

§ 11.1109

evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1109 Summons.

(a) At least five working days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

- (1) The minor;
- (2) The minor's parents, guardian or custodian; and
- (3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1110 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in §11.906 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of §11.906(a) are met by a summons issued pursuant to §11.1109.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

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(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.1111 Minor-in-need-of-care dispositional hearing.

(a) No later than 15 days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in §11.906 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing the children's court shall consider any predisposition report or other study it may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1112 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the children's court may make whichever of the following dispositions is in the best interest of the minor;

(2) Place the minor with a relative within the boundaries of the reservation subject to such limitations and conditions as the court may prescribe;

(3) Place the minor in a foster home within the boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe;

(4) Place the minor in shelter care facilities designated by the court;

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

§ 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties

in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

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

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

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons: