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**Section 1. Citation**

This Title may be cited as the "Juvenile Procedure Act".

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 2. Purpose**

The purposes of this Title are to:

(a) Secure for each child subject to this Title such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Tribe and society in general;

(b) Preserve and strengthen the ties between the child and his Tribe whenever possible;

(c) Preserve and strengthen family ties whenever possible, and, to strengthen and improve the home and its environment when necessary;

(d) Remove a child from the custody of his parents and traditional custodians only when his welfare and safety or the protection of the public would otherwise be endangered;

(e) Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Tribe and society in general;

In order to carry out these purposes, the provisions of this Title shall be liberally construed.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 3. Definitions**

Unless the context otherwise requires, as used in this Title, the term:

(a) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in-need-of-supervision, or delinquent filed pursuant to this Title are supported by the evidence.

(b) "Adult" means a person eighteen years of age or over; except that any person alleged to have committed a delinquent act before he became eighteen years of age shall be considered a child under this Title for the purpose of adjudication and disposition of the delinquent Act.

- (c) "Aunt" means a person who; by blood or marriage, is:
- (1) A female sibling of the biological parents, or
  - (2) A female first cousin of the biological parents, or
  - (3) A female child of a grandparent, or
  - (4) Any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection.
- (d) "Brother" means:
- (1) Any male sibling, or
  - (2) Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state, would hold the relationship of a sibling with the person in question.
- (e) "Brother-in-law" means the husband of a sister by blood or marriage.
- (f) "Child" means a person under eighteen years of age.
- (g) "Child care center" means an institution or facility designed for the care of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
- (h) "Child in need of supervision" means any child:
- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, legal guardian, or other custodian; or
  - (2) Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
  - (3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.
- (i) "Child placement agency" means an agency designed for the care or placement of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.
- (j) "Commit" means to transfer legal custody.
- (k) "Cousin" means the child of an aunt or uncle.
- (l) "Custody" means guardianship of the person.

(m) "Delinquent child" means a child who:

(1) Has violated any federal, Tribal, or state law excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Title, or

(2) Has habitually violated any traffic, hunting, or fishing statutes or ordinances, or lawful orders of the Court made under this Title.

(n) "Department" means the Tribal Social Services Department.

(o) "Deprivation of custody" means the transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency, or institution.

(p) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending Court disposition or a Court order for placement or commitment.

(q) "Dispositional hearing" means a hearing, held after an adjudicating hearing has found a child to be deprived, neglected, in need of supervision, or delinquent in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(r) "Family care home" or "foster home" means a facility for the care of not more than ten (10) children in a family type setting, licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(s) "Group care facilities" means places other than family care homes or child care centers providing care for small groups of children.

(t) "Grandparent" means

(1) A biological grandparent.

(2) The brothers and sisters of a biological grandparent, and their spouses.

(3) Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (1) or (2) of this subsection.

(u) "Guardianship of the person" means legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:

(1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment, and

(2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child, and

(3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents, and

(4) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution.

(5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child. Guardianship of the person of a child, or legal custody of a child, may be taken from its parents only by Court action.

(v) "Halfway house" means group care facilities for children who have been placed on probation or parole by virtue of being adjudicated delinquent, or in need of supervision under this Title.

(w) "Juvenile Court" or "Court" means the Juvenile Division of the Tribal Court, or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or a state Juvenile Court as is appropriate from the context.

(x) "Neglected child" or "dependent child" means a child:

(1) Whose parent, guardian, or legal custodian has subjected him to mistreatment or abuse, or whose parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; or

(2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or

(3) Whose environment is injurious to his welfare; or

(4) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well being, whether because of the fault of the parent, guardian, or legal custodian, or because the parent, guardian or legal custodian does not have the ability or resources to provide for the child.

(5) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, due to, or without the fault of his parent, guardian, or legal custodian, or

(6) Whose parent, guardian, or legal custodian has abandoned him without apparent intent to return, or who has placed him informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of six months.

(y) "Nephew" means the male child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

(z) "Niece" means the female child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

(aa) "Parent" means either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action.

(bb) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his own home under the supervision of the Juvenile Court through the Tribal social services department during the period during which treatment is being provided to the family by the Tribal Social Services Department or other agencies designated by the Court.

(cc) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

(dd) "Shelter" means a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.

(ee) "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.

(ff) "Sister" means

(1) Any female sibling.

(2) Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to this Title or the laws of any Indian Tribe or state, would have the relationship of a sibling with the person in question.

(gg) "Sister-in-law" means the wife of a brother by blood or marriage.

(hh) "Termination of parental rights" or "termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent's whose rights have been terminated.

(ii) "Traditional custodian" means those relatives of the child other than the parents, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for its support.

(jj) "Transfer proceeding" means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian Tribe or state whenever such transfer is authorized by Tribal, federal, or state law.

(kk) "Tribal Court" shall mean the Tribal District Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 4. Place of Sitting**

The Juvenile Division of the District Court shall maintain offices and in the same place the District Court sits, provided, that the Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of Justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**CHAPTER ONE**  
**GENERAL PROVISIONS**

**Section 101. Juvenile Court Established**

There is hereby created and established within the Tribal Court, a Juvenile Division whose powers and duties are set forth in this Title. Any Judge of the Tribal Court may be assigned to hear cases in the Juvenile Division of the Court by the Chief Judge.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 102. Jurisdiction**

(a) Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:

- (1) Concerning any child in need of supervision.
- (2) Concerning any child who is delinquent, neglected or dependent.
- (3) Concerning any transfer proceeding to or from a court of another sovereign in a children's case.
- (4) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Juvenile Court's jurisdiction.
- (5) For the issuance of orders of support of minor children.
- (6) To determine the parentage of a child and to make an order of support in connection therewith.
- (7) For the adoption of a person of any age.
- (8) For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law.
- (9) For the treatment of commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.

(b) The Court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(c) Nothing in this section shall deprive the Tribal District Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the Tribal Court except that:

(1) If a petition involving the same child is pending in Juvenile Court or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and

(2) The Tribal Court at any time may request the Juvenile Court to make recommendations pertaining to guardianship or legal custody.

(d) Where a custody award has been made in the Tribal District Court in a dissolution of marriage action or another proceeding and the jurisdiction of the Tribal District Court may take jurisdiction in a case involving the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 103. Indian Child Welfare Act Transfers from State Courts**

(a) Pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911 (b), any state court may transfer to the Juvenile Court herein any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interests of the child.

(b) The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after the order of transfer is received by the Court Clerk. In making such determination, the Court may consider:

(1) Whether the child or its family will be in need of special services for physical or mental disease or defect which the Tribe and its resources are unable to adequately provide, and

(2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear the Court should decline to accept the transfer until after the adjudication is completed, and

(3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

(c) A Court transferring a case to the Tribe's jurisdiction under subsection (a) of this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Tribal Juvenile Court, which court

shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a Tribal Court juvenile division case number as in other cases.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 104. Indian Child Welfare Transfers From Tribal Courts**

(a) Any Tribal Court may transfer to the Juvenile Court herein any children's case concerning any child who is a member or eligible for membership in the Tribe, or, whose parents or guardian reside within the jurisdiction of the Tribe if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.

(b) The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after an order of transfer is received by the Court Clerk. In making such determination, the Court may consider:

(1) Whether the child or its family will be in need of special services for physically or mental disease or defect which the Tribe and its resources are unable to adequately provide, and

(2) If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed,

(3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

(c) A Tribal Court transferring a case to the Tribe's jurisdiction under subsection (a) of this Section shall transmit all documents and legal and social records, or certified copies thereof, pertaining to the case to the Tribal Juvenile Court, which shall proceed with the case as if a petition had been originally filed or the adjudication originally made in the Tribal Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 105. Child Welfare Transfers to Tribal or State Courts**

(a) The Tribal Juvenile Court, in its discretion, is authorized to transfer any children's case arising within the Tribal jurisdiction, said child not being a member or eligible for membership in the Tribe, to the Court of the Child's Indian Tribe, or if the child is a non-Indian, to the Courts of the State where the child is a resident or domiciled, upon the petition of the Tribal Attorney General, either parent, a custodian or guardian, the Child's Tribe, or an appropriate official of the Child's state.

(b) In making such transfers the Tribal Court may consider:

(1) The best interests of the child, and

(2) Any special needs or mental or physical disease or defects of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs, and

(3) If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction, and

(4) Emotional, cultural, and social ties of the child and its family

(5) The likelihood that the same child and family would return to the Tribal jurisdiction within a reasonable time and come before the Juvenile Court again.

(c) Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 106-109. Reserved**

**Section 110. Notice of Legal Rights**

(a) At his first appearance before the Court, the child and his parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

(1) Their right to a jury trial upon demand where available.

(2) Their right to be represented by an attorney, at their own expense, at every state of the proceeding.

(3) Their right to see, hear, and cross-examine all witnesses against them.

(4) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them.

(5) In juvenile delinquency proceedings, the right of the child not to be compelled to testify against himself.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent such are available at no fee, shall be appointed by the Court in proceedings wherein the Tribe is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons.

(c) The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(d) If the child and his parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 111. Tribal Attorney General Duties**

The Tribal Attorney General shall represent the Tribe in the interest of the child in all proceedings subject to this Title in which the Tribe is a party. In proceedings subject to this Title in which the Tribe is not a party, the Tribal Attorney General, upon request of the Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian ad litem of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 112. Jury Trials**

(a) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six or the Court on its own motion may order such a jury to try and case:

(1) In adjudicatory hearings concerning an alleged delinquent, neglected, or deprived child, or child in need of supervision, where termination is stated as a possible disposition in the petition.

(2) In determining the parentage of a child under this title.

(b) Unless a jury is demanded, it shall be deemed to be waived.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Sections 113-119. Reserved**

**Section 120. Procedure**

(a) The rules of juvenile procedure herein set forth shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

(b) In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case.

(c) The Tribal Court shall have the authority by written Court rule not inconsistent with this Title or the Rules of Civil Procedure and filed of record in the Court Clerk's office and Tribal Secretary's office to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Title.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 121. Hearings**

(a) Hearings shall be held before the Court without a jury, except as provided in Section 112, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public, to attend. The Court shall admit only such persons as have an interest in the case or the work of the Court, including persons whom the parents or guardian wish to be present unless an order has been entered authorizing the general public to attend. Hearings may be continued from time to time as ordered by court.

(b) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the Judge or referee.

(c) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

(d) Children's cases shall be heard separately from adult's cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.

(e) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this Title shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates the

provisions of this subsection (6) is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a fine or not more than Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for not more than thirty days, or by both such fine and imprisonment.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 122. Social Study and Other Reports**

(a) Unless waived by the Court, the Tribal Social Services Department or other agency designated by the Court shall make a social study and report in writing in all children's cases, except:

(1) If the allegations of a petition filed under Section 102 are denied, the study shall not be made until the Court has entered an order of adjudication; and

(2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

(b) For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

(c) The Court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 123. Effect of Proceedings**

(a) No adjudication or disposition in proceedings under Section 102 shall impose any civil disability upon a child or disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.

(b) No adjudication, disposition, or evidence given in proceedings brought under this Title shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Title concerning the same child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 123-129. Reserved****Section 130. Referees - Qualifications - Duties**

(a) The Juvenile Court may appoint one or more referees to hear any case or matter under the Court's jurisdiction, except where a jury trial has been requested and in transfer hearings. Referees shall serve at the pleasure of the Court, unless otherwise provided by law.

(b) Referees shall conduct hearings in the manner provided for the hearing of cases by the Court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the referee shall inform the parties that they have the right to a hearing before the juvenile Judge in the first instance and that they may waive that right, but, that by waiving that right, they are bound by the findings and recommendations of the referee, except as provided in subsection (d) of this Section. If a request is made for a hearing before a juvenile Judge in the first instance, the referee shall terminate the hearing and transmit the case to the appointing Judge.

(c) At the conclusion of a hearing, the referee shall:

(1) Transmit promptly to the juvenile Judge all papers relating to the case together with his findings and recommendations in writing;

(2) Advise the parties before him of his findings and recommendations; and

(3) Advise the parties of their right to review of the findings and recommendations by the juvenile Judge.

(d) A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the referee. If review is not requested, the findings and recommendations of the referee shall become the decree of the Court when confirmed by order of the juvenile Judge. The Judge may, on his motion, order a hearing of any case before a referee.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 131-139. Reserved****Section 140. Inspection of Court Records**

(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been

transferred, except records of court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.

(b) With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

(c) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 141. Expungment of Records**

(a) Any person who has been adjudicated delinquent or in need of supervision, who was taken into custody on an allegation of delinquency or need of supervision, or who was the subject of a petition for delinquency or need of supervision later may petition the Court for the expungment of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungment proceedings concerning the record of any child who has been under the jurisdiction of the Court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction over the person. Only by stipulation of all parties involved may expungment be applied for prior to the expiration of two years from the date of termination of the Court's jurisdiction or termination of the Court's supervision under an informal adjustment.

(b) Upon the filing of a petition for expungment or entering of a court order, the Court shall set a date for a hearing and shall notify the Tribal Attorney General and anyone else whom the Court has reason to believe may have relevant information related to the expungment of the record, including all agencies or officials known to have relevant files relating to the individual.

(c) The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other agency or official, if at the hearing the Court finds that:

(1) The subject of the hearing has not been convicted of a felony, an offense, punishable by banishment or of a misdemeanor involving moral turpitude and has not been adjudicated under this title since the termination of the Court's jurisdiction;

(2) No proceeding concerning a felony, an offense punishable by banishment, a misdemeanor involving moral turpitude, or a petition under this title is pending or being instituted against him; and

(3) The rehabilitation of the person has been attained to the satisfaction of the Court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

(g) In any proceeding alleging delinquency or need-of-supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the Court's own motion.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 142. Law Enforcement Records**

(a) The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(1) To the victim in each case when the child is found guilty of a delinquent act;

(2) When the child has escaped from an institution to which he has been committed;

(3) By order of the Court;

(4) When the Court orders the child to be held for criminal proceedings; or

(5) When there has been a criminal conviction and a presentence investigation is being made on an application for probation.

(6) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 143. Social Service Department Records**

The records of the Social Service Department concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(a) To the victim in each case when the child is found guilty of a delinquent act;

(b) When the child has escaped from an institution to which he has been committed;

(c) By order of the Court;

(d) When the Court orders the child to be held for criminal proceedings;  
or

(e) When there has been a criminal conviction and a presentence investigation is being made on an application for probation;

(f) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 144. Identify Confidential**

No fingerprint, photograph, name, address, or other information concerning identity of a child taken into temporary custody or issued a summons under the provisions of this article may be transmitted to the Federal Bureau of Investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 145-149. Reserved****Section 150. Search Warrants for the Protection of Children**

(a) A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the territorial jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.

(b) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(1) Be in writing and supported by affidavit sworn to or affirmed before the Court;

(2) Name or describe with particularity the child sought;

(3) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;

(4) State the address or legal description of the place to be searched;

(5) State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 151. Issuance and Return of Search Warrant**

(a) If the Court is satisfied that grounds for the application exist or that there is probably cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(b) The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.

(c) The warrant shall state the grounds or probably cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. And shall be issued in form substantially similar to other search warrants.

(d) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

(e) A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

(f) If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility subject to the conditions of Section 210 (c)(d).

(g) The warrant shall be returned to the issuing court, immediately upon service, and the officer shall subscribe on the warrant his name, the date and

time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Tribal Attorney General. If the child was not found, such information should be subscribed on the warrant.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 152. Expiration of Search Warrant**

A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 153-159. Reserved**

**Section 160. Exclusion of Certain Statements by Alleged Delinquent**

(a) No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation if available at no fee except that, if, to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

(b) Notwithstanding the provisions of subsection (a) of this Section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 161-189. Reserved**

**Section 190. Appeals**

(a) An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(b) The Tribe shall have the same right to appeal questions of law in delinquency cases as exists in criminal cases.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 191. Voluntary Foster Care Authorized**

In order to provide better treatment for a families problems and to better protect children, the Department is authorized to accept a child for foster care when:

(a) The parent, guardian, or other physical or legal custodian has consented to such foster care in writing before a Judge of a court of competent jurisdiction by the Judge's certificate that the terms and conditions, and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language which was understood.

(b) A consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the authorized person requesting the child's release within forty-eight (48) hours.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

## CHAPTER TWO

## EMERGENCY CUSTODY

**Section 201. Taking Children into Custody**

(a) A child may be taken into temporary custody by a law enforcement officer without order of the Court when there are reasonable grounds to believe that:

(1) He has committed an act which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by law;

(2) He is abandoned, lost, or seriously endangered in his surroundings or seriously endanger others and immediate removal appears to be necessary for his protection or the protection of others; or

(3) He has run away or escaped from his parents, guardian, or legal custodian.

(4) He has violated the conditions of probation and he is under the continuing jurisdiction of the Juvenile Court.

(b) A child may be detained temporarily without an order of the Court by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or Tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.

(c) A medical doctor, physician, or similar licensed practitioner of medicine may temporarily detain without an order of the Court a child brought before him for treatment whom he reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a Judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his consent to treatment of the child.

(d) In all other cases, a child may be taken into custody only upon an order of the Court.

(e) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 202. Notification of Parents**

When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailor in whose physical custody the child is placed.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 203. Notification of Court Officers**

Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to Section 201(c), and determines not to release said child pursuant to Section 210(b), the officer or other person who took the child to a detention or shelter facility shall notify the Tribal district attorney, the Tribal Social Services Department, and any agency or persons so designated by the Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Tribal district attorney, the Tribal Social Services Department, and any agency or person so designated by the Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four hours excluding Saturdays, Sundays, and legal holidays.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 204-209. Reserved**

**Section 210. Release of Detained Child**

(a) Except as provided in paragraph (b) of this section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parents, guardian, or legal custodian.

(b) The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the court at a time set or to be set by the Court.

(c) If he is not released as provided in subsection (b) of this section, he shall be taken directly to the Court or to the place of detention or shelter approved by the department and designated by the Court without unnecessary delay unless admitted to a facility for medical treatment pursuant to Section 201(c) of this Title.

(d) No child shall be detained pursuant to subsection (b) for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.

(e) Notwithstanding the provisions of subsection (d) of this Section, a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, or legal custodian.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 211. Special Release Rule for Major Offenses**

(a) No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime or offense punishable by banishment if committed by an adult shall be released from such facility if in writing a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the Tribal district attorney, alleging new circumstances concerning the further detention of the child.

(b) When, following a detention hearing as provided for by subsection (a) of this section, the Court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(c) Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 212. Court Ordered Release**

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child, except children being held pursuant to Section 205 of this Title from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set or to be set by the Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 213. Extension of Detention Period**

For good cause shown the Court may extend the time period during which a child may be detained without a petition and court order for a period not exceeding five working days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four hours.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 214-219. Reserved****Section 220. Detention and Shelter**

(a) A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the Department and designated by the Court or the Tribal or Bureau of Indian Affairs Department of Social Services and shall not be placed in detention.

(b) No child under the age of fourteen and, except upon the order of the Court, no child fourteen years of age or older and under sixteen years of age shall be detained in a jail, lockup, or other place used for confinement of adult offenders or persons charged with crime. The exception shall be used by the Court only if no other suitable place of confinement is available.

(c) A child fourteen years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the Court to be held for criminal proceedings.

(d) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the Court and Tribal district attorney immediately when a child who is or appears to be under the age eighteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 221. Emergency Shelter in Child's Home**

(a) Upon application of a Tribal or Bureau of Social Services Department, the Court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the Tribal or Bureau of Indian Affairs Department of Social Services, which has emergency caretaker services available, to remain in the child's home with the child until a parent, or legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the Tribal or Bureau of Indian Affairs Department of Social Services, to resume charge of the child.

(b) The director of the Tribal or Bureau of Indian Affairs Department of Social Services shall designate in writing the representatives of these departments authorized to perform such duties.

(c) The court order allowing emergency shelter in the child's home may be written or oral, provided, that if consent is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 222-229. Reserved****Section 230. Court Ordered Medical Treatment**

(a) At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

(1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to this Title or pursuant to court order.

(2) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non emergency medical, surgical, or dental treatment or care for a child in Tribal custody.

(b) After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 231. Court Ordered Commitment for Observation**

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten days.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**CHAPTER THREE****ADJUDICATION****Section 301. Court Intake**

(a) Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the Court's jurisdiction, by reason of delinquency, need of supervision, neglect, or deprivation, the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the Tribal Department, Child Welfare officer, who shall determine whether the interests of the child or of the community requires that further action be taken.

(b) If the Child Welfare officer determines that the interests of the child or of the community require that court action be taken, he shall request in writing the Tribal Attorney General to file a petition and deliver a copy of the entire case file to the Attorney General.

(c) If the Child Welfare officer is unable to determine whether the interests of the child or of the Tribe require that court action be taken from information available to him, he may refer the matter to the Tribal or Bureau of Indian Affairs Department of Social Services, a Tribal or Bureau of Indian Affairs law enforcement agency or other agency designated by the Court for a preliminary investigation and recommendations as to filing a petition or as to initiating an informal adjustment pursuant to this Title.

(d) If the Child Welfare officer determines that the interests of the child or of the Tribe do not require court action, the Department may offer such social services and make such referrals to other agencies as may be feasible to help the family with any problems they may have.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 302. Attorney General Intake**

(a) Upon receiving a request to file a petition and the accompanying reports and files from the Child Welfare officer, the Attorney General shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Tribal Rules of Evidence to establish the jurisdiction of the Tribal Juvenile Court over the child.

(b) If the Attorney General determines that there is not sufficient evidence available to establish the jurisdiction of the Tribal Juvenile Court over the child, he shall, in writing, refuse to file the requested petition, or, in his discretion, may request the Tribal or Bureau of Indian Affairs Social Services Department of Law Enforcement Agency to conduct a further investigation into the matter.

(c) If the Attorney General determines that sufficient evidence is available to establish the jurisdiction of the Tribal Juvenile Court over the child, he shall file a petition concerning the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 303. Diversion by Contract**

(a) Prior to the filing of a Petition, either the Child Welfare officer, or the Attorney General with the consent of the Child Welfare officer may divert any children's case, except a case subject to Section 211 or Section 306 of this Title from the court process.

(b) Diversion shall be made by entering into a contract with the child's parents, guardian, or other custodian whereby the parent, guardian or other custodian agrees to undergo specified treatment for the condition noticed, including an agreement to do or refrain from doing certain acts and the Child Welfare officer or Attorney General on behalf of the Tribe agrees not to file a petition in the case so long as the parent, guardian, or other custodian comply with the contract.

(c) Each such contract shall contain the following:

(1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.

(2) The specific treatment programs the parents, guardian, or custodian agree to successfully complete and their duration.

(3) The specific facts which the parents, guardian, or custodian agree to do or to refrain from doing.

(4) The specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs and accepted by the family.

(5) A fixed, limited time for the contract to run not exceeding one year.

(6) That the Tribe will not file a petition on the subject of the contract for the facts or allegations stated if the parents, guardian, or custodian comply with the contract terms for the full term of the contract.

(7) That each party has received a copy of the contract.

(d) No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge or the Juvenile Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 304. Diversion Contract Inadmissible**

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence, except, that the parents, guardian, or custodian may prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm. Proof of the contract shall not be an admission of the parents, guardian, or custodian of any of the facts alleged therein.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 305. Diversion by Consent Decree**

(a) After filing of a petition, the Attorney General with the consent of the Child Welfare officer, may divert any children's case, except a case subject to Section 211 or Section 306 of this Title from the adjudicatory process with the consent of the respondents and the Court by obtaining Consent Decree if:

(1) The Court has informed the child and his parents, guardian, or legal custodian of their rights to:

(i) deny the allegations of the petition and require the Tribe to prove each allegation by admissible evidence.

(ii) confront and cross-examine the witnesses against them and to call witnesses on their own behalf.

(iii) refuse to testify against themselves or each other in delinquency cases.

(iv) a trial by a jury of six persons at the adjudicatory state, where a jury trial is available.

(v) be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel.

(vi) and the Court believed they understand their rights.

(2) Written consent to the decree is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication.

(3) The Tribal or Bureau of Indian Affairs Social Service Department has prepared a treatment plan for the family to be incorporated into the Consent Decree which distinctly states:

(i) the specific treatment programs the parents, guardian, or custodian, or child agree to successfully complete and their duration.

(ii) the specific treatment or other social services to be offered by the Tribe or the Bureau of Indian Affairs and accepted by the family.

(iii) the specific acts which the parents, guardian, or custodian or child agree to do or to refrain from doing.

(iv) the person or agency to be vested with custody of the child if the child cannot remain in its own home, the specific provisions of (i), (ii), and (iii) above which must be completed or accomplished for a specific duration before the child is returned to its own home, and the period of supervision of the child in its own home.

(b) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided, that if the family fails to comply with the treatment plan, the Court, on motion of the Attorney General shall proceed with the adjudication.

(c) A Consent Decree shall remain in effect for not exceeding one year, provided, that upon notice of hearing the Court may extend the force of the decree for an additional term of one year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if the Decree is complied with.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 306. Limitation on Diversions**

No child shall be handled by informal adjustment where the child referred to the Court by any person has had any sustained petition for delinquency in the preceding twelve months or has been handled by informal adjustment for a delinquent act in the preceding twelve months.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Sections 307-309. Reserved**

**Section 310. Petition Form**

The Tribal Attorney General shall sign and file all child welfare petitioners alleging a child to be delinquent, in-need-of-supervision, or deprived, or neglected. Such petitioners and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE TRIBAL DISTRICT COURT  
JUVENILE DIVISION  
[NAME OF TRIBE]

The [NAME OF TRIBE]	)	
In The Interest Of:	)	
	)	
_____	)	Case No. JFJ-
	)	
An Alleged _____ Child,	)	
And Concerning _____	)	
	)	
_____	)	
_____	)	
Respondent(s).	)	

**Section 311. Petition Contents**

(a) The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

(b) All petitions filed alleging the dependency or neglect of a child may include the following statement: "Termination of the parent - child legal relationship is a possible remedy available if this petition is sustained." Unless such statement is contained in the petition, no termination of parental rights can be obtained unless, upon the occurrence of new facts after the filing of the petition an amended petition be filed based upon the new facts and containing the above required statement.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 312-319. Reserved**



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Court Clerk

[Seal]

(Return as in other civil cases)

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 321. When Summons Unnecessary**

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 322. Additional Parties to be Summoned**

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 323. Service of Summons**

(a) Summons shall be served personally, pursuant to the Tribal rules of civil procedure.

(b) If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(1) When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

(2) When the person to be served has no residence within the Tribe's jurisdiction and his place of residence is not known or when he cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 324. Failure to Appear**

(a) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.

(b) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

(c) When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 325-329. Reserved****Section 330. Appointment of Guardian Ad Litem**

(a) The Court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to Section 310 of this Chapter when:

(1) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(2) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or

(3) The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

(b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to Section 310 of this Title who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) At the time any child first appears in court, if it is determined that he has no guardian of his person, the Court shall appoint a guardian of the person of the child before proceeding with the matter.

(d) In all proceedings brought for the protection of a child suffering from abuse or nonaccidental injury, a guardian ad litem shall be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

(e) All guardian ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 331-339. Reserved**

**Section 340. Adjudicatory Hearing**

(a) At the adjudicatory hearing, which shall be conducted as provided in the rules of civil procedure, except that the rules of criminal procedure shall apply in delinquency cases, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(b) When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(c) In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(d) If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 341. Mentally Ill and Developmentally Disabled Children**

(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

(b) A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, but neither a Tribal, city or county jail nor a detention facility shall be considered a suitable facility under any circumstances.

(c) If the report of the examination made pursuant to subsection (a) of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(d) The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(e) The Court shall set a time for resuming the hearing on the original petition when

(1) The report of the examination made pursuant to subsection (a) of this Section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

(2) The child is found not to be mentally ill;

(3) The report of the examination made pursuant to subsection (a) of this Section states that the child is developmentally disabled but not mentally ill.

(f) "Mentally ill person" means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

(g) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(h) "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 342. Consent Decree**

At any time during the adjudicatory process, but prior to the entry of an order sustaining the petition or provided in Section 344 of this Title, a consent decree may be entered as provided in Section 305 of this Title.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 343. Dismissal of Petition**

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction other previous temporary order.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 344. Sustaining Petition**

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children, evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this Section.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 345. Temporary Orders**

Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

## CHAPTER FOUR

## DISPOSITION

**Section 401. Dispositional Hearing**

After making an order of adjudication, finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe at a hearing scheduled for that purpose.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 402. Social Studies and Reports**

(a) The Court may order any agency within its jurisdiction a request any other agency to prepare and submit to the Court after the adjudication and prior to disposition a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

(b) After adjudication the Court may order or request, as appropriate, any agency to submit and preadjudicatory social studies or reports helpful in determining proper treatment and disposition for the family.

(c) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 403. Treatment Plan**

(a) In every case the Court shall order the Tribal Department and/or the Bureau of Indian Affairs Social Services Department to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

(b) The treatment plan shall contain at a minimum

(1) A brief social and family history

(2) A brief statement of the causes of the Court exercises its jurisdiction.

(3) The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished.

(4) The specific actions the parents, guardian, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore

(5) The specific treatment or other social services offered by the Tribe or Bureau of Indian Affairs which the family should be required to accept

(6) The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained to its home under supervision and when court supervision should cease.

(c) The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 404. Medical Examination**

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 405. Hearing Purpose**

The purpose of the dispositional hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare, and safety of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 406. Hearing Informal**

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 407. Continuance**

(a) The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

(c) In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 408. Order of Protection**

(a) The Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this Chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to the proceeding.

(b) The order of protection may require any such person:

(1) To stay away from a child or his residence;

(2) To permit a parent to visit a child at stated periods;

(3) To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given:

(4) To give proper attention to the care of the home;

(5) To cooperate in good faith with an agency:

(i) which has been given legal custody of a child;

(ii) Which is providing protective supervision of a child by court order; or

(iii) to which the child has been referred by the Court;

(6) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(7) To perform any legal obligation of support.

(c) When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (e) of this section.

(d) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served thereby.

(e) A person failing to comply with an order of protection without good cause may be found in contempt of court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 409. Reserved**

**Section 410. Placement Preferences**

(a) In making a placement of or committing legal custody of a child to some person in the dispositional process whether for foster care or adoption, the Court shall place the child in the following descending order of preference:

(1) The natural parents, adoptive parents, or step-parents as the case may be

(2) A traditional custodian who is a member of the Tribe and their spouse.

(3) A traditional custodian who is a member of another Indian Tribe and their spouse.

(4) A member of the Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(5) A member of another Indian Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(6) Any other person over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

(7) Any other member of the Tribe and their spouse.

(8) Any other Indian person and their spouse.

(9) A foster home licensed by the Tribal Department of Social Services.

(10) An Indian foster home licensed by any other Licensing authority within the State or an Indian foster home licensed by some other Tribe.

(11) An institution for children licensed or approved by the Tribal Department of Social Services with a program suitable to meet the child's needs.

(b) Where appropriate the Court, may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences.

(c) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(d) The Court may place the child with the Tribal or Bureau of Indian Affairs Department of Social Services or a child placement agency approved by the Tribal Department or the Tribal Legislative Body for further placement in lieu of a direct placement pursuant to subsection (a) of this Section. When the Court does so, the agency shall place said child in accordance with the preferences described above, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

(e) State courts shall follow the placement preference rules outlined herein.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 411. Extended Family Defined**

For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., a child's extended family is defined to mean the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent over eighteen years of age and their spouse as those terms of relation are defined in this Title.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Sections 412-419. Reserved**

**Section 420. Neglected or Dependent Child - Disposition**

(a) When a child has been adjudicated to be neglected or dependent, the Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship, it shall include one or more of the following provisions which the Court finds appropriate:

(1) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose.

(2) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with Section 410 of this Title.

(3) The Court may place legal custody in the Tribal Department of Social Services or a child placement agency for placement in a family care home, or other child care facility in accordance with Section 410 of this Title.

(4) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(b) The Court may enter a decree terminating the parent-child legal relationship of one or both parents when all reasonable efforts to treat the family have failed.

(c) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the Court may:

(1) Vest the Tribal Department of Social Services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption according to the placement preferences; or

(2) Make any other disposition provided in subsection (a) of this Section that the Court finds appropriate.

(d) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Court may:

(1) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(2) Make any other disposition provided in subsection (a) of this section that the Court finds appropriate.

(e) When a child has been adjudicated neglected because he has been abandoned by his parent or parents, the Court may enter a decree terminating the parent-child legal relationship if it finds:

(1) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(2) That the identity of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents have failed.

(f) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 421. Child in Need of Supervision - Disposition**

When a child has been adjudicated as being in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions which the Court finds appropriate:

(a) The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the Court may impose.

(b) The Court may place the child in the legal custody of a relative or other suitable person under such conditions as the Court may impose, which may include placing the child on probation or under protective supervision in accordance with Section 410 of this Title.

(c) The Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

(1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel;

(3) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

(d) The Court may place legal custody in the Tribal Department of Social Services or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

(e) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(g) The Court may commit the child to any institution or group care facility designated by the Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 422. Delinquent Child - Disposition**

If a child has been adjudicated as being delinquent, the Court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

(b) The designated institution shall provide the Court with any information concerning a child committed to its care which the Court at any time may require.

(c) A commitment of a child to a designated institution under Section 421 of Section 422 shall be for an indeterminate period not to exceed two years.

(d) The Tribal department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the Court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

(e) Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 424. Legal Custody - Guardianship**

(a) Any individual, agency, or institution vested by the Court with legal custody of a child shall have the rights and duties defined in Section 3(u) (4) and (5).

(b) Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined in Section 3(u); except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the Court.

(c) If legal custody or guardianship of the person is vested in an agency or institution, the Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(d) An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the Court at any time may require.

(e) Any agency other than the department of institutions vested by the Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

(f) No individual vested by the Court with legal custody of child shall remove the child from the state for more than thirty days without Court approval.

(g) A decree vesting legal custody of a child in an individual, institution, or agency other than the department of institutions shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall reviewed by the Court no later than six months after it is entered.

(h) The individual, institution, or agency vested with the legal custody of a child may petition the Court for renewal of the decree. The Court, after notice and hearing, may renew the decree for such additional period as the Court may determine, if it finds such renewal to be in the best interest of the child. The findings of the Court and the reasons therefore shall be entered with the order renewing or denying renewal of the decree.

(i) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the Court if he so requests.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 425-429. Reserved**

**Section 430. Probation for Delinquents and Children in Need of Supervision**

(a) The terms and conditions of probation shall be specified by rules or orders of the Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention, whether continuous or at designated intervals, shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(b) The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(c) The Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(d)

(1) When it is alleged that a child has violated the terms and conditions of his probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding.

(2) The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(3) The hearing on the alleged violation shall be conducted as soon as possible.

(e) If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this Chapter which is in the best interest of the child and the Tribe.

(f) If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

(g) If the Court revokes the probation of a person over eighteen years of age, in addition to other action permitted by this Chapter, the Court may sentence him to the Tribal jail for a period not to exceed one hundred eighty days during which he may be released during the day for school attendance, job training, or employment, as ordered by the Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Sections 431-439. Reserved**

**Section 440. New Hearing Authorized**

(a) A parent, guardian, custodian, or next friend of any child adjudicated under this Title, or any person affected by a decree in a proceeding under this Chapter, may petition the court for a new hearing on the following grounds:

(1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(2) That irregularities in the proceedings prevented a fair hearing.

(b) If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 441. Continuing Jurisdiction**

Except as otherwise provided in this Chapter, the jurisdiction of the Court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until he becomes twenty-one years of age unless terminated by court order.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Sections 442-449. Reserved**

#### **Section 450. Motion for Termination of Parental Rights**

(a) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 451. Appointment of Counsel**

(a) After a motion for termination of a parent-child legal relationship is filed pursuant to this Chapter, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient unobligated funds to pay an attorney a maximum of Five Hundred Dollars per case.

(b) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-

child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 452. No Jury Trial**

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 454. Criteria for Termination**

(a) The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:

- (1) That the child has been abandoned by his parent or parents;
- (2) That the child is adjudicated dependent or neglected and all of the following exist:
  - (i) That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;
  - (ii) That the parent is unfit;
  - (iii) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(b) In determining unfitness, conduct, or condition, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:

- (1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;

- (2) Conduct towards the child of a physically or sexually abusive nature;
- (3) History of violent behavior;
- (4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
- (5) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (6) Neglect of the child;
- (7) Long-term confinement of the parent;
- (8) Injury or death of a sibling due to proven parental abuse or neglect;
- (9) Reasonable efforts by child care agencies which have been unable to rehabilitate the parent or parents.

(c) In considering any of the factors in subsection (b) of this Section in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 455. Criteria**

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 456. Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship**

(a) The Court, at the conclusion of a hearing which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 457. Expert Testimony**

(a) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from the court funds.

(b) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 458. Effect of Decree**

(a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent.

(b) No order or decree entered pursuant to this Chapter shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Tribe, any agency, any state, or the United States.

(c) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 459. Appeals**

(a) Appeals of court decrees made under an order terminating parental rights shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

(b) Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the Tribe to be paid from the court fund.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 460. Traditional Custodian's and Grandparents Rights**

(a) No dispositional order or decree including termination of parental rights and adoption shall divest the child's traditional custodians or grandparent of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party provided, that adoptive traditional custodians shall also succeed to these rights and duties.

(b) The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 461. Orders for Support**

(a) Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Tribe, or take other reasonable action to provide support for the child.

(b) In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodians means after a hearing, whether the child has been placed in his own home or elsewhere.

(c) When the Tribe, or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispense by court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances. In all cases of placement with a particular family, the contribution shall be paid to that family by the Court Clerk subject to the supervision of the Court to prevent waste or misuse of such funds.

**CHAPTER FIVE****CHILD ABUSE****Section 501. Legislative Purpose**

The Tribal Legislative Body hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Chapter it is the intent of the Tribe to protect the children within the jurisdiction of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and Tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Chapter.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 502. Definitions**

As used in this Chapter, unless the context otherwise requires:

(a) "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death or condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(2) Any case in which a child is subject to sexual assault or molestation;

(3) Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.

(4) In all cases, those investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(b) "Child protection team" means a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the Tribal law enforcement agency, a representative of a non-Tribal law enforcement agency, a mental health agency representative, a representative of the Bureau of Indian Affairs Social Services Department, a

representative of the State social services department, an attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three (3) persons. The role of the child protection team shall be advisory only.

(c) "Tribal department" means the Tribal, or, where appropriate, the Bureau of Indian Affairs police department or social services.

(d) "Law enforcement agency" means a Tribal or Bureau of Indian Affairs police department, a police department incorporated municipalities or the office of the county sheriff of the State.

(e) "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (a) of this section.

(f) "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.

(g) "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(Each) "Unfounded report" means any report made pursuant to this Chapter which is not supported by some credible evidence.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 503. Persons Required to Report Child Abuse or Neglect**

(a) Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or Tribal law enforcement agency.

(b) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist

- (5) Osteopath
- (6) Optometrist
- (7) Chiropractor;
- (8) Chiropodist or podiatrist;
- (9) Registered nurse or licensed practical nurse;
- (10) Hospital personnel engaged in the admission, care, or treatment of patients;
- (11) School official or employee;
- (12) Social worker or worker in a family care home or child care center;
- (13) Mental health professional;
- (14) Any law enforcement personnel;
- (15) The Tribal Attorney General or his assistants.

(c) In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency or the tribal department.

(d) Any person who willfully violates the provisions of this Section:

(1) Shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00); and

(2) Shall be liable for damages approximately caused thereby.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 504. Required Report of Postmortem Investigation**

(a) Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the tribal law enforcement agency, the Tribal Attorney General, and the tribal department.

(b) The tribal department shall forward a copy of such report to the central registry.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 505. Evidence of Abuse**

(a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(b) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 506. Temporary Protective Custody**

The Chief Judge of the Tribal District Court shall be responsible for making available a person appointed by the Chief Judge, who may be the juvenile Judge, a Magistrate, referee, or any other officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Juvenile Division of the Court when no Judicial Officer is present in the Court, to issue written or verbal temporary protective custody orders, or in the alternative or in addition thereto, the Chief Judge may enter his general order detailing the procedure to be used in taking children into custody on an emergency basis when no Judge or Magistrate is present at the Court. These orders may be requested by the tribal department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before him a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or the condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The tribal department shall be notified on such action immediately by the Court appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody under this Section shall not exceed seventy-two hours notwithstanding any provision of law to the contrary.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 507. Reporting Procedures**

(a) Reports of known or suspected child abuse or neglect made pursuant to this Chapter shall be made immediately to the tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the tribal department.

(b) Such reports, when possible, shall include the following information:

(1) The name, address, age, sex, and race of the child;

(2) The name and address of the responsible person;

(3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;

(4) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;

(5) The family composition;

(6) The source of the report and the name, address, and occupation of the person making the report;

(7) Any action taken by the reporting source;

(8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

(c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal Attorney General's office and to the Tribal law enforcement agency.

(d) A written report from persons or officials required by this Chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 508. Action Upon Receipt of Report**

(a) The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

(b) The investigation, to the extent that it is reasonably possible, shall include:

- (1) The nature, extent, and cause of the abuse or neglect;
- (2) The identity of the person responsible for such abuse or neglect;
- (3) The names and conditions of any other children living in the same place;
- (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
- (5) All other data deemed pertinent.

(c) The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(d) The Tribal department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Tribal department shall provide for persons to be continuously available to respond to such reports. Tribes and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Tribal department or to have such arrangements made through agreements with local law enforcement agencies.

(e) Upon receipt of a report, if the Tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the Tribal law enforcement agency and the Tribal Attorney General shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with Tribal law.

(f) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Tribal department, it shall make a complete investigation and may request the Tribal Attorney General to institute appropriate legal proceedings on behalf of the subject child or other

children under the same care. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Tribal department.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 509. Child Protection Teams**

It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.

(a) The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(b) At each meeting, each member of the child protection team shall be provided with all available records and reports on each case to be considered.

(c) The public, in a nonparticipatory role, shall be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to public agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.

(d) At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or neglect; whether the child is an infant, a toddler, a preschool or school aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The team shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.

(e) At this public session, and immediately after any executive sessions at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this Chapter, and shall publicly report nonidentifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(f) After this mandatory public discussion of agency responses, the child protection team shall go into executive session upon the vote of a majority of the team members to consider identifying details of the case being discussed, to discuss confidential reports, including but not limited to the reports of

physicians and psychiatrists, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive sessions shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

(g) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

(Each) The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribes and state and federal agencies may cooperate in meeting the requirements of this subsection.

(i) Each member of the team shall be appointed by the agency he represents, and each team member shall serve at the pleasure of the appointing agency; except that the director of the Tribal department shall appoint the representatives of the lay community, and shall actively recruit all interested individuals and consider their applications for appointment as lay community representatives on the team.

(j) The director of the Tribal department or his designee shall be deemed to be the coordinator of the child protection team.

(k) The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety (90) days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the Tribal department for that purpose.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 510. Immunity from Liability**

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this Chapter or otherwise performing his duties or acting pursuant to this Title shall be immune from any liability, civil or criminal, that otherwise might result

by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 511. Child Abuse and Child Neglect Diversion Program**

(a) The Tribal Attorney General, upon recommendation of the Tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the Tribal department and the Tribal Attorney General. If a person is so diverted from the criminal justice system, the Tribal Attorney General shall not file charges in connection with the case if the person participates to the satisfaction of the Tribal department and the Tribal Attorney General in the diversion program offered.

(b) The initial diversion shall be for a period not to exceed two (2) years. This diversion period may be extended for one (1) additional one year period by the Tribal Attorney General if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Tribal Attorney General and the Tribal department.

(c) If the person diverted successfully completes the diversion program to the satisfaction of the Tribal department and the Tribal Attorney General, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(d) Participating by a person accused or suspected of child abuse in any diversion program shall be voluntary.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 512. Evidence Not Privileged**

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this Chapter.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 513. Court Proceedings - Guardian Ad Litem**

(a) In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be legal or actual physical custodians or guardians of the child. In every such case, the responsible

person shall be named as respondent. Summonses shall be issued for all named respondents.

(b) The Court in every case filed under this Chapter shall appoint, at no fee, a guardian ad litem at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Chapter and with reports of any examination of the responsible person made pursuant to this section. The Court or the social services worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the Court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(c) If the prayer of the petition is granted, the costs of this proceedings, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.

(d) It is not necessary that the guardian ad litem be an attorney.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 514. Central Registry**

(a) There shall be established a central registry of child protection in the Tribal department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this Chapter.

(b) The central registry shall contain but shall not be limited to:

(1) All information in any written report received under this Chapter;

(2) Record of the final disposition of the report, including services offered and services accepted;

(3) The plan for rehabilitative treatment;

(4) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;

(5) Any other information which might be helpful in furthering the purposes of this Title.

(c) The director of the Tribal department shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his office so that data in the central registry may be made available during nonbusiness hours through the use of computer technology. Such computerized records shall be password coded and only department personnel, judges, justices and law enforcement personnel shall have access to the password.

(d) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in Section 503(b) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Tribal Attorney General or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

(e) Unless an investigation of a report conducted pursuant to this Chapter determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the Tribal department or the Tribal law enforcement agency.

(f) In all other cases, the record of the reports to the central registry shall be sealed no later than ten (10) years after the child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the department and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(g) At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

(h) At any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses to does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing before the District Court to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Chapter. The Tribal department shall be

given notice of the hearing. The burden in such a hearing shall be on the Tribal department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(i) Written notice of any amendment, sealing, or expungment made pursuant to the provisions of this Title shall be given to the subject of such report and to the Tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

(j) Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this Chapter shall be subject to a civil penalty not in excess of Five Hundred Dollars (\$500.00) and any actual damages sustained.

(k) The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other Tribes, states and the national center on child abuse and neglect.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 515. Confidentiality of Records**

(a) Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this Section shall be subject to a civil penalty or not more than Five Hundred Dollars (\$500.00).

(d) Only the following persons or agencies shall be given access to child abuse or neglect records and reports.

(1) The law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of the report;

(2) A physician who has before him a child whom he reasonably suspects to be abused or neglected'

(3) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;

(4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;

(5) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

(6) A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(7) The central registry of child protection;

(8) All members of a child protection team;

(9) The Attorney General and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary.

(10) Such other persons as a Court may determine, for good cause.

(e) After a child who is the subject of a report reaches the age of eighteen (18) years, access to his record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (d) of this Section and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be release unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a Tribal Attorney General or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**CHAPTER SIX**  
**DEVELOPING FOSTER CARE HOMES**

**Section 601. Responsibility**

It shall be the responsibility of the Tribal Social Services Department to recruit, screen, and license foster homes for children in accordance with this Title.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 602. Licensing Foster Homes**

The Social Services Department pursuant to rules not inconsistent with this Title which it shall develop and file with the Tribal Secretary's office, shall have the authority to license foster care homes for the care of children.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 603. Basic Standard for Foster Families**

In considering Indian foster parents the primary consideration should be the parents capacity to provide love and understanding to a child or children in distress.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 604. Basic Requirements of Foster Families**

Foster families shall meet the following personal criteria:

(a) The age of foster parent(s) shall be a consideration only as it affects their physical capability, flexibility, and ability to care for a specific child.

(b) A written statement from a physician, regarding the foster parent(s) and their children's' general health, specific illnesses, or disabilities shall be a routine part of the study evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated.

(c) Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 605. Income of Foster Families**

(a) When the agency does not have a plan for paying foster families a salary, it shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.

(b) Employment of foster parent(s) outside the home:

(1) In two parent homes it is preferable, in most instances, that both foster parents shall not be employed outside the home so that one parent is available for the parenting that the child requires. The agency shall make decisions regarding such situations on the basis of what is the best interest of the child.

(2) When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans (approved by the Agency) for care and supervision of the child after school and during the summer while parent(s) are at work.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 606. Physical Facilities**

(a) Physical facilities of the foster home shall present no hazard to the safety of the foster child.

(b) Foster homes shall meet zoning and housing requirements and/or codes as set by the public safety department for individual family dwellings.

(c) Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides.

(d) Comfort and privacy:

(1) It is preferable for no more than two children to share sleeping rooms.

(2) The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities attitudes, and behavior.

(3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.

(4) Individual space shall be provided for the child's personal possessions.

(5) In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socio-economic circumstances create a situation in which such exceptions will not be to the detriment of the child.

(e) Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.

(f) If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 607. Family Composition**

(a) Two parents shall be selected in most cases; however, single parents shall be selected when they can more effectively fulfill the needs of a particular child.

(b) The presence of other children (either own or foster), and other adults (i.e. grandparents, aunts, etc; or unrelated persons) shall be taken into consideration in terms of how they might be effected by or have an effect upon another child.

(c) The number and ages of children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster parent(s) ability to meet the needs of all children present in the home, physical accommodations of the home, and especially the effect which an additional child would have on the family as a unit. It is preferable that:

(1) Foster parent(s) shall care for not more than two infants (under two), including the foster parent(s) own children.

(2) Foster families should not have more than a total of six children, including foster children and foster parent(s) own children, in the foster home. Exceptions shall be made in order to keep siblings together.

(3) The age range of the children in a foster home shall be similar to that in a "normal" family in order to lessen competition and comparisons.

(4) All placement situations shall consider the effect of having some children in the foster home whose parent(s) visit them and other children whose parent(s) do not.

(5) A foster home shall not provide placements for more than one agency at a time without a written agreement delineating the responsibilities of all parties involved.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 608. Personal Characteristics**

Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

(a) Psycho-social history, including significant childhood relationships and experiences (parent-child, sibling, or other relationships).

(b) Role identification and acceptance.

(c) Reactions to experiences of separation and loss (through death, desertion, etc.)

(d) Education, employment, and patterns of interpersonal relationships.

(e) General social, intellectual and cultural level of the family.

(f) Level of everyday functioning:

(1) Home and money management ability;

(2) Daily routine and habits;

(3) Reactions to stress.

(g) Affect responses (ability to give and receive love, deal with loss, separation and disappointment, etc.)

(h) Moral, ethical, and spiritual qualities of the family.

(i) Religious affiliation and habits.

(j) Hobbies, special interests, skills, and talents.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 609. Foster Parenting Abilities**

As assessment of prospective foster parent(s) parenting ability regarding a specific child shall take into account the following:

- (a) Motivation for application at this time.
- (b) Characteristics and number of children best suited to foster family.
- (c) Existing family relationships, attitudes, and expectations regarding own children and parent-child relationships, especially where such existing attitudes and relationships might effect the foster child.
- (d) Attitudes of significant members of the extended family regarding child placement.
- (e) Ability to accept and love child as he/she is.
- (f) Capacity to absorb the child into family life functioning without undue disruption.
- (g) Capacity of parent(s) to provide for foster child's needs while giving proper consideration to own children.
- (h) Own children's attitudes towards accepting foster child.
- (i) Realistic assessment of positive and negative aspects of foster parenthood.
- (j) Personal characteristics necessary to provide continuity of care throughout child's need for placement.
- (k) Flexibility to meet changing needs over the course of placement.
- (l) Ability to accept child's relationship with own parent(s).
- (m) Ability to relate to neglecting and abusing natural parent(s).
- (n) Special ability to care for children with special needs (physical handicaps, emotional disturbances, etc.)
- (o) Areas in which ongoing social work assistance may be needed.
- (p) Ability to help a child return home or be placed for adoption and gain satisfaction from the experience.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

## CHAPTER SEVEN

## ADOPTIONS

**Section 701. Jurisdiction Over Adoptions**

(a) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction of the Court, is unmarried, less than eighteen years of age, and either:

- (1) A member of an Indian Tribe, or
- (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
- (3) Whose case has been transferred to the Juvenile Division of the District Court from the courts of a state, or Tribe which has assumed jurisdiction over said child,
- (4) The adoption of any adult Indian who resides or is domiciled within the jurisdiction of the Court.

(b) The Juvenile Division of the District Court shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:

- (1) A bonafide resident of or domiciled within the jurisdiction of the Court, or
- (2) Between two adults who submit to the jurisdiction of the Court irregardless of residence or domicile, or
- (3) A member of the Tribe.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 702. Purpose of Adoptions**

The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Title shall be so recognized by every agency and level of the Government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 703. Types of Adoptions**

There shall be three types of adoptions recognized by this Tribe, namely:

(a) Statutory adoptions under Tribal law entered into pursuant to Subchapter A of this Chapter.

(b) Statutory adoptions under the laws of some other Tribe, State, or Nation having jurisdiction over the parties and the subject matter.

(c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Tribal Common Law until such time as the proper procedures for such adoptions are written down as a part of the Tribal Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents estates.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 704. In Camera Determination of Enrollment Eligibility**

Whenever a parent, whether biological or adoptive, has expressed a desire that the name of the parent or the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment as a citizen and member of the Tribe, the Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information in camera, and to enter its order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non-identifying enrollment eligibility criteria. In doing so, the Court shall be provided with a complete Tribal roll for the necessary period(s), and shall seal all records received to maintain their confidentiality of the parties. If the Court determines that such child is eligible for enrollment, it shall enter its order declaring said fact and the Tribal enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines that such child is not eligible for enrollment, it shall enter its order accordingly, and the Tribal enrollment officers shall accept such order as proof of the ineligibility of said child and refuse to enroll the child unless other or further qualifications for enrollment are shown.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

## SUBCHAPTER A

## STATUTORY ADOPTIONS

**Section 710. Eligibility for Statutory Adoption**

Every child within the jurisdiction of the Juvenile Division of the District Court at the time a petition for adoption is filed, may be adopted subject to the terms and conditions of this Subchapter.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 711. Eligibility to Adopt by Statutory Process**

The following persons are eligible to adopt a child pursuant to this Subchapter, and subject to the placement preferences of Section 410 of this Title:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;
- (c) An unmarried person who is at least twenty-one (21) years old;
- (d) A married person who is legally separated from the other spouse and at least twenty-one (21) years old.
- (e) In the case of a child born out-of-wedlock, its unmarried father or mother.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 712. Consent to Statutory Adoption**

(a) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:

(1) both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.

(2) a parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.

(3) if both parents be deceased, or if their parental rights have been terminated by judicial decree, then the traditional custodian having physical custody of said child for the preceding six (6) month period, or

a person or the executive head of an agency having custody of the child by judicial decree with the specific authority, granted by the Court, to consent to the adoption of the child.

(b) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(c) Any consent given prior to or within ten days after the birth of a child shall not be valid.

(d) Any consent given for the adoption of, or termination of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child shall be returned to the parent.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 713. Voluntary Relinquishment**

Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of Section 712(b), (c), and (d) of this Subchapter, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Division of the Court with notice to the Tribal Department, District Attorney, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene in said action. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specially to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 714. When Consent of Parents Unnecessary**

Adoption of a child may be decreed without the consent required by Section 712 of this Subchapter only if the parents, or the traditional custodians having custody if the parents be deceased, have:

(a) had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction, or

(b) been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority, or

(c) for a period of twelve months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:

(1) in substantial compliance with any decree of a Court of competent jurisdiction ordering certain support to be contributed, or

(2) if no court order has been made ordering certain support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.

(d) been finally adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period such that the parent will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority.

In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 715. Notice and Hearing for Adoptions Without Consent**

Before the Court hears a petition for adoption without the consent of the parents as provided by Section 714 of this Subchapter, except proceedings pursuant to Section 714(a), the person having authority to consent to the adoption, or the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing at a date and time certain and the application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear at the hearing and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian whose consent is alleged to be unnecessary in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 716. Consent of Child**

Whenever a child be a sufficient maturity and understanding the Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 717. Petition**

A Petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

(a) The full names, ages, and places of residence of the Petitioners, and, if married, the place and date of their marriage.

(b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.

(c) When and from whom the petitioners acquired or intend to acquire physical custody of the child.

(d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.

(e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.

(f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.

(g) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(h) A full description and statement of the value of all property owned or possessed by the child.

(i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.

(j) Any required consents to the adoption may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

(k) The facts which bring the child within the jurisdiction of the Court.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 718. Investigation**

(a) Upon the filing of a petition for adoption, the Court shall order an investigation to be made:

(1) by the agency having custody or legal guardianship of the child, or

(2) in other cases, by the State, Bureau of Indian Affairs, or Tribal Department, or

(3) by a person qualified by training or experience, designated by the Court,

and shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the Court.

(b) Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

(c) The Court may order agencies named in Subsection (a) of this Section located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

(c) The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefore.

(d) Where the adopting parent is the spouse of a parent, or in the event that a report, as outlined above deemed adequate for the purpose by the Court, has been made within the six months next preceding the filing of the petition for adoption, the Court, in its discretion, may waive the making of an investigation and the filing of a report.

(e) Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the Tribal Department and the District Attorney.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 719. Adoption Hearing**

At any time after the written investigation report has been filed, the Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the Tribal agencies, Federal agencies, or other agencies to provide services to assist in the placement and the care of the child, or, in case of need, refer the matter to the Tribal Department and District Attorney for the purpose of determining whether a involuntary juvenile petition should be filed.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 720. Report and Final Decree of Adoption**

If 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 petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 721. Contents of Adoption Order**

The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for

the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 722. Effect of Final Decree of Statutory Adoption**

(a) After a final decree of adoption pursuant to this Subchapter is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parent(s).

(b) After a final decree of adoption pursuant to this Subchapter is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in a Tribe by virtue of his birth to said natural parents.

(c) Unless the traditional custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

### **Section 723. Records and Hearings Confidential**

Unless the Court shall otherwise order:

(a) All hearings held in proceedings under this Subchapter shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including traditional custodians, representatives of the Tribal Department when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court

after the exclusion of all other persons, and the counsel for the parties, traditional custodians, and the Tribal Department.

(b) All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

(1) Upon order of the Court for good cause shown.

(2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

(3) The traditional custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity, by affidavit, the traditional custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

(4) For the purpose of obtaining the enrollment of the child with another Indian Tribe, the Court may upon request of an enrollment officer of that Tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that Tribe subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Tribe for an in camera review only, or allow such Judge to review the record in the District Court, in camera, for the purpose of said Judge certifying to his Tribe that ~~the child is~~ eligible for membership in that Tribe.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 724. Certificates of Adoption**

(a) For each adoption or annulment of adoption, the Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

(c) One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judges certificate showing:

- (1) The original and adoptive name and tribal affiliation of the child,
- (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents,
- (3) The names and addresses of the adoptive parents,
- (4) The identity of any agency having files or information relating to the adoptive placement,
- (5) Any affidavit of the biological parent requesting that their identity remain confidential.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 725. Foreign Decree**

When the relationship of parent and child has been created by a decree of adoption of any Court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined by section 722 of this Chapter.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

#### **Section 726. Adoption of Adults**

(a) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth herein. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]

**Section 727. Appeals**

An appeal to the Supreme Court may be taken from any final order, judgment, or decree rendered hereunder by any person aggrieved thereby in the manner provided for civil appeals.

[History: PUBLIC LAW #SF-85-61, June 21, 1985.]