at any future legal proceeding concerning the child;



- (3) any support obligation accrued prior to the effective date of the order terminating parental rights shall not be terminated, unless the Petitioner of the CSEP case wishes the arrears to be forgiven;
  - (4) the rights of one parent may be terminated without affecting the rights of the other parent;
  - (5) if no person having parental rights remains, the child shall be committed to the custody of the Tribal Court for the purpose of placing the child for adoption. In the absence of an adoptive home, the child may be placed in a licensed foster home, with a relative or other suitable placement. The Court shall retain jurisdiction concerning the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, and consent to such matters as might normally be required of the child's parent.
- (f) The Court in its discretion may also make the following findings:
- (1) an order that would not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination;
  - (2) an order that the child shall not be disentitled to any benefit due the child from any non-parental third person, agencies, state or the United States;
  - (3) an order that any rights the child derives from the child's descent from a member of a federally recognized Indian tribe shall not be affected;

(g) If a child has not been adopted or placed as provided by this section, within six months of the termination order, the Court will hold another six-month review hearing. Such hearings will continue every six months thereafter until the child is adopted or placed.

(h) **Duty of Support:** A termination of parental rights does not terminate the duty of either parent to support the child. Upon a termination of parental rights, the biological parents shall continue to owe a duty of support for the child(ren) up until the time of adoption. Upon an adoption decree being entered by the Court, the child support obligation for said child shall terminate. A termination of a child support obligation under this section does not relieve a parent of the duty to pay any unpaid child support such as arrears, unless the Petitioner of the CSEP case wishes the arrears to be forgiven, and the court agrees.

## **ADOPTIONS**

### **§5-1-29 Adoptions in General**

The purpose of adoptions shall be to give the adoptee a permanent home. Adoptions may

be "open" or "closed" as ordered by the Court upon stipulation by the parties or in the best interest of the child.

### **§5-1-30      The Petition**

(a) An adoption petition shall be filed with the juvenile court by the person proposing to adopt. A husband and wife who live together, shall file a joint petition except that a person who is already the natural or adopted parent of the proposed adoptee shall not be required to join in the petition. Only one petition shall be required for the adoption of all or any combination of siblings, provided that each sibling to be adopted is named in the petition.

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

- (1) the full name, address, and tribal affiliation of the petitioner;
- (2) the full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee(s);
- (3) the name by which the proposed adoptee shall be known if the petition is granted;
- (4) the basis for the Court's jurisdiction;
- (5) if the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest;
- (6) the relationship of the petitioner to the proposed adoptee;
- (7) the names and addresses of any person or whose consent to the adoption is necessary; and
- (8) the signature of the petitioner, date of signing, and notarization or witness by the Clerk of the Court.

(c) When a petition for the adoption of a child is filed, the Court shall immediately request that a case worker or Tribe approved "Qualified Expert Witness" (QEW) submit to the Court within ten business days a home study on the petitioner and report which shall contain:

- (1) the circumstance of the home and the petitioner and his ability, both physically and mentally, to assume the responsibilities of a parent of the child;
- (2) other pertinent information designed to assist the Court in determining the best placement for the child; and
- (3) whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his tribal affiliation.

The Court may order additional home studies or reports as it deems necessary.

**§5-1-31 Hearing**

(a) An adoption hearing shall be held by the Court within 90 days of receipt of an adoption petition to determine if it is in the best interests of the child to be adopted by the petitioners. To this end, the Court shall consider the:

- (1) validity of written consent;
- (2) termination of parental rights order;
- (3) length of time of the child's wardship by the Court;
- (4) special conditions of the child;
- (5) the adoptive parents' ability to protect the health and welfare of the child;  
and
- (6) required home studies or other reports.

(b) During an adoption hearing:

- (1) the petitioner and the proposed adoptee shall appear personally;
- (2) the judge shall examine all persons separately, and may:
  - (A) enter a final decree of adoption, or place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six months prior to entering a final decree of adoption;
  - (B) deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this chapter if it determines that the adoption will not be in the child's best interest, or that all of the requirements of this section have not been met.
- (3) the proceedings for termination of the parent/child relationship and proceedings for adoption may be consolidated and determined together.

**§5-1-32 Consent**

(a) Written consent to an adoption which shall be orally acknowledged before the Court no earlier than ten days after the child's birth is required of:

- (1) the biological and adoptive mother;
- (2) the biological and adoptive father;
- (3) the custodian, if empowered by the Court to consent;
- (4) the Court, if the custodian is not empowered to consent.

(b) Consent of the parent to an adoption is not required if the:

- (1) parent has abandoned his child;
- (2) parent's rights have been terminated;
- (3) parent has relinquished his parental rights; or
- (4) parent has been declared incompetent.

(c) An interpreter shall be provided if the person consenting does not understand English. Oral consent of the child to be adopted shall be made either in open court, or in chambers with only the judge, any other person he deems necessary, and the child present.

(d) Without reason or the need for a hearing, consent under this section may be withdrawn in a writing notarized or witnessed by a Clerk of the Court by the person consenting at any time prior to the entry of a final decree of adoption.

**§5-1-33      Decrees**

(a) If the Court finds that the requirements of this section have been met and that the child's best interests will be served, it shall enter a final decree of adoption containing the following:

- (1) the adoptive parent(s) and adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as set forth herein;
  - (A) in the case of open adoptions, the adoptive child:
    - (i) shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and his tribal heritage;
    - (ii) members of the child's natural extended family (including parents) shall have a right of visitation subject to reasonable controls of the adoptive parents.
  - (B) in the case of closed adoptions, the adoptive child shall be denied access to identifying information and knowledge about his natural family except as agreed to by the parties or ordered by the Court.
- (2) an adopted child shall not be considered an heir of his natural parent(s) unless the decree of adoption provides for the continuation of inheritance rights. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if natural parents and child.

**§5-1-34      Placement Considerations and Orders of Preference**

The Department considers giving preference to an adult relative over a non-related

caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State/Tribal child protection standards.

(a) Sibling Placement

The Department shall make reasonable efforts to:

- (1) place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and
- (2) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that Department documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

(b) Customary Adoption

- (1) the child is placed in a home using a traditional tribal practice recognized by the community and tribe which gives a child a permanent parent-child relationship with someone other than the child's birth parent(s).

(c) The Court shall place an adopted child in the following order of preference subject to the requirements of subsection (d):

- (1) extended family member;
- (2) a tribal member or person eligible for tribal membership;
- (3) other Indian families; and
- (4) any person who has significant knowledge of the child's tribal affiliation and his special needs.

(d) The placement of a child shall be conducted with the best interest of the child in mind including the consideration of:

- (1) the wishes of the child and/or the child's parent(s);
- (2) the child's adjustment to a new home, school or community;
- (3) the mental and physical health of the child; and
- (4) the need to promote continuity and stability in the life of the child.

(e) Removal of Barriers to Interracial Adoption

- (1) A State/Tribal agency or any other entity in the State/Tribe that receives funds from the Federal Government and is involved in adoption or foster care placements may not:
  - (A) deny to any person the opportunity to become an adoptive or foster parent, on the basis of race, color, or national origin of the person, or of the child involved;
  - (B) delay or deny the placement of a child for adoption or into foster care, on the basis of race, color, or national origin of the adoptive or foster parent or the child involved; and
  - (C) maintain any statute, regulation, policy, procedure or practice that, on its face, is a violation as defined in sections 471(a)(18)(A) and (B) of the Act.

### **§5-1-35 Vacating the Decree**

A decree of adoption may be vacated within two (2) years after entry upon the filing of a petition and a showing that consent making the adoption possible was obtained through fraud or duress. If the Court vacates the decree, it shall return the adopted person to the status he had prior to entry of the decree.

### **§5-1-36 Adoption Assistance**

Adoption assistance payments may be made to adoptive parents who have entered into an adoption assistance agreement with the Department. In determining the eligibility for adoption assistance payments of a child in a legal guardianship arrangement, the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made.

Payments may be made for non-recurring adoption expenses incurred by or on behalf of the adoptive parents in connection with the adoption of a child with special needs, directly through the Department or through another public or nonprofit private agency, in amounts determined through an agreement with the adoptive parents; and

In any case where the child meets the requirements of section 473(a)(2) of the Act, the Department may make adoption assistance payments to adoptive parents, directly through the Department or through another public or nonprofit private agency, in amounts so determined through an adoption assistance agreement.

- (a) The amount of such payment:
  - (1) will take into consideration the circumstances of the adopting parents and the needs of the child being adopted;
  - (2) may be adjusted periodically with the concurrence of the adoptive parents to reflect changing circumstances; and

- (3) may not exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.
- (b) In determining eligibility for adoption assistance payments, there is no income eligibility requirement (means test) for the adoptive parents.
  - (c) Payments are terminated when the Department determines that:
    - (1) the child has attained the age of 18, or such greater age as the Department may elect under section 475(8)(B)(iii) of the Act;
    - (2) the child has attained 21 years of age, if the Department determines that the child has a mental or physical disability which warrants the continuation of assistance to age 21;
    - (3) the parents are no longer legally responsible for the support of the child who has not yet attained 18 years of age; or
    - (4) the adoptive parents are no longer providing any support to the child.
  - (d) The adoptive parents are required to inform the Department of circumstances that would make them ineligible for adoption assistance payments or eligible for adoption assistance payments in a different amount.
  - (e) No payment may be made to parents with respect to any applicable child for a fiscal year that:
    - (1) would be considered a child with special needs under 473(c)(2) of the Act;
    - (2) is not a citizen or resident of the United States; and
    - (3) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.
  - (f) A child that is not a citizen or resident of the US and was adopted outside of the US or brought into the US for the purpose of being adopted may be eligible for adoption assistance payments if the initial adoption of the child by parents is a failure and the child is subsequently placed into foster care.

**§5-1-37 Adoption Assistance Agreement**

- (a) An adoption assistance agreement is a written agreement, binding on all parties, including the Department, other relevant agencies, and the prospective adoptive parents.
- (b) The adoption assistance agreement:
  - (1) is signed by the adoptive parents and a representative of the Department and is in effect before adoption assistance payments are made under title IV-E, but no later than the finalization of the adoption;

- (2) specifies the duration of the agreement;
- (3) specifies the amount of the adoption assistance payments (if any) and the nature and amount of any other payments, services and assistance to be provided (including non-recurring adoption expenses in agreements for expenditures incurred by the parents);
- (4) specifies the child's eligibility for title XIX and title XX of the Act;
- (5) specifies that the agreement remains in effect regardless of the State or Tribal service area of residence of the adoptive parents;
- (6) contains provisions for the protection of the interests of the child in case the adoptive parents and child should move to another State or out of the Tribal service area while the agreement is in effect; and
- (7) if a needed service specified in the agreement is not available in the new State or Tribal service area of residence, the Department making the original adoption assistance payment remains financially responsible for providing the specified service(s).

#### **§5-1-38 Medicaid and Social Services**

(a) For the purposes of titles XIX and XX of the Act, any eligible child for whom there is an adoption assistance agreement in effect (whether or not adoption assistance payments are being made) is deemed to be a dependent child as defined in 406 of the Act and is deemed to be a recipient of AFDC under part A of title IV of the Act (as in effect 7/16/96) in the State in which such child resides.

(b) The Nez Perce Tribe will provide health insurance coverage (through one or more State/Tribal medical assistance programs), with the same type and kind of benefits as those which would be provided for children under title XIX of the Act, or a comparable medical plan, for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the Department and an adoptive parent or parents, and who the Department has determined cannot be placed with an adoptive parent or parents without medical assistance due to special needs for medical, mental health or rehabilitative care.

(c) In the event that the Tribe provides such coverage through a State/Tribe medical assistance program other than the program under title XIX of the Act, and the Department exceeds its funding for services under such other program, any such child is deemed to be receiving aid or assistance under the Department plan under this part for purposes of section 1902(a)(10)(a)(i)(1) of the Act; and in determining cost-sharing requirements, the Department will take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted to the extent coverage is provided through a State/Tribal medical assistance program, consistent with the rules under such program.

#### **ESTABLISHING PATERNITY**

#### **§5-1-39 Establishment of Parentage and/or Support**



(a) Unless determined otherwise by court order, a child's parents are jointly and severally liable for his support until he reaches 18 years of age or is emancipated notwithstanding the fact that the parents have never been married to each other.

(1) A male donor shall have no right, obligation or interest with respect to a child born as a result of artificial insemination.

(2) A child born as a result of the artificial insemination shall have no right, obligation, or interest with respect to the donor.

(b) The parentage of a child may be established by:

(1) written acknowledgment by a parent filed with the Tribal Court that he is the father, or she is the mother of the child; or

(2) a determination by the Tribal Court.

#### **§5-1-40 Hearing**

(a) An action to establish parentage and/or support may be brought by a complaining parent, by the minor acting through a custodian or guardian if the complainant dies or becomes disabled, or by the tribe. For purposes of this section, a minor shall include any child up to and including at least eighteen (18) years of age. The petition shall name the respondent as the father or mother of the minor and if a petition to compel support, demand that such person be compelled to support the minor.

(b) An action to establish parentage may be brought in Tribal Court for any child up to and including at least eighteen (18) years of age but, unless the alleged father consents, a hearing will not be held until at least 15 days after the birth of the child.

A hearing on whether to compel support from a parent may be brought in Tribal Court at any time for any child up to and including at least eighteen (18) years of age. This excludes any child who becomes an adult through emancipation or marriage.

(c) The Court shall enter its order determining the child's parentage and/or support at the conclusion of the hearing. If parentage is established, the child has the same rights of inheritance from the person who is established as a parent that a child born as a result of a lawful marriage has under tribal law.

#### **§5-1-41 Genetic Testing**

(a) In any proceeding in which paternity is an issue, the court, upon motion of any party or the Tribe, may order the mother, her child, and the putative father or the husband of the mother to submit to one or more blood, buccal cells, human leukocyte antigen tests, DNA tests, or other court-recognized scientific testing, to be made by a qualified physician, accredited laboratory (as defined by the American Association of Blood Banks (AABB), the American Society for Histocompatibility and immunogenetics (ASHI) or by the federal Secretary of Health and Human Services), hospital, or other qualified person acceptable to the court, to determine whether the putative father or the husband of the mother can be excluded as being the father of the child or whether paternity can be determined.

(b) The minimum percentage to identify a biological father shall be 99%.

(c) The court may order additional tests to be performed, as necessary, to determine whether the putative father or husband can be excluded or whether the putative father or husband is the father of the child.

(d) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

(e) The costs of the initial genetic testing shall be chargeable to:

- (1) a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services. The support-enforcement agency may seek reimbursement from a man who is rebuttably identified as the father;
- (2) by the individual who made the request;
- (3) as agreed by the parties; or
- (4) as ordered by the court.

**§5-1-42 Genetic Testing Results; Rebuttal**

(a) Under this chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with § 5-1-41 and the results disclose that:

- (1) the man has at least a 99 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
- (2) a combined paternity index of at least 100 to 1.

(b) A man identified under subsection (a) as the father of child may rebut the genetic testing results only by other genetic testing satisfying the requirements of § 5-1-41 which:

- (1) excludes the man as a genetic father of the child; or
- (2) identifies another man as the possible father of the child.

(c) Except as otherwise provided in § 5-1-44, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

**§5-1-43 Additional Genetic Testing**

The Court or the CSEP shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child under § 5-1-42, the court may or may not order additional testing unless the party provides advance payment for the testing.

#### **§5-1-44 Identical Brothers**

(a) The Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(b) If each brother satisfies the requirements as the identified father of the child under § 5-1-42 without consideration of another identical brother being identified as the father of the child, the Court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

#### **§5-1-45 Confidentiality of Genetic Testing**

(a) Release of the report of genetic testing for parentage is controlled by the applicable law.

(b) An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or written permission of the individual who furnished the specimen commits a civil infraction.

#### **§5-1-46 Presumption of Paternity**

A rebuttal presumption of paternity exists where one or more of the following factors is present:

(a) The child is born during the marriage of the parties or within 300 days of the termination of marriage;

(b) The child is born to parties who attempted to marry but whose marriage is or could be declared void;

(c) The child is born to parties who have married or attempted to marry after the child's birth and the putative father has acknowledged paternity in writing, consented to be named as father on the child's birth certificate, or been ordered to pay child support;

(d) The putative father has openly held out the child as his natural child; or

(e) The putative father has signed a written acknowledgment of paternity.

#### **§5-1-47 Judgment and Order of the Court**

(a) If the putative father is found to be the biological father of the child, or if the presumption of paternity cannot be rebutted, the Court shall make an Order of Paternity.

(b) The Court may order the father of the child to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able.

#### **VOLUNTARY ACKNOWLEDGMENT OF PATERNITY**

The mother of a child and a man claiming to be the father of the child conceived as the

result of his sexual intercourse with the mother may sign an acknowledgment of paternity with intent to establish the man's paternity.

**§5-1-48 Acknowledgment of Paternity**

(a) In lieu of or in conclusion of a paternity proceeding, the written acknowledgment of paternity executed by the putative father of the child when accompanied by an attested waiver of the right to a hearing, and a written affirmation of paternity executed and sworn or affirmed to by the mother of the child and filed with the court, shall have the same force and effect as a judgment of the court. The written affirmation must state that the child whose paternity is being acknowledged:

- (1) does not have a presumed father, or has a presumed father whose full name is stated; and
  - (2) does not have another acknowledged or adjudicated father;
- (b) An acknowledgment of paternity must state:
- (1) whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing;
  - (2) that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.

**§5-1-49 Denial of Paternity**

A presumed father may sign a denial of his paternity. The denial is valid only if:

- (a) an acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to § 5-1-50;
- (b) the denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and
- (c) the presumed father has not previously:
  - (1) acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to § 5-1-52 or successfully challenged pursuant to § 5-1-53; or
  - (2) been adjudicated to be the father of the child.

**§5-1-50 Rules for Acknowledgment and Denial of Paternity**

(a) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) Subject to subsection (a), an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the Idaho Bureau of Health Policy and Vital Statistics, whichever occurs later.

(d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter.

#### **§5-1-51 Effect of Acknowledgment or Denial of Paternity**

(a) Except as otherwise provided in § 5-1-52 and § 5-1-53, a valid acknowledgment of paternity filed with the Idaho Bureau of Health Policy and Vital Statistics is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

(b) Except as otherwise provided in § 5-1-52 and § 5-1-53, a valid denial of paternity by a presumed father filed with the Idaho Bureau of Health Policy and Vital Statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the non-paternity of the presumed father discharges the presumed father from all rights and duties of a parent.

#### **§5-1-52 Proceeding for Rescission**

A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

- (a) 60 days after the effective date of the acknowledgment or denial, as provided in § 5-1-50; or
- (b) the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

#### **§5-1-53 Challenge After Expiration of Period for Rescission**

(a) After the period for rescission under § 5-1-52 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

- (1) on the basis of fraud, duress, or material mistake of fact; and
- (2) within two years after the acknowledgment or denial is filed with the Idaho Bureau of Health Policy and Vital Statistics.

(b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

#### **§5-1-54 Procedure for Rescission or Challenge**

(a) Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(b) For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of the Nez Perce Tribe by signing the acknowledgment or denial, effective upon the filing of the document with the Idaho Bureau of Health Policy and Vital Statistics.

(c) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the Court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) A proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under this chapter.

(1) If a support enforcement agency is involved in such challenge or denial, notice must be provided to the enforcement agency.

(e) At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the Court shall forward the order to the Idaho Bureau of Health Policy and Vital Statistics requesting to amend the birth record of the child, if appropriate.

#### **§5-1-55 Ratification Barred**

The Court conducting a judicial proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity so long as the acknowledgement complies with § 5-1-47.

#### **§5-1-56 Full Faith and Credit**

The Nez Perce Tribal Court shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another tribal or state court if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other tribe or state.

#### **§5-1-57 Forms for Acknowledgment and Denial of Paternity**

(a) To facilitate compliance with this chapter, the CSEP shall prescribe forms for the acknowledgment paternity and the denial of paternity.

(b) A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

#### **§5-1-58 Release of Information**

The CSEP may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and appropriate tribal, state or federal agencies.

**§5-1-59 Adoption of Rules**

The CSEP may adopt rules to implement this chapter, to be approved by the Nez Perce Tribal Executive Committee.

**SUPPORT**

**§5-1-60 Procedure for Support Payment**

Unless otherwise ordered by the Court, all court ordered payments for child support shall be paid to CSEP who shall record and transfer the payments to the person(s) entitled to them.

**§5-1-61 Voluntary Support Agreement**

A voluntary agreement by the parents to provide support and maintenance for the child, to reimburse any past due support, and to pay any reasonable expense of prosecution, shall have the same force and effect as an order of support by the Court.

**§5-1-62 Registration and Enforcement of Foreign Paternity Judgments**

Any party to an action in which a paternity or support judgment from the State of Idaho or the State of Washington was rendered may register the foreign paternity or support judgement in the Nez Perce Tribal Court without payment of a filing fee or other cost to the party and according to the terms of the inter-governmental agreements between the Nez Perce Tribe and such States.

## **CHAPTER 5-2 GUARDIANSHIPS**

### **INTRODUCTORY PROVISIONS**

#### **§5-2-1 Definitions**

- (a) "Child or minor" means any person under the age of eighteen (18).
- (b) "Competent" means any person who is not incapacitated.
- (c) "Guardian ad litem" means a guardian who is appointed to represent a ward for the purpose of actual, threatened or contemplated litigation.
- (d) "Estate" means the total property of any kind owned by a deceased person prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the deceased.
- (e) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that he lacks sufficient understanding or ability to make or communicate responsible decisions concerning his person or property.
- (f) "Ward" means a child or incapacitated person for whom a guardian is appointed, or other protective order is made.

#### **§5-2-2 Guardianships in General**

The Nez Perce Tribal Court may appoint guardians for the persons and/or the estates of either minors or incapacitated persons.

#### **§5-2-3 Appointment of Guardian in Connection With Probating an Estate**

In the process of administering an estate for which there is a valid will containing a designation of a guardian for a child orphaned by the deceased, the Court may appoint such guardian without the necessity of a separate guardianship hearing. If the person so designated is unable or unwilling to serve, if such person's appointment is objected to by the orphaned child if he is over fourteen (14) years of age, or if the Court deems it to be in the minor's best interest, a separate guardianship hearing shall be held.

#### **§5-2-4 Who may Serve as Guardian**

Any person twenty-one (21) years of age or older may serve as a guardian. The Court shall determine the best interest of the proposed ward in appointing a guardian, but preference may be given to:

- (a) relatives of the proposed ward in order of their closeness of relationship;
- (b) a person with whom the proposed ward is living at the time of the filing of the guardianship petition; or



(c) the person preferred by a proposed ward if such ward is over fourteen (14) years of age and competent.

**§5-2-5 Placement of Children** (amended by NPTEC 3/25/03)

If the child(ren) is a ward of the Court, the Court shall place him in the setting which most meets his/her needs (emotionally, physically, culturally specific, spiritually) and in which his special needs, if any, are most likely to be met. In addition, the placement of a child(ren) shall be based upon the best interest of the child(ren) including the consideration of:

- (a) the wishes of the child(ren) and the child(ren)'s parent(s);
- (b) the child(ren)'s adjustment to a new home, school or community;
- (c) the mental and physical health of the child(ren);
- (d) continuity and stability in the life of the child(ren); and

(e) a child(ren) shall not be placed in a home where individuals reside or may reside who are convicted sex offenders.

**§5-2-6 Powers and Duties of Guardian**

(a) A guardian:

- (1) shall take or provide for the custody of the person of the ward and shall be required to care for the health, safety and welfare of such ward and provide for their education and medical care as needed or appropriate;
- (2) may expend such portions of the ward's estate, income and the principle as he shall deem reasonably necessary for the support, care, including medical care and education, of the ward given the size and nature of the estate and the station in life or needs of the ward; and
- (3) may invest, manage and dispose of specified portions or all of the property of the ward according to law and in a prudent and reasonable manner.

(b) If a guardian is uncertain as to his authority, he may petition the Court for authority to do the act in question. The Court may grant such authority if it appears to be consistent with the best interest of the ward following such notice and hearing, if any, as the Court may direct.

(c) A guardian shall:

- (1) have a fiduciary relationship towards the ward;
- (2) exercise a high degree of care in managing the estate of his ward;

- (3) derive no personal benefit of any kind from his management of the estate of his ward; and
- (4) be civilly liable to the ward for any losses to the estate attributable to a violation of this chapter. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after: the appointment of a new guardian; the removal of the ward's incapacity; or the ward attains the age of eighteen (18).

(d) A violation of this chapter by an appointed guardian may constitute contempt of court and/or result in the discharge of the guardian.

#### **§5-2-7 Powers and Duties of Guardian Ad Litem**

(a) A guardian ad litem shall have a fiduciary relationship towards the ward and shall have the power and authority to:

- (1) represent a ward's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature or regarding a delinquent act); and
- (2) employ counsel and settle or compromise claims subject to the approval of the Court.

(b) The Court may appoint a guardian ad litem without the necessity of a petition or hearing.

#### **§5-2-8 Guardians Reimbursement**

The Court may order monthly reimbursement payments to the person appointed as a guardian, provided sufficient funds are available. Such disbursements shall be used for the sole purpose of covering expenses incurred in the care and custody of the ward.

### **TYPES OF GUARDIANSHIPS**

#### **§5-2-9 Guardianship of Children**

After a hearing upon the filing of a guardianship petition, the Court may appoint a guardian for a child. Guardianship for a child may provide custody of a child to someone other than the parent(s), although there is no termination of the parental rights. The parent(s) and the child's extended family may be granted visitation rights during a guardianship.

#### **§5-2-10 Guardianship of Incapacitated Persons**

If after a guardianship hearing, the Court determines that the prospective ward is incapacitated, it shall appoint a guardian for such person. The proof at hearing shall include the certification by a qualified physician showing that a person is incapacitated, the anticipated duration of the incapacity and that the best interests of the incapacitated person will be served by the appointment of a guardian.

## **§5-2-11 Guardianship of Property**

The Court may require any guardian before taking and receiving into custody the money or funds of a ward, to provide security in the form of a bond in such sum as the Court shall order. Such bond shall be returned upon termination of the guardianship on the condition that the guardian:

- (a) submits to the Court an accounting of:
  - (1) the property, estate and money of the ward and all the proceeds or interests derived therefor, at such times as the Court may order; and
  - (2) the management and disposition of the property, estate money, proceeds and interest of the ward within three (3) months of his appointment and every three (3) months thereafter.
- (b) faithfully discharges his guardianship duties;
- (c) at the expiration of his trust, justifies his accounts with the Court and the ward if the ward is of full age or regains competency, or the ward's legal representative, and pays over and delivers all the estate, monies and effects remaining in his possession.

## **§5-2-12 Temporary Guardianship**

Upon petition, the Court may appoint a temporary guardian when it determines such to be in the best interest of the ward and under such terms and conditions as it sets forth in a written order.

## **PROCEEDINGS**

### **§5-2-13 Guardianship Petition**

- (a) A guardianship proceeding shall be initiated by the filing of a petition by the proposed guardian or the case worker. The Court may initiate proceedings to appoint a guardian itself if such appointment reasonably appears necessary and no other person has filed a petition.
- (b) A petition shall include:
  - (1) the full name, sex, date and place of birth, residence and tribal affiliation if any, of the proposed ward and guardian;
  - (2) the basis for the Court's jurisdiction;
  - (3) the relationship, if any of the proposed guardian to the proposed ward;
  - (4) the name and address of the person or agency having legal or temporary custody of the proposed ward;
  - (5) whether the guardianship is a guardian ad litem, a temporary guardianship, a guardianship of a child or children, a guardianship of an incapacitated

person or persons and/or a guardianship of property;

- (6) the present conditions and circumstances which warrant the appointment of a guardian;
- (7) a full description and statement of the value of all property owned, possessed, or in which the proposed ward has an interest, if known; and
- (8) the signature of the petitioner.

#### **§5-2-14 Parties**

The parties to a guardianship proceeding shall include the:

- (a) proposed guardian;
- (b) proposed ward;
- (c) guardian ad litem, if any;
- (d) legal custodian of the ward, if any; and
- (e) parents of a proposed minor ward.

#### **§5-2-15 Guardianship Report**

Upon the filing of a guardianship petition, the Court may request that a qualified individual produce a guardianship report. The report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

#### **§5-2-16 Hearings**

During a guardianship hearing:

(a) the Court shall advise the parties of the reason for the proceedings and that each has a right to:

- (1) be represented by an attorney at their own expense in all proceedings under this chapter;
- (2) introduce evidence;
- (3) be heard on their own behalf; and
- (4) examine witnesses.

(b) the general public shall be excluded from the proceedings and the Court shall be authorized to further limit hearing attendance to only the parties, their counsel and witnesses during the time of their testimony; and

- (c) the Court shall issue an order which may:
  - (1) appoint a guardian and:
    - (A) set forth the guardian's authority and the duration of the guardianship; and
    - (B) direct the Court clerk to issue to the appointed guardian a certified copy of a letter of guardianship which shall evidence such appointment and contain any limitations of the authority of the guardian.
  - (2) determine that the guardianship is not warranted and dismiss the petition or request for guardianship;
  - (3) issue other appropriate directives in accordance with this chapter.

**§5-2-17 Discharge of Guardianship**

(a) A guardian of a child or the child himself who is not otherwise incapacitated, may petition the Court on or after the date the child reaches the age of eighteen (18) to have the guardian discharged and the estate turned over to the child.

(b) A person who has been declared incapacitated, the guardian of such person, any relative of such person within the third degree or any friend, may petition the Court in which the person was declared incapacitated, to restore him to competency. At the hearing, witnesses shall be examined, and a determination made as to whether the incapacitated person is of sound mind and capable of taking care of himself and his property. The proof at hearing shall include the certification by a qualified physician showing that the incapacitated person has been sufficiently restored to competency. If so, such person shall be restored to capacity and the guardianship of such person, if he is not a child, shall be discharged.

(c) A guardianship may be terminated at any time if the Court determines that it is in the best interests of the ward.