

**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

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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;