

**LEECH LAKE BAND OF
OJIBWE**

TITLE ³4. CHILD PROTECTION CODE

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JUDICIAL CODE**

TITLE 3: CHILD AND FAMILY PROTECTION

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**LEECH LAKE BAND OF OJIBWE
JUDICIAL CODE**

TITLE 3: CHILD AND FAMILY PROTECTION

3-1 Short Title, Purpose And Definitions

3-1 A. Short Title:

Title 3 (Chapters 3-1 through 3-30) shall be entitled "The Child/Family Protection Code".

3-1 B. Purpose:

The child/family protection code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To provide for the welfare, care and protection of the children and families on the Leech Lake Indian Reservation.
2. To preserve unity of the family, preferably by separating a child from his parents only when necessary;
3. To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
4. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
5. To secure the rights of and ensure fairness to the children, parents, guardian, custodians or other parties who come before the Tribal Court under the provisions of this code;
6. To ensure that off-reservation courts will be willing to return Band children to the Reservation by establishing this code;
7. To recognize and acknowledge the tribal customs and traditions of the Leech Lake Band with regard to child rearing.

3-1 C. Definitions:

1. "Abandon": The failure of the parent, guardian or custodian to provide reasonable care and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of

- abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
2. "Abuse": The infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child and shall include failing to provide reasonable care and treatment or exploiting or overworking a child to such an extent that his health or emotional well being is endangered.
 3. "Adult": A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
 4. "Child": A person who is less than eight (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
 5. "Child Protection Team": A team established to involve and coordinate the child protection services of various agencies as set forth in chapter 2-7 of this code.
 4. "Court": The Tribal Court of the Leech Lake Band.
 7. "Custodian": A person, other than a parent or guardian, to whom custody of the child has been given.
 8. "Domicile": A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers being their permanent home.
 9. "Emergency Foster Home": Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see "Foster Home").
 10. "Extended Family": Relatives of the child including grandparents, uncles, aunts, sisters, brothers, nephews, nieces, and cousins, regardless of the degree of kinship. Extended family may include relatives of the child related by marriage to another extended family member or by traditional or legal adoption.
 11. "Foster Home": Placement with a family whose home has been licensed by the social services department of the Band or other approved agency.
 12. "Guardian": A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child (see "Permanent Guardian", "Temporary Guardian", "Guardian Ad Litem", and "Guardian of Property").

13. "Guardian Ad Litem": A person appointed by the court to represent the child's interests before the court.
14. "Guardian of Property": A person appointed by the court to manage the property of a child or incompetent person as set forth in chapter 3-25 of this code.
15. He/His": The use of he/his means he or she, his or her, and singular includes plural.
16. "Incompetent": A person who is, for any cause, mentally incompetent to take care of himself and to manage his property.
17. "Indian": Any member of a federally recognized Indian tribe, band or community, or Alaska Natives; or a person considered by the community to be Indian; or recognized as an Indian by the federal government for any purpose.
18. "Neglect": The failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well being. "Neglect" shall include "abandoned" children.
19. "Parent": Includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.
20. "Open Adoption": An adoption, which is not intended to permanently deprive the child of connections to, or knowledge of, his or her natural family.
21. "Permanent Guardian": A guardian who has been granted long term Guardianship status as set forth in section 3-25D of this code.
22. "Protective Services Worker": The protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in chapter 3-6 of this code.
23. "Reservation": The Leech Lake Reservation in the State of Minnesota.
24. "Temporary Guardianship": A guardian who has been granted temporary guardian status as set forth in Chapter 3-25 of this code.
25. "Tribal Council": The tribal council of the Leech Lake Band.

26. "Tribal Court": The tribal court of the Leech Lake Band as established in Title 1 of this code.
27. "Band": The Leech Lake Band.

3.2 Jurisdiction Of The Tribal Court.

3-2 A. General Jurisdiction.

The jurisdiction of the Tribal Court pertaining to matters in the Title shall be civil in nature and shall include the right to issue all orders necessary to insure the safety of children and incompetents within the boundaries of the Reservation, as well as Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate, and as necessary to carry its jurisdiction into effect.

The Tribal Court shall have jurisdiction over the following persons:

1. Enrolled members of the Band under the age of eighteen (18) years regardless of domicile or residence;
2. Persons under the age of eighteen (18) years who are eligible for enrollment in the Band regardless of domicile or residence;
3. Indians, as defined in section 3-1C of this code, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the Reservation;
4. Children of enrolled members of the Band or other Indians, as defined in section 3-1C of this code, including adopted children, who reside within the exterior boundaries of the reservation;
5. Children residing within the exterior boundaries of the Reservation, for whatever reason, in the home of an enrolled member of the Band or other Indians, as defined in section 3-1C of this code, as long as the parents, guardians, or custodians have consented to the jurisdiction of the Tribal Court. Such consent, once given, may be revoked only with permission of the Court; and
6. Incompetent persons residing or domiciled within the exterior boundaries of the reservation.

3-2 B. Jurisdiction Over Extended Family

Where the Tribal Court asserts jurisdiction over a person under section 3-2A above, the court shall also have jurisdiction over the person's parent, guardian, custodian or extended family whenever the court deems it appropriate.

3-2 C. Continuing Jurisdiction

Where the Tribal Court deems it appropriate, it may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation.

3-3 Transfer of Jurisdiction

3-3 A. Application of the Indian Child Welfare Act

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

3-3 B. Transfer to State Court or Other Tribal Court

In any proceeding before the court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or the Indian tribal have a significant interest in the child and the transfer would be in the best interest of the child

3-3 C. Transfer from Other Courts

The court may accept or decline, under the procedures set forth in this code, transfers of child welfare cases from other federal, state or tribal courts.

3-3 D. Procedures for Transfer from State Court

1. Receipt of Notice: The tribal agent for service notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the social service department of the Leech Lake Band.
2. Investigation and Pre-Transfer Report: The Band social services department shall conduct an investigation and file a written report with the court within five (5) days of receipt of notice.
3. Recommendations for Transfer or Intervention: The social services department shall make written recommendations to the Band prosecutor

on whether or not the tribe should petition for transfer from or intervene in state court proceedings.

4. Petition for Transfer: A petition for transfer shall be filed by the Band prosecutor within ten (10) days of receipt of recommendations from the social services department.
5. Intervention in State Court Proceedings:
 - a. The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and;
 - b. the Band prosecutor or selected representatives shall file a motion to intervene within ten (10) days of receipt of recommendations from social services.
6. Acceptance of Transfer: The Tribal Court will not accept a transfer from state court unless:
 - a. a parent or Indian custodian's petition to state court for transfer is granted, or;
 - b. the Band's petition to state court for transfer is granted, and;
 - c. the Band social services department's pre-transfer report recommends the acceptance of transfer, and;
 - d. the Band prosecutor recommends acceptance.
7. Hearing(s): Upon receipt of transfer jurisdiction from state court, the Band prosecutor shall file a child/family protection petition, and appropriate hearing(s) shall be held in accordance with this code.

3-3 E. Full Faith and Credit; Conflict of Laws

1. State Court Orders: Child custody orders of any state involving children over whom the Tribal Court could take jurisdiction may be recognized by the Tribal Court only after a full independent review of such state proceedings has determined:
 - a. the state court had jurisdiction over the child; and;
 - b. the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed, and;
 - c. the state court proceedings ^{do} ~~does~~ not violate the public policies, customs, or common law of the Band, and;

- d. the requirements of Rule 60, L.L.R.P. are otherwise met.
2. Court Orders of Other Tribal Courts: Orders of other tribal courts involving children over whom the court could take jurisdiction shall be recognized after the Court has determined:
 - a. that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and
 - b. due process was accorded to all interested parties participating in the other tribal court proceedings, and
 - c. the requirements of Rule 60, L.L.R.P. are otherwise met.
3. Band Interest: Because of the vital interest of the Band in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and common law of the tribe shall control in any proceeding involving a child who is eligible for or a member of the Band.

3-4 Procedures And Authorizations

3-4 A. Rules of Procedure

The procedures in matters litigated under this Title shall be governed by the Rules of Procedure for the Tribal Court, Title 2, which are not in conflict with this code.

3-4 B. Cooperation and Grants

The court is authorized to cooperate fully with any federal, state, tribal, 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 this Title. This authority is subject to the approval of the Reservation Tribal Council if it involves an expenditure of Band funds.

3-4 C. Social Services

The court shall utilize such social services as may be furnished by any Band, tribal, federal, or state agency.

3-4 D. Guardian ad Litem

At any stage of the proceedings conducted under this code the court may appoint a guardian ad litem to represent the child's best interests.

3-4 E. Additional Court Personnel

The court may set qualifications and appoint additional personnel such as guardians ad litem, court appointed special advocates (CASAs), court advocates, and/or facilitators whenever the Court decides that it is appropriate to do so and the expenditure of Band funds for the same have been approved by the Reservations Tribal Council.

3-5 Protective Services Workers

3-5 A. Power and Duties:

1. Protective services workers shall be employed by the Band social services department and/or the Band law enforcement department.
2. The department(s) may cooperate with such state and community agencies as are necessary to achieve the purposes of the code. The department(s) may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Reservation Tribal Council.
3. A protective services worker shall:
 - a. Receive reports of neglected, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis, and;
 - b. Receive from any source, oral or written, information regarding a child who may be in need of protective services.
 - c. Upon receipt of any report or information under paragraph (a) or (b) of this section, immediately:
 1. notify the appropriate law enforcement agency, and;
 2. make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
 - d. Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officials shall cooperate with social

services personnel to remove a child from the custody of this parents, guardian, or custodian when necessary.

- e. After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.
- f. Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.
- g. Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of the investigation and evaluation to the Band prosecutor.
- h. No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a child/family protection petition is filed.

3-5 B. Limitations of Authority; Duty to Inform

- 1. Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in the Tribal Court.
- 2. If the family declines the offered services, the worker may initiate a child/family protection petition in Tribal Court alleging a child in need of protective services if he/she believes it to be in the child's best interests.

3-6 Child Protection Team

The Band shall establish a child protection team. Establishment of the child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then to be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs, which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well being is found to be endangered, the child protection team should initiate protective services as promptly, efficiently, and effectively as possible.

These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems, which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well being of the child and the appropriate family members.

The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well being of a child and provide relevant information and advice to decision-making agencies. The child protection team shall facilitate (not hinder) the decision-making process. All child protection team members shall maintain confidentiality.

The duties of the child protection team shall include the development and implementation of procedures for:

3-6 A. Providing Oversight

1. Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.
2. Review and track all child abuse and neglect cases which have been referred.
3. Investigate cases to determine whether the best interests of the child are being met.
4. Review case plans for their adequacy.
5. Maintain confidentiality of information.
6. Send local child protection team data to area child protection teams.

3-6 B. Facilitating Provision of Services

1. Receive child abuse and neglect referrals. Assign case managers to track cases.
2. Identify available community resources, programs and services.
3. Provide recommendations to various pertinent agencies.
4. Promote cooperation, communication, and consistency among agencies.
5. Provide a forum for debating what actions would best promote the well being of Indian children.

6. Respond to inquiries from the community, area child protection teams, and other individuals and groups.

3-6 C. Providing Technical Assistance

1. Develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services.
2. Develop standards to determine which cases are to be investigated.
3. Provide information and technical recommendations to decision-making agencies.
4. Educate communities about child abuse and neglect problems and solutions.
5. Identify danger signs, which prompt intervention and/or prevention actions.
6. Assist in the development and implementation of plans to promote the long-term well being of children and their families.
7. Assist in the development and implementation of strategies by communities to create environments, which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

3-7 Duty To Report Child Abuse And Neglect

3-7 A. Duty to Report

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the Band's social services and/or law enforcement departments.

3-7 B. Persons Specifically Required to Report

Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional, school principal, school teacher, or any other medical or mental health professional, school principal, school teacher, or other child care staff including foster parents, residential care or institutional personnel, counselor, police officer or other law enforcement official, judge, attorney, lay advocate, court administrator or other judicial system official.

3-7 C. Anonymous Reports

Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in section 3-8B above, may remain anonymous.

3-7 D. Immunity from Liability

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from the imposition of any civil liability by the Band or Tribal Court.

3-7 E. Penalty for Not Reporting

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action proceeding in Tribal Court and the imposition of a civil fine not to exceed the sum of one thousand dollars (\$1,000.).

3-7 F. Abuse and Neglect Reports

1. Form of Report: Those persons mandated to report under section 3-8B above shall promptly make an oral report to the Band social services or law enforcement departments and then following with a written report as soon thereafter as possible.
2. Contents of Written Report: The following information shall be included in the written report:
 - a. Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian, if known.
 - b. The child's age.
 - c. The nature and content of the child's abuse or neglect.
 - d. Previous abuse or neglect of the child or his siblings, if known.
 - e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
 - f. The name and address of the person or agency making the report.
3. Photograph or X-rays of Trauma: Protective services workers may photograph or cause x-rays to be taken of the child suspected of having

been abused and such photographs or x-rays may be introduced into evidence at a hearing. Any person reporting suspected abuse of a child may take photographs of the child. Such photographs or x-rays shall be admissible in any hearing held under this Title.

3-8 Investigation And Removal

3-8 A. Investigation

When a report of suspected child abuse or neglect is received by the law enforcement department the officer receiving the report shall inform the social services department of the report immediately and shall assist the social services department with the removal of the child and investigated of the case as necessary. The child abuse or neglect report shall be investigated within one court working day by the social services department or other appropriate agency, unless the Tribal Court directs otherwise.

3-8 B. Authority to Remove

If the person investigating a report of child abuse or neglect finds that the grounds for removal, listed in section 3-8C below, have been met, such person may remove the child from the home in which the child is residing and place the child with a responsible member of the child's extended family, a temporary foster home or other appropriate placement.

3-8 C. Grounds for Emergency Removal

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

1. When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotion harm, or;
2. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

3-8 D. Power to Remove

Any person shall have the power to remove a child pursuant to this section provided that:

1. Reasonable grounds existed at the time of the removal to believe the removal was necessary, and;
2. The person removing the child ensures the safety and well being of the child, until such time as the Tribal Court assumes jurisdiction of the matter, and;
3. The person removing the child complies with the notice provisions contained in chapter 3-9 of this code.

3-9 Notice of Removal

3-9 A. Notice of the Tribal Court

After a child is removed from his home, the person who removed the child shall attempt to contact the Tribal Court within twenty-four hours. The attempt to contact the court shall be documented. Actual notice to the court shall be made, by the removing person, no later than 12:00 p.m. (noon) the next court working day.

3-9 B. Notice to the Parent, Guardian or Custodian

The Band's social services or law enforcement departments shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

3-10 Restrictions On Placement Of Children

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following:

3-10 A. Extended Family Members Home

A relative of the child who is willing to guarantee that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court, or;

3.10 B. Licensed Foster Home

A licensed foster home or a home otherwise authorized under the law of the Band to provide foster care, group care, protective residence, or;

3-10 C. Other Licensed Facility

A facility operated by a licensed child welfare services agency, or;

3-10 D. Other Suitable Place

Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the Band's social services department.

3-11 Filing Child/Family Protection Petition

3.11 A. Authorization to File Petition

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the Band prosecutor on behalf of the Band and in the best interests of the child.

3-11 B. Time Limitations

If a child has been removed from the home, then a child/family protection petition shall be filed with the Tribal Court no later than 12:00 p.m. (noon) of the second court working day following the removal.

3-11 C. Contents of Petition

The child/family protection petition shall set forth the following with specificity:

1. The name, birth date, sex, residence and tribal affiliation of the child;
2. The basis for the court's jurisdiction;
3. The specific allegations of abuse, neglect or abandonment;
4. A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;

5. The names, residence and tribal affiliation of the child's parents, guardians or custodians, if known;
6. The names, relationship and residences of all known members of the child's extended family and all former care givers, if known, and;
7. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement. On order of the court information regarding the child's placement may be sealed if the court finds that disclosure of the information may seriously endanger the child or the caregiver.

3-12 Initial Hearing

3-12 A. Hearing Date

An initial hearing shall be held regarding the removal of a child before the end of the second court working day following the filing of the child/family protection petition.

3-12 B. Purpose

The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well being of the child.

3-12 C. Advise of Rights

During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for the chapter 3-14 of this code.

3-12 D. Nature of Hearing

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is relevant and material to the issues. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and another persons determined to be appropriate by the court shall be admitted.

3-12 E. Possible Outcomes of the Initial Hearing

1. The child/family protection petition may be dismissed and the child returned to the home.

2. The child may be returned to the home of the parents, guardian or custodian under the supervision of the court and a hearing shall be held within thirty (30) days.
3. The child may be continued in the child's out-of-home placement and a hearing will be held within thirty (30) days.

3-12 F. Notice of Initial Hearing

The petitioner shall make all reasonable efforts to advise the parents, guardian or custodian of the time and place of the initial hearing and shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the petitioner is unable to contact the parent, guardian or custodian, notice shall be given to the members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

3-12 G. Unresolved Issues

If the problems are not resolved at the initial hearing or the thirty (30) day hearing, the court will set a date for a formal hearing on the issues. Such date will be no later than ninety (90) days after the filing of the child/family protection petition.

3-13 Notification Of Rights

All parties have a right to be represented by an advocate/attorney of their own choosing at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine and cross-examine witnesses, to have subpoenas issued by the court at no expense to the party, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court.

3-14 Thirty (30) Day Hearing

3-14 A. Purpose

A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the court to reassess whether continuing court intervention is necessary to protect the well being of the child.

3-14 B. Hearing Procedure

The thirty (30)-day hearing shall be held according to section 3-12D, 3-12E, 3-12f and 3-13 of this code.

3-15 Formal Trial On the Issues

3-15 A. Time Limitation

The formal trial on the issues will be set for no later than ninety (90) days following the filing of the child/family protection petition.

3-15 B. Admissibility

The records of the initial hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at that hearing which would normally be admissible under the court's rules of evidence.

3-15 C. Closed Hearing

The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the court shall be admitted.

3-15 D. Advise of Rights

During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in chapter 3-13 of this code.

3-15 E. Child Witnesses

If the court determines that it is in the best interest 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, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.

3-15 F. Burden of Proof

The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interest of the child will be served by continued court intervention.

3-15 G. Outcome of Hearing

The court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.

3-15 H. Return to Home

The court may find the allegations of the child/family protection petition to be true, but that out of home placement is not needed to protect the child. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

3-15 I. Grounds for Continuing Removal From the Home

The court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are that:

1. A child has no parent, guardian or custodian available, willing and capable of caring for the child.
2. 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, substantial risk of serious emotional trauma, disfigurement or impairment of bodily functions.
3. The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well being.
4. The child has been sexually abused or sexually exploited.
5. The child has committed juvenile offenses as a result of parental pressure guidance or approval.
6. The child has been emotionally abused or neglected.
7. The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

3-15 J. Court Order for Continuing Removal

The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem.

3-15 K. Return of child to Parent, Guardian or Custodian

The court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the accomplishment of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court will specify actions, and the time frames for such actions, that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

3-15 L. Out-Of-Home Placement

The court may find the allegations of the child/family protection team petition to be true and that out-of-home placement continues to be 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 or not the child should be returned.

3-15 M. Written Order

The court shall specify in writing the facts, grounds, and code sections upon which it relied to make its decisions.

3-16 Notice Of Formal Trial On The Issues

3-16 A. Summons

The court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial.

3-16 B. Attachments to Summons

A copy of the child/family protection petition if not previously successfully served shall be attached to each summons. The court shall also attach a notice to the parent, guardian or custodian which advises them of their rights under chapter 3-13 of this code.

3-16 C. Personal Service

If the parties to be served with a summons have not previously appeared on the matter before the court and can be found within the exterior boundaries of the reservation, the summons, a copy of the child/family protection petition and the notice of rights shall be personally served upon them at least fifteen (15) court days before the formal trial on the issues.

3-16 D. Mail Service

If the parties have previously been served with the petition and have appeared on the matter before the court and if their address is known, the summons, and notice of rights may be served by mail at least ten (10) days before the formal trial.

3-16 E. Notice to Extended Family

If the court cannot accomplish personal or mail service, the court shall attempt to notify the parent, guardian or custodian by contacting members of the extended family of to the parent, guardian, custodian, and/or the extended family of the child.

3-16 F. Service of Summons

Service of summons may be made under the direction of the court by any person eighteen (18) years of age or older who is not a party to the proceedings.

3-16 G. Publication

In a child/family protection case where it appears within the body of to the petition or within an accompanying statement that the parent, guardian or custodian is a non-resident of the reservation, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by mail has been unable to be effected, the court may permit the petitioner to publish legal notice as a provided in Title 2, Leech Lake Rule of Procedure, File 5.C(5). Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown a phrase to whom it may concern may be used and applied to and be binding upon any such person whose names are unknown. The name of the court, name of the child, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Band. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

3-16 H. Contempt Warning

The summons issued by the court shall conspicuously display the words:

NOTICE: VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO TRIBAL CODE, TITLE 1, SECTION 4. THE COURT MAY FIND YOU IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

3-17 Default Judgment

3-17 A. When Appropriate

If the parent, guardian or custodian fail to appear for the formal trial, the court may find the parent, guardian or custodian in default, and enter a default order of child/family protection and order necessary intervention and appropriate steps the parents, guardian or custodian must follow to correct the underlying problem.

3-17 B. Notice Determination

Prior to finding a parent, guardian, or custodian in default, the court must be satisfied actual notice has been given or that all reasonable possible steps have been taken to provide notice of the formal tribal to the parent, guardian, or custodian. The court must also find that the petitioner can prove the elements of the child/family protection petition.

3-17 C. Written Order

If the parent, guardian, or custodian is found in default, the court shall specify the facts, grounds, and code sections upon which it relied to make the decision.

3-18 Six (6) Month Review

3-18 A. Review Requirement

The status of all children subject to a child/family protection code order shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue, except that the first review following a formal tribal on the issues shall be held within ninety (90) days of the formal tribal on the issues. ✓

3-18 B. Return to Home

A child shall be returned home at the review hearing unless the court finds that a reason for removal pursuant to this code still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

3-18 C. Written Order

If continued court intervention is determined to be necessary, the court shall set forth the following in a written order:

1. What services have been provided or offered to the parent, guardian, or custodian, to help correct the underlying problems(s).
2. The extent to which the parent, guardian, or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.
3. Whether the parent, guardian or custodian is cooperative with the court and social services.
4. Whether additional services should be offered to the parent, guardian or custodian.
5. Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s).
6. When the return of the child can be expected.

3-19 Social Service Report

3-19 A. Requirement of a Social Study

To aid the court in its decision, a social study consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

3-19 B. Contents of a Social Study

The social study shall include the following points, and be made available to the court, and the parties as deemed appropriate by the court, three (3) days prior to a child/family protection review hearing:

1. A summary of the problem(s).
2. What steps, if any, have the parent, guardian, custodian, or social services personnel already taken to correct the problem(s).
3. What services could be of benefit to the parent, guardian or custodian, but are not available in the community.
4. A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves.
5. Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed.
6. If there have been no contacts with the parent, guardian, custodian or social worker, what efforts have been made to contact such parties.
7. An assessment of when the child is expected to return home.
8. A list of who the extended family members are and a list of contacts, or attempts to contact such family members regarding placement of child.
9. The social services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
 - a. A treatment plan for the parents.
 - b. Future placement of the child.
 - c. What services should be provided for the child, if services are needed.

3-20 Placement Preferences

3-20 A. Least Restrictive Setting

If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family and in which has special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in chapter 3-10 of this code shall be followed.

3-20 B. Order of Preferences

Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

1. Members of the extended family.
2. An Indian family of the same Band or tribe as the child.
3. People who have a nurturing relationship with the child, but who are not related to the child.
4. An Indian family.
5. Any other family which can provide a suitable home for such a child.
6. A foster home licensed or approved by the Band.

3-20 C. Extended Family Conference.

The court shall have discretion in making a determination for placement of a child to seek the advice and council of the extended family members of the child. If the court uses this option it shall appoint a facilitator for an extended family conference.

Notice of the conference shall be served by mail on known extended family members of the child. The notice shall specify the purpose of the conference, the date, time and place of the conference and the name of the facilitator.

The extended family members attending the conference shall be informed of the nature of the reasons for removal of the child and the expected length of time the removal will be continued. The extended family members attending the conference shall make recommendations to the court regarding an appropriate placement for the child. The recommendations shall be reduced to writing by the facilitator and submitted to the court. In making a placement determination the court shall give substantial weight to the recommendations of the extended family.

3-21 Authorization of Medical Treatment

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

3-21 A. Unavailability of Parent, Guardian or Custodian

A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or;

3-22 Life Endangerment

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

In making its order the court shall give due consideration to any treatment being given the child through spiritual means alone or through other methods approved by tribal customs, traditions or religions, if the child or his parent, guardian or legal custodian are adherents of a bona fide religion that relies exclusively on this form of treatment in lieu of medical treatment, or practices in fact the tribal customs, traditions or religion which is relied upon for such treatment of the child.

After entering any authorization under this section, the court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.

Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital not any nurse, technician or other person under the director on such physician or hospital shall be subject to liability in the court for performance of care or treatment in reliance on the court's authorization, and any function performed there under shall be regarded as if it were performed with the child's and the parent's authorization.

3-23 Guardianship

3-23 A. Purpose

The Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of either children under the court's jurisdiction or incompetents who have no guardian legally appointed. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems relatives of the child as the court may deem proper, and in

cases of adult incompetents, the court may cause notice to be given to the incompetent at least five (5) days before hearing the petition.

If a child is under the age of fourteen (14) years, the court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if the child resides outside of the reservation, or if, after being duly cited by the court, he neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. A guardian appointed may as specified by the court have the custody and care of the child and the care and management of his property until such child reaches the age of eighteen (18) marries, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real or personal property of the child in any manner. Said guardian shall not have the authority to consent to the medical care and treatment of the child.

3-23 B. Types of Guardianship

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

3-23 C. Guardianship of Property

The court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

3-23 D. Permanent Guardianship

The court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency

or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

3-23 E. Temporary Guardianship

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. Temporary legal guardianship of a child under jurisdiction of the court may also be granted to the Leech Lake Band, Department of Social Services. A temporary guardianship may be terminated if the court determines that it is in the best interests of the child to change custody to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

3-23 F. Who May File Guardianship Petition

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

3-23 G. Contents of Guardianship Petition

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

1. The full name, address and tribal affiliation of the petitioner;
2. The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
3. The basis for the court's jurisdiction;
4. The relationship of the proposed guardian to the proposed ward;
5. The name and address of the person or agency having legal or temporary custody of the proposed ward;
6. The type of guardianship requested;
7. In the case of alleged incompetent persons, the grounds for incompetence under this Title; and
8. A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

3-23 H. Guardianship Report

Upon the filing of a guardianship petition, the court shall immediately request that the social services department or other qualified agency conduct a guardianship report on the proposed guardian and on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.

No determination can be made on a petition for guardianship until the report has been completed, submitted to and considered by the court. The guardianship report shall be submitted to the court no later than ten (10) days before the hearing. The court may order additional reports as it deems necessary.

3-23 I. Guardianship Procedures

The procedures for guardianship hearings shall be in accordance with sections 3-15C, 3-15D, 3-15F, 3-16, and 3-19 of this code.

3-23 J. Management of Property

In the event that any guardian shall receive any money or funds of any child or incompetent person during his or her term of office as guardian, before taking and receiving into custody such money or funds, the guardian must secure a bond in such sum and with sufficient surety as ordered by the court, conditioned that the guardian will faithfully execute the duties of his/her trust, and the following conditions shall form the part of such bond without being expressed therein:

1. To make an inventory of all the estate of his ward that comes into his possession or knowledge and to return the same within such time as the court may order, and;
2. To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody and education of the ward, and;
3. To render an account on oath of the property, estate and money of the ward in his hands and all the proceeds or interests derived thereto, and of the management and disposition of the same, within three (3) months after his appointment, and annually, or at such other times as the court directs, and at the expiration of his trust, to settle his accounts with the court or with the ward if he be of full age, or his legal representative, and to pay over and deliver all the estate, moneys and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto.

The funds of any child or incompetent must be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonably be afforded according to the income and estate of said ward, provided, however, the guardian shall be permitted to deduct the cost of the required bond and court costs, including attorney fees, associated with his/her duties as guardian.

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

3-23 K. Incompetent Persons

In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that any person is incompetent it appears to the court that the person in question is not capable of taking care of himself and of managing his property, the court shall appoint a guardian of his person and estate within the powers and duties specified in this chapter.

Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of his ward and the management of his estate until such guardian is legally discharged; he must give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

A person who has been declared incompetent or the guardian, or any relative of such person within the third degree or any friend may apply to the court to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent. The court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the incompetent person be declared of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

3.24 Termination of Parental Rights

3.24 A. Purpose

The purpose of this chapter is to provide for the voluntary and involuntary termination of the parent/child relationship and for the substitution of parental care and supervision by judicial process. This chapter shall be construed in a manner consistent with the philosophy that all parties shall be secured their civil rights and that the family unit is of most value to the community and the individual family members when that unit remains united and together, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the court, all efforts have failed to avoid termination and it is in the best interest of the child concerned to proceed under this chapter.

3-24 B. Grounds for Involuntary Termination:

1. **Abandonment.** If the parent has not contacted the child by telephone, letter or in person, or provided any financial support for more that one (1) year without a break, or has had only minimal contacts for twenty-four (24) out of the latest forty-eight (48) months, a presumption shall exist that there is no parental relationship existing. The burden shall then be up to the parent to provide that such a relationship does exist. The evidence necessary to rebut this presumption may include, but shall not be limited to, information about efforts to maintain the parent-child relationship, including a showing of regular visits, telephone calls, letters, other contacts, monetary support.
2. **Physical Injuries.** Willful and repeated physical injuries inflicted on the child by the parent or willful and repeated failure to protect a child from the willful and repeated infliction of physical injuries by any other person.
3. **Sexual Abuse.** Willful and repeated acts of sexual abuse or sexual exploitation or willful and repeated failure to protect a child from such abuse or exploitation by any other person.
4. **Emotional Harm.** The return of the child may result in serious permanent emotional damage as supported by the best evidence available in the field of child development.

3-24 C. Pre-Filing Requirements.

A petition seeking involuntary termination of the parent-child relationship must establish the following:

1. The child has been found to be an abandoned or neglected child under the code for at least a one year period of time, and has been removed

from their parent at the time of this termination hearing for a period of one year or more;

2. The court has entered an order which states what the parent was required to accomplish to correct their underlying problem(s);
3. The social service agency involved has made a good faith attempt to offer or provide all court ordered and/or necessary services that are reasonably available in the community and which are capable of helping the parent resolve his or her underlying problem(s);
4. There is little likelihood the conditions will be remedied so that the child can be returned to the parents in the near future;
5. Continuation of the parent-child relationship clearly diminishes the child's prospects for successful placement into a permanent and stable home; and
6. Not returning the child to their parent is the least detrimental alternative that can be taken.

3-24 D. Who May File Termination Petition

A petition may be filed by:

1. Either parent when termination is sought with respect to the other parent.
2. The Band prosecutor.
3. Any other person possessing a legitimate interest in the matter.
4. A parent may file a petition for the voluntary termination of his/her own parental rights.

No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held in accordance with the provision of this chapter.

3-24 E. Contents of Termination Petition

The petition for termination of parental rights shall include the following to the best information and belief of the petitioner:

1. The name, place of residence and tribal affiliation of the petitioner (if other than Band prosecutor);

2. The full name, sex, date and place of birth, residence and tribal affiliation of the child;
3. The basis for the court's jurisdiction.
4. The relationship of the petitioner to the child, or the fact that no relationship exists;
5. The names, addresses, tribal affiliation, and dates of birth of the child's parents;
6. Where the child's parent is himself a child, the names and addresses of the parents' parents or guardian; and where the parent has no parent or guardian, the members of the parent's extended family.
7. The name and address of the person or agency having legal or temporary custody of the child;
8. The grounds on which the termination is sought under section 3-24B of this code (unless voluntary termination);
9. A statement that the pre-filing requirements set forth in section 3-24C of this code have been met (unless involuntary termination), and;
10. A list of the assets of the child together with a statement of the value thereof.

When any of the facts required by this section are unknown, the petition shall so state. The petitioner shall date the petition and sign it under oath.

3-24 F. Notice

After a petition for the involuntary termination of parental rights has been filed, the court shall set the time and place for hearing and shall cause notice there of to be given to the petitioner, the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and the child's extended family as determined by the court.

Where the child's parent is himself a child, notice shall also be given to the parent's parents or guardian of the person unless the court is satisfied, in exercise of its discretion that said notice is not in the best interest of the parent and that it would serve no useful purpose.

Notice shall be given by personal service. If service cannot be made personally, the court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the court may authorize service by publication in the manner provided in Leech Lake Rules

of Procedure, Rule 5.C(5). All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made.

Notice and appearance may be waived by a parent in writing before the court in the presence of, and witnessed by, a notary public or the Court Administrator, provided that such parent has been apprised by the court of the meaning and consequences of the termination action. The parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the court.

3-24 G. Pre-Termination Report

Upon the filing of a petition under this chapter for the involuntary termination of parental rights, the court shall request that the social services department or other qualified agency prepare and submit to the court a report in writing. The report shall be submitted to the court no later than ten (10) days before the hearing with copies given to the parents. The purpose of the report is to aid the court in making a determination on the petition and shall be considered by the court prior thereto. The court may request additional reports where it deems necessary.

The report shall include the circumstances of the petition, the investigation, the present condition of the child and parents, proposed plans for the child, and other such facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefore as to whether or not the parent and child relationship should be terminated.

3-24 H. Relinquishment of Parental Rights (Voluntary Termination of Parental Rights)

Parental rights may be relinquished (voluntarily terminated) by a parent in writing, if signed by the parent in the present and with approval of the court. Relinquishment shall not be accepted or acknowledged by the court prior to thirty (30) days after birth of the child. The court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it.

3-24 I. Hearing Procedures

The procedures for termination of parental rights hearings shall be in accordance with sections 3-14B, 3-14C, 3-14D and 3-14E of this code.

3-24 J. Burden of Proof

The burden of proof lies with the petitioner to prove that the allegations in the termination petition are supported by clear, cogent and convincing evidence, and that the best interest of the child will be served by termination of parental rights.

3-24 K. Findings of Facts and Conclusions of Law

The court will make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship.

3-24 L. Result of Termination Order

1 (Upon the termination of parental rights, all rights, powers, privileges, immunities, duties and obligations including any rights, to custody, control, visitation or support existing between the child and parent shall be severed and terminated unless otherwise directed by the court. The parent shall have no standing to appear at any future legal proceeding concerning the child. Any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination.

3-24 M. Child's Continued Right to Benefits

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or other United States, nor shall any action under this code 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.

3-24 N. Custody After Termination Order

If upon entering an order terminating the parental rights of a parent there remains no parent having parental rights, the court shall commit the child to the custody of a social services agency for the purpose of placing the child for adoption, or in the absence of an adoptive home the agency may place the child in a licensed foster home or with a or relative, or take other suitable measures for the care and welfare of the child. The custodian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child and consent to such matters as might normally be required of the child's parent.

3-24 O. Future Review Hearings

If a child has not been adopted or permanently placed within six (6) months of the termination order, another six (6) month review hearing will be held. Such six (6) month hearings will continue until the child is adopted or permanently placed.

3-25 Adoptions

3-25 A. Open Adoptions

Adoptions under this code shall be in the nature of "Open Adoptions." The purpose of such open adoptions is not to permanently deprive the child of connections to, or knowledge of, the child's natural family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this the following shall apply and be contained in all adoptive orders and decrees:

1. The adoptive parents and adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as set forth herein.
2. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and his tribal heritage.
3. The adoptive child and members of the child's natural extended family (including parents) shall have a right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.
4. Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if natural parents and child.

3-25 B. Consent to Adoption

1. When not required: Written consent to an adoption is not required if:
 - a. The parent has abandoned his child;
 - b. The parent's rights have been terminated;
 - c. The parent has relinquished his parental rights;
 - d. The parent has been declared incompetent.
2. When required: Written consent to an adoption is required of:
 - a. The biological or adoptive mother;
 - b. The biological, adoptive, or acknowledged father;

- c. The custodian, if empowered to consent;
- d. The child, if he is over twelve (12) years of age.

3-25 C. Execution of Consent to Adopt

Written consent to an adoption shall be executed and acknowledged before the court. Consent shall not be accepted or acknowledged by the court prior to thirty (30) days after birth of the child. Consents of a child over the age of twelve (12) years shall be made orally either in open court, or in chambers with only the judge and any other person(s) she/he deems necessary, and the child present.

3-25 D. Who May File An Adoption Petition

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said parent shall not be required to join in the petition.

3-25 E. Contents of Adoption Petition

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

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

Where there is more than one proposed adoptee, and these proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.

All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by the Court Administrator.

3-25 F. Notice

Notice shall be provided in accordance with the notice procedures set forth in section 3-24F of this code except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.

3-25 G. Home Studies

When a petition for the adoption of a child is filed with the court, the court shall immediately request that the social services department or other qualified agency conduct a home study on the petitioner and report on the child. The home study and report shall relate the circumstance of the home, the petitioner and his ability, both physical and mental, to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the court in determining the best placement for the child. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identify, and where applicable, his tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult.

No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the court. The home study shall be submitted to the court no later than ten (10) days before the hearing. The home study and report may be consolidated into one document. The court may order additional home studies or reports as it deems necessary.

3-25 H. Withdrawal of Consents

Any consent given under the provisions of this chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

All withdrawals must be in writing and notarized or witnessed by the Court Administrator, with the original being filed with the court.

Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

3-25 I. Adoption Preferences

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

1. Extended family member;
2. A member or person eligible for membership in the child's band or tribe.
3. Other Indian person(s).
4. A person who has had a nurturing relationship with the child.
5. If this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's tribal affiliation and his special needs.

3-25 J. Hearing Procedures

An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition for the prospective parent(s). The court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the court shall examine:

1. Validity of written consent;
2. Termination of parental rights order;
3. Length of time of the child's ward ship by the court;
4. Special conditions of the child;
5. Parent communication with this child;
6. Minor's consent to adoption, if he is over twelve (12) years of age;
7. Home studies or other reports, and;
8. Order of preference of placement.

The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the court shall advise the party(s) of their basic rights as provided in chapter 3-12 of this code. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this chapter have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petition for a period not to exceed six (6) months prior to entering a final decree of adoption.

If the court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this code.

Proceedings for termination of the parent-child relationship and proceedings for adoption may be consolidated and determined at one (1) hearing provided that all the requirements of this chapter as well as the provisions of this code governing termination are complied with fully.

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the court shall be admitted

3-25 K. Adoption Decree

If the court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.

A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the code.

3-26 Modification, Revocation Of Extension Of Court Orders

3-26 A. Motion to Modify, Revoke or Extend Court Order

The court may hold a hearing to modify, revoke or extend a court order under this code, except a final decree of adoption, at any time upon the motion of;

1. The child;
2. the child's parent, guardian or custodian;
3. the prospective adoptive parent'(s) upon court order;
4. the child's counsel or guardian ad litem;
5. the Band prosecutor;
6. the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision, or;
7. the court on its own motion.

3-26 B. Hearing Procedure

Any hearing to modify, revoke or extend a court order shall be held in accordance with the procedures established for the underlying order at issue.

3-27 Child/Family Protection Records

3-27 A. Tribal Court Records

A record of all hearings under this code shall be made and preserved. All children's court records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent, guardian or custodian;
3. the prospective adoptive parent(s);
4. the child's counsel or guardian ad litem;
5. personnel directly involved in the handling of the case;
6. any other person by order of the court, having legitimate interest in the particular case or the work of the court.

3-27 B. Law Enforcement and Social Services Records

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel or guardian ad litem;
4. law enforcement and social services personnel directly involved in the handling of the case;
5. court personnel directly involved in the handling of the case;

6. any person by order of the court, having legitimate interest in the particular case or the work of the court.

3-28 Appeals

3-28 A. Who Can Appeal

Any party to a children's court hearing may appeal a final court order.

3-28 B. Appeals Procedure

All appeals from proceedings under this Code shall be heard pursuant to Leech Lake Rules of Procedure, Title 2, Part VIII except to the extent that any Rule of Procedure is in direct conflict with the express provisions of the Title 3. In such a case other provisions of this Title shall prevail.

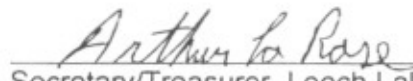
3-29 Severability

If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of the Title are declared severable.

CERTIFICATION

WE HEREBY CERTIFY that the forgoing Tribal Council Resolution No. 03-62 as duly presented and acted upon by a vote of 2 For, and 0 Against, at the Tribal Council of the Leech Lake Band, a quorum being present, held on December 23, 2002 at Cass River, MN.


Chairperson, Leech Lake Tribal Council


Secretary/Treasurer, Leech Lake Tribal Council

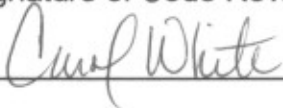


CERTIFICATION OF TECHNICAL CORRECTION

Title 3: Child and Family Protection of the Leech Lake Band of Ojibwe Judicial Code was revised on January 27, 2004 by Resolution No. 04-76 (Resolution for Child Protection Amendments). Resolution No. 04-76 provides that it is desirable to include non-enrolled children of enrolled Band or other tribal members within the protections of the Code. Due to a clerical error, Title 3, Section 3-2A.2. did not include the words "or eligible" as provided for in Resolution No. 04-76. Therefore, Title 3, Section 3-2A.2. is hereby corrected to read as follows: "Persons under the age of eighteen (18) years who are eligible for enrollment or membership in the Band regardless of domicile or residence."

The undersigned, Code Revisor, for the Leech Lake Band of Ojibwe Tribal Court, hereby certifies that Section 3-2A.2, Title 3 of the Child Protection Code is hereby corrected, pursuant to the authority vested in the Code revised by Leech Lake Band of Ojibwe Judicial Code, Title 1, Section 5.B.1 and, pursuant to the authority invested by the Leech Lake Band of Ojibwe Reservation Tribal Council in Judicial Code, Title 2, Rule 63 on the 15th day of June, 2004.

Signature of Code Revisor:



Dated on the 15th day of June 2004