

**Subpart K—Minor-in-Need-of-Care Procedure**

**§ 11.1100 Complaint.**

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

- (a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;
- (b) The name, age and address of the minor who is the subject of the complaint, if known; and
- (c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

**§ 11.1101 Warrant.**

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds there is probable cause to believe the minor is a minor-in-need-of-care.

**§ 11.1102 Custody.**

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or
- (b) A warrant pursuant to § 11.1101 of this part has been issued for the minor.

**§ 11.1103 Law enforcement officer's duties.**

Upon taking a minor into custody the officer shall:

- (a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.
- (b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

ter care is made by the children's court.

**§ 11.1104 Shelter care.**

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

- (1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;
- (2) A private family home approved by the tribe; or
- (3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

**§ 11.1105 Preliminary inquiry.**

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry with 24 hours for the purpose of determining:

- (1) Whether probable cause exists to believe the minor is a minor-in-need-of care; and
- (2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to

## Bureau of Indian Affairs, Interior

## § 11.1108

obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings;

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or custodian and that removal from them is necessary; or

(3) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

### § 11.1106 Investigation by the presenting officer.

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.1107 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

### § 11.1107 Petition.

Proceedings under §§ 11.1100–11.1114 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

(a) The name, birth date, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

### § 11.1108 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after the filing of the petition, it shall be dismissed unless:

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material