

## § 11.1106

## 25 CFR Ch. I (4–1–06 Edition)

### § 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 evidence or witnesses and the chil-

dren'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.

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