

CHAPTER VIII

PARENT-CHILD RELATIONSHIPS

Section 1

Parent and Child

- a. Duties of Support- It is the duty of the father, the mother and the child or children of any poor person who is unable to maintain himself or herself by work, to maintain such person to the extent of his or her ability.
- b. Liability for Child's Necessaries- If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the responsible parent.
- c. Legitimation of Issue- A child born before wedlock becomes legitimate by the subsequent marriage of its parents.
- d. Rights of Grandparents- When a grandparent(s) has established a substantial relationship with a minor child, the court may, upon a proper showing, grant reasonable visitation rights to said grandparent(s).

Section 2

Paternity Proceedings

Section 2.1

Determination of Paternity and Support

The Shoshone Bannock Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance.

Section 2.2

Definitions

- (1) The phrase "child born out of wedlock" refers to a child who is begotten and born outside of lawful matrimony.
- (2) The word "child" refers to a child born out of wedlock.
- (3) The word "mother" refers to the mother of a child born out of wedlock.
- (4) The word "court" refers to the Shoshone Bannock Tribal Court.

Section 2.3

Liability for Support and Education

Each parent of a child born out of wedlock is liable for the necessary support and education of the child and for the child's funeral expenses. If a parent dies, an order of support or a judicially approved settlement made prior to that parent's death shall be enforceable as a claim against the deceased parent's estate in an amount to be determined by the probate court not greater than is provided in the order of settlement having regard to the age of the child, the ability of the surviving parent to support and educate the child, the amount of property left by the deceased parent and the number, age and financial condition of those other persons legally entitled to support by the deceased parent during his or her lifetime.

Section 2.4

Compromise Agreements

(1) An agreement or compromise made by the mother or by some authorized person on behalf of either the mother or child concerning the support of either is binding upon the mother and child only when the court determines that adequate provision has been made and is fully secured and approves said agreement or compromise.

(2) The complete and continuous performance of the agreement or compromise, when so approved, bars other remedies of the mother and child for the support and education of the child.

Section 2.5

Limitation of Action

Proceedings to establish the paternity of the child may be instituted by the mother only after the birth of the child, and such birth shall commence the time within which proceedings may be instituted under this section; provided, however, that no proceedings may be instituted by the mother under this section more than three (3) years after the birth of the child.

Section 2.6

Death of Mother

If, after the action is commenced, the mother dies or is judicially determined an incompetent, the proceeding does not abate but may be continued by her executor, administrator, guardian, or such other personal representative as may be appointed by the court.

Section 2.7

Venue - Birth Out of State

Proceedings to establish paternity may be originated in the Shoshone Bannock Tribal Court only if one of the following requirements is satisfied:

1. The mother resides on the Fort Hall Reservation; or
2. The child resides on the Fort Hall Reservation; or
3. The putative father resides on the Fort Hall Reservation.

The fact that the child was born outside the State of Idaho or the Fort Hall Reservation does not bar a proceeding to establish paternity in this Court if one of the above requirements is satisfied.

Section 2.8

Proceedings - By Whom Brought

Proceedings to establish the paternity of the child and to compel support under this section may be commenced by the mother, whether a minor or not, or by the child's guardian or other person standing on a paternal relation or being the next of kin of the child.

Section 2.9

Commencement of Proceedings

Proceedings are commenced by the filing of a verified complaint, alleging that the person named as defendant is the father of the child and petitioning the court to issue a summons. The service of summons, complaint and all pleadings shall be in accordance with the provisions of Chapter III of this Code.

Section 2.10

RESERVED FOR FUTURE USE.

Section 2.11

Trial by Court - Testimony

The trial shall be by the court without a jury. If the mother is married both she and her husband may testify to nonaccess. If the defendant shall offer testimony of access by others at or about the time charged in the complaint, such testimony shall not be competent or sufficient to base a finding of access unless corroborated by other acts and circumstances tending to prove such access.

Section 2.12

Blood Tests

The court, on motion of either party, may order the mother, her child and the defendant to submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child. If any refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require. The results of the blood test(s) can only be used to exclude the defendant as the father of the child and cannot be used as proof that he is or may be the father of said child.

The blood tests shall be made by experts qualified as examiners of blood types. Said experts shall be employed by the party to be tested and shall be paid a reasonable fee fixed by the court only if said party qualifies him as an expert pursuant to the Rules of Evidence. In the event the child is ordered to be tested, the mother of the child shall employ said expert. Said fee shall be paid by the court in accordance with this section.

If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the defendant is not the father of the child, the question of paternity shall be resolved accordingly, and the action shall be dismissed with costs awarded to the defendant. If the experts disagree in their findings and conclusions, the action shall proceed.

Section 2.13

Presumption of Legitimacy

The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child.

Section 2.14

Order of Filiation

If the court finds the defendant is the father of the child, it shall make an order of filiation, declaring paternity.

Section 2.15

Order for Support

In a proceeding in which the court has made an order of filiation, the court shall direct the father possessed of sufficient means or able to earn such means to pay monthly or at other fixed periods a fair and reasonable sum for the support and education of the child until the child is eighteen (18) years of age. If the child continues his formal education subsequent to reaching the age of eighteen (18) years, the court may in its discretion, order the continuation of support payments until the child discontinues his education or reaches the age of twenty-one (21) years, whichever is sooner.

The order of filiation may direct the father to pay or reimburse amounts paid for the support of the child prior to the date of the order of filiation and may also direct him to pay or reimburse amounts paid for: (1) the funeral expenses if the child has died; (2) the necessary expenses incurred by or for the mother in connection with her confinement and recovery; (3) such expenses in connection with the pregnancy of the mother as the court may deem proper.

Section 2.16

Payment of Support

All payments for support in compliance with a court order in that regard shall be paid directly to the clerk of the court for which a receipt shall be issued. The clerk shall then disburse the funds to the mother or to some other person, association, or trustee as the court may designate.

Section 3

Guardianship

Section 3.1

General

The Shoshone Bannock Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and estate of either minors or incompetents who have no guardian legally appointed by will or deed, and who are members of a Federally recognized Indian Tribe.

Such appointment may be made on the petition of a relative or other person on behalf of the minor or incompetent; or a petition of the minor, if

fourteen (14) years of age. Before making such appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the minor, and to such other relatives of the minor residing on the Fort Hall Indian Reservation as the Court may deem proper, and in cases of adult incompetents, the Court may cause notice to be given to such incompetent, at least five (5) days before hearing said petition.

Incompetent as used in this section shall be construed to mean an insane person, or person who is from any cause mentally incompetent to manage his property.

If a minor 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 minor is not approved by the Court, or if ~~the minor resides~~ outside of the Fort Hall Indian 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 minor were under the age of fourteen (14) years.

When a guardian has been appointed by the Court for a minor under the age of fourteen (14) years, the minor, at any time after he attains that age, may nominate his own guardian, subject to the approval of the Court.

The father of the minor, if living, and in case of his decease, the mother, being themselves respectively competent to transact their own business, and not otherwise unsuitable, must be entitled to the guardianship of the minor. A married woman may be appointed guardian.

If a minor has no father or mother living who is competent to have custody and care of his education, the guardian appointed shall have the same.

Every guardian appointed shall have the custody and care of the education of the minor and the care and management of his estate until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

In the event that any guardian shall receive any money or funds of any minor or incompetent person during his or her term of office as guardian, before taking and receiving into custody such money or funds, the Court must require of such person a bond with sufficient surety to be approved by the Court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his 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 interest derived therefor, and of the management and disposition of the same, within three(3) months after his appointment, and at such other times as the Court directs, and at the expiration of his trust, to settle his accounts with the Court or judge or with the ward if he be of full age, or his legal representative, and to pay over and deliver all the estate, monies and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto.

Upon appointing a guardian by an order of the Court, Letters of Guardianship shall be issued by the Court.

The funds of any minor or incompetent must be used by his guardian solely for the support and education of such minor 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.

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 as defined in this Law and Order Code, it appears to the Court that the person in question is not capable of taking care of himself and of managing his property, such Court must 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 minor.

A person who has been declared insane or incompetent or the guardian, or any relative of such person within the third degree or any friend, may apply by petition to the Court in which he was declared insane, 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 insane or 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 minor, shall cease.

The Court, shall be required to keep permanent records of all papers and documents which relate to or whereby guardians are appointed. After any paper or document is once filed in the permanent file, the same shall become a permanent record and shall not be removed from said file. Certified copies of all instruments relating to guardianship proceedings shall be delivered by the Court to the guardian. Certified copies of the same shall be made and delivered to other persons at a fee of \$1.00 per page.



The petition for appointment of guardian, notice of appointment of guardian, the order appointing time and place for hearing and order appointing guardian shall be made permanent part of the records.

Section 3.2

Trust Property

The Court is hereby authorized to appoint a Guardian of the trust estate of minors or incompetents using the procedures and safeguards outlined in Section 5 for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent. If it appears that the price to be paid is reasonable and adequate and that such sale is to the best interests of said minor or incompetent, the Court may enter an order authorizing such action. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent of the Bureau of Indian Affairs of the Fort Hall Reservation.

Section 3.3

Temporary Guardianship and Custody

The Shoshone Bannock Tribal Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interest of the child involved.

The procedure for Temporary Guardianships shall be the same as provided above for General Guardianships where not inconsistent with the intent of either of the actions.

Section 3.4

Powers and Duties of Guardians

The respective powers and duties of a guardian shall be described in Section 4.2(4) of this Chapter as well as those described in this section.

Section 4

CHILD PROTECTION CODE

Section 4.1

PURPOSE

The Child Protection Code shall be interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the children on the Fort Hall Reservation;
- B. To preserve unity of the family preferably by separating the child from his parents 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 secure the rights of and ensure fairness to the children, parents, custodians or other parties who come before the Shoshone Bannock Tribal Court, Juvenile Division, pursuant to the provisions of this chapter;
- E. To ensure that off-reservation courts will be willing to return tribal children to the reservation by establishing this chapter.
- F. To recognize and acknowledge the tribal customs and traditions of the Shoshone Bannock Tribes with regard to child-rearing.

Section 4.2

DEFINITIONS

For purposes of the terms used in this chapter, the masculine shall include the feminine and the feminine shall include the masculine, and the singular shall include the plural and the plural shall

include the singular, except where such construction would conflict with the obvious meaning of the term as used in its context. Any term used in this chapter may be given a different meaning by the Court where the tribal customs or traditions of the child's tribe provide for such a different meaning.

A. "Reservation" shall mean the Fort Hall Indian Reservation in Fort Hall, Idaho.

B. "Court" shall mean the Juvenile Division of the Shoshone Bannock Tribal Court.

C. "Child" shall mean an unmarried individual who is under the age of eighteen (18) years of age.

D. "Parent" shall mean the natural or adopted parent of the child, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

E. "Guardian" shall mean that person or agency given legal custody of the child by a Court of competent jurisdiction.

F. "Custodian" shall mean that person or agency who has physical custody of the child pursuant to tribal law or custom or to whom temporary physical care, custody and control has been transferred by the parent or guardian of such child without an order of a Court.

G. "Abused" shall mean any case in which a child has been the victim of conduct resulting in skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence. "Abused" shall also include the intentional infliction of emotional distress or injury upon a child.

H. "Neglect" shall mean:

- (1) any case in which a child is without proper adult care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardians or custodian or their neglect or refusal to provide them; Provided however, that no child whose parent, or guardian or custodian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment, shall be deemed for that reason alone to be neglected or lacking parental care necessary for his health and well-being, but further provided that this subsection shall not prevent the Court from acting pursuant to Section 17 of this chapter; or
- (2) any case where a child's parents, guardians or custodians are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or
- (3) any case where a child has been placed for care or adoption in violation of Federal, State or Tribal law; or
- (4) any case where by act or omission of the parents, guardians or custodians there is inflicted upon a child emotional distress or injury.

I. "Abandoned" shall mean the failure of the parents to maintain a normal parental relationship with his child, including but not limited to reasonable support or regular personal contact. Failure to maintain this relationship without just cause for a period of one (1) consecutive year shall constitute prima facie evidence of abandonment.

J. "Department" shall mean the Shoshone Bannock Tribal Social Services Department, if any, or if not, the Division of Social Services of the Bureau of Indian Affairs of the Fort Hall Agency in Fort Hall, Idaho.

K. "Shelter Care" shall mean the temporary placement of a child pending court disposition or placement.

L. "Adjudicatory Hearing" shall mean a hearing to determine the truth of the allegations in the petition filed under this chapter.

M. "Extended Family Member" shall be defined according to the tribal customs and traditions of the child's tribe.

### Section 4.3

### JURISDICTION

There is hereby established within the already existing Shoshone Bannock Tribal Court Structure a Juvenile Division which shall operate under the same budget as the Trial and Appellate Divisions therein.

Except as otherwise provided herein the Court shall have concurrent jurisdiction with the State of Idaho, pursuant to Public Law 83-280, over all proceedings involving children found within the exterior boundaries of the reservation where those children are alleged or found to be abused, neglected, or abandoned. The Court shall exercise exclusive jurisdiction over those children who have been made wards of the Court.

The Court shall have all the power and authority granted the Trial Division of the Shoshone Bannock Tribal Court including but not limited to the authority to cooperate fully with any federal, tribal, state, or private agency in order to participate in any diversion, rehabilitation or training programs. The Court may utilize any available social services for the purpose of carrying out the purposes of this chapter.

The Court may accept or decline, pursuant to the procedures set forth below, transfers of child welfare cases from other federal, state or tribal courts.

Jurisdiction obtained by the Court pursuant to this chapter shall be retained until the child becomes eighteen (18) years of age, unless terminated prior thereto.

Section 4.4

ROLE OF TRIBAL PROSECUTOR

All petitions filed with the Court pursuant to the provisions of this chapter shall be filed by the Shoshone Bannock Tribal Prosecutor's office who shall also pursue the matter in court on behalf of the Shoshone Bannock Tribes. All such petitions must be signed by either the Chief Prosecutor or his Deputy and filed and pursued in accordance with the provisions found herein.

Section 4.5

GUARDIAN AD LITEM

At any stage of the proceedings conducted under this chapter the Court may appoint separate counsel for the child, without affecting the right to counsel of the parents, guardians or other legal custodians, to act as guardian ad litem representing that child's best interests. The Court may appoint an advocate from the Shoshone Bannock Tribal Public Defender's office to fill this position. If the child is fourteen (14) years of age or older and has an independent estate sufficient to pay for other counsel of his own choice, the Court shall have the discretion to allow such representation.

Section 4.6

DUTY TO REPORT

Any person having reasonable cause to believe that a child has been abused, neglected, or abandoned, or who observes the child being subjected to conditions or circumstances which would reasonably result in abuse, neglect, or abandonment, shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to either the Shoshone Bannock Tribal Prosecutor's office, the Social Services Division of the Bureau of Indian Affairs in Fort Hall, Idaho, or the Shoshone Bannock Tribal Police Department. The department or office notified of such a report shall immediately notify the Social Services Division of the Bureau of Indian Affairs in Fort Hall.

Any person acting upon reasonable cause in the making of such report shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any such judicial proceeding resulting from such report. Any person who reports in bad faith or with malice shall not be protected by this section. Any privilege between husband and wife, or between any professional person except the lawyer-client privilege, shall not be grounds for excluding evidence at any proceeding regarding the abuse, neglect, or abandonment of the child or the cause therefor. Any Indian who wilfully fails to make a report as required in this section shall be guilty of an offense and subject, upon conviction, to a term of imprisonment not to exceed six (6) months or a fine not to exceed Five Hundred Dollars (\$500), or both. Any non-Indian who wilfully fails to report as required in Idaho Code 16-1619 may also be subjected to punishment as prescribed by State Law.

Section 4.7

PETITION

After reviewing the facts and evidence presented the Shoshone Bannock Tribal Prosecutor or his Deputy shall be authorized, in their discretion, to file a petition with the Court requesting that certain action be taken by the Court in regard to the child named in the petition. The Prosecutor shall file a petition on behalf of any child whose parent, guardian or custodian has been convicted in any Court in a criminal proceeding of neglect, abuse, maltreatment, cruel treatment, or endangering the welfare of said child.

Petitions shall be entitled "In the Matter of \_\_\_\_\_, a child under the age of eighteen (18) years of age" and shall set forth with specificity:

1. The name, birthdate, sex, residence and tribal affiliation of the child;
2. The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;

3. The Court's jurisdiction over this matter.
4. The facts which bring the child within the provisions of this chapter.
5. If the child is in shelter care, and, if so, the place of the shelter care, the facts necessitating such care and the date and time he was placed in such care.
6. That active efforts will be made prior to the adjudicatory hearing to provide remedial services and rehabilitation programs designed to prevent the break-up of the Indian family, or that such efforts have been made and failed.
7. When any of the facts required by this section are not known the petition shall so state. The petition may be based upon information and belief but in such case the petition shall state the source of such information and belief.

Section 4.8

SUMMONS

After the petition has been filed; the Court shall issue summonses to:

1. The person or persons having custody of the child;
2. The child's parents.
3. Any person the Court or the parties believe necessary for the proper adjudication.
4. The prosecutor or deputy prosecutor who signed the petition.



5. The person designated as agent to receive notice on behalf of the child's tribe as listed in the Federal Register in accordance with the Indian Child Welfare Act of 1978 if the child is a member of an Indian tribe other than the Shoshone Bannock tribes. If the designated agent is not listed in the Federal Register and is otherwise unknown, notice shall be sent to the Chairman of the Business Council or the Governor of the Pueblo of the child's tribe.

The summons directed to the person having custody of the child shall command said person to bring the child before the Court at the time specified therein. All other summonses shall command the named person to appear before the Court at the time specified therein.

A copy of the petition shall be attached to the summons delivered to the parents and the person with physical custody of the child.

The summons shall be delivered to the person named therein personally by a Tribal Police Officer or appointee of the Court. If the summons cannot be delivered personally, the Court may authorize delivery of the summons by registered mail. If the summons cannot be delivered by registered mail, the Court may authorize delivery by publication in either the Tribal newspaper of the Fort Hall Reservation, or a newspaper of general circulation in the county where the Court is located once a week for two consecutive weeks.

All summonses served either personally or by registered mail shall be received by the person named therein no less than five (5) days prior to the date set for the hearing. No hearing can be held sooner than five (5) days after the last publication where service is so made.

If any Indian person summoned as herein provided shall, without reasonable cause, fail to appear, he may be proceeded against for contempt of Court. Where the summons cannot be served, or the parties served fail to obey the same, or in any case where it shall be made to appear

to the Court that the service will be ineffectual, or that the welfare of the child requires that he be brought forthwith into the custody of the Court, a warrant or detention order may be issued for the parent, guardian or custodian of the child, or for the child himself. Failure of any non-Indian person, without reasonable cause, to appear as commanded in a properly served summons shall not delay the hearing.

Section 4.9

CUSTODY

A child may be taken into custody by a Tribal Police Officer or the Department without an order of the Court only where the child is endangered in his surroundings and prompt removal appears to be necessary to prevent serious emotional or physical damage to the child. When a child is taken into custody pursuant to this section, he may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays, and holidays recognized by the Fort Hall Business Council, unless a shelter care hearing has been held pursuant to the provisions of this chapter, and the Court orders an adjudicatory hearing.

Any person who takes a child into custody pursuant to the provisions of this section shall immediately:

1. Take the child to a place of shelter; and
2. Notify the Court of the action taken and the place to which the child was taken; and
3. Notify the parents, guardian or custodian that the child has been taken into custody and the whereabouts of the child, and that the child may be held for a maximum of forty-eight (48) hours, excluding Saturdays, Sundays, and holidays recognized by the Fort Hall Business Council, within which time there may be a shelter hearing.

Any person taking a child into custody pursuant to the provisions of this section shall not be held liable either civilly or criminally unless the action of taking the child was exercised in bad faith or the requirements of this section were not complied with.

Section 4.10

SHELTER CARE HEARING

Notwithstanding any other provision of this chapter, when a child is taken into custody pursuant to the provisions of Section 9 of this chapter, a hearing to determine whether the child should be released shall be held according to the provisions of this section.

The parents, guardian or custodian of the child shall be given notice of the shelter care hearing. Such notice shall include the time, place and purpose of the hearing; and that such person is entitled to representation by the Tribal Public Defender at no expense or by Professional legal counsel or any other person licensed to practice before the Court at their own expense. Notice as required by this section shall be given at least twenty-four (24) hours before the shelter care hearing.

Notice of the shelter care hearing shall be given by personal service and the return of service shall be filed with the Court. Provided, however, that such service need not be made where the undelivered notice is returned to the Court along with an affidavit stating that the person to be served could not be located or served.

The shelter care hearing may be continued for a reasonable time upon request by the parent, guardian or custodian.

If, upon completion of the shelter care hearing, it is shown that:

1. a petition has been filed; and
2. the allegations in the petition are, more probably than not, true; and

3. releasing the child is likely to result in serious emotional or physical damage to the child;

the Court shall issue, within twenty-four (24) hours of such hearing, an order of temporary custody. Any evidence may be considered by the Court which is of the type which reasonable people may rely upon.

Upon ordering temporary custody pursuant to this section, the Court shall also order an adjudicatory hearing to be held as soon as possible, but in no event later than thirty (30) days from the date the petition was filed. If the court issues an order for an adjudicatory hearing the parents, guardians or custodians if they are present, shall be served by the Court at the conclusion of the shelter care hearing with a copy of the petition and shall be notified in open Court and upon written summons issued by the Clerk, of the time and date set for the adjudicatory hearing. If they are not present at the shelter care hearing the Court shall order that summonses be served immediately.

If the Court does not find that the child should remain in shelter care under this section, the child shall be released and the Court may dismiss the petition.

#### Section 4.11

#### ADJUDICATORY HEARING

Where a petition has been filed under the provisions of this chapter, or, where the Court has ordered the temporary custody of a child after a shelter care hearing, the Court shall set an adjudicatory hearing to be held within thirty (30) days from the date the petition was filed.

The purpose of the adjudicatory hearing is to hear the allegations of the petition and to allow the parents, guardians or custodians and petitioner to present and cross-examine witnesses and to present other evidence either in support of or opposition to the petition.

The Rules of Evidence of the Shoshone Bannock Law and Order Code shall apply

in this hearing which shall otherwise be conducted in an informal manner and may be adjourned from time to time by the Court.

Section 4.12

INVESTIGATION

Where a petition is filed, the Court shall request the department or other qualified agency to investigate the circumstances of the child and his family and report to the Court.

The report shall be delivered to the Court with copies to the parents, guardians and custodians at least five (5) days before the date set for the adjudicatory hearing. The report shall contain a social evaluation of the child and the parents, guardians, or other legal custodians, and such other information as the court shall require.

The report shall not be admitted into evidence at the adjudicatory hearing and shall be used by the Court only for disposition if the child is found to be within the purview of this chapter.

Section 4.13

DISPOSITIONAL PREFERENCES

If the evidence of the adjudicatory hearing shows that the child comes within the purview of this chapter the Court shall decree the child a ward of the Court, and in its decree shall make a finding of the facts and conclusions of law upon which it bases its decision. Upon entry of its decree, the Court shall determine where the child shall be placed by following the order of preference below:

1. In its own discretion, the Court may consider the preference of the parents or the party from whom custody has been taken.
2. The child may be placed with a member of his extended family residing on the child's reservation.

3. The child may be placed with a member of the child's extended family residing off the child's reservation.
4. The child may be placed with other relatives of the child residing on the child's reservation.
5. The child may be placed with other relatives of the child residing off the child's reservation;
6. The child may be placed with other members of the child's tribe residing on the child's reservation.
7. The child may be placed with other members of the child's tribe residing off the child's reservation.

Provided, however, that the Court shall at all times keep the child's best interests in mind and may deviate from the above order of preference where the anticipated custodian is unable or unwilling to meet the specific needs of the child.

No placement shall be made pursuant to this chapter for a period longer than one (1) year from the date the order is entered but the Court may extend the period of placement if, at the end of the original or extended period, there is evidence shown at another hearing that such extension is in the best interests of the child. No extension may exceed a period of one year.

Any party may petition the Court at any time to vacate any order of placement. Any party who has previously filed such a petition and had it denied cannot file another such petition until three months have passed since said denial.

The Court shall request the department or any other agency with available services to supervise the placement made by the Court under this section.

If the Court does not find that the child comes within the purview of this chapter it shall dismiss the petition, and, if the child is in custody, shall release said child.

Section 4.14

NOTICE OF SUBSEQUENT HEARINGS

Any hearings held subsequent to the placement of a child under this chapter, or any hearings for which no notice provisions are provided, shall be governed by the notice requirements set forth in Section 8 of this chapter.

Section 4.15

PREVENTION OF FAMILY BREAKUP

Before the Court can find the child within the purview of this chapter after an adjudicatory hearing, the Court shall be satisfied that active efforts have been made to provide the parents, or persons from whom custody was taken with remedial services and rehabilitative programs designed to prevent the breakup of the family. The Court must also be satisfied that said services were Indian oriented and designed to take into consideration the customs and traditions of child-rearing and family life of the child's tribe.

After the child has been made a ward of the Court pursuant to this chapter, it shall request any qualified agency with available services to continue active efforts to provide the services explained in this section.

Section 4.16

TERMINATION OF PARENTAL RIGHTS

If the child has been a ward of the Court pursuant to the provisions of this chapter for more than one (1) consecutive year, and there is adequate evidence that the efforts to prevent family breakup as prescribed in Section 15 hereof have failed, then the party in custody of the child or the Tribal Prosecutor may petition the Court for an order termin-

ating the parental rights of the parent who was the subject of the hearings under this chapter and who was offered the services described in Section 15 hereof. Said petition will be processed as prescribed in this Law and Order Code.

Section 4.17

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:

1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or
2. A physician informs the Court orally or 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 parents or legal 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 under subsection 1 of this section, the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by tribal customs or traditions or religions, if the child or his parent, guardian or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment, or practices in fact the tribal customs or traditions or religion upon which is relied for such treatment of the child.



After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization to 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 nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

Section 4.18

APPEALS

Any final order issued by the Court pursuant to the authority given by this chapter shall be subject to appeal unless otherwise specified herein, in accordance with the provisions of that chapter in this Law and Order Code governing appeals in general. Provided, however, that the pendency of the appeal shall not suspend an order of the Court regarding a child, and it shall not discharge the child from the custody of the Court or of the person or authorized agency to whose care he has been committed, unless otherwise ordered by the Appeals Court on application of appellant. No bond or undertaking shall be required of any party appealing under the provisions of this section.

Section 4.19

COURT RECORDS

The Court shall keep a record of all court proceedings under this chapter. The records shall be available only to parties to the proceeding and authorized agencies providing protective supervision or having legal custody of the child.

Any other person may have access to the records only upon permission by the Court and then only if it is shown that such access is in the best interests of the child; or for the purpose of legitimate research. If the records are released for research purposes, the person receiving them must agree to maintain the confidentiality of any information which could lead to the identification of the child.

Section 4.20

SUPPORT OF COMMITTED CHILD

Whenever pursuant to this chapter, legal custody of a child is vested in someone other than his parents, or other persons legally obligated to care for and support the child, after due notice thereto, and after a hearing, the Court may order and decree that the parent or other person legally obligated shall pay in such manner as the Court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the Court may proceed against him for contempt, and the order may be filed and shall have the effect of a civil judgment.

All actions under this section shall be initiated and pursued by the Tribal Prosecutor's office on behalf of the Shoshone Bannock Tribes.

Section 4.21

AUTHORIZATION OF DEPARTMENT TO ACT

Upon receiving information that a child may be abused, neglected or abandoned, the department shall cause such investigation to be made in accordance with this chapter as is appropriate. In making the investigation the department shall use its own resources, and may enlist the cooperation of the Tribal Police Department for phases of the investigation for which they are better equipped. Upon satisfying itself as to the course of action which should be pursued to best accord with the purpose of this chapter, the department shall:

1. resolve the matter in such informal fashion as is appropriate under the circumstances; or
2. seek to enter a voluntary agreement with all concerned persons to resolve the problem in such a manner that the child will ultimately remain in his own home; or
3. refer the matter to the Tribal Prosecutor with recommendation that appropriate action be taken under either Tribal or State law.

If a voluntary agreement is entered into such agreement shall not be valid or binding until approved by the Court and entered on the record. This may be done informally and need not be done in open court. If the Court is satisfied that the best interests of the child and his family will be satisfied by such an agreement a judge of the Court shall sign the agreement placing the original in the Court file. The Court must also be satisfied that the parent, guardian or custodian who is a party to the agreement fully understands the contents and meaning of the agreement.

Any voluntary consent regarding the temporary placement of a child may be withdrawn by the consenting party at any time, but must be given in writing filing the original withdrawal with the Court. Upon serving a copy of the withdrawal upon the party with custody of the child pursuant to the previously given consent, the child shall immediately be returned to the party withdrawing his consent. No reason need be given for the withdrawing of the consent and no hearing shall be required to have the child returned. Failure of any person to honor a withdrawal of consent shall subject that person to contempt of court.

Section 4.22

CONSTRUCTION

This chapter shall be liberally construed to accomplish the purposes herein set forth.

Section 4.23

SHORT TITLE

This chapter shall be known and cited as the Child Protection Code.

Section 4.24

SEVERABILITY

The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

Section 4.25

USE OF INTERPRETER

At any stage of any hearing, meeting or discussion before the Court under the provisions of this chapter, the Court may order that an interpreter be present to interpret to any of the parties what is being said and decided, or the Court may take any other action which is designed to ensure that all parties are afforded the opportunity to participate in the proceedings in a language they best understand. The cost of an interpreter shall be borne by the Court.

Section 4.26

CLOSED HEARINGS

All hearings, meetings or discussions prescribed or permitted by this chapter shall be closed to the general public and only those persons who are parties or who have, in the opinion of the Court, a direct interest in the case shall be permitted to attend.

All hearings held under the provisions of this chapter shall be before a judge of the Court without a jury.

SECTION 4.27

MEDICAL EXAMINATIONS

The Court may order a medical examination of any child alleged by petition to be under the purview of this chapter.

SECTION 4.28

RIGHT TO REPRESENTATION

At any hearing, meeting or discussion at which the parents, guardians or other legal custodians are present the Court shall advise said parties of their right to be represented by Professional legal counsel of their choice at their own expense or by the Tribal Public Defender at no expense. Said parties may also be represented by any person licensed to practice before the Court, provided, however, that said parties shall bear their own expense of such representation.

SECTION 4.29

STANDARD OF EVIDENCE

Before any placement is made under the provisions of this chapter, the petitioner must show by clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or party from whom custody is sought to be taken is likely to result in serious emotional or physical damage to the child.

No decision of the Court shall be based on any report or other document not filed with the Court, or upon any evidence not presented to the Court and put upon the record.

"Qualified expert witness" as used in this chapter shall be construed to mean any person who is:

1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-

rearing practices; or

2. A professional or lay person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the child's tribe.

The burden of establishing that any person is qualified as a "qualified expert witness" under this chapter shall be upon the party presenting said witness.

#### Section 4.30

#### CHANGE IN STATUS

Whenever a child is removed from a placement previously made by the Court under the provisions of this chapter for the purpose of making a different degree of placement, such placement shall be in accordance with the provisions of this chapter, except in those cases where the child is being returned to his parent or other party from whom custody was taken, or where the child is merely being placed with a different family or agency.

"Different degree of placement" as used in this section shall include, but is not limited to:

1. A placement which is changed from a temporary status to one of a more permanent nature; or
2. A placement which is generally classified as a "foster care" placement which is changed to a placement generally classified as a "pre-adoptive" or "adoptive" placement; or
3. A placement which is generally classified as a "pre-adoptive" placement which is changed to a placement generally classified as an "adoptive" placement.

Section 4.31

FULL FAITH AND CREDIT

The Court shall give full faith and credit to the public acts, records, and judicial proceedings applicable to child custody proceedings of every State, territory, or possession of the United States to the same extent that such entities give full faith and credit to the public acts, records, ordinances, resolutions and judicial proceedings applicable to child custody proceedings of the Shoshone Bannock Tribes.

Section 4.32

DOMICILE AND RESIDENCE OF CHILD

No person or agency to whom custody of a child is granted under this chapter shall have authority to change the child's domicile or to permanently change the child's residence without an express written consent from the Court sought by a filed petition. The Court shall not grant such a petition unless it is satisfied that the jurisdiction of the Court over the child will not be materially jeopardized and that such a change will be in the best interests of the child.

Any person or agency to whom custody of a child is granted under this chapter who fails to comply with this section and who removes the child from the Court's jurisdiction with the intent to permanently change the residence or domicile of the child or to remove the child from the jurisdiction of the Court shall be in contempt of Court and the decree or order granting said person or agency custody of the child shall immediately terminate, without further order from the Court, upon said person or agency so removing the child from the jurisdiction of the Court; and said person or agency from that time forward, until further order of the Court, shall be considered to have unlawful custody of the child in violation of the Shoshone Bannock Criminal Code and shall be subject to both criminal and civil penalties and remedies under the Shoshone Bannock Law and Order Code in this Court.

Section 4.33

POWERS & DUTIES OF GUARDIAN

The person or agency to whom custody is granted under this chapter shall be called the child's guardian. Said guardian shall have all the powers and be subject to all the duties and responsibilities of a general guardian including the management and care of the person and estate of the child. Provided, however, that said guardian shall not have the authority, without express written consent from the Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

The Court may order that the Court Administrator of the Court disburse, in an amount set by the Fort Hall Business Council, monthly reimbursement payments to the person or agency to whom custody is granted under this chapter, provided, sufficient funds have been appropriated by said Business Council. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of Court and to any criminal and civil penalties or remedies provided by the Shoshone Bannock Law and Order Code.

Section 4.34

TRANSFER OF CASES TO STATE COURT

In any proceeding before the Court under the provisions of this chapter, the Court may transfer said proceedings to the appropriate Idaho State Court which shares jurisdiction over the matter with the Court pursuant to Public Law 83-280 and Idaho Code 67-5101-5103.

Any transfer made under the provisions of this section must be done upon the Court's own motion or upon the petition,



timely filed, of any party to the matter. A petition will not be considered timely if in the opinion of the Court the petition was filed at such a late stage of the proceedings that transfer of such proceedings to the State Court would prejudice, or present an undue hardship upon, any of the parties. In addition, the Court shall deny any petition for transfer for any of the following reasons:

1. Either parent of the child objects to the transfer; or
2. The proposed State Court declines to accept the matter; or
3. The Court finds that such transfer would not be in the best interests of the child.

If a case is transferred to a State Court under this section, the Court shall then close its files and dismiss the petition and proceedings before it.

If, for any reason, the State Court to which the matter was earlier transferred under this section becomes unable or unwilling to provide for the best interests of the child, the matter may be transferred back to the Juvenile Division of the Tribal Court where the matter will be reopened in accordance with Sections 36-39 of this chapter and treated as though this was the first transfer of the matter to occur. Such transfer shall take place only after the State Court agrees to make the transfer and only after the Juvenile Division of the Tribal Court agrees to accept it. Transfers made under the provisions of this paragraph shall be the final transfer of the case and the Court is not authorized to make any further transfers to any Court and must either dismiss the proceedings before it or hear the matter and render a decision therein.

Section 4.35

TRANSFER TO OTHER TRIBAL COURT

In any proceeding before the Court under the provisions of this chapter, the Court may transfer said proceedings to another Tribal Court of a different jurisdiction where the Indian Tribe which the other Tribal Court represents has a significant interest in the child. The same rules and procedures outlined in Section 34 shall also apply to transfers under this section.

Section 4.36

TRANSFER FROM STATE OR TRIBAL COURT

The Court is authorized to accept the transfer of cases, whose subject matter would normally fall under the provisions of this chapter, from State or other Tribal Courts. Before the Court accepts such a transfer it must issue an Order to Accept said transfer.

A petition to accept a transfer may be filed with the Court by either of the parents, or the party from whom custody is sought to be taken, the Shoshone Bannock Tribes designated agent or the State or Tribal Court from which the transfer is sought. There shall be no filing fee for the filing of this petition.

Section 4.37

NOTICE OF TRANSFER PETITION

Upon a petition for transfer being filed under Section 36, the Clerk of the Court shall immediately set the matter for hearing and shall cause that notice be given, in a manner reasonably calculated to assure that said notice is received, to all the parties in the cause or matter before the State or Tribal Court from which the transfer is sought, and to the Shoshone Bannock Tribal Prosecutor.

Section 4.38

TRANSFER HEARING

The Court shall make the decision of whether to grant or decline the petition for transfer. Said decision shall be within the discretion of the Court and shall not be appealable.

Before the Court may accept the transfer, however, it must receive from the Tribal Prosecutor, prior to the hearing a written affidavit verifying that he has reviewed the facts of the matter and based thereon he believes that grounds exist for filing a petition under this chapter, and that he will pursue the matter with reasonable prudence under tribal law should the matter be transferred to the Court. The Court may hear other evidence at the hearing which shall be conducted in an informal manner where the Rules of Evidence shall not apply. Said hearing shall be recorded.

The Court shall deny the petition for any of the following reasons:

1. Either parent of the child objects to the transfer;
2. The Court finds that such transfer would not be in the best interests of the child;
3. The Tribal Prosecutor fails to file an Affidavit, as prescribed in this section, before the time of the hearing.

The Court's decision shall be set forth in findings of fact and conclusions of law and distributed to the parties and to the State or Tribal Court from which the transfer is sought. The Court's decision and the issuance thereof shall be done without delay.

Section 4.39

PROCEDURE FOR TRANSFER

If the Court accepts the transfer and the State or Tribal Court from which transfer is sought also grants the transfer, the Court shall request from the transferring court copies of all pertinent pleadings or other documents in the files of the transferring court relating to the matter being transferred and these pleadings and documents shall become a part of the Court record.

The Tribal Prosecutor, upon being informed by the Court that the transfer has been

effected, shall immediately file the appropriate petition to pursue the matter as stated in his affidavit filed pursuant to Section 38 of this chapter and the matter will proceed according to the provisions of this chapter.

Section 4.40

RETURN OF JURISDICTION

If, for any reason, the Court becomes unwilling or unable to provide for the best interests of the child, the matter may be transferred back to the court from which it was originally received; Provided, however, that such a return of the case is allowed under the laws of the jurisdiction to which the transfer will be made. Provided further, that said transfer will be conducted in accordance with the provisions of Sections 34 & 35 of this chapter as applicable.

Section 4.41

INTERVENTION

In any proceedings before the Court under this chapter, the Indian child's tribe shall have the right to Intervene at any point in the proceedings, provided, however, that the pleadings must be submitted and appearances made by a person licensed to practice before the Court.

Section 5

TERMINATION OF PARENTAL-RIGHTS

Section 5.1

PURPOSE

The purpose of this chapter is to provide for the voluntary and involuntary termination of the parent-child relationship and for 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 rights as enumerated in the Indian Civil Rights Act of 1968 and the Constitution of the Shoshone Bannock Tribes; 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 interests of the child concerned to proceed under this chapter.

Section 5.2

DEFINITIONS

For purposes of the terms used in this chapter, the masculine shall include the feminine and the feminine shall include the masculine, and the singular shall include the plural and the plural shall include the singular, except where such construction would conflict with the obvious meaning of the term as used in its context. Any term used in this chapter may be given a different meaning by the Court where the tribal customs and traditions of the child's tribe provide for such a different meaning.

A. "Reservation" shall mean the Fort Hall Indian Reservation in Fort Hall, Idaho.

B. "Court" shall mean the Juvenile Division of the Shoshone Bannock Tribal Court.

C. "Child" shall mean an unmarried individual who is under the age of eighteen (18) years.

D. "Parent" shall mean the natural or adopted parent of the child, but does not include persons whose parental rights have been terminated.

E. "Prosecutor" shall mean the Shoshone Bannock Tribal Prosecutor or any of his duly appointed Deputies, Advocates or Assistants.

F. "Extended Family Member" shall be defined according to the tribal customs and traditions of the child's tribe.

G. "Guardian" shall mean that person or agency given legal custody of the child by a Court of competent jurisdiction.

H. "Guardian ad litem" shall mean that person or agency appointed by the Court to prosecute or defend, in behalf of another person, the interests of said person.

I. "Department" shall mean the Shoshone Bannock Tribal Social Services Department, if any, or if not, the Division of Social Services of the Bureau of Indian Affairs of the Fort Hall Agency in Fort Hall, Idaho.

### Section 5.3

### JURISDICTION

The Juvenile Division of the Shoshone Bannock Tribal Court shall have authority to hear cases arising under this chapter, and shall have concurrent jurisdiction with the State of Idaho, pursuant to Public Law 83-280, over such cases. Such jurisdiction shall extend to all children found within the exterior boundaries of the reservation. The Court shall exercise exclusive jurisdiction over those children who have been made wards of the Court.

The Court shall have all the power and authority granted the Trial Division of the Shoshone Bannock Tribal Court including but not limited to the authority to cooperate fully with any federal, tribal, state, or private agency in order to participate in any diversion, rehabilitation or training programs. The Court may utilize any available social services for the purpose of carrying out the purposes of this chapter.

The Court may accept or decline, pursuant to the procedures set forth below, transfers of child welfare cases from other federal, state or tribal courts.

Jurisdiction obtained by the Court pursuant to this chapter shall be retained until the child becomes eighteen(18) years of age, unless terminated prior thereto.

#### Section 5.4

#### FILING OF PETITION

A petition may be filed by:

- A. Either parent when termination is sought with respect to the other parent.
- B. The Prosecutor
- C. Any other person possessing a legitimate interest in the matter.
- D. A parent may file a petition for the voluntary termination of his parental rights.

No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held all pursuant to the provisions of this chapter.

#### Section 5.5

#### CONTENTS OF PETITION - INVOLUNTARY

The petition for involuntary termination shall include, to the best information and belief of the petitioner:

- A. The name, place of residence and tribal affiliation of the petitioner;
- B. The name, sex, date and place of birth, residence and tribal affiliation of the child;
- C. The basis for the Court's jurisdiction.
- D. The relationship of the petitioner to the child, or the fact that no relationship exists;
- E. The names, addresses, and dates of birth of the parents; and where the child is illegitimate, the names, addresses and dates of birth of both parents, if known to the petitioner;
- F. Where the child's parent is a minor, the names and addresses of said minor's parents or guardian; and where the child has no parent or guardian, the members of the child's extended family.
- G. The name and address of the person or agency having legal or temporary custody of the child;
- H. The grounds on which termination is sought;
- I. 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 sign and date the petition.

#### Section 5.6

#### CONTENTS OF PETITION - VOLUNTARY

All petitions filed by a parent for the voluntary termination of his parental rights shall contain the same information as required by Section 5 of this chapter.

All petitions for voluntary termination shall also contain a statement to the effect that the child involved is, or will be at the time of execution, at least ten (10) days old.



All petitions for voluntary termination shall be invalid unless executed in writing and recorded before a judge of the Court and accompanied by the presiding judge's certificate that the terms and consequences of the petition were fully explained in detail and were fully understood by the parent in a language that he understood.

Section 5.7

JUDICIAL CERTIFICATION

Before the judge certifies a petition for voluntary termination as prescribed in Section 6 of this chapter, he shall, on the record and in open court, inquire of the petitioning parent to be certain that:

- A. The terms and consequences of the consent are fully understood by the parent;
- B. This consent is not being given under the influence of any fraud or duress; and
- C. The child involved is at least ten (10) days old at the time of execution.

Section 5.8

WITHDRAWAL OF VOLUNTARY PETITION

Any parent filing a petition for voluntary termination may withdraw said petition for any reason at any time prior to the entry of a final decree of termination.

The withdrawal of the petition as allowed under this section shall be in writing with the original filed with the Court.

Upon serving a copy of the withdrawal upon the party with custody of the child the child shall immediately be returned to the parent or party with legal custody. No reason need be given for the withdrawal and no hearing shall be required to have the child returned. Failure of any person to honor a withdrawal shall subject that person to contempt of court.

Section 5.9

VACATION OF DECREE

After the entry of a final decree accepting a petition for the voluntary termination of parental rights, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the Court to vacate such decree. Upon finding that such consent was obtained through fraud or duress, the Court shall vacate such decree and return the child to the parent or party with legal custody prior to the entry of such decree. No decree of termination which has been effective for at least two years may be invalidated or vacated under this section.

Section 5.10

GROUND FOR TERMINATION

No termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of a qualified expert witness, that the continuation of the parent-child relationship is likely to result in serious emotional or physical damage to the child. The burden of proof shall be upon the petitioner.

A termination of parental rights may also be ordered where a parent has filed a petition for the voluntary termination of his parental rights and the requirements of Sections 6 & 7 of this chapter have been satisfied.

Termination may also be granted when the requirements of Sections 15 & 16 of the Child Protection Code of this Law and Order Code have been satisfied.

No decision of the Court shall be based on any report or other document not filed with the Court, or upon any evidence not presented to the Court and put upon the record.

"Qualified expert witness" as used in this section shall be construed to have the same meaning as it is given by the Child Protection Code of this Law and Order Code.

Section 5.11

NOTICE - GUARDIAN AD LITEM

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 thereof 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 grandparents of the child.

Where the child's parent is a minor, notice shall also be given to said minor'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 interests of said minor 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 either the Tribal newspaper of the reservation, or a newspaper of general circulation in the county where the Court is located, once a week for three consecutive weeks. 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 so made.

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 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.

At any stage of the proceedings the Court may appoint a Guardian ad litem, as may be deemed necessary or desirable, for any party.

Section 5.12

RIGHT TO REPRESENTATION

As soon as is practicable, the Court shall advise the parents of their right to be represented at all stages of the proceedings by professional legal counsel, or any other person licensed to practice before the Court, of their choice and at their own expense; and of their right to be represented by the Tribal Public Defender's office at no expense where his representation will not present a conflict of interests.

Section 5.13

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 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 such other facts as may be pertinent to the parent and child relationship, and the report submitted shall include a recommendation and the reasons therefor as to whether or not the parent and child

relationship should be terminated.

Section 5.14

HEARING

Cases under this chapter shall be heard by the Court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or mechanical recording of the hearing shall be required. The general public shall be excluded and only such persons admitted whose presence is requested by any person entitled to notice under Section 11 of this chapter or as the judge shall find to have a direct interest in the case or in the work of the Court; provided that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. The Court may require the presence of witnesses deemed necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to Section 11 of this chapter shall not be required to appear at the hearing. The Rules of Evidence of this Law and Order Code shall apply at the hearing.

Section 5.15

DECREE

In addition to any other requirements of this chapter with regard to the decree, every order of the Court terminating the parent and child relationship or transferring legal custody or guardianship of the person of the child, shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction.

If the Court finds sufficient grounds exist for the termination of the parent and child relationship, it shall so decree and:

- A. Appoint an individual as guardian of the child's person; or
- B. Appoint an individual as guardian of the child's person and vest legal

custody in another individual or qualified agency; or

C. Appoint a qualified agency as guardian of the child's person and vest legal custody in such agency.

The Court may also order that the Court Administrator of the Court disburse, in an amount set by the Fort Hall Business Council, monthly reimbursement payments to the person or agency to whom custody is granted under this chapter, provided, sufficient funds have been appropriated by said Business Council. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of the child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of Court and to any criminal and civil penalties or remedies provided by the Shoshone Bannock Law and Order Code.

Where the Court does not order termination of the parent and child relationship, it shall dismiss the petition, provided, however, that where the Court finds that the best interest of the child requires substitution or supplementation of parental care and supervision, it shall make an order placing the child under protective supervision, or vesting temporary legal custody in the department or qualified agency in accordance with the provisions of the Child Protection Code of this Law and Order Code.

Section 5.16

EFFECT OF DECREE

An order terminating the parent and child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations, including rights of inheritance, with respect to each other, unless provided by will.

Section 5.17

COURT COSTS

All court costs of giving notice and advertising shall be paid by the petitioners, except that the Court may suspend such costs where payment would work a hardship on the petitioner or would be otherwise inappropriate.

There shall be no filing fee for petitions filed under this chapter.

Section 5.18

RECORDS

Files and records of the Court in any proceedings had under this chapter shall be withheld from public inspection but shall be open to inspection by persons having a legal interest in the case, and by an authorized agency which has a legal interest in the case, and by an authorized agency to which legal custody of the child has been transferred. Such files and records may be, pursuant to rule or special order of the Court, inspected by other persons and agencies having a legal interest in the protection, welfare, or treatment of the child or in research studies. As used in this section, the words "files and records" include the Court docket and entries therein, petitions, and other papers filed in any case, transcripts of testimony taken by the Court, and findings, orders and decrees and other writings filed in the proceeding before the Court.

It shall be unlawful for any person to disclose, receive or make use of, or authorize, or knowingly permit, or participate in, or acquiesce in, the use of any information concerning any person before the Court directly or indirectly derived from the files and records or communications of the Court, or social records acquired in the course of the performance of official duties. Any person who shall disclose information in violation of the provisions of this section shall be guilty of an offense and shall be subject to a fine of Five Hundred Dollars (\$500). Non-Indians found in

violation hereof will be subject to any civil remedies permitted by the Court or tribal law.

Section 5.19

CHILDREN'S RIGHTS

Nothing in this chapter shall be construed to indicate that the child involved in these proceedings will lose any of his rights or privileges as an enrolled Indian, or member of the Shoshone Bannock Tribes.

Section 5.20

APPEAL

An appeal may be taken from an order or decree of the Court granting or refusing to grant a termination, in the manner and form prescribed in that chapter of this Law and Order Code regulating the procedures for appeals, provided, however, that the pendency of an appeal or application therefor shall not suspend the order of the Court relative to termination of the parent-child relationship.

Section 5.21

TRANSFERS

The Court is authorized to transfer and to accept transfers of cases normally falling under the provisions of this chapter. Such transfers shall be done in accordance with the provisions of the Child Protection Code of this Law and Order Code with respect to such transfers.

Section 5.22

PREVENTION OF FAMILY BREAKUP

Before the Court can order the involuntary termination of any parent-child relationship, the Court shall be satisfied that active efforts have been made to provide the parent with remedial services and rehabilitative programs designed to prevent the breakup of the family. The Court must also be satisfied that said services were Indian oriented and designed to take into consideration the customs and traditions of child-rearing and family life of the child's tribe.



Section 5.23

CHANGE OF STATUS

Whenever a final decree of termination or adoption has been invalidated, vacated or set aside, or the adoptive parents have their parental rights to the child terminated either voluntarily or involuntarily, a biological parent may petition for return of the child and a restoration of the parent-child relationship between the child and said biological parent, and the Court shall grant the petition unless there is a showing, in a proceeding subject to the provisions of this chapter, that such return of custody is not in the best interests of the child.

Section 5.24

CONSTRUCTION

This chapter shall be liberally construed to accomplish the purposes herein set forth.

Section 5.25

FULL FAITH AND CREDIT

The Court shall give full faith and credit to the public acts, records, and judicial proceedings applicable to termination proceedings of every State, territory or possession of the United States to the same extent that such entities give full faith and credit to the public acts, records, ordinances, resolutions and judicial proceedings applicable to termination of parental rights of the Shoshone Bannock Tribes.

Section 5.26

INTERVENTION

In any proceedings before the Court under this chapter, the Indian Child's tribe shall have the right to Intervene at any point in the proceedings, provided, however, that the pleadings must be submitted and appearances made by a person licensed to practice before the Court.

Section 6

ADOPTIONS

Section 6.1

PURPOSE

The purpose of this section is to protect the rights and promote the welfare of the children found within the reservation, and to protect the rights of their natural and adopted parents, and to provide a judicial procedure whereby adoptions can be had and finalized in a court of law, and to provide said children with an environment which most closely resembles that of their culture, identity, and, where applicable, their tribal affiliation.

Section 6.2

DEFINITIONS

For purposes of the terms used in this chapter, the masculine shall include the feminine and the feminine shall include the masculine, and the singular shall include the plural and the plural shall include the singular, except where such construction would conflict with the obvious meaning of the terms as used in its context. Any term used in this chapter may be given a different meaning by the Court where the tribal customs and traditions of the tribe of the proposed adoptee provide for such a different meaning.

A. "Reservation" shall mean the Fort Hall Indian Reservation in Fort Hall, Idaho.

B. "Court" shall mean the Juvenile Division of the Shoshone Bannock Tribal Court.

C. "Child" shall mean an unmarried individual who is under the age of eighteen (18) years.

D. "Natural Parent" shall mean the biological parent of the child.

E. "Adopted Parent" shall mean the person who adopted the child at an earlier date.

F. "Extended Family Member" shall be defined according to the tribal customs and traditions of the proposed adoptee's tribe.

G. "Proposed Adoptee" shall mean that person or those persons named in the petition for adoption who is or are the subject(s) of said petition.

H. "Siblings" shall mean natural or adopted brothers and sisters.

I. "Department" shall mean the Shoshone Bannock Tribal Social Services Department, if any, or if not, the Division of Social Services of the Bureau of Indian Affairs of the Fort Hall Agency in Fort Hall, Idaho.

### Section 6.3

### JURISDICTION

The Court shall have jurisdiction to hear, pass upon, and approve or deny petitions for adoption where the proposed adoptee resides on the reservation. All adoptions decreed by the Court shall be final, conclusive and binding unless otherwise determined by the Court or by the Appeals Court of the Shoshone Bannock Tribes.

### Section 6.4

### MINORS AND ADULTS MAY BE ADOPTED

Any child whose parent-child relationship has been terminated may be adopted subject to the rules prescribed in this chapter; provided that persons not minors may be adopted in cases where such adoption did not occur during the minority of such adopted person by reason of inadvertence, mistake or neglect and the person adopting has sustained the relation of parent to such adopted person.

Section 6.5

RESTRICTIONS AS TO AGE

The person adopting must be at least ten (10) years older than the person adopted, or twenty-five (25) years of age or older, except such age restrictions or requirements shall not apply in cases where the adopting parent is a spouse of a natural parent.

Section 6.6

ELIGIBLE CHILDREN

Only the following types of children may be adopted under the provisions of this chapter:

A. Those children whose parent-child relationship has been terminated by a court of competent jurisdiction; or

B. Those children whose natural or adopted parents are deceased; or

C. Those children whose natural or adopted parents consent to the adoption.

Section 6.7

CONSENT OF SPOUSE NECESSARY

No married person may adopt another person without the consent of his spouse, if said spouse is living and capable of giving such consent.

Section 6.8

CONSENT OF PROPOSED ADOPTEE

If the person to be adopted is over the age of twelve (12) years, his consent to the adoption shall be required before it can be finalized, except in the case of a child over the age of twelve (12) years, where the Court finds his consent is being withheld arbitrarily, capriciously or without good reason.

Section 6.9

CONSENT OF PARENT, GUARDIAN OR COURT

Where a child has only one living natural or adopted parent, said parent's consent is needed before his spouse can adopt said child.

Where the child has been appointed a guardian by a court of competent jurisdiction, and said guardian has been given authority to consent to the child's adoption, said guardian's consent is required before the child can be adopted under the provisions of this chapter.

Where the child has been made a ward of the Court, the Court may consent to an adoption of the child where it finds that such an adoption would be in the best interest of the child and the purposes of this chapter satisfied.

If the child's parents are deceased or their parental rights have been terminated, and the responsibility of caring for and raising the child has been assumed by a member of the child's extended family, that person's consent is required before an adoption can be finalized.

The consent of a parent who is a minor shall not be voidable because of that minority.

Section 6.10

PETITION FOR ADOPTION

No hearing may be held, nor may any decree of adoption be entered until a petition for adoption has been filed in accordance with the provisions of this chapter.

Section 6.11

WHO MAY FILE A PETITION

Any person may file a petition for adoption. Said 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.

Single persons may file a petition for adoption but no adoption shall be granted to any person living with another not his spouse under State or Tribal law.

Section 6.12

CONTENTS OF PETITION

The petition for adoption shall be filed with the Court only after the required filing fee has been paid and shall contain:

A. The full name, address and tribal affiliation of the petitioner; and

B. The full name, residence, date of birth, sex and tribal affiliation of the proposed adoptee; and

C. The name by which the proposed adoptee shall be known if the petition is granted; and

D. 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; and

E. The degree of relationship of the proposed adoptee, if any, to the petitioner; and

F. The names and addresses of any persons or agency whose consent to said adoption is necessary.

Where there are more than one proposed adoptees, 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 a Clerk of the Court.

Section 6.13

HOMESTUDIES

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

No determination can be made on a petition for adoption until such a homestudy and report has been completed and submitted to, and considered by the Court, with copies to the petitioner. The homestudy and report may be consolidated into one document. The Court may order additional homestudies or reports as it deems necessary.

Section 6.14

HEARING

All hearings under the provisions of this chapter shall be closed to the public and open only to those persons who have a legitimate interest in the case or in the operations of the Court.

Notice of the hearing must be given reasonably in advance thereof to those persons named in the petition. No notice shall be given to any parents whose parental rights have been terminated.

Any and all consents required under this chapter, except that of a child over the age of twelve (12) years, must be executed in writing and notarized or witnessed by a Clerk of the Court, and made a part of the record. 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 presiding judge and any other persons he deems necessary, and the child present.

The petitioner and the proposed adoptee shall appear personally at the hearing. The presiding 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 petitioner 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 Law and Order 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 that chapter of this Law and Order Code governing terminations be fully complied with.



Section 6.15

REPORT AND FINAL DECREE OF ADOPTION

If, as permitted in Section 14 of this chapter, the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioner for a period not to exceed six (6) months, within that period the Court shall request a supplementary homestudy under the same procedures followed in Section 13 of this chapter as to the welfare of the child, the current situation and condition of the adoptive home and the petitioner, and any other information required by Section 13 or by the Court.

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.

Section 6.16

EFFECT OF DECREE OF ADOPTION

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 this Law and Order Code.

Section 6.17

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 a Clerk of the Court, 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.

Section 6.18

RECORDS OF PROCEEDINGS

All hearings before the Court under the provisions of this chapter shall be recorded. Upon the motion of the petitioner, or upon its own motion the Court shall order that the record of its proceedings in any adoption proceeding be sealed. When such order has been made and entered the Court shall seal such record and thereafter the seal shall not be broken except upon the motion of the petitioner or the person adopted. The person adopted shall not be permitted to submit such a motion until he has attained the age of eighteen (18) years. Such records which have had the seal broken according to this section may be sealed again as in this section provided.

Section 6.19

FULL FAITH AND CREDIT

The Court shall give full faith and credit to the public acts, records and judicial proceedings applicable to adoptions of every State, territory or possession of the United States to the same extent that such entities give full faith and credit to the public acts, records, ordinances,

resolutions and judicial proceedings applicable to adoptions of the Shoshone Bannock Tribes.

Section 6.20

PLACEMENT PREFERENCES

All other things being equal, if there is more than one petition for the adoption of the same Indian child under the age of twelve (12) years, the Court shall follow the order of preference as outlined in this section when determining which petition to grant.

FIRST: Preference shall be given to a member of the child's extended family residing on the child's reservation.

SECOND: Preference shall next be given to a member of the child's extended family residing off the child's reservation.

THIRD: Preference shall next be given to other relatives of the child residing on the child's reservation.

FOURTH: Preference shall next be given to other relatives of the child residing off the child's reservation.

FIFTH: Preference shall next be given to other members of the child's tribe residing on the child's reservation.

SIXTH: Preference shall next be given to other members of the child's tribe residing off the child's reservation.

Provided, however, the Court shall at all times keep the child's best interests in mind and may deviate from the above order of preference only where the petitioner is unable or unwilling to provide for the specific needs of the child.

Section 6.21

VITAL STATISTICS

Within five (5) working days after the decree of adoption is entered, the Clerk of the Court shall notify the Division of Vital Statistics of the Idaho State Board of Health, furnishing whatever information is required thereby for the purpose of recording said adoption decree and so that a new record of birth can be issued for the adopted person in his new name, if any. Said Clerk shall submit all necessary forms, documents, certified copies of decrees or orders, or any other information needed to accomplish the purposes of this section.

Section 6.22

APPEAL

An appeal may be taken from an order or decree of the Court granting or refusing to grant a petition for adoption in the manner and form prescribed in that chapter of this Law and Order Code regulating the procedures for appeals, provided, however, that the pendency of an appeal or application therefore shall not suspend the order or decree of the Court relative to the adoption petition unless so ordered by the Appeals Court of the Shoshone Bannock Tribes.