

# **Prairie Island Indian Community Family Services Ordinance**

## **Title 1. Child Welfare**

### **Article I. General Provisions**

**Section 1.01 Short Title.** This Title shall be cited as the Child Welfare Ordinance.

**Section 1.02 Effective Date.** This Ordinance shall be effective as of January 1, 2020.

**Section 1.03 Philosophy.** Child Welfare must be considered within the broader context of multigenerational trauma and the ongoing negative effects of Indian boarding schools and removals in the Prairie Island Indian Community. Parents recovering from multigenerational cultural, spiritual, emotional, and physical traumas and the effects of resulting addiction need more time to recover. Recovery from these traumas and addictions are often not linear and can even be cyclical. The Community commits to giving our parents who are struggling more support and time to recover so that the Community can restore the family units in this generation.

**Section 1.04 Purpose.** The Tribal Council declares that the following are the policies of the Prairie Island Indian Community:

- (a) To provide for the welfare, care, and protection of the children and families of the Prairie Island Indian Community and other native children residing or domiciled on the Prairie Island Indian Community;
- (b) To preserve unity of the family, separating a child from his parents, guardians, or custodians only when necessary;
- (c) To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children;
- (d) To provide a continuum of services for children and their families from prevention to residential treatment, with an emphasis on prevention, early intervention, and community-based alternatives;
- (e) To secure the rights of and ensure fairness to the children, parents, guardians, custodians, or other parties who come before the Tribal Court under this Child Welfare Ordinance;
- (f) To ensure that off-reservation Courts will return tribal children to the reservation by establishing this Ordinance;
- (g) To ensure that Family Services makes active and best efforts to achieve enrollment of a child who is eligible for enrollment where the Community has legal custody of a child under six months of age who is eligible for enrollment, consistent with the requirements of the Prairie Island Constitution and Prairie Island Enrollment Ordinance; and
- (h) To recognize and follow the tribal customs and traditions of the Prairie Island Indian Community with regard to child-rearing.

**Section 1.05 Rules of Construction.**

- (a) The Child Welfare Ordinance shall be construed liberally to effectuate the Community's policies, enumerated in §1.02.
- (b) References to the masculine shall be construed to include the feminine, and references to the feminine shall be construed to include the masculine.
- (c) References to the singular shall be construed to include the plural, and references to the plural shall be construed to include the singular.
- (d) In interpreting the Child Welfare Ordinance, the Court and other parties shall balance the best interests of the child, the best interests of the child's family, and the best interests of the Prairie Island Indian Community.

**Section 1.06 Application.** This ordinance shall govern all proceeding related to child welfare or permanency petitions filed after the date of enactment.

**Section 1.07 Repeal.** Adoption and enactment of this ordinance will serve a repeal of the Judicial Code Title 3, Chapter IX – Child Welfare.

**Section 1.08 Written Orders.** The Tribal Court must issue written orders pertaining to all matters brought under the Child Welfare Ordinance. Any order issued under this Ordinance other than scheduling orders or other orders on procedural matters must contain findings of fact and conclusions of law, unless the parties stipulate to the Order.

## **Article II. Definitions**

**Section 2.01** As used in the Child Welfare Ordinance:

- (a) "Abandon" means to fail to provide reasonable support and to maintain regular contact with a child. Failure to maintain a parental relationship with a child without just cause for a period of six months shall constitute prima facie evidence of abandonment. Custody with extended family or voluntary consent to placement does not constitute abandonment.
- (b) "Abuse" means to inflict physical, emotional, or mental injury on a child, or to sexually abuse or sexually exploit a child. As used in the Child Welfare Ordinance, this term shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that the child's health, moods, or emotional well-being is endangered.
- (c) "Adult" means a person 18 years of age or older or otherwise emancipated by order of a Court of competent jurisdiction.
- (d) "Best interests of the child" means a standard used to make decisions impacting a child under this Ordinance. It is in the best interests of the child to promote the child's healthy growth and development through safe, stable, nurturing relationships between a child and both parents. In evaluating the best interests of the child to make decisions under the Child Welfare Ordinance, the Court must consider and evaluate all relevant factors, including:
  - (i) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed decision on the child's needs and development;

- (ii) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;
  - (iii) the reasonable preference of the child, if the Court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;
  - (iv) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;
  - (v) the willingness and ability of any adults involved to provide ongoing care for the child to meet the child's ongoing developmental, emotional, spiritual, and cultural needs, and to maintain consistency and follow through with the child's needs;
  - (vi) the effect on the child's well-being and development of changes to home, school, and community;
  - (vii) the effect of the proposed decision on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life; and
  - (viii) the effect of the proposed decision on the ongoing relationships of the child with her Dakota heritage, the Prairie Island Indian Community, its members, and her extended family.
- (e) "Child" means a person who is less than 18 years old and who has not been emancipated by order of a Court of competent jurisdiction.
  - (f) "Child in need of protective services" means any child who is subjected to abuse, neglect, or abandonment or who is a child in violation of the law.
  - (g) "Child in violation of the law" means any child who:
    - (i) violates any offenses enumerated in the criminal code of another jurisdiction or the ordinances of the Prairie Island Indian Community pertaining to civil infractions or Community conduct;
    - (ii) by reason of being ungovernable or habitually disobedient, is uncontrolled by her parents, guardians, or custodians;
    - (iii) is habitually truant from school or home; or
    - (iv) habitually so deports herself so as to injure herself or the health and safety of others.
  - (h) "Child-protection worker" means an officer of Prairie Island Family Services assigned to perform the duties and responsibilities set forth in §5.02.
  - (i) "Cost of care" means the cost of caring for a child while the child is in non-institutional out-of-home placement, including the cost of temporary placement of the child pending trial.
  - (j) "Custodian" means a person, other than a parent or guardian, to whom legal or physical custody of a child has been given.
  - (k) "Domicile" means a person's true, fixed, and permanent home, to which the person intends to return even if currently residing elsewhere. The domicile of a child is generally

that of the custodial parent or guardian. When the child is placed by the Tribal Court, the child's domicile shall always remain the Community.

- (l) "Extended family" means relatives through blood and marriage, and those considered extended family under Tribal custom and tradition.
- (m) "Family Services" means Prairie Island Family Services.
- (n) "Foster home" means placement with a family whose home has been licensed under §13.01.
- (o) "Guardian" means a person, other than a parent, appointed by a Court of competent jurisdiction, having the duty and authority to provide care and control of a child.
- (p) "Guardian ad Litem" means a person appointed by the Tribal Court to represent a child's best interests before the Court. Although the Guardian ad Litem is an advocate for the child, the Guardian ad Litem is not bound by the wishes of the child and must make her own independent judgments as to the Best Interests of the child.
- (q) "Indian" or "Native" means any person who is a member or is eligible to become a member of a federally recognized Indian tribe.
- (r) "Legal Custody" means the right to determine the child's upbringing, including education, health care, religious training, and enrollment.
- (s) "Neglect" means to fail to provide adequate food, clothing, shelter, medical care, education, or supervision for a child's health and well-being. As used in the Child Welfare Ordinance, this term shall include "abandon," as defined in this section.
- (t) "Parent" means a natural or adoptive parent, but does not include a person whose parental rights have been terminated or an unwed father where paternity has not been either acknowledged by the mother or established by law.
- (u) "Physical custody" means the right to provide the routine daily care and control and the residence of a child.
- (v) "Prima Facie" means pleadings or allegations sufficient to establish a fact or raise a presumption unless disproved or rebutted.
- (w) "Reservation" means the Prairie Island Indian Community Reservation in Minnesota.
- (x) "Suspension of Parental Rights" means a legal proceeding whereby all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, control, visitation, or support existing between the child and the parent are severed and suspended during the minority of the child except that the parent must still pay any obligation for support incurred before the suspension unless the order of the Court specifically provides otherwise. If the child is not adopted by another, the child shall be considered a child of the parent whose rights were suspended upon reaching the age of majority and shall be treated as an heir of the parent through intestacy as though parental rights had always been intact. During a period of suspension of parental rights, however, the biological parent shall not be entitled to inherit by intestacy from the minor child.

- (y) “Termination of Parental Rights” means a legal proceeding whereby all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, control, visitation, or support existing between the child and the parent are permanently severed and terminated except that the parent must still pay any obligation for support incurred before the termination unless the order of the Court specifically provides otherwise.
- (z) “Tribal Council” means the Tribal Council of the Prairie Island Indian Community.
- (aa) “Tribal Court” or “Court” means the Tribal Court of the Prairie Island Indian Community.
- (bb) “Tribe” means the Prairie Island Indian Community.
- (cc) “Working day” means any day that is not a Saturday or Sunday on which the Tribal Court is open for filing.

### **Article III. Jurisdiction of the Tribal Court**

**Section 3.01 General Jurisdiction.** The Tribal Court shall have jurisdiction to hear matters under and enforce the Child Welfare Ordinance. The jurisdiction of the Court under this Chapter shall be civil in nature and shall include the right to issue all orders necessary to effectuate the purposes of the Child Welfare Ordinance, as enumerated in §1.02. The Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other orders as it deems appropriate in administering the Child Welfare Ordinance. The Court shall have jurisdiction over the following children:

- (a) Any child who is an enrolled member of the Tribe;
- (b) Any child who is eligible for enrollment with the Tribe; and
- (c) Any other Native child residing on or found upon the Prairie Island Indian Community Reservation but such jurisdiction shall be emergency in nature and shall last only until the appropriate tribal or state court assumes jurisdiction.

**Section 3.02 Jurisdiction Over Extended Family.** Where the Tribal Court asserts jurisdiction over a child under §3.01, the Court shall also have jurisdiction over the child’s parents, guardians, custodians, and extended family when not preempted by federal law.

**Section 3.03 Continuing Jurisdiction.** Where the Tribal Court deems it appropriate, the Court may retain jurisdiction over a child and his extended family who leave the exterior boundaries of the Reservation.

**Section 3.04 Transfer of Jurisdiction.**

- (a) Application of the Indian Child Welfare Act. The Tribal Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§1901 *et seq.*, where they do not conflict with the provisions of the Child Welfare Ordinance. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in the Child Welfare Ordinance.
- (b) Transfer from Other Courts. The Tribal Court may accept transfers of child welfare cases from other federal, state, or tribal courts. The Tribal Court may decline transfers of such

cases only after prior consultation with and concurrence from the Tribal Council and Prairie Island Family Services.

(c) Procedures for Transfer from State Court.

- (i) Receipt of Notice: Prairie Island Family Services shall be the tribal agent for service of notice of state-court child-custody proceedings, as defined by the Indian Child Welfare Act.
- (ii) Petition for Transfer: Prairie Island Family Services may, in its discretion, file a written request with the Tribal Court to accept a transfer of jurisdiction from any other federal, state, or tribal court.
- (iii) Acceptance of Transfer: Subject to the consultation and concurrence requirement in §3.04(C), the Tribal Court shall accept a transfer from a state court unless:
  - 1) Prairie Island Family Services indicates that it is unable to provide services to the family or child; or
  - 2) A parent, guardian, or custodian objects to the transfer with the State court.
- (iv) Hearing(s): Upon receipt of transfer jurisdiction from state court, Prairie Island Family Services shall file a child-protection petition, and the Court shall hold appropriate hearing(s) in accordance with the Child Welfare Ordinance.

(d) Recognition of Foreign Orders; Conflict of Laws.

- (i) Child-custody orders involving children over whom the Tribal Court could take jurisdiction from state courts or other tribal courts shall be recognized by the Court unless a party to the order objects to recognition and demonstrates that:
  - 1) the other court lacked jurisdiction over the child;
  - 2) the other court did not properly apply the Indian Child Welfare Act, 25 U.S.C. §§ 1901 *et seq.*;
  - 3) due process was not provided to all interested persons participating in the other court's proceedings; or
  - 4) the Court's order violates the public policies, customs, or common law of the Tribe.
- (ii) Nothing in this Section prevents the Tribal Court from determining that the parent, guardian, or custodian of the minor child should continue to receive services from Prairie Island Family Services in those cases where the state court has made a finding that active efforts need not be provided to the parent, guardian, or custodian after receiving input from Prairie Island Family Services.
- (iii) Because of the Tribe's vital interest in its children, the statutes, regulations, public policies, customs, and common law of the Prairie Island Indian Community shall control in any proceeding involving a child who is a member of or is eligible for membership with the Tribe.

#### **Article IV. Procedures and Authorizations**

**Section 4.01 Rules of Procedure.** The procedures in the Tribal Court shall be governed by the Prairie Island Judicial Code, Title 2: Rules of Civil Procedure, to the extent they are not in

conflict with this Child Welfare Ordinance.

**Section 4.02 Rules of Evidence.**

- (a) Generally. Except as otherwise provided by statute or these rules, in a child welfare matter the Court shall only admit evidence that would be admissible in a civil trial pursuant to the Federal Rules of Evidence.
- (b) Hearsay allowed. Hearsay evidence will not be excluded in a child welfare hearing as long as it is otherwise reliable and subject to challenge by the opposing party. The Tribal Court will give due weight to such evidence. Best evidence is direct testimony from the witnesses. The Tribal Court may continue the proceedings and order that witnesses be produced, if they are available, to verify hearsay.
- (c) Judicial Notice. In addition to the judicial notice permitted under the Rules of Evidence, the Court, upon its own motion or the motion of any party or the tribal attorney, may take judicial notice only of findings of fact and court orders in the juvenile protection court file and in any other proceeding in any other court file involving the child or the child's parent or legal custodian.

**Section 4.03 Cooperation and Grants.** The Tribal Court is authorized to cooperate fully with any federal, state, tribal, or public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of the Child Welfare Ordinance. This authority is subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.

**Section 4.04 Court Programs.** Tribal Court is authorized to establish for Healing to Wellness court, Peacemaking court or personnel, traditional court, or other court programs or personnel, and create rules and procedures for the administration thereof, to carry out the purposes of the Child Welfare Ordinance. This authority is subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.

**Section 4.05 Social Services.** The Tribal Court may use such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

**Section 4.06 Contracts.** The Tribal Court may negotiate contracts with tribal, federal, or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Court, subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.

**Article V. Children's Court Personnel**

**Section 5.01 Guardians ad Litem.**

- (a) Appointment. At any stage of proceedings conducted under the Child Welfare Ordinance, when it determines that a Guardian ad Litem would be helpful, the Tribal Court may appoint a Guardian ad Litem, without affecting the parent's, guardian's, or custodian's right to counsel.

- (b) Funding. The Court shall have discretion to allocate the costs and expenses of the Guardian ad Litem, and shall advise the parents, guardians, or custodians that they may be responsible. All parents, guardians, or custodians shall be responsible for reimbursement of a Guardian ad Litem.

**Section 5.02 Child Protection Workers.**

- (a) Purpose. It is the purpose of Prairie Island Family Services child protection workers to aid the Community in caring for its most valuable resources, its children and its families. This must be done with a respectful understanding of, and sensitivity for, traditional Dakota values and beliefs. An abused or neglected child has the right to receive help and the right to an improved living situation. The child protection worker's responsibility is to the child, the child's family, and to the Community. The child protection worker strives to a) keep the Community's children safe and nurtured; b) provide parents with the time and resources to address whatever issues they may have so that they can provide a healthy and safe home where the family can be reunified; and c) to ensure that the Community's children grow up with a healthy connection to their Tribe and their culture that will provide them with lifelong support and spiritual sustenance.
- (b) Powers and Duties.
  - (i) Prairie Island Family Services shall employ child-protection workers.
  - (ii) Child-protection workers may cooperate with federal, state, and tribal agencies as necessary to achieve the purposes of the Child Welfare Ordinance. Child-protection workers may negotiate working agreements with other jurisdictions, which shall be subject to ratification by the Tribal Council.
  - (iii) A child-protection worker shall:
    - 1) Receive reports of children in need of protective services and be prepared to provide temporary foster care for those children on a 24-hour basis;
    - 2) Receive, from any source, oral or written information regarding a child who may be in need of protective services;
    - 3) Upon receipt of any report or information that a child is in imminent danger or harm, immediately:
      - a) Notify the appropriate law-enforcement agency; and
      - b) Make a prompt and thorough investigation, which shall include a determination of the nature, extent, and cause of any condition that is contrary to the child's best interests and the name, age, and condition of other children in the home;
    - 4) Take a child into temporary custody if there are reasonable grounds to believe that child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary in order to protect the child from imminent danger or harm. Law-enforcement officials shall cooperate with child-protection workers to remove a child from the custody of his parents, guardian, or custodian when necessary;
    - 5) After investigation, evaluate and assess the home environment of the child and the risk to the child if she continues to be subjected to the existing home environment;

- 6) Determine whether the child is in need of protective services. Every effort shall be made to provide services to the family to ensure the safety of the child while remaining in the home;
  - 7) Offer to the family of any child found to be a child in need of protective services appropriate services that may include, but shall not be restricted to, protective services;
  - 8) Within 30 days after a referral of a juvenile assessed as a child in need of protective services, prepare a written report of his investigation and evaluation to be attached to a child-protection petition filed with the Tribal Court or stating grounds for not substantiating the allegations which shall be kept on file with Family Services and the Legal Department;
  - 9) Ensure that no child remains in temporary custody for a period exceeding 72 hours, excluding Saturdays, Sundays, holidays, and other days Prairie Island offices are closed, unless a hearing on continued removal is held or the parents, guardians, or custodians have waived the right to a hearing;
  - 10) Represent the Community in child welfare cases involving Community children in state courts; and
  - 11) Maintain the confidentiality of the child and his parents, guardians, or custodians, and not release information unless authorized to do so by court order or a validly executed release of information on file with Prairie Island Family Services.
- (c) Limitations of Authority; Duty to Inform.
- (i) Before offering voluntary protective services to a family, a child-protection worker shall inform the family that he has no legal authority to compel the family to receive those services and of his authority to initiate a petition in the Tribal Court.
  - (ii) If the family declines the offered services, the child-protection worker may initiate a child-protection petition in the Tribal Court, alleging a child in need of protective services if he believes it is in the child's best interest.

## **Article VI. Duty to Report Child Abuse and Neglect**

**Section 6.01 Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected, abandoned, or is a child in violation of the law shall immediately report the abuse, neglect, abandonment, or status as a child in violation of the law to Prairie Island Family Services or the Prairie Island Police Department.

**Section 6.02 Persons Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include physicians, nurses, dentists, optometrists, or any other medical or mental-health professional; school principals, teachers, or other officials; social workers; child day-care-center workers or other child-care staff including foster parents, residential-care or institutional personnel, and counselors; peace officers or other law-enforcement officials; judges, attorneys (subject to any attorney-client privilege restrictions), clerks of the Court, or other judicial-system officials.

**Section 6.03 Anonymous Reports.** Any person who has a reasonable cause to suspect that a child has been abused, neglected, abandoned, or is a child in violation of the law shall report

the abuse, neglect, abandonment, or status as a child in violation of the law. Those persons reporting, except those specified in §6.02 above, may remain anonymous.

**Section 6.04 Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of abuse, neglect, abandonment, or a child's status as a child in violation of the law shall be immune from civil liability and criminal prosecution for reporting or for good faith actions taken while assisting with or participating in an investigation of allegations of maltreatment.

**Section 6.05 Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse, neglect, abandonment or a child's status as a child in violation of the law who knowingly fail to do so or willfully prevent someone else from doing so may be subject to a civil cause of action before the Tribal Court, state penalties, and/or disciplinary action up to and including dismissal if they are employed by the Community.

**Section 6.06 Reports.**

- (a) Form of Report. Those persons mandated to report under §6.02 shall promptly make an oral report to Prairie Island Family Services, followed by a written report within 72 hours, not including Saturdays, Sundays, holidays, and other days Prairie Island offices are closed.
- (b) Contents of Report. The following information shall be included in the written report:
  - (i) Names, addresses, and tribal affiliation of the child and his parent, guardian, or custodian;
  - (ii) The child's age;
  - (iii) The nature of the suspected abuse, neglect, abandonment, or status as a child in violation of the law;
  - (iv) Previous abuse, neglect, abandonment, or status as a child in violation of the law of the child or his siblings, if known;
  - (v) The name, age, and address of the person suspected of abusing, neglecting, or abandoning the child, if known; and
  - (vi) The name and address of the person making the report.
- (c) Photograph of Visible Trauma. Persons reporting suspected abuse, neglect, abandonment or a child's status as a child in violation of the law may photograph or cause x-rays to be taken of the child, and such photographs or x-rays may be introduced into evidence at a hearing.

**Article VII. Investigation and Removal**

**Section 7.01 Investigation.**

- (a) Any verbal, written, telephonic, email, or social media report or description of events or conditions made to Family Services or any Family Services employee that might be construed as abuse, neglect, or abandonment of a child, or as indicating that a child is in violation of the law, must be investigated unless, assuming that the report is true, it is

determined that the report does not constitute abuse, neglect, abandonment or a child in violation of the law, developed by Family Services. Written screening criteria shall be made available to any Prairie Island Tribal Member upon request.

- (b) If Prairie Island Police Department has contact with a Prairie Island child that might indicate abuse, neglect, or abandonment of the child, or that a child is in violation of the law, Prairie Island Police Department shall inform Family Services.
- (c) The investigation of a report of abuse, neglect, abandonment of a child, or of a child in violation of the law shall be initiated by a child-protection worker within 24 hours of receipt of the report.
- (d) If the report is screened out, the report and the reason it did not meet criteria will be recorded and the reporter will be informed orally or in writing. If the investigation does not substantiate the report, the report, the steps taken to investigate it, and the reason for the determination the report is unsubstantiated will be recorded and the reporter will be informed orally or in writing.
- (e) Family Services shall maintain a record of all reports, the actions Family Services took resulting from the report, and the outcome of those actions. These records shall be filed according to each Child or sibling group and available to all Family Services employees. The records shall be made available to Tribal Council or the legal department upon request. The records shall be maintained until the Child's eighteenth birthday.
- (f) Reports and investigations should be staffed with a multi-disciplinary team which may include child welfare staff, chemical dependency staff, legal staff, and other appropriate service providers to determine best next steps.

**Section 7.02 Emergency Removal Without Court Order.** If a child-protection worker or a Prairie Island Police Officer has reasonable grounds to believe that a child is (a) abused, (b) neglected, (c) abandoned, or (d) a child in violation of the law, *and* that the child is suffering from illness or injury or is in immediate danger from her surroundings and that removal from the home is the least restrictive means to protect the child, she may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

**Section 7.03 Notice to Parent, Guardian or Custodian Upon Emergency Removal.** When a child-protection worker or Prairie Island Police Officer removes a child under §7.02, he shall notify the parent, guardian, or custodian of the child from whom the child is being removed of the following:

- (a) the legal grounds for the removal;
- (b) the factual circumstances requiring removal;
- (c) the parent's, guardian's, or custodian's right to a hearing within 72 hours of the removal;
- (d) the parent's, guardian's, or custodian's rights under Article VIII; and
- (e) Prairie Island Family Services' burden of proof for the removal to continue.

Upon permission of the Court and when there is a showing that notification to a parent, guardian, or custodian may endanger the life or welfare of a child, another parent, guardian,

or custodian, or extended family, notice need not be provided. If the Court is unavailable holidays, weekends and other days and times Prairie Island offices are closed and Prairie Island Family Services has a reasonable belief that notification may create such a danger, notification may be withheld until the case can be heard by the Court.

**Section 7.04 Duties Upon Removal.** Prairie Island Family Services and tribal law enforcement shall ensure the safety and well-being of the child until such time as the Tribal Court assumes control over the matter and shall comply with §7.05.

**Section 7.05 Notice of Removal.**

- (a) Notice to the Tribal Court. The person who removed the child shall attempt to contact the Tribal Court within six hours of removing the child. The person shall document his attempt to contact the Court. The person shall thereafter provide the Court actual notice, no later than 12:00 p.m. the next working day.
- (b) Notice to the Parent, Guardian, or Custodian. The Tribal Court shall make all reasonable efforts, with the assistance of Prairie Island Family Services and tribal law enforcement as the Tribal Court may direct, to notify a removed child's parent, guardian, or custodian, within 12 hours of the Court's receipt of notice that the child was removed. Reasonable efforts shall include personal, telephone, and written contact at the parent's, guardian's, or custodian's residence, place of employment, or other location where he is known to frequent with regularity. If the parent, guardian, or custodian cannot be found, the Court shall give notice to her or the child's extended family.

**Article VIII. Rights Under the Child Welfare Ordinance**

**Section 8.01 Parental Rights.** Every parent, guardian, or custodian whose child is subject to a proceeding under this Ordinance has a right to represent herself or be represented by an attorney at her own expense in all proceedings under the Child Welfare Ordinance, to be heard, to introduce evidence, to examine witnesses, to submit reports to the Court, request hearings before the Court, and to be informed of possible consequences if the Tribal Court finds the allegations in the petition to be true. Each parent, guardian, or custodian whose child is subject to a proceeding under this Ordinance is entitled to advance copies of Court documents, including petitions and reports, unless the Tribal Court finds good cause to the contrary.

**Section 8.02 Rights of the Child.** Every child who is subject to a proceeding under this Ordinance has a right to be represented by an attorney at her own expense in all proceedings under the Child Welfare Ordinance, to request the appointment of a Guardian ad Litem or to have one appointed by motion of a party or the Court, and to submit reports to the Court through their attorney or the Guardian ad Litem or their child welfare worker. The child may be present and be heard at hearings if the Court deems the child to be of sufficient ability, age, and maturity and that it is in the child's best interest. The Court shall give due weight to the reasonable preferences of the child, if the Court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference.

## **Article IX. Active Efforts**

### **Section 9.01 Active Efforts Required.**

- (a) Family Services is required to provide active efforts at each stage of the case, including:
  - (i) To prevent removal;
  - (ii) To reunify the family;
  - (iii) To provide permanency to the child within the placement preferences if reunification fails;
  - (iv) To enroll any child under six months of age who is eligible for enrollment when the Prairie Island Indian Community has legal custody of the child; and
  - (v) To ensure that the child maintains her cultural connection to the Dakota people and the Prairie Island Indian Community.
- (b) Family Services' active efforts obligation includes at a minimum the active efforts required of state and county child welfare agencies under the Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq., and the Minnesota Indian Family Protection Act, Minn. Stat. §§ 260.751 to 260.835.
- (c) Active efforts should be tailored to the facts and circumstances of each case. By necessity, the descriptions of active efforts in this section are illustrative. Active efforts in any given case will vary depending on the needs of the parents and of the children. Perfect adherence to the minimum standards provide in this section will, in many cases, be insufficient to justify a finding of active efforts by the Court.

### **Section 9.02 Relief from Active Efforts to Reunify.**

- (a) Active efforts to reunify are required until either:
  - (i) A permanency order is entered;
  - (ii) The Court specifically finds that reunification efforts are futile because the parent(s) cannot or will not engage with a case plan and orders that Prairie Island Family Services is relieved of active efforts to reunify the family; or
  - (iii) The Court finds that the child was conceived as a result of rape or incest. A parent being charged with a crime as the result of the conception shall create a rebuttable presumption that active efforts are not required. Conviction of such a crime shall relieve Family Services of a duty to provide efforts to reunify.
- (b) If a parent seeks services after a finding and order described in § 9.02(a)(ii), Prairie Island Family Services is required to provide reasonable efforts towards reunification. The parent may move the Court to reinstate the duty to provide active efforts toward reunification.

### **Section 9.03 Active Efforts to Prevent Removal.**

Active effort to prevent removal may include:

- (a) Voluntary Services. Family Service is required to provide voluntary services to the family of any Prairie Island Child that requests them. Nothing in this section prevents Family Services from filing a Child Protection petition if Family Services deems it necessary. Voluntary services may include, but is not limited to:
  - (i) Arranging for or providing evaluations of mental or chemical health needs of family members;
  - (ii) Arranging for voluntary out-of-home placements for children;
  - (iii) Arranging from mental or chemical health services for family members;
  - (iv) Providing or arranging for parenting training and/or support, including in-home parenting evaluations and training;
- (b) Safety Planning. If a Safety Plan can sufficiently mitigate the risks to the child, Family Services must create a written Safety Plan that the child protection worker develops with the family that clearly describes the safety services that will be used to manage threats to a child's safety while keeping the child in the home.
  - (i) The safety plan should be realistic and feasible and have the immediate impact of controlling identified safety threats,
  - (ii) While the safety plan may address short term safety concerns, it should be coupled with a case plan to create long-term sustainable safety by reducing risks and increasing the family's capacity to protect the child.
  - (iii) The safety planning process should include assessments of the possible resources available to support the family including child care providers, parent/homemaker aides, public health nurses, neighbors or relatives.
  - (iv) The safety plan may include removing one or more parent from the home to prevent disruption for the child.
  - (v) Failure to comply with a safety plan in a manner that creates a risk or danger to the child may result in the removal of the child from the home.
  - (vi) If a family is on a safety plan for more than 90 days, a petition must be filed with the Court for court supervision of the case.
- (c) Family consultation. Family Services should consult with the family, which may include, but is not limited to, elders and family matriarchs as the customary leaders of the family, for strategies and techniques to prevent removals unless it is not in the best interests of the child

**Section 9.04** Active Efforts to Reunify the Family.

Active efforts to reunify the family must include:

- (a) Regular contact. Family Services shall make active efforts to make regular contact with the family. At a minimum, Family Services shall:
  - (i) Make active efforts to have face-to-face contact with each parent at least every month;

- (ii) Make face-to-face contact with each child at least every month unless the child is placed more than 100 miles away from Prairie Island, in which case regular contact should be maintained in whatever way is reasonable under the circumstances;
  - (iii) Make face-to-face contact with each active foster provider at least every month unless the provider is more than 100 miles away from Prairie Island, in which case regular contact should be maintained in whatever way is reasonable under the circumstances.
- (b) Visitation. Family Services shall provide regular visits for each child with each parent or custodian in the most natural setting possible, whether supervised or unsupervised, consistent with the need to ensure the health, safety, and welfare of the child. Family Services shall make active efforts to provide visits to each parent with each child each week.
- (i) Visits are a parental right and are necessary for reunification. Withholding visitation should never be used to punish parents.
  - (ii) Supervision by Family Services staff at Family Services offices is service sometimes offered by the Community depending on the schedules of the children, parents, and Family Services staff that requires appropriate behavior by the parents. Visits may be supervised at an off-site visitation center.
  - (iii) Visits must be provided to each parent with each child unless the Court finds that visitation between the child and parent is not in the child's best interests and orders that visitation cease. Positive drug test or other evidence of drug use is not sufficient to cease visitation, but may impact the level of supervision required.
  - (iv) If a parent misses three scheduled visits in a row or has pattern of repeated missed visits, Family Services need not schedule any more visits until the parent requests them. Family Services may also require the parent to arrange their own visits until she has demonstrated a pattern of attending scheduled visits.
  - (v) An individual visit may be cancelled if the parents appears visibly intoxicated or otherwise unsafe for the child.
  - (vi) The length and location of visits and whether they are supervised or unsupervised or trial home visits should be appropriate for the stage of the case, the health, safety, and best interests of the child, and the parent's engagement with the case plan.
  - (vii) Family Services should make active efforts to provide visits at least monthly to grandparents and other close relatives if it is in the best interests of the child.
  - (viii) Grandparents or other close family members may request visitation from the Court without intervening as parties. Family members may need to make arrangements for visits directly with the care-giver.
  - (ix) Family services may institute ground rules for parent, grandparent, or relative visits. If the rules are not followed or if the child suffers negative effects from visits, visits may be suspended.

- (x) Parents, grandparents, and relatives who are verbally aggressive or abusive to staff may be limited to contact with Family Services by phone or in writing as necessary and may be required to arrange their own visits through a visitation center.
- (c) Family consultation. Family Services should consult with the family, which may include, but is not limited to, the elders and family matriarchs as the customary leaders of the family for strategies and techniques to achieve reunification unless it is not in the best interests of the child.
- (d) Active efforts may also include:
  - (i) Conducting a comprehensive assessment of the circumstances of the child's family, with a focus on safe reunification as the most desirable goal;
  - (ii) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
  - (iii) Conducting or causing to be conducted a diligent search for the child's extended family members, including requesting a family search from Prairie Island enrollment office and the enrollment office of any other tribe to which the child is related;
  - (iv) Identifying, notifying, and inviting members of the child's family to participate in providing support and services to the child's nuclear family and in family team meetings, permanency planning, and resolution of placement issues;
  - (v) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the Community;
  - (vi) Taking steps to keep siblings together whenever possible and to provide visits between siblings when they are not placed together;
  - (vii) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
  - (viii) Monitoring progress and participation in services;
  - (ix) Considering alternative ways to address the needs of the Native child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
  - (x) Providing post-reunification services and monitoring.

**Section 9.05** Active Efforts to Provide Permanency to the Children

Active efforts to provide permanency to the children within the placement preferences if reunification fails may include:

- (a) Concurrent Planning. Concurrent with active efforts to reunify the family, Family Services should from the earliest part of the case be planning for the permanent placement of the child if reunification fails. The child should be moved into the home of

the best permanency option as soon as is practicable, unless to do so would impair active efforts to reunify.

- (b) Parental wishes. Family Services must consider parents' wishes as to placement and permanent placement. The parents' wishes are not dispositive, but should carry significant weight.
- (c) Investigation of Placements. Every Community member and relative who wishes to be a placement option must be investigated by Family Services for appropriateness of placement or permanency. Family Services must report the reasons for choosing one relative placement over another to the parents and the Court upon request from any party or the Court.
- (d) Relative Search. Family Services should conduct a relative search for possible placements and permanency options, including contacting Prairie Island enrollment office and the enrollment offices of any tribes the child is related to for a list of relatives.
- (e) Supportive services. Family Services is required to provide supportive services to relatives willing to take placement of the child to remove barriers to placement.
- (f) Permanency planning. Family Services must aid permanency options planning for the long-term care and well-being of the child including developing a concrete plan for the child to maintain cultural and social ties to the Community.
- (g) Foster care development. Active efforts to provide permanency includes all of the efforts to recruit, train, and retain tribal foster homes.
- (h) Family consultation. Family Services should consult with the family, which may include, but is not limited to, the elders and family matriarchs as the customary leaders of the family to create a plan for permanency.

#### **Section 9.06** Active Efforts to Enroll Eligible Children

Where the Prairie Island Indian Community has legal custody of a Child under six months of age who is eligible for enrollment:

- (a) The Family Services Department shall use active and best efforts to achieve enrollment of the infant in the Community;
- (b) Whenever possible, the Family Services Department shall have the Member parent sign the Application Form;
- (c) Other than when the Member parent is deceased, the Member parent must submit to the genetic testing required by Article III, Section 1(b) of the Constitution. Where the Member parent is deceased, Family Services may facilitate genetic testing from another Member relative in order to evidence that the Applicant is a lineal descendant of a Member.

#### **Section 9.07** Active Efforts to Maintain Culture.

- (a) Active efforts to ensure that the child maintains her cultural connection to the Dakota people and the Prairie Island Indian Community may include:

- (i) Placement. In considering where to place children, Family Services should place considerable weight on how well the placement could protect and nurture the child's cultural connection. This means that some preference should be given to placing a child with Community-member family over non-Community placements.
  - (ii) Communication with non-Community Placements. Family Services shall maintain regular contact with non-Community placements, even if they are members of another tribe, to ensure that they are aware of and helping the child to participate in cultural activities;
  - (iii) Ending placements. If, after active efforts by Family Services to educate and support them, a placement does not actively nurture and protect the child's cultural connection to the Dakota people and the Prairie Island Indian Community, Family Services may determine that it is not in the child's or the Community's best interests for the placement to continue.
- (b) Family Services has an ongoing obligation to any child removed from the care of her parent to provide active efforts to ensure that the child maintains her cultural connection to the Dakota people and the Prairie Island Indian Community until the child is eighteen unless the child is returned to a parent or permanently placed with a Community member.
  - (c) Family consultation. Family Services should consult with the family, which may include, but is not limited to, elders and family matriarchs as the customary leaders of the family for strategies and techniques to engage the child in her culture unless it is not in the best interests of the child.

## **Article X. Proceedings for Child-Protection Petition**

### **Section 10.01 Filing Child-Protection Petition.**

- (a) Authorization to File Petition. Formal child-protection proceedings shall be instituted by a child-protection petition filed by a child-protection worker on behalf of Prairie Island Family Services and in the child's best interests.
- (b) Time Limitations. If a child has been removed from the home, then a child-protection petition shall be filed with the Tribal Court no later than 12:00 p.m. of the second working day following the removal if a petition is deemed necessary by the child-protection worker. A petition is necessary if the child is not being returned to his parent, custodian, or guardian.
- (c) If a child has been placed voluntarily outside the home as part of a safety plan and the child has not been returned to the care and custody of the parent within 90 days of being voluntarily removed from the home, a child protection petition shall be filed with the Court establishing that sufficient allegations existed at the time of the voluntary placement to support out-of-home placement and that that continued out-of-home placement is the in the best interests of the child and the least restrictive option.
- (d) Contents of Petition. The child-protection petition shall set forth the following with specificity, unless such information is not available to Prairie Island Family Services:

- (i) The name, birthdate, sex, residence, tribal-membership eligibility, and tribal membership status of the child;
  - (ii) The basis for the Tribal Court’s jurisdiction;
  - (iii) The specific allegations of abuse, neglect, abandonment, or that the child is a child in violation of the law;
  - (iv) A plain and concise statement of the facts upon which the allegations that the child is in need of protective services are based; and
  - (v) The name, residence, and tribal-membership status of the child’s parent, guardian, or custodian, if known
- (e) **Caption.** The caption for child-protection matters shall be “In Re the Matter of (child’s initials), a Child in Need of Protective Services.
- (f) **Service of the Petition.** Prairie Island Family Services shall serve the child-protection petition on the parent, guardian, or custodian personally at the time of removal or, if service at the time of the removal is not possible, at the time of the hearing on removal. If personal service cannot be perfected, Prairie Island Family Services may serve the child-protection petition by certified mail at the last known address of the parent, guardian, or custodian. Prairie Island Family Services shall complete and file an Affidavit of Service with the Court.

**Section 10.02 Parties to a Child Protection Matter.** The parties to a child-protection matter include Prairie Island Family Services, the subject child’s parents, guardians, or legal custodians, and the Guardian ad Litem (if one has been appointed). Any time a party has the right to be present or receive records or filings under this Ordinance, that right extends to the party’s counsel.

**Section 10.03 Closed Proceedings.** Child-protection matters are confidential. The general public shall be excluded. Only the parents, guardians, or legal custodians; the child protection worker; the attorneys for the parties; a Guardian ad Litem (if one has been appointed); and, with permission of the Court, others having a direct interest in the matter may be present.

**Section 10.04 Initial Hearing.**

- (a) **Hearing Date.**
  - (i) If a child has been removed from her home or if immediate removal is being requested in the petition, the Tribal Court shall hold an initial hearing regarding the removal of a child within three business days of removal of the child or service of the petition, whichever happens first, excluding weekends and court holidays. A parent, guardian, or custodian may waive the right to a 72-hour hearing either personally or through counsel.
  - (ii) The Tribal Court may adjourn the initial hearing for up to 7 days, *sua sponte* or on the motion of any party, should it appear that the parent, guardian, or custodian need additional time to contest the grounds for removal.

- (iii) If a child has not been removed from her home and if the petition is not seeking immediate removal of the child from her home, the Tribal Court shall hold an initial hearing on the petition within 30 calendar days of service of the petition.
- (b) Notice of Rights. During the hearing, the Tribal Court shall advise the parties of the reason for the hearing and of their rights under Article VIII.
- (c) Nature of Hearing. The hearing shall be informal in nature. Parties may present any evidence relevant to the situation. The general public shall be excluded from the hearing. Only the parent, guardian, or custodian; the child-protection worker; the parties' attorneys; the Guardian ad Litem, if one is appointed; and, with the permission of the Court, others having a direct interest in the matter, may be present.
- (d) Burden and Possible Outcomes of the Initial Hearing. The petitioner bears the burden to prove by the preponderance of the evidence that the child is a child in need of protective services and, if the petitioner recommends removal or continued removal of the child, that removal of the child is necessary to protect the child's well-being and in the best interests of the child. Following the initial hearing, based on the evidence presented, the Tribal Court may:
  - (i) Dismiss the child-protection petition and order that the child be returned to his parent's, guardian's, or custodian's home;
  - (ii) Order that the child be returned to the parent's, guardian's, or custodian's home under the supervision of the Court and schedule a 30-day hearing; or
  - (iii) Order that the child remain in the out-of-home placement and schedule a 30-day hearing.
- (e) Notice of Initial Hearing. The Tribal Court shall make all reasonable efforts to advise the parents, guardians, or custodians of the time and place of the initial hearing and request their presence. Reasonable efforts shall include personal, telephone, and written contact at the parents', guardians', or custodians' residence, place of employment or other location where they are known to frequent with regularity. If the Court is unable to contact the parents, guardians, or custodians, the Court shall give notice to their and/or the child's extended family.

**Section 10.05 30-Day Hearing.**

- (a) Purpose. The purpose of the 30-day hearing is for the Tribal Court to reassess whether continued intervention is necessary to protect the well-being of the child.
- (b) Notice of Rights. During the hearing, the Tribal Court shall advise the parties of the reason for the hearing and of their rights under Article VIII.
- (c) Nature of Hearing. The hearing shall be informal in nature. Parties may present any evidence relevant to the situation, as it is otherwise admissible. The general public shall be excluded from the hearing. Only the parent, guardian, or custodian; the child-protection worker; the parties' attorneys; the Guardian ad Litem, if one is appointed; and, with the permission of the Court, others having a direct interest in the matter may be present.

- (d) Burden of Proof and Possible Outcomes of the 30-Day Hearing. The petitioner bears the burden to prove by the clear and convincing evidence that the child is neglected, abused, abandoned, or is a child in violation of the law and, if the petitioner recommends removal or continued removal of the child, that removal of the child is necessary to protect the child's well-being and in the best interests of the child. Following the initial hearing, based on the evidence presented, the Tribal Court may:
- (i) Dismiss the child-protection petition and order that the child be returned to his parent's, guardian's, or custodian's home;
  - (ii) Order that the child be returned to the parent's, guardian's, or custodian's home under the supervision of the Court and schedule a trial on the merits of the petition; or
  - (iii) Order that the child remain in the out-of-home placement and schedule a trial on the merits of the petition.
- (e) Other Factors. Also at the 30-day hearing, if a child has been removed from her home, the Court shall determine whether:
- (i) Prairie Island Family Services provided active efforts to prevent removal of the child;
  - (ii) Prairie Island Family Services was unable to provide active efforts to prevent removal of the child;
  - (iii) Prairie Island Family Services was not required to provide active efforts to prevent removal of the child because:
    - 1) The parent, guardian, or custodian has subjected the child or another child while residing in the home to severe or repeated abuse, severe or repeated neglect, sexual abuse, acts of torture, or abandonment;
    - 2) The parent, guardian, or custodian has been convicted of or pled guilty or nolo contendere to murder of another child, or an equivalent offense;
    - 3) The parent, guardian, or custodian has been convicted of or pled guilty or nolo contendere to voluntary manslaughter of another child, or an equivalent offense;
    - 4) The parent, guardian, or custodian has been convicted of or pled guilty or nolo contendere to aiding, abetting, attempting, soliciting, or conspiring to commit murder or voluntary manslaughter of the child or another child while residing in the parent's, guardian's, or custodian's home, or an equivalent offense;
    - 5) Physical abuse of a child resulted in death or admission to the hospital for in-patient care and that act of abuse is the act for which the parent, guardian, or custodian has been convicted of or pled guilty or nolo contendere to committing, aiding, abetting, conspiring to commit, or soliciting (i) an offense against the person, (ii) criminal domestic violence, or (iii) assault and battery of a high and aggravated nature or an equivalent offense in another jurisdiction;
  - (iv) The parent, guardian, or custodian has a diagnosable condition unlikely to change within a reasonable time, including, but not limited to, alcohol or drug addiction, mental deficiency, mental illness, or extreme physical incapacity, and the condition makes the parent unable or unlikely to provide minimally acceptable care of the child; or

- (v) Other circumstances exist that the Tribal Children’s Court finds make continuation or implementation of active efforts to preserve or reunify the family inconsistent with the permanent plan for the child.
- (f) Notice of 30-Day Hearing. The Tribal Court shall make all reasonable efforts to advise the parent, guardian, or custodian of the time and place of the 30-day hearing and request his presence. Reasonable efforts shall include personal, telephone, and written contact at the parent’s, guardian’s, or custodian’s residence, place of employment or other location where he is known to frequent with regularity. If the Court is unable to contact the parent, guardian, or custodian, notice shall be given to his and/or the child’s extended family.
- (g) Unresolved Issues. If the parties do not resolve all issues raised in the petition during the 30-day hearing, the Tribal Court will schedule a formal trial on the unresolved issues no later than 90 days after the filing of the child-protection petition.

**Section 10.06 Formal Trial on the Issues.**

- (a) Admissibility. The records of the initial hearing and the 30-day hearing shall not be admissible at the formal trial unless the parties so agree. In any event, the parties may introduce any evidence that was presented at those hearings that would normally be admissible under the Judicial Code, Title 2: Rules of Civil Procedure.
- (b) Notice of Rights. During the formal trial, the Tribal Court shall advise the parties of the reason for the hearing and of their rights as provided for in Article VIII.
- (c) Child Witnesses. If the Tribal Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition or other appropriate method rather than in Court. However, it is in the discretion of the Court to determine whether the parent or guardian has the right to subpoena the minor child as a witness in a contested case.
- (d) Burden of Proof. The burden of proof lies with Prairie Island Family Services. Family Services must prove by clear and convincing evidence that (a) the allegations in the child-protection petition are true and, if the petitioner recommends removal or continued removal of the child, that (b) removal is necessary to protect the child’s well-being, and (c) removal is in the best interests of the child.
- (e) Outcome of Hearing. The Tribal Court may:
  - (i) Find that the allegations of the child-protection petition are not true, dismiss the child-protection petition, and order that the child be returned to his parent’s, guardian’s, or custodian’s home;
  - (ii) Find that the allegations of the child-protection petition are true and issue an order under this Ordinance; or
  - (iii) Continue the hearing to a date certain to allow for the presentation of further evidence.
- (f) Return to Home. The Tribal Court may find that the child is a child in need of protective services and order that the child be returned to his parent’s, guardian’s, or custodian’s home and continue intervention and supervision as appropriate.

- (g) Continuing Removal from the Home. The Tribal Court may find that the child is a child in need of protection or services and order that the child remain out of the home if the petitioner proves any of the following grounds by clear and convincing evidence that:
- (i) A child has no parent, guardian, or custodian available, willing and capable to care for the child;
  - (ii) The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions;
  - (iii) The child has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his parent, guardian, or custodian, which is necessary for the child's health and well-being;
  - (iv) The child has been sexually abused or sexually exploited by the child's parent, guardian, or custodian or if the child's parent, guardian, or custodian knew or should have known of a substantial risk of sexual abuse or sexual exploitation and failed to protect the child;
  - (v) The child's environment is injurious to the child's welfare, including direct exposure to any unlawful use, distribution, or manufacture of any controlled substance, not including the use of marijuana;
  - (vi) The child was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner and safety planning with the parent was not effective;
  - (vii) The child has committed juvenile offenses as a result of parental pressure, guidance, or approval or is otherwise a child in violation of the law;
  - (viii) The child is incorrigible, ungovernable or habitually disobedient, is uncontrolled by her or his parents, guardian or custodian or habitually acts in a manner that creates substantial risk of injury to herself or himself or others or endangers the health, property, or well-being of herself or himself or others;
  - (ix) The child has sustained emotional harm or mental injury as indicated by an injury to the child's intellect or psychological capacity evidenced by a substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard for the child's culture; or
  - (x) The child has suffered, or is likely to suffer, emotional damage that causes or creates a substantial risk of impaired development.
- (h) Court Order for Continuing Removal. In its order for continued out of home placement, the Tribal Court shall:

- (i) Order the parent, guardian, or custodian to engage with Prairie Island Family Services to develop and implement a case plan to reunify the family. Prairie Island Family Services shall file the case plan within 30 days of the Order for Continuing Removal, and shall notify the parent, guardian, or custodian in writing of her right to request a hearing to challenge the contents of the case plan. If the parent, guardian, or custodian wishes to challenge the contents of the case plan, they may do so at any regularly scheduled hearing or request, in writing, a special hearing with the Court.
- (ii) Advise that out-of-home placement continues to be or is necessary and further that the child may not be returned to the home, absent specific order of the Court. The Court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the Court will consider at a subsequent hearing to determine whether the child should be returned.
- (iii) Order Prairie Island Family Services to make active efforts to enroll any child eligible for enrollment in Prairie Island Indian Community.

**Section 10.07 Notice of Formal Trial.**

- (a) Notice of Hearing.
  - (i) The Tribal Court shall issue a Notice of Hearing to the parent, guardian, or custodian. The Notice of Hearing shall require the parent, guardian, or custodian to appear personally before the Court at the time set for the formal trial.
  - (ii) The Notice of Hearing issued by the Court shall conspicuously display the words:  
Notice: Violation of this order is subject to proceedings for contempt of Court under the Prairie Island Judicial Code, Title I. The Court may find a parent, guardian, or custodian in contempt for failure to appear at a Court hearing or for failure to follow Court orders. The Court will hold the trial and enter an Order in your absence if you fail to appear.
- (b) Attachment to Notice of Hearing. The Tribal Court shall attach a notice to the parent, guardian, or custodian that advises him of his rights under Article VIII.
- (c) Methods of Service.
  - (i) Personal Service. If it appears within the body of the child-protection petition or within an accompanying statement that the parent, guardian, or custodian is a resident of the Reservation, the Tribal Court may direct tribal law enforcement or a person 18 years of age or older who is not a party to serve the Notice of Hearing and attachment personally where possible. Personal service must be made at least 15 working days before the formal trial.
  - (ii) Mail Service. If it appears within the body of the child-protection petition or within an accompanying statement that the parent, guardian, or custodian is not a resident of the Reservation, or is a resident of the Reservation but personal service is not possible, the Tribal Court may serve the Notice of Hearing and attachment by certified mail with a return receipt requested where possible. Mail service shall be made at least 15 working days before the formal trial.

- (iii) **Publication.** Where it appears within the body of the child-protection petition or within an accompanying statement that the name, place of residence, or whereabouts of the parent, guardian, or custodian is unknown, or where personal service and mail service are not possible, the Tribal Court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons. Such notice must be published once a week for three consecutive weeks with the first publication made at least 21 days prior to the formal trial. Such notice shall be directed to the parent, guardian, or custodian or, if unknown, include the phrase “to whom it may concern,” to be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, the caption of the case in a form as follows – “In Re the Welfare of the Child(ren) of (name of parent, guardian, or custodian)”, the date the child-protection petition was filed, the date of the formal trial, and the object of the formal trial, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The Tribe shall pay for publication of the notice. The Tribal Court shall deem publication of the notice equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.
- (iv) **Notice to Extended Family.** If personal service and mail service are not possible, the Tribal Court shall attempt to notify the parent, guardian, or custodian by contacting his and/or the child’s extended family.

**Section 10.08 Failure to Appear.**

- (a) **When Appropriate.** If the Tribal Court finds that notice has been effected under §9.07, and the parent, guardian, or custodian fails to appear for the formal trial, the Tribal Court may make default finding against the parent or hold the trial in the absence of the parent, guardian, or custodian and grant the requested relief.
- (b) **Order.** If the Tribal Court finds that the Petitioner established facts that support that the child is in need of protective services, the Court shall enter findings of fact, conclusions of law, and an order adjudicating the child in need of protective services and ordering the parents, guardian, or custodian to engage with Prairie Island Family Services to develop and implement of a case plan for reunification.

**Section 10.09 Three-Month Review Hearings.**

- (a) **Review Requirement.** At least every three months after a child has been found to be a child in need of protective services, the Tribal Court shall hold an informal hearing to review the status of a child-protection case and determine whether intervention and supervision continue to be appropriate.
- (b) **Disposition.** At each review hearing, the Tribal Court shall determine whether a basis for finding the child in need of protective services still exists. If the child has been removed from her home, the Tribal Court shall determine whether the preponderance of the evidence demonstrates that a reason for removal as set forth in §10.06(g) still exists.

**Article XI. Placement Preferences**

**Section 11.01 Least Restrictive Setting.** If a child cannot be returned home, the Tribal Court

shall place a child in the least restrictive setting that most approximates a family and in which his special needs, if any, may be met. The Court shall also place the child within reasonable proximity to his parent's, guardian's, or custodian's home, taking into account any special needs of the child.

**Section 11.02 Compliance with Foster Care Licensing Ordinance.**

- (a) A child who cannot be returned home must be placed in home licensed pursuant to the Prairie Island Indian Community Foster Care Licensing Ordinance, or in a home eligible for and willing to be licensed within a reasonable amount of time, unless a more restrictive placement is required to meet the needs of the child, such as an institutional placement.
- (b) If a home that meets the requirements of §11.02(a) is not available, a child may be placed in a home licensed by another foster care licensing agency approved by Prairie Island Family Services.

**Section 11.03 Compliance with Federal Law.** A child who cannot be returned home must be placed in a home in accordance with 25 U.S.C. § 3207, and any other applicable federal law.

**Section 11.04 Order of Preferences.**

- (a) Whenever appropriate, the Tribal Court shall place a child using the following order of preference:
  - (i) Members of the child's extended family who have been licensed or approved by the Tribe under §11.02 and §11.03;
  - (ii) Another member of the Tribe who has been licensed or approved by the Tribe under §11.02 and §11.03;
  - (iii) Another member of a Federally-recognized tribe who has been licensed or approved by the Tribe under §11.02 and §11.03;
  - (iv) A non-Native foster home located on the Reservation who has been licensed or approved by the Tribe under §11.02 and §11.03, where the child's hair will not be cut without the permission of the PIIC parent or the Community unless necessary for health reasons and the child will be supported in its cultural needs through engagement with the child's extended family where possible and attendance at cultural events;
  - (v) A non-Native foster home located off the Reservation who has been licensed or approved by the Tribe under §11.02 and §11.03 where the child's hair will not be cut without the permission of the PIIC parent or the Community unless necessary for health reasons and the child will be supported in its cultural needs through engagement with the child's extended family where possible and attendance at cultural events; and
  - (vi) An institution for children approved by the Tribe or operated by an Indian organization that has a program suitable to meet the child's needs.
- (b) Where appropriate, the preferences of the child and parent shall be considered.
- (c) Any placement other than those described in 11.04(a)(i-iii) requires a specific finding by the Court of good cause to depart from the placement preferences.

- (d) Native Placement. If the child is placed with a non-Native, non-relative and an appropriate Native relative placement becomes available prior to a permanency order being entered, the child should be placed with the Native relative without regard for the amount of time spent in the home of the non-Native, non-relative unless the Court makes a finding of good cause to deviate from the placement preferences. This provision does not apply to any Native relative who had notice by Family Services of the need for placement during the pendency of the current case for six months or more.
- (e) Good cause.
  - (i) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the Court.
  - (ii) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences.
  - (iii) The Court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
    - 1) The request of one or both of the child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
    - 2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
    - 3) The presence of a sibling attachment that can be maintained only through a particular placement;
    - 4) The extraordinary physical, mental, or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
    - 5) The unavailability of a suitable placement after a determination by the Court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located; or
    - 6) The ability of the proposed placement to protect and nurture the child’s cultural connection to the Dakota people and the Prairie Island Indian Community.
  - (iv) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
  - (v) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of this code or other mistake or failure attributable to Prairie Island Indian Community.

**Section 11.05 Order of Preference for State Court Cases.** Pursuant to 25 U.S.C. § 1915, the Community hereby adopts the placement preferences in this Article for all cases governed by the Indian Child Welfare Act.

**Section 11.06 Institutional Placement.** Placement of a child adjudicated as a child in violation

of the law in an institution may only be done as a placement of last resort with permission of the Court.

### **Section 11.07 Challenging Placement.**

- (a) Parents may at any point in the proceedings petition the Court in writing to find that:
  - (i) The current placement is not in the best interests of the child and Family Services must find a new placement; or
  - (ii) That another, specific placement is in the best interests of the child.
- (b) On review of the petition, the Court may, upon good cause, grant a contested evidentiary hearing.
- (c) Upon hearing the evidence, the Court, giving due deference to Family Services' expertise and recommendations, may:
  - (i) Find that the current placement is in the child's best interests and order that the child remain there;
  - (ii) Find that the current placement is not in the child's best interests and order that the child be moved to a new placement, either immediately if there is an imminent risk of harm, or at the soonest practicable time; or
  - (iii) Find that a specific placement other than the current placement is in the child's best interests and order that the child moved to the new placement, either immediately if there is an imminent risk of harm, or at the soonest practicable time.

## **Article XII. Authorization for Medical Treatment**

The Court may order medical examinations and care as may be required for children under its jurisdiction. The Court, upon the request of a child-protection worker, shall issue a truncated order that describes in sufficient detail any authority approved by the Court in a case, such as authority to make medical, education, and placement decisions, and the name of the persons or institutions ordered to have such approved authority but omits all other personal, factual, and private information.

## **Article XIII. Out-of-Home Placement**

**Section 13.01 Foster-Home Licensing Procedures.** Prairie Island Family Services shall be responsible for licensing all tribal foster homes according to standards approved by the Tribal Council and in compliance with the Prairie Island Indian Community Foster Care Licensing Ordinance and all applicable federal law.

### **Section 13.02 Funding for Out-of-Home Placements.**

- (a) Orders for Support. The Court shall order the county of financial responsibility, parents, guardians, or custodians to pay the cost of care for the child.
- (b) Amount of Funding. If a governmental agency is not paying for foster care, the cost of care shall be set by the Prairie Island Indian Community Welfare Fund Ordinance. Those amounts shall be paid by the Community member in accordance with the Welfare Fund

Ordinance. The Tribal Court shall determine whether the non-member parent, guardian, or custodian has the ability to contribute to the cost of care, including whether the non-member parent had a child support obligation at the time the child protection proceeding opened, and may order the non-member to contribute to the cost of care as it deems appropriate; the amount of the obligation of the non-member parent, guardian, or custodian shall be determined under the child support guidelines in Chapter III, Section 7 of the Domestic Relations Code or by an Order for Support in effect at the time. The support orders of the Court shall have the force and effect of a child support order and shall be enforceable as all other child support orders.

- (c) Limitations. Out-of-home placement funding shall be provided for the child until he reaches the age of 18, except that out-of-home placement funding shall continue after the age of 18 if the child is still enrolled in high school until he graduates or leaves foster care, whichever occurs first.

#### **Article XIV. Reunification and Permanency**

##### **Section 14.01 Reunification.**

- (a) Plan for Reunification. Once a child is removed (and, if removal was on an emergency basis, the removal has been confirmed by Court order), Prairie Island Family Services must provide active efforts to reunify the child with his parent, guardian, or custodian, including developing and implementing a case plan for reunification that must be filed with the Court for review as provided in §10.06(G).
- (b) Review of the Case Plan.
  - (i) At the three-month review hearings, the Court shall determine whether Prairie Island Family Services provided active efforts in the preceding three months to reunify the child with the parent, guardian, or custodian, and whether those services were satisfactory, such that the child can be returned to the care or custody of the parent, guardian, or custodian. In making such a determination, the Court must consider whether the active efforts of Prairie Island Family Services and the services offered to the family over the preceding three months were reasonably available, timely, meaningful, and realistic under the circumstances of the case and whether the efforts and services offered were consistent with the goal of reunification.
  - (ii) The Court shall also review whether the parents, guardians, or custodians complied with the components of the case plan.
- (c) Order. The Court shall determine whether continued out-of-home placement of the child or a return of care or custody of the child to the parent, guardian, or custodian is in the best interests of the child, and enter an Order continuing out-of-home placement, or returning the child to the care or custody of the parent, guardian, or custodian. The Court may order engagement by the parent, guardian, or custodian in particular services identified at the hearing as necessary for reunification.

##### **Section 14.02 Child-Protection Report.**

- (a) Requirement of a Child-Protection Report. To aid the Tribal Court, Prairie Island Family Services shall file a child-protection report prior to each review hearing. Family Services shall file the child-protection report with the Court and serve it on the parties at least three working days before the review hearing.
- (b) Contents of a Child-Protection Report. The child-protection report shall include the following:
  - (i) A summary of the child protection concern(s);
  - (ii) What steps, if any, the parent, guardian, or custodian has taken to correct the child protection concern(s);
  - (iii) What steps, if any, Prairie Island Family Services has taken to correct the child protection concern(s);
  - (iv) What services could be of benefit to the parent, guardian, or custodian, but are not available;
  - (v) The placement of the child, the length of the placement, and why the child is not in placement with a family member, if applicable;
  - (vi) How the child is doing in his current placement since the last trial/hearing. If the child's placement has changed, the reasons for the change;
  - (vii) Dates of contact between the child-protection worker and the child since the previous trial/hearing was held, method of contact, duration of contact, and subjects of discussion;
  - (viii) Dates of contact between the child-protection worker and the parent, guardian, or custodian since the previous trial or hearing was held, method of contact, duration of contact, and subjects of discussion;
  - (ix) If the child-protection worker has made no contact with the parent, guardian, or custodian, what efforts the child-protection worker has made to contact him;
  - (x) An assessment of whether and when the child is expected to return home;
  - (xi) A list of extended family members and dates of contact between the child-protection worker and such members regarding placement of the child
  - (xii) Efforts made by Family Services and/or the placement to protect and nurture the child's cultural connection to the Dakota people and the Prairie Island Indian Community; and
  - (xiii) A case plan for all parents for the next six months. The case plan must include:
    - 1) A plan and services to be provided for the parents, custodians, or guardians;
    - 2) A recommendation for future placement of the child; and
    - 3) Services to be provided to the child, if services are needed.

**Section 14.03 Permanency Plans.**

- (a) Without a specific showing of exceptional need, Prairie Island Family Services may not petition for permanency within one year of the child being initially removed from the home.
- (b) Need to Finalize Permanency Plan. Once a child has been removed for a period of thirty months, then Prairie Island Family Services must provide active efforts to provide permanency to the children within the placement preferences if reunification fails. The Tribal Court must determine at each hearing after this time whether a) Prairie Island Family Services has made active efforts to provide permanency to the child within the placement preferences if reunification fails, which could include on-going active efforts toward reunification, and b) whether there is good cause to not finalize a permanent plan for the child and keep the case open.
- (c) Annual Determinations by the Tribal Court. Each year following the removal of a child (and, if the removal was on an emergency basis, the removal has been confirmed by Court order), the Tribal Court must determine whether Prairie Island Family Services provided active efforts to provide permanency to the children within the placement preferences if reunification fails. In making such a determination, the Court must consider whether the active efforts of Prairie Island Family Services and the services offered to the family over the preceding year were reasonably available, timely, meaningful, and realistic under the circumstances of the case and whether the efforts and services offered were consistent with the goal of permanency.

**Section 14.04 Petition for Permanency.**

- (a) Available Options. Reunification of the family is always the preferred plan for a removed child. Where it appears that a child cannot be reunified with her parent, guardian, or custodian, Prairie Island Family Services may file a petition for permanency, requesting one of the following permanency options, in the following order of preference:
  - (i) Transfer of legal and physical custody of the child;
  - (ii) Suspension or termination of the parent's, guardian's, or custodian's parental rights and authorization for adoption of the child; or
  - (iii) Placement in long-term foster care with a finding under 9.02(a)(ii).
- (b) Transfer of legal and/or physical custody to the parent who was not the custodial parent at the commencement of the proceedings may be done by motion by Family Services to the Court without filing a permanency petition.
- (c) Emancipation. The Court may issue an order of emancipation of a child over the age of 16, if the Court determines the emancipation is in the child's best interests. A petition for emancipation may be filed by the child, the Community, or the Guardian ad Litem. Once emancipated, the child will have the same rights and duties as an adult. When considering the best interests of the child for emancipation should consider:
  - (i) The child's ability to support herself financially;
  - (ii) Where the child will live;
  - (iii) The child's record of decision-making;

- (iv) The child's maturity;
  - (v) Whether child has or will be able to complete high school;
  - (vi) If the child is pregnant or an expecting father, the child's ability to care for the progeny;
  - (vii) The ability of the child's parents or other caregivers to meet the child's needs.
- (d) In all cases where the proposed placement is not a member of the Prairie Island Indian Community, the permanency petition shall be filed with an affidavit signed by the proposed placement attesting that they intend to make active efforts to ensure that the child maintains her cultural connection to the Dakota people and the Prairie Island Indian Community and outlining their plan to do so.
- (e) A child must be placed in a particular home for at least 60 days before a petition may be filed establishing that home as a permanent placement.
- (f) Burden of Proof. Prairie Island Family Services bears the burden to prove by clear and convincing evidence that (a) that the child's parent, custodian, or guardian has not taken appropriate steps to remedy the basis for filing the petition or made necessary progress to permit reunification (b) that reunification at this time is not in the best interests of the child and creates a substantial risk of emotional or physical harm to the child, (c) that Family Services has provided active efforts to reunify the family, (d) the proposed permanency option is the least restrictive option for the child, (e) that the proposed permanency option is in the best interests of the child and (f) that the permanency option has a concrete plan for the child to maintain cultural and social ties to the Community.

**Section 14.05 Transfer of Legal and Physical Custody.**

- (a) Purpose. The purpose of this Section is to allow the Court to transfer legal and physical custody of a child who has been found to be in need of protective services to someone other than the parent, custodian, or guardian who had legal and physical custody of the child when the case was initiated.
- (b) Grounds. When a child has been in out-of-home placement for one year and Prairie Island Family Services does not believe that the child's parent, custodian, or guardian has taken appropriate steps to remedy the basis for filing the petition or made necessary progress to permit reunification, the Court may transfer legal and physical custody of the child to another, consistent with the placement preferences set forth in Article XI.
- (c) Procedure.
- (i) When grounds for a transfer of legal and physical custody exist, Family Services may file a petition with supporting affidavits and other documentation, and service on the parties.
  - (ii) The Court shall schedule a hearing on the petition and notify all parties of the date and time for the hearing at least 15 working days before the hearing.
  - (iii) In the Court's notice of the hearing, the Tribal Court shall advise the parties of the reason for the hearing and of their rights as provided for in Article VIII.

- (iv) If the Tribal Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition or other appropriate method rather than in Court.
- (d) Result of Transfer of Legal and Physical Custody Order. Should the Tribal Court conclude that Family Services has met its burden of proof by clear and convincing evidence, the Tribal Court shall (a) order that legal and physical custody of the child is transferred, subject to any rights to visitation or support existing between the child and the parent, guardian, or custodian, and (b) close the child-protection matter. If the parent, guardian, or custodian wishes to regain legal or physical custody at a later date, she must demonstrate by clear and convincing evidence that she has corrected the conditions that led to out-of-home placement; and that there has been a substantial change in circumstances in the home of the custodian and that a return of legal and physical custody to her is in the best interests of the child. A parent who physical and legal custody have been transferred under this code shall have no right to amend the child's Community trust.
- (e) Child's name. After a transfer of Legal and Physical custody, the child's name may not be changed until the child reaches her majority.
- (f) Transfer of Legal and Physical Custody to Non-member. If the transfer of legal and physical custody is to a relative or a non-relative who is not a member of the Prairie Island Indian Community, the Community shall retain joint legal custody of the child and the Court shall order the placement to protect and nurture the child's cultural connection to the Dakota people and the Prairie Island Indian Community. Each year, Family Services shall provide a report to the Court and the Court shall hold a hearing to ensure that the placement is acting adequately to protect and nurture the child's cultural connection to the Dakota people and the Prairie Island Indian Community. The Court may order Family Services to provide active efforts to ensure that the placement protects and nurtures the child's cultural connection.
- (g) Transfer of Legal and Physical Custody to Non-member Non-relative. If the transfer of legal and physical custody is to a non-relative who is not a member of the Prairie Island Indian Community, Prairie Island Family Services shall permanently retain shared legal custody of the child with the custodian. The permanency order in such cases shall provide guidance to the permanency option as to what decisions must be shared with the Community.

#### **Section 14.06 Suspension and Termination of Parental Rights; Adoption.**

- (a) Purpose. The purpose of this Chapter is to provide for the voluntary and involuntary suspension or termination of the parent-child relationship and for the substitution of parental care. This Section shall be construed in a manner consistent with the philosophy that all parties shall be secured in their rights as enumerated in the Indian Civil Rights Act of 1968 and that the family unit is of most value to the Tribe and the individual family members when that unit remains united and together, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts to reunify the family have failed and it is in the best interests of the child to proceed under this Section.

(b) Voluntary Suspension or Termination.

- (i) In any child-protection proceeding, a parent may file a request, which may be in the form of an affidavit and must be in writing, to voluntarily suspend or terminate his parental rights.
- (ii) Before granting a parent's request to voluntarily suspend or terminate his parental rights, the Court shall conduct a hearing to ensure that the parent understands the ramifications of a voluntary suspension or termination of parental rights and affirms that he still wishes to suspend or terminate his parental rights in view of those ramifications. Where the parent does not understand English, the Court shall provide an interpreter to assist him. The Court shall inform the parent that a voluntary suspension or termination of parental rights does not necessarily relieve the parent of a duty to provide financial support for the child unless the child is subsequently adopted and the adoptive parents are able to financially provide for the child.
- (iii) The Court shall not grant a voluntary suspension or termination of parental rights earlier than 30 days after the birth of the child.

(c) Grounds for Involuntary Suspension or Termination.

- (i) When a child has been in out-of-home placement for one year and Prairie Island Family Services does not believe that the child's parent, guardian, or custodian has been or will be able to take appropriate steps to remedy the basis for filing the petition or make necessary progress to permit reunification, the Court may suspend or terminate the parent's parental rights.
- (ii) In addition to the requirements in 14.06(c)(iii), the petition for termination of the parental rights of the parent, guardian, or custodian must establish beyond a reasonable doubt one of the following grounds for termination. Involuntary terminations of parental rights shall be considered only as a matter of last resort in the most egregious situations, including:
  - 1) Willful infliction of physical injuries on the child or any child by the parent;
  - 2) Willful acts of sexual abuse or sexual exploitation by the parent upon the child or any child;
  - 3) Willful infliction of egregious emotional harm or mental injury on the child or any child as indicated by an injury to the child's intellect or psychological capacity evidenced by a substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard for the child's culture;
- (iii) Requirements. Petitioner seeking involuntary suspension or termination of the parent-child relationship must establish the following beyond a reasonable doubt:
  - 1) The Tribal Court has entered an order stating what the parent, guardian, or custodian was required to accomplish to correct certain underlying child protection concern(s) including the components of the case plan filed with the Court;
  - 2) Active efforts were made by Prairie Island Family Services to offer or provide all ordered or necessary services that are reasonably available and that are capable of

helping the parent, guardian, or custodian resolve the underlying child protection concern(s);

- 3) There is little likelihood the parent, guardian, or custodian will remedy the conditions so that the child can be returned to her home in the near future;
  - 4) Adoption is being sought for the child and continuation of the parent-child relationship clearly diminishes the child's prospects for successful placement in a permanent and stable home;
  - 5) Adoption by the proposed placement is in the best interests of the child;
  - 6) Not returning the child to the parent, guardian, or custodian is the least detrimental alternative that the Court can take; and
  - 7) Returning the child to the parent, guardian, or custodian will result in serious emotional or physical harm to the child.
- (d) Who May File Involuntary Suspension or Termination Petition. Prairie Island Family Services may petition the Tribal Court for suspension or termination of a parent's parental rights under this Section.
- (e) Contents of Involuntary Suspension or Termination Petition. The petition shall include the following to the best information and belief of the petitioner:
- (i) The child's full name, sex, date of birth, address, and tribal-membership status or eligibility for tribal membership;
  - (ii) The basis for the Tribal Court's jurisdiction;
  - (iii) The parent's full name, date of birth, address, and tribal-membership status;
  - (iv) Where the child's parent is also a child, the name and address of his parent, guardian, or custodian and, where he has no parent, guardian, or custodian, the names and addresses of members of his extended family.
  - (v) The name and address of the person or agency having legal custody of the child;
  - (vi) The grounds on which the suspension or termination is sought; and
  - (vii) A statement that the requirements set forth in 14.06(c)(iii) have been met.

When any of the facts required by this Section are unknown, the petition shall so state. The petitioning party shall sign and date the petition.

- (f) Notice.
- (i) After a petition for the involuntary suspension or termination of parental rights has been filed, the Tribal Court shall schedule a hearing and cause notice thereof to be given to the parties to the child protection proceeding including Prairie Island Family Services; the parents, guardians, or custodians; and the Guardian ad Litem, if one has been appointed. Where the child's parent is also a child, the Tribal Court shall cause notice to also be given to his parents, guardian, or custodian, unless the Court is satisfied, in exercise of its discretion, that such notice is not in the best interest of the parent and that it would serve no useful purpose.

- (ii) The Tribal Court shall cause notice to be given in the same manner as provided in §10.07(c) and the notice shall include a statement of the parent's rights under §8.01.
  - (iii) Notice and appearance may be waived by a parent in writing before the Court in the presence of and witnessed by a clerk of the Court, provided that the parent has been apprised by the Court of the meaning and consequences of the suspension or termination action. A parent who has executed such a waiver is not required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the Court.
  - (iv) If the Tribal Court finds that notice of the petition for involuntary suspension or termination has been effected consistent with §10.07 and the parent, guardian, or custodian fails to appear or to waive appearance for the formal trial, the Tribal Court may hold the trial in the absence of the parent, guardian, or custodian and grant the requested relief.
- (g) Pre-Termination Report.
- (i) Court may request additional reports where it deems necessary.
  - (ii) Along with a petition for suspension or termination of parental rights, Prairie Island Family Services shall file a pre-termination report.
  - (iii) The report shall include the circumstances giving rise to the petition, the investigation, the present condition of the child and parent, the proposed plans for the child, and other such facts as may be pertinent to the parent-child relationship. The report shall include a recommendation as to whether the parent-child relationship should be suspended or terminated and the reasons therefor.
- (h) The Result of Suspension or Termination Order. Should the Tribal Court conclude that Prairie Island Family Services met its burden of proof by clear and convincing evidence, the Tribal Court shall order that all rights, powers, privileges, immunities, duties, and obligations including any rights to custody, control, visitation, or support existing between the child and the parent be severed and terminated, except that the parent must still pay any obligation for support incurred before the suspension or termination unless the order of the Court specifically provides otherwise. The parent shall have no standing to appear at any future legal proceeding concerning the child.
- (i) Child's Continued Right to Benefits. An order suspending or terminating the parent-child relationship shall not disentitle a child to any benefit due to the child from any third person, agencies, state or the United States, nor shall any action under the Child Welfare Ordinance be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe. The terminated or suspended parent shall have no rights to amend the child's trust.
  - (j) Custody After Suspension or Termination Order. If upon entering an order suspending or terminating the parental rights, there remains no person having parental rights, the Tribal Court shall commit the child to the custody of Prairie Island Family Services for the purpose of placing the child for adoption or, in the absence of an adoptive home, Prairie

Island Family Services may place the child in a licensed foster home or with a relative or take other suitable measures for the care and welfare of the child.

- (k) Future Review Hearings. Following the suspension or termination order, the Tribal Court shall hold review hearings at least every 90 days, continuing until the child is adopted or permanently placed.

## **Article XV. Modification, Revocation, Extension, or Appeal of Orders**

**Section 15.01 Motion to Modify, Revoke or Extend Court Order.** The Tribal Court may hold a hearing to modify, revoke, or extend an order under the Child Welfare Ordinance at any time upon the motion of:

- (a) The child's parent, guardian, or custodian;
- (b) The child;
- (c) The child's Guardian ad Litem;
- (d) Prairie Island Family Services;
- (e) The Court *sue sponte*; or
- (f) With permission of the Court, other persons having a direct interest in the matter.

**Section 15.02 Hearing Procedure.** The Tribal Court shall hold any hearing to modify, revoke, or extend an order in accordance with the procedures established for the order at issue.

**Section 15.03 Limitation on Revocation of Suspension Orders.** Motions to revoke a Suspension Order may be brought by a party to the Order only if one of the following occurs: (1) there is no final permanency order in effect after a period of one year from entry of the Suspension Order, (2) the adoption of the child fails, or (3) the adoptive parent is deceased. Notice of the request and proceedings on the request shall be provided to all parties to the hearing at which the Suspension Order was issued.

**Section 15.04 No Revocation of Termination Orders.** Termination Orders are not subject to revocation. A party challenging entry of a termination of parental rights may seek appeal with the Prairie Island Indian Community Appellate Court, and must demonstrate that entry of the Termination Order was an abuse of discretion.

**Section 15.05 Appealable Orders.** All final Orders under the Child Welfare Ordinance may be appealed to the Prairie Island Indian Community Appellate Court subject to the Prairie Island Dakota Community Judicial Code, Title 4: Rules of Appellate Procedure and the provisions of this Ordinance including but not limited to orders adjudicating a child in need of assistance, transferring legal and physical custody, suspending parental rights, and terminating parental rights. Except as provided herein, all other orders that are not final orders are subject to modification, revocation and extension pursuant to Section 1, above, upon motion of a party including but not limited to orders for out-of-home placement, visitation, and services for the child or the parent, guardian, or custodian.

**Section 15.06 Rules.** The Prairie Island Dakota Community Judicial Code, Title 4: Rules of Appellate Procedure shall govern appeals under this Ordinance.

## **Article XVI. Child-Protection Records**

**Section 16.01 The Records.** A record of all hearings, case management, reports, and investigations under the Child Welfare Ordinance shall be made and preserved.

**Section 16.02 Confidentiality.** All records shall be confidential, except as specifically described in this code, and shall not be open to inspection to any but the following:

- (a) The child's parent, guardian, or custodian (other than a parent, guardian, or custodian whose parental rights have been terminated);
- (b) With permission of the Court, the child upon reaching 18 years of age;
- (c) The child's Guardian ad Litem;
- (d) Prairie Island Family Services;
- (e) Counsel for one of the foregoing;
- (f) Tribal Court personnel directly involved in handling the case
- (g) Tribal Council in their role as supervisors to the Family Services Department; and
- (h) With permission of the Court, other persons having a direct interest in the matter.