

# **Absentee Shawnee of Oklahoma**

## **Juvenile Code**

### **Chapter 1**

#### **GENERAL PROVISIONS**

##### **§ 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. A District Court Judge shall be appointed to preside over Juvenile Division pursuant to the rules promulgated by the Judicial Branch.

##### **§ 102. Officers of the Court**

The Director of the Indian Child Welfare Department, child protection workers, family violence workers, and other Indian Child Welfare Services are, by virtue of this ordinance and/or Court Order, officers of the Absentee Shawnee Tribal Court.

##### **§ 103. 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 within the Absentee Shawnee Tribe's territorial jurisdiction.
  - (2) Concerning any child who is delinquent, neglected, or dependent, within the Absentee Shawnee Tribe's territorial jurisdiction.
  - (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. nor 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 or commitment of a mentally ill or developmentally disabled child who comes within the Court's jurisdiction.
- (b) The Juvenile Court has concurrent jurisdiction over the following:
- (1) Any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian Tribe.
  - (2) Any child residing off the reservation, who is a member of the Absentee Shawnee Tribe of Oklahoma, in proceedings covered by the Indian Child Welfare Act pending in state courts or other tribal courts.
- (c) The Court may issue temporary order 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/her case.
- (d) Nothing in this section shall deprive the Tribal District Court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine 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.
- (e) Where a custody award has been made in the Tribal District Court in a dissolution of marriage action or another proceeding and the Tribal District Court may take jurisdiction in a case involving the same child if he is deprived or neglected or otherwise comes within the jurisdiction set forth herein.

**§ 104. Jurisdiction Over Extended Family**

Where the Juvenile Court asserts jurisdiction over a child under this Title, the Court shall also have jurisdiction over the child's extended family whenever necessary to further the best interests of the child.

**§ 105. Continuing Jurisdiction**

The Juvenile Court may retain continuing jurisdiction over children and their extended families who, while subject to the Juvenile Court jurisdiction, leave the reservation whenever necessary to further the best interests of the child.

**§106. 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 any familial or culturally defined clan or band relationships.

**§ 107. Transfers from State Court or Other Tribal Court**

- (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 Absentee Shawnee Tribe, if the juvenile Court finds that the transfer would not be detrimental to the best interests of the child.
- (b) By this Ordinance, the Governor of the Absentee Shawnee Tribe or his designee is hereby established as the appropriate person to receive notice of Indian Child Welfare Act cases from the courts of any state or sovereign .
- (c) 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 of the Tribal Court. 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 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.
- (d) 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 had 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.

- (e) The Indian Child Welfare Department shall conduct an investigation and file a written report, including recommendations as to transfer of the proceedings, with the Tribal Prosecutor within five (5) days of receipt of notice of an Indian Child Welfare Act proceeding or a request for transfer from another tribe.
- (f) Upon transfer of jurisdiction from a state or tribal court, the tribal prosecutor shall file a petition in the tribal court to accept transfer of jurisdiction and the Indian Child Welfare Department shall arrange for transportation and placement of the child, if required.

**§ 108. Full Faith and Credit.**

Orders of state courts and other tribal courts involving children over whom the Juvenile Court could assume jurisdiction shall be recognized and given full faith and credit if:

- (a) The issuing court had jurisdiction over the parties and the subject matter;
- (b) The procedures specified in the Indian Child Welfare Act, if applicable, were properly followed; And
- (c) Due process and other rights provided by the Indian Civil Rights Act were accorded all interested parties.

**§ 109. Child Welfare Transfers to Tribal or State Court**

- (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 Prosecutor of the Absentee Shawnee Tribe, 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 interest 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 need, 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, and
  - (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 for the protection of the child until completion of physical transfer to the receiving jurisdiction.

### **§ 110. Notice of Legal Rights**

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:

- (a) The right to a jury trial upon demand where available;
- (b) The right to be represented by an attorney, at their own expense, at every phase of the proceedings;
- (c) The right, if found to be without sufficient financial means, to have an attorney appointed at no cost in cases where the Tribe is a party and the termination of the parent-child legal relationship is stated as a possible remedy in the summons. The Court may appoint an attorney without such request if it deems representation by an attorney necessary to protect the interest of the child or other parties.

### **§ 111 Absentee Shawnee Tribal Prosecutor Duties**

The Prosecutor shall represent the Tribe in the interest of 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 Prosecutor shall intervene on behalf of the Tribe in the interest of the child.

### **§ 112. Jury Trials**

- (a) A child, his parent or guardian, or any interested party may demand a trial by jury or the Court on its own motion may order such a jury to try the case in the following cases:
  - (1) In adjudicatory hearings concerning an alleged delinquent, neglected, or deprived child, or a child in need of supervision, where termination is stated as a possible disposition in the petition.
  - (2) In termination of parental rights hearings.
  - (3) In determining the parentage of a child under this Title.
- (b) Unless a jury trial is demanded, it shall be deemed to be waived.

### **§ 113. 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 Courts of the Absentee Shawnee Tribe 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 to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Title.

### **§ 114. Hearings**

- (a) Hearings shall be held before the Court without jury, except as provided in §112, and may be conducted in an informal manner, except in proceedings brought concerning an alleged delinquent. The general public shall be excluded. The Court shall admit only such persons as have an interest in the case or the work of the Court. Hearings may be continued as ordered by the Court.
- (b) A verbatim record shall be taken of all proceedings, unless waived, which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge.
- (c) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or deprived, the hearings may be consolidated; or heard separately at any stage of the proceedings, at 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 and specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of contempt of court, and upon conviction, thereof, shall be subject to a civil fine of not more than One Thousand Dollars (\$ 1,000. 00).

### **§ 115. Mileage and Witness Fees**

In proceedings pursuant to this Code, the Court may allow mileage as in civil actions to witnesses and reimbursement for expert witnesses but shall not be tendered in advance of the hearing.

### **§ 116. Penalties**

A willful violation of any provision of an order of the Court issued under the provisions of this Code shall constitute indirect contempt of court and shall be punishable as such. Punishment for any such act of contempt shall be civil or criminal in nature, at the discretion of the Court. Such punishment if civil shall not exceed a fine of Five Hundred Dollars (\$500.00). Such punishment if criminal shall not exceed a fine of Three Hundred Dollars (\$300.00), or imprisonment in the tribal jail for not more than thirty (30) days, or both such fine and imprisonment.

### **§ 117. Social Study and Other Reports**

- (a) Unless waived by the Court, the Absentee Shawnee Indian Child Welfare 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 are denied by the parents, guardians, or legal custodian, 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 unless a relative placement.
- (b) For the purpose of determining proper disposition of a child the general rules of evidence shall apply; written reports and other materials relating to the child's mental, physical, and social history may be received and considered by the Court along with evidence. The Court shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination.
- (c) The Court shall inform the child, his parents, legal guardian, or custodian of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

### **§ 118. Effect of Proceedings**

- (a) No adjudication or disposition in proceedings under §103 shall impose any civil disability on 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.

**§ 119. 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 proceedings 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 the Court.

**§ 120. Law Enforcement Records**

The records 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:

- (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;
- (e) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
- (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.

### **§ 121. Indian Child Welfare -Records**

The records of the Children and Family Services Administration concerning all children's, cases under the provisions of the Title shall not be inspected or disclosed to the public, including the names of children taken into temporary custody or issued a , except;

- (a) To the victim in each case when the child is 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;
- (e) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
- (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.

### **§ 122. Identity Confidential**

No fingerprint, photograph, name, address, or other info information concerning identity of a child taken into custody or issued a summons under the provisions of this article maybe transmitted to the Federal Bureau of Investigation or any other person or agency except a tribal 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.

### **§ 123. Search Warrants or Pick-up Orders for the Protection of Children**

- (a) A search warrant or pick-up order may be issued by the Juvenile Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or deprived child.
- (b) Such a warrant or order shall be issued only on the conditions that the application for the warrant shall:
  - (1) Be 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 deprived 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.

#### **§ 124. Issuance of Search Warrants or Pick-up Orders**

- (a) If the Court is satisfied that grounds for the application exist or that there is probable 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 or pick-up order 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 or pick-up order shall state the ground:, or probable cause for its issuance.
- (d) The warrant or pick-up order 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 or pick-up order 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 is 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 §§ 210 (c)(d).
- (g) The warrant or pick-up order 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, and the place where the child was delivered by him. A copy shall be delivered to the Tribal Prosecutor. If the child was not found, such information should be subscribed on the warrant.

#### **§ 125. Expiration of Search Warrants/Pick-up Orders**

A search warrant/pick-up order 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.

#### **§ 126. 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 s I 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.

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## Chapter 2

### Children

#### **§201. Definitions**

- (a) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition (pursuant to the provisions of this Chapter or Chapter 5 of this Code)alleging a child to be neglected, deprived, in-need-of-supervision, or delinquent filed pursuant to this Code are supported by the evidence;
- (b) "Aunt" means a person who; by blood or marriage, is:
  - (1) A female sibling of a biological parent, or
  - (2) A female cousin of a biological parent, 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 tie laws written or commonly held by virtue of culture, of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection;
- (c) "Best Interest of a Child" means all relevant factors including, but not limited to, the following:
  - (1) Preference of the child's parents as to his custody;
  - (2) Preference of the child as to his custody;
  - (3) The interaction and interrelationship of the child with his parents, siblings, and any other persons who may significantly affect a child's best interest;
  - (4) The child's adjustment to his home, school and community; and
  - (5) The mental and physical health of all individuals involved;
- (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 or customs 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 the age of eighteen except any person who has been certified as an adult pursuant to §548 of this Code, or a person who has been emancipated;
  - (g) "Child care center" means an institution or facility designed for the care of children licensed or approved pursuant to Tribal ordinance, of Program policy, 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 mental health treatment" means a child in need of mental health treatment as defined by Oklahoma's Inpatient Mental Health Treatment of Children Act, 43A O.S. §5-501 et seq.;
  - (i) "Child with a disability" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who regarded as having such an impairment by a competent medical professional;
  - (j) "Cousin" means the child of an aunt or uncle;
  - (k) "Custody" means guardianship of the person;
  - (1) "Day treatment" means a nonresidential program which provides intensive services to children who reside in their own home, the home of a relative, group home, a foster home or residential child care facility. Day treatment programs include but are not limited to, educational services;
  - (m) "Deprivation of custody" means the transfer of physical custody by the Court from a parent or a legal custodian to another person, agency, or institution;
  - (n) "Deprived child" means a child:
    - (1) who is for any reason destitute, homeless, or Abandoned, if abandoned when the parent, guardian, or custodian has abandoned the child without apparent intent to return, or who has placed him/her informally and without benefit of tribal custom with any other person, and/or has not contributed to the support of the child or maintained personal contact with the child for a period in excess of 12 months

- (2) who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, abuse, cruelty, or depravity on the part of the child's parents, legal guardian, or other person responsible for the child's health or welfare or whose parent, guardian, or custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such maltreatment or abuse and prevent it from recurring,
- (3) who is a child in need of special care and treatment because of his physical or mental condition including, but not limited to, a child born in a condition of dependence on a controlled dangerous substance, and his parents, legal guardian, or other custodian is unable or willfully fails to provide said special care and treatment,
- (4) who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated children without a disability or children with disabilities whether because of the fault of the parent, guardian, or custodian, or because the parent, guardian, or custodian does not have the ability to provide for the child; provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child,
- (5) who is, due to improper parental care and guardianship, excessively absent from school, if said child is subject to compulsory school attendance,
- (6) whose parent or legal custodian for good cause desires to be relieved of custody.

However, no child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of this Code;

- (o) "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the Court to 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;
- (p) "Emancipation" means a procedure by which a child who is over sixteen (16) years of age and who has, with the real or apparent assent of his parents, demonstrated his independence from his parents in matters of care, custody and earnings may petition the Court for recognition of such status. The term may include, but shall not be limited to, any child who has sole responsibility for his own support, who is married, or who is in the military;

- (q) "Emergency custody: means court-ordered custody of a child prior to adjudication of the child;
- (r) "Foster care" or "foster care services" means continuous twenty-four hour care and supportive services provided for a child in foster placement, while the child needs foster care;
- (s) "Foster child" means a child placed in foster placement;
- (t) "Foster family" means all persons living in a foster family home, other than a foster child;
- (u) "Foster family home" means the private residence of a family which provides foster care services to a child. Such term shall include it foster family home, a therapeutic foster family home, or the home of a relative;
- (v) "Foster parent" means any individual maintaining a foster family home who is responsible for the care of a foster child;
- (w) "Foster placement" means a child placing agency or foster family home providing foster care services;
- (x) "Group care facilities" means places other than foster family care homes or child care centers providing care for groups of children;
- (y) "Grandparent" means:
  - (1) A biological grandparent, or
  - (2) The brothers and sisters of a biological grandparent, and their spouses, or
  - (3) Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws or customs of any Indian Tribe or state, would come within the terms of subparagraphs (1) or (2) of this subsection;
- (z) "Guardian" means a person other than the child's parent who is by law responsible for that child;
- (aa) "Investigation" means a mandatory preadjudicatory process by the Indian Child Welfare Department to determine the safety of a child and to make a recommendation to the Tribal Prosecutor as to whether a petition should be filed alleging a child to be a deprived child or whether other nonadjudicatory alternatives are available;
- (bb) "Indian Child Welfare" or "Indian Child Welfare Department" means the Indian Child Welfare program of the Absentee Shawnee Tribe;

- (cc) "Juvenile Court" or "Court" means the Juvenile Division of the Absentee Shawnee Tribal Court System, or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or as state Juvenile Courts is appropriate from the context;
- (dd) "Least Restrictive Alternative" means restrictions placed on the child which are reasonably related to the court's objectives and are the least drastic methods available to achieve those objectives;
- (ee) "Mental health facility" means a mental health facility as defined by the Oklahoma's Inpatient Mental Health Treatment of Children Act, 43A O.S. §5-501 et seq.;
- (ff) "Neglected child" or "dependent child" means a deprived child;
- (gg) "Nephew" means the male child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, adoption, or custom;
- (hh) "Niece" means the female child of a brother, sister, brother-in-law, or sister-in-law, by blood, marriage, adoption, or custom;
- (ii) "Out-of-home placement" means a placement, other than a placement in the home of the parent or guardian from whose custody the Court has removed the child, until the child is reunified with the child's parents;
- (jj) "Parent" means either a natural parent or a parent by adoption, custom, common law or tradition. 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 or was established prior to the child's birth;
- (kk) "Permanent custody" means Court-ordered custody of an adjudicated deprived child whose parental rights have been terminated;
- (ll) "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility, or day treatment program; or an owner, operator, or employee of a child care facility;
- (mm) "Placement agency" means an agency designed the care of children or placement of children licensed or approved pursuant to Tribal ordinance, or, if outside the Absentee Shawnee Tribe's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both;
- (nn) "Preliminary inquiry" means an assessment and, Determination as to whether there is sufficient information to proceed with an investigation of abuse or neglect of a child or

an investigation of failure to protect by the person responsible for the child when there are allegations of abuse or neglect;

- (oo) "Protective custody" means custody of a child taken pursuant to §206 et seq. of this Code;
- (pp) "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 Absentee Shawnee Tribal Indian Child Welfare during the period during which treatment is being provided to the family by the Absentee Shawnee Tribal Indian Child Welfare or other agencies designated by the Court;
- (qq) "Relative" means a grandparent, great grandparent, brother, sister, aunt, uncle, nephew, niece, cousin, or any other person related to the child within the fourth degree of consanguinity;
- (rr) "Residential child care center" means a twenty-four hour a day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents;
- (ss) "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, and the right to reasonable visitation with the child unless restricted by the Court;
- (tt) "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;
- (uu) "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child;
- (vv) "Sister" means:
  - (1) Any female sibling, or
  - (2) Any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws or customs of any Indian Tribe or state, would hold the relationship of a sibling with the person in question;
- (ww) "Sister-in-law" means the wife of a brother by blood or marriage;
- (xx) "Temporary custody" means Court-ordered custody of an adjudicated deprived child;

- (yy) "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 whose rights have been terminated and the child's right to receive financial support from the parent whose rights have been terminated;
- (zz) "Traditional custodian" means those relatives of the child other than the parents, who, by force of the traditions, customs, and common law of the Absentee Shawnee Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing for his/her support or may act in loco parentis by virtue of custom and tradition; .
- (aaa) "Transfer proceeding" means any proceeding in tie Absentee Shawnee Tribal Court System 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;
- (bbb) "Treatment and service plan" means a written document which includes at least the following:
- A plan
- (1) for assuring that the child receives proper care;
  - (2) for assuring that services are provided to the parents, child and placement providers;
  - (3) to improve the conditions in the parents' home;
  - (4) to facilitate return of the child to the child's own home or to an alternate permanent placement;
  - (5) to address the needs of the child while in out-of-home care; and
  - (6) that discusses the appropriateness of the services for the child under the Plan;
- (ccc) "Tribal Court" means the District Court of the Absentee Shawnee Tribe; and
- (ddd) "Uncle" means a person who; by blood or marriage, is:
- (1) A male sibling of a biological parent, or
  - (2) A male cousin of a biological parent, or
  - (3) A male child of a grandparent, or

- (4) Any other male person, who by virtue of in adoption, either of themselves or of a member of their family pursuant to he laws written or commonly held by virtue of culture, of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection;

### **§202. Evidence of Child Abuse or Neglect in Matrimonial or Child Custody Actions**

- (a) If the evidence in an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child or for the appointment of a guardian of the person of a child, for habeas corpus in subsequent proceedings in such actions, indicates that a child is deprived, the Court shall notify the Indian Child Welfare Department that the child may be a victim of abuse or neglect. The Indian Child Welfare Department shall conduct a preliminary inquiry or investigation concerning such report. The Indian Child Welfare Department shall submit all findings regarding the preliminary inquiry to the Tribal Prosecutor and send a copy of its findings to the Court within thirty (30) days of such notice and notify parties to the proceeding of the submission of the report to the Court. The Tribal Prosecutor shall advise the Court within three (3) days of the receipt of said findings whether a. deprived petition will be filed. If no deprived petition is filed, the Court may take appropriate action regarding the custody of the child or children or appointment of a guardian for the child or children.
- (b) Nothing in this section shall preclude the Court from entering an order to have the child or children taken into protective custody if evidence presented to the Court indicates a child is in surroundings that are such as to endanger the welfare of the child. If a child is taken into protective custody by such an order, the provisions of §206 applies.

### **§203. Intake**

- (a) Each allegation of child abuse/neglect, delinquency, in need of supervision, in need of treatment within the Court's jurisdiction shall be investigated by the Indian Child Welfare Department and/or the Tribal Police.
- (b) An intake refers to the initial process of gathering information which may be pertinent to provide services or proceed with an investigation.
- (c) All intakes shall have a written record.
- (d) If the Child Welfare officer determines that the interests of the child of the community require that court action be taken, she shall request in writing that the Tribal Prosecutor file a petition and deliver a copy of the entire case file to the Tribal Prosecutor.
- (e) If the Child Welfare officer determines that the interests of the child or of the Tribe do not require court action, Indian Child W fare may offer such services and make such referrals to other agencies as may be feasible to help the family with any defined problems.

**§204. Tribal Prosecutor Intake/Duties**

- (a) The Tribal Prosecutor may become involved in a case at any point in any proceeding.
- (b) No case shall be entered into in which insufficient evidence exists in order to prosecute unless there is imminent danger to the child, family, or community.
- (c) Petitions and any information in any case shall be presented to the Tribal Prosecutor upon request at any reasonable hour.

**§205. Responsibility for Deprived Children**

It shall be the responsibility of the Indian Child Welfare Department to provide care for deprived children who are committed to the care of the Indian Child Welfare Department for custody or guardianship.

**§206. Children Taken Into Custody Prior to Filing of Petition--Protective Custody**

- (a) A child may be taken into protective custody prior to the filing of a petition:
  - (1) By a peace officer or officer of the Court. without a court order if the child's surroundings are such as to endanger the welfare of the child;
  - (2) By an order of the Court issued upon the application of the Tribal Prosecutor. The application presented by the Tribal prosecutor may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to Demonstrate to the Court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal, if verbal, a written application shall be submitted to the Court no later than the close of the next day that the Court is open for business; and
  - (3) By order of the Court when the child is in need of medical treatment or mental health treatment in order to protect the child's health or welfare and the child's parent, legal guardian, custodian, or other person responsible for the child's health or welfare is unwilling or unavailable to consent to such medical or mental health treatment or other her action pursuant to this Code.
- (c) Whenever a child is taken into protective custody:
  - (1) Such child may be taken to a children's shelter;
  - (2) Such child may be taken before the Judge of the Court for the purpose of obtaining an order for protective custody. The child may be placed in the custody of the Indian Child Welfare Department, if ordered by the Court, for placement in

a relative's home or in foster care if such placement is determined by the Indian Child Welfare Department to meet the needs of the child;

- (3) Such child may be taken directly to or retained in a health care facility for medical treatment, when it reasonably appears to the peace officer or officer of the court that the child is in need of immediate medical treatment to preserve the child's health, or as otherwise directed by the Court
  - (4) Such child may be taken directly to or retained in a mental health facility for mental health care, or inpatient mental health evaluation or inpatient mental health treatment, when it reasonably appears to the peace officer or officer of the court that the child is in need of emergency mental health care to preserve the child's health, or as otherwise directed by the Court; and
  - (5) The Court shall be immediately notified verbally or in writing, that the child has been taken into protective custody. If notification is verbal, written notification shall be sent to the Court no later than the close of the next day that the Court is open for business.
- (d) No child taken into protective custody pursuant to this section shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious, or dissolute persons.

#### **§207. Emergency Medical Treatment or Mental Health Care**

- (a) If the child who is taken into protective custody due to the need of immediate emergency medical treatment or mental health care to protect the child's health or welfare, the Court may issue an emergency ex parte order upon the application of the Tribal Prosecutor. The application for an emergency ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the Court that there is reasonable cause to believe that the child is in need of emergency treatment or care to protect the child's health or welfare.
- (b) The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any emergency ex parte order issued by the Court shall be served upon such parent, guardian, or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application, the Court shall hold a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

#### **§208. Immunity From Liability**

No peace officer, officer of the Court, or person acting pursuant to Court order authorizing medical treatment or mental health evaluation or treatment in accordance with the provisions of

this part for any child found in need of such medical treatment or mental health evaluation or treatment shall have any liability, civil or criminal, for such authorization.

**§209. Deferred Prosecution Agreements/Contracts**

- (a) Prior to the filing of a Petition, either the Court, or the Tribal Prosecutor with the consent of the Indian Child Welfare Department may divert any children's case, except a case alleging physical or sexual abuse, 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 Indian Child Welfare Department and the Tribal Prosecutor agree 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 complete successfully and the duration.
  - (3) The specific tasks 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 other agencies 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 each of 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 of the Juvenile Court.

**§210. Deferred Prosecution Agreements/Contracts Admissible**

The diversion contract and any statements or admission of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The parents, guardian, or

custodian may choose to prove the contract and show their compliance 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.

**§ 211. Petition Form**

A petition in a deprived child proceeding maybe filed by the Tribal Prosecutor to determine if further action is necessary. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially this following form:

DISTRICT (SUPREME) COURT THE  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
JUVENILE DIVISION

In the Interest of: \_\_\_\_\_ )  
\_\_\_\_\_ ) Case No.  
An Alleged \_\_\_\_\_ )

**§ 212. Petition contents**

The petition shall be verified and may be upon information and belief. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction; the name, age, and residence of the child and the names and residences of his parents, guardian, or other custodian or of his nearest relative if no parent, guardian, or other custodian is known; the relief requested and an endorsement of witnesses intended to be called by the petitioner; if any facts required are not known by the petitioner, the petitioner shall so state, along with the reasons why said facts are not known to petitioner. Any action pertaining to the possible termination of the legal relationship between parent(s) and child(ren) must contain a motion for such action based on continued disregard for the reasonable orders of the Courts of the Absentee Shawnee Tribe. The petition shall be signed by the Tribal Prosecutor or designee. A copy of the petition shall be attached to and delivered with the summons.

**§213. Filing Petition When Child in Protective Custody - Time**

- (a) If a child has been taken into protective custody (pursuant to the provisions of this Code, before a petition for a deprived child proceeding has been filed, the petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody. Except as otherwise provided by this section, if such petition is not filed and a summons issued thereon as required by this subsection, custody of the child shall be released to the child's parent, legal guardian, custodian, or another responsible adult.
- (b) If the child has been taken into custody and upon allegations of cruelty on the part of the child's parents, legal guardian, or custodian, the five-day limitation provided for in subsection (a) of this section shall not cause the child to be released to such person. In these cases a petition shall be filed within thirty (30) days of the child being taken into custody.

**§214. Amendment of Petition**

No pleading subsequent to the petition for a deprived child proceeding is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing. A petition may be amended by order of the Court at any time before an order of adjudication has been made, provided that the Court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to be amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the Court shall not amend the adjudicatory category prayed for in the petition.

**§ 215. Summons - Form**

- (a) Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE DISTRICT COURT OF  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
JUVENILE DIVISION  
SUMMONS

THE ABSENTEE SHAWNEE TRIBE to:

, Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the District Court of the Absentee Shawnee Tribe alleging that the above named is a deprived child and that as the (parent) (guardian) (custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition

YOU ARE THEREFORE ORDERED TO APPEAR at Courtroom of the District Court of the Absentee Shawnee Tribe, (Address of the Court), on the. \_\_\_ day of \_\_\_, \_\_\_ at the hour of \_\_\_ o'clock \_\_.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition, and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in physical custody or subject to your control, to bring, the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD(REN) AS DEPRIVED CHILD(REN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD(REN) OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD(REN).

---

Court Clerk

(Seal)

(Return as in other civil cases)

- (b) The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years of age, a copy shall be served on the child. If the person who has actual custody (of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both, as hereinafter provided. A copy of the summons shall be served on a custodial parent, guardian, or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the Court shall designate. Summons may be issued requiring the appearance of any other person whose presence is necessary.
- (c) Service of summons shall be made as provided for in civil actions or service maybe made by certified mail to such person's last known address, requesting a return receipt from the addressee only. If the address of the person to be summoned is not known, or if the mailed summons is returned, the Court may order that notice of the hearing be published once in a newspaper of get feral circulation in the jurisdiction, and a copy of the

summons shall be mailed by regular first-class mail to the last- known address of the parent.

- (d) The Court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian.
- (e) If notice is published, the Court shall not hold the hearing until at least ten (10) days after the date of publication.
- (f) If one or more persons must be served by publication, the Court may delay the date of hearing, with reasonable notice to the other persons who have been served or are properly and legally notified, to any date that the Court determines to be reasonable and may proceed with the action.
- (g) An order determining that a child is deprived shall not become final until thirty (30) days after the date of the publication of the notice.

**§ 216. 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.

**§217. 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.

**§218. Court Diversion by Stipulation**

- (a) After filing a petition, Indian Child Welfare and the Tribal Prosecutor may divert any children's case, except a case alleging physical or sexual abuse from the adjudicatory process with the consent of the respondents and the Court by stipulation to the validity of the allegations in the petition if:
  - (1) The Court has informed the child and his parents, guardian, or 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 witnesses against them and to call witnesses on their own behalf;

- (iii) a trial by a jury of six persons at the adjudicatory stage where a jury trial is available;
- (iv) 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.

*(There was no roman numeral v in the source document)*

### **§219. Limitation on Diversions**

There shall be no diversion where the respondents referred to the Court by any person has had any sustained petition for deprived child in the preceding sixty (60) months.

### **§220. 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 immediate into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other custodian of the child, or a Pick Up Order 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.

### **§221. 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 this Chapter when:
  - (1) No parent, guardian, 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 parent, guardian, or other custodian; or
  - (3) The Court finds that it is in the child's interest, and welfare, and necessary, whether or not a parent, guardian, or other custodian is present.

- (b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to this Code 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, the conservator 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 there is no guardian of the 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 non-accidental injury, a guardian ad litem may be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.
- (e) All guardians ad litem shall, whenever, practical, be required to personally visit the place of residence of the child.

### **§222. Adjudicatory Hearing**

- (a) At the adjudicatory hearing, which shall be conducted as provided in the rules of civil procedure, the Court shall consider whether the allegations of the petition are supported by a preponderance of the evidence; 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 hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence.
- (c) In such event, the Court, on the motion of party to the case 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.

### **§223. 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 (30) days; in the custody and control of the Indian Child Welfare Department.

- (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, during, 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, due to completion of 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 is 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 a person 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 the person lacks sufficient control, judgment, and discretion to manage property or affairs or who, by reason of this deficiency and for the persons own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care.

**§224. Admissibility of prerecorded statements of a child age 12 or under who is victim of abuse**

- (a) This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply or apply to the statement of that child or other child witness.

- (b) The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:
- (1) The Court determines that the time, content, and circumstances of the statement provide sufficient indicia of reliability; no corroboration of the child's statement is necessary for admission;
  - (2) No attorney for any party is present when the statement is made;
  - (3) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
  - (4) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
  - (5) The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question(s);
  - (6) Every voice on the recording is identified ;
  - (7) The person conducting the interview of the child in the recording is present at the proceeding and is available to testify; or be cross-examined by any party; and
  - (8) Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

**§225. Taking testimony of child age 12 or under in room other than courtroom-Recording**

- (a) This section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, and shall apply only to the statement of that child or other child witness.
- (b) The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court, the finder of fact and the parties to the proceeding. Only an attorney for each party, the guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the equipment may be present in the room with the child during his testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them.

- (c) The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court, the finder of fact and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (b) of this section may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the persons operating the equipment shall be confined from the child's sight and hearing. The Court shall ensure that:
- (1) The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
  - (2) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;
  - (3) Every voice on the recording is identified; and
  - (4) Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.
- (d) If the testimony of a child is taken as provided by subsections (b) or (c) of this section, the child shall not be compelled to testify in Court during the proceeding.

### **§226. Court Diversion**

At any time during the adjudicatory process, but prior to the entry of order sustaining the petition as provided in §228 of this Code, a Court Diversion by virtue of Stipulation may be entered as provided in §218 of this Code.

### **§227. Dismissal of Petition**

When the Court finds that the allegations of the petition are not supported by a preponderance of the evidence, the Court shall order the petition dismissed and the legal custody of the child shall be returned to his parents, guardian, or other custodian, further they shall also be discharged from any restriction previously ordered.

### **§228. Sustaining Petition**

When the Court finds that the allegations of the petition are supported by a preponderance of the evidence, the Court shall sustain the petition and make an order of adjudication setting forth the child to be a deprived child and making the child a ward of the Court. In cases concerning a deprived child, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is deprived and such evidence shall be sufficient to support an adjudication under this Section.

### **§229. 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 or may choose of its own volition to hold a dispositional hearing at any reasonable time.

### **§230. New Hearing Authorized**

- (a) A parent, guardian, custodian, or next friend of any child adjudicated under this Code, or any person affected by an order 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 order, 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 of the facts and circumstances and the best interest of the child.

### **§231. 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.

### **§232. Social Studies and Reports**

- (a) The Court may order any agency within its jurisdiction and/or request any other agency to prepare and submit to the Court at any point in the proceedings 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) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at the earliest opportunity.

### **§233. Case Plan/Service Plan**

- (a) In every case the Court shall order Indian Child Welfare to prepare a detailed case plan for the treatment and disposition of the problems identified in the adjudication.
- (b) The case plan shall contain:
  - (1) A brief social and family history.

- (2) A brief statement of the causes of the Court exercising its jurisdiction.
  - (3) The specific treatment programs the family is required to complete, their duration, and what is expected to be accomplished.
  - (4) The specific actions the parents, guardian, other 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 other agencies 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 returned to its home under supervision and when court supervision should cease.
  - (7) The goal(s) of the plan, whether that be reunification, independent living, adoption, etc.
- (c) The case plan shall be filed with the Court and a copy delivered to the parties or their attorney at the earliest opportunity.
- (1) The case plan must contain reasonable goals that can be accomplished. Innovative plans shall be utilized in order to gain a higher prospective degree of success.

#### **§234. 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.

#### **§235. 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.

#### **§236. Hearing Informal**

The dispositional hearing shall be informal and the 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.

#### **§237. Continuance**

- (a) The Court may continue a 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 may continue the hearing for good cause the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible consequence.
- (b) If the hearing is continued, the Court shall make an appropriate order for detention of the child for release in the custody of 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.

**§238. Order of Protection/Protective Orders**

- (a) The Court may make an order of protection in assistance o 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 a party to the proceedings.
- (b) The order of protection may require any such person:
  - (1) To stay away from a child or particular residential area;
  - (2) To permit a parent to visit a child only at stated periods or in supervised conditions;
  - (3) To abstain from offensive conduct ,against a child, parent, or parents, guardian, or any other person to whom 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 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.

**§239. 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/alternative 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 preference for placement, in the following order, shall be given to:
    - (i) Natural, adoptive or step-parents;
    - (ii) A member of the child's extended family; a child's extended family is defined to mean any familial or culturally defined clan or band relationships within the Absentee, Shawnee Tribe or another Tribe.
    - (iii) A member of the Absentee Shawnee Tribe;
    - (iv) A member of an Indian Tribe;
    - (v) A home licensed by the Absentee Shawnee Shawnee Tribe's Indian Child Welfare Department;
    - (vi) A home licensed by another Indian Tribe;
    - (vii) An Indian home licensed by a State;
    - (viii) A public or private institution for children approved by the Absentee Shawnee Tribe's Indian Child Welfare: Department or operated by an

Indian organization which has programs suitable to meet the needs of an Absentee Shawnee child.

- (b) Where appropriate the Court may consider the preference of the parents and the proximity of the prospective foster/alternative care 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 in the custody of the Indian Child Welfare for further 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.
- (e) State courts shall follow the placement preference rules outlined herein.

#### **§240 Movement of Child in Custody of the Indian Child Welfare Department**

- (a) The Indian Child Welfare Department shall notify the Court, the Tribal Prosecutor, and the Guardian Ad Litem whenever a child in the custody of the Indian Child Welfare Department is moved from one location to another. Foster parents shall be notified by the Indian Child Welfare Department prior to movement of the child pursuant to the provisions of Chapter 4 of this Code.
- (b) The Indian Child Welfare Department shall inform the Court and attorney regarding the location of the child unless the movement was due to an emergency situation, in which case the notification required under this paragraph shall be within one (1) business day after such movement. As used in this subsection "emergency situation" means a movement of the child requested by a person having actual physical custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or if movement is for emergency medical treatment.
- (c) The Indian Child Welfare Department shall not move any deprived child from one placement to another if the child has already been moved once since the last court hearing without first obtaining the approval of the Court following a hearing into the reasons and necessity for moving the child. However, the Indian Child Welfare Department may move the child due to an emergency, in which case a hearing shall be conducted concerning the reasons and necessity for moving the child, if requested in writing, within ten (10) days following the moving of the child. Court approval shall not be required for movement to or from a children's shelter due to an emergency, including a placement failure, a placement disruption, or similar cause.

#### **§241. Unmanageable and Uncontrollable Children**

If a child who has been adjudicated as a deprived child, and who has been placed in the custody of the Indian Child Welfare Department becomes unmanageable and uncontrollable while in the legal custody of the Indian Child Welfare Department, the Department may return the child to the Court for further disposition or may provide information to the Tribal Prosecutor and request the filing of a petition alleging the child to be delinquent, in need of supervision, or in need of mental health treatment, if such petition is warranted by the facts in the case.

#### **§242. Disposition**

When a child has been adjudicated to be deprived, the Court shall enter a dispositional order, which shall include one or more of the following provisions the Court finds appropriate:

- (a) 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.
- (b) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, such conditions as the Court may impose, in accordance with §239 of this Code.
- (c) The Court may place legal custody in the Indian Child Welfare Department for placement in a family care home, or other child care facility in accordance with §239 of this Code.
- (d) 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.

#### **§243. Review of Disposition Order**

Every disposition order regarding a child adjudicated to be deprived shall be reviewed by the Court at least every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of the parent or parents are terminated and a final adoption decreed.

#### **§244. Review Hearing Reports**

- (a) The Indian Child Welfare Department shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.
- (b) Said report shall include but not limited to:
  - (1) A summary of the physical, mental, and emotional condition of the child, the conditions existing in the out-of-home Placement where the child has been placed, and the child's adjustment thereto;

- (2) A report on the child's progress in school and, if the child has been placed outside the child's home, the visitation exercised by the parents of the child or other persons authorized by the Court;
- (3) Services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other placement to independent living; and
- (4) Any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived. Specific recommendations, giving reasons therefor, whether:
  - (i) the parental rights of the parent or parents of the child should be terminated and the child placed for adoption,
  - (ii) the child should remain in the home or be placed outside of the home of the child's lawful parents, or
  - (iii) the child should remain outside the home or be returned to the home from which the child was removed.
- (c) The Guardian Ad Litem representing a child may submit a report to the Court for presentation at the review hearing to assist the court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.
- (d) All reports shall be filed in the Court no later than five (5) days prior to the review. Further, the reports are to be to the Tribal Prosecutor, Guardian Ad Litem, and other parties or attorneys involved no later than five (5) days prior to the review. All incidents and information involving the five days, prior to the review may be given in an addendum to the report in writing or orally, at the review hearing.

**§245. Motion for Termination of Parental Rights**

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 deprived or neglected. Such motion shall be filed at least thirty (30) days before such hearing, and shall be signed by the Tribal Prosecutor or designee.

**§246. 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.

- (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.

**§247. Notice of Hearing to Terminate Parental Rights**

- (a) A parent shall be given actual notice of any hearing to terminate such parent's parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least ten (10) days after the receipt of notice, except with the consent of the parent, if known.
- (b) If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last-known address of the parent. The notice shall be published once in a newspaper of general circulation in the jurisdiction and the hearings I not be held for at least ten(10) days after the date of publication of the notice, Except as otherwise provided by subsection (c), of this section, if a parent has not received actual notice of the hearing at which he is deprived of his, parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this section shall prevent the Court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.
- (c) For the purpose of terminating the parental rights , a father or putative father of a child born out of wedlock who has not, prior to commencement of a proceeding to terminate parental rights to such child, exercised parental rights and duties shall not be deemed to have parental rights to such child. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to this section, except that the Court may:
  - (1) Waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock and the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry in to the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law.
  - (2) When the identity of the father or putative father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown, order that notice be given by publication as provided in subsection (b) of this section and a copy mailed to the last-known address, if known, of such father or putative father.

When notice is given by publication the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.

**§248. Termination of Parental Rights by Abandonment**

Before a termination of the parent-child legal relation 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 (10) days prior to the hearing.

**§249. Criteria for Termination**

- (a) The Court may order a termination of the parent-child legal relationship upon the finding of any of the following:
  - (1) That the child has been abandoned by his parent or parents;
  - (2) That the child has been adjudicated as deprived 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 been ignored;
    - (ii) That the parent is unfit;
    - (iii) That the conduct or condition of the parent or parents is not likely to change over time;
    - (iv) That it is in the child's best interest.
  - (3) A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other Court order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity; or
  - (4) A conviction in a criminal action in any, jurisdiction as to physical or sexual abuse of a child or a finding in a deprived child action either of the following has occurred:
    - (i) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse;
    - (ii) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or sibling of such child from physical or

sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse;

- (5) A conviction in a criminal action that the parent has caused the death of a sibling of the child as a result of physical or sexual abuse or chronic neglect of such sibling;
- (b) In determining unfitness, conduct, or condition, 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, he 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 over 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 he child;
  - (6) Neglect of the child;
  - (7) Long-term confinement of the parent;
  - (8) Injury or death of a sibling due to proven abuse or neglect by parental figures;
  - (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.

**§250. Criteria for Order Terminating Parental Rights**

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

**§251. Review of Child's Disposition Following termination of the Parent-Child Legal Relationship**

- (a) The Court, at the conclusion of a hearing which h it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety (90) days following the date of termination. At such hearing, the Indian Child Welfare Department, 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 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 alternative placement of the child.

**§252. 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 as expeditiously as possible prior to the hearing.

**§253. Effect of Order**

- (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.

**§254. Adoption Action Not to be Combined with Termination. of Parental Rights**

- (a) Except as otherwise provided for in subsection (I ) of this Section, an action to adopt a child shall not be combined with an action to terminate parental rights and when the

rights of a parent have been terminated, neither an interlocutory nor a final decree of adoption may be rendered until the decree terminating parental rights has become final.

- (b) This section shall not apply to:
  - (1) A proceeding to adopt a child without the consent of a parent when the Court has determined that consent is not legally required; or
  - (2) A proceeding to adopt a child born-out of wedlock when the mother of the child is granting consent to the adoption, is a party to the action and there has been no judicial or administrative determination of the paternity.

**§255. Confidential nature of proceedings and record**

Unless the Court shall otherwise order, all hearings held in proceedings under this chapter shall be confidential and shall be held in closed court without admission of any person other than interested parties and witnesses. Further, all papers, records or files pertaining to proceedings under this chapter, kept by the Court or by the Indian Child Welfare Department shall be confidential and withheld from inspection except upon order of the Court for good cause shown. Upon application and for good cause being shown, the Court, by written order, reciting its findings, permit the necessary information to be released, or may restrict the purposes for which it shall be used. Any person in charge of such records or having access to such records or information who discloses any information, including, but not limited to, all records and reports relevant to the case and any records and reports, contrary to the provisions of this Chapter, may be charged criminally with a misdemeanor or be held civilly liable.

**§256. Modification of Decrees or Orders**

Any decree or order made pursuant to this Chapter may be modified by the Court at any time; provided, however, that an order terminating parental rights shall not be modified.

**§257. Traditional Custodian's and Grandparent 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 parties to the case shall be given notice and an opportunity to be heard.

**§258. 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 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 custodian's means after a hearing, whether the child has been placed in his own home or elsewhere.
- (c) When Indian Child Welfare is paying for alternative/foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispensed by court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances.

**§259. Voluntary Foster/Alternative Care-Authorized**

In order to provide better treatment for a family's problems and to better protect children, the Department is authorized to accept a child for foster/alternative care when:

- (a) The parent, guardian, or other physical or legal custodian has consented to such alternative care in writing before the Director of the Indian Child Welfare Department or her designee and 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 an appropriate tribal language which was understood.
- (b) A consent to alternative 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.
- (c) The Court may enter an order terminating the parent-child legal relationship of one or both parents when all reasonable efforts to treat the family have proven ineffective.
- (d) Upon the entry of an order 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 Indian Child Welfare Department or a child placement agency with the legal custody and guardians of the person of a child for the purposes of placing the child for adoption according to the placement preferences in §239 of this document; or
  - (2) Make any other disposition provided in subsection (a) of this Section that the Court finds appropriate.

- (e) Upon the entry of an order 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.
- (f) 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 twelve (12) months and during this period have not manifested to the child or the person having physical custody 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 (90) days and that reasonable efforts to identify and locate the parents have failed.
- (g) In placing the legal custody or guardianship of the person of a child with an individual or Indian Child Welfare for further placement, 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.

### **§260 Emancipation**

A child sixteen(16)years or older, but less than eighteen (18)years of age may petition the Court to be considered an emancipated minor. Determination of whether such status shall be given to the minor is to be made by the Juvenile Court. The decision shall be made by a clear and convincing standard. Evidence for the determination of emancipated status shall include, but is not limited to:

- (a) the real or apparent assent of his/her parent(s);
- (b) demonstration of his/her independence from s/her parents in matters of care, custody and earnings through employment or other means provides for his/her own food, shelter and other cost-of-living expenses;
- (c) proof he/she has sole responsibility for his/her own support;
- (d) proof he/she is married;

- (e) proof he/she is in the military; or
  - (f) any other evidence the Court finds relevant to make an emancipation determination.
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## **Chapter 3**

### **Child Abuse Reporting & Prevention**

#### **§301. Legislative Purpose**

The Absentee Shawnee Tribal Business Committee 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.

#### **§302. 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 kind, subdural hematoma, soft-tissue swelling, or death, and such 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, molestation, sexual exploitation or lewd conduct;

- (3) Any case in which the child's parents, guardian , or custodian fails 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" means any person under the age of eighteen (18) years, except any person convicted of a crime specified in the law of any State or federal law or any person who has been certified as an adult pursuant to §548 of this Code or under any state or federal law or charged with a felony and convicted;
- (c) "Child protection team" means a multi-disciplinary team consisting, where possible, of a physician, the Child Protection Worker, Indian Child Welfare, Family Services Director, Child Care Coordinator, 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 Social Services Department, a representative of the State Department of Human Services, an attorney, and a representative of the local school district. 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 guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be comprised of fewer than three (3) persons. The role of the child protection team shall be advisory and recommendatory;
- (d) "Confirmed report" means a report which is determined by an Indian Child Welfare worker, based upon some credible evidence, to constitute child abuse or neglect;
- (e) "Law enforcement" means the Absentee Shawnee Tribal Police Department;
- (f) "Person responsible for the child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program; or an owner, operator, or employee of a child care facility;
- (g) "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals by a person responsible for the child's, health or welfare;

- (h) "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, by a person responsible for the child's health or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming or depicting of a child in those acts by a person responsible for the child's health or ,welfare.

**§303. Persons Required to Report Child Abuse or Neglect**

- (a) Any person specified in subsection (b) or (c) of this.s section who has reasonable cause to know or suspect that a child has been subjected to physical or sexual abuse, sexual exploitation or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect or who has knowledge of the birth of a child dependent on a controlled substance shall immediately report or cause a report to be made of such fact to the Indian Child Welfare Department or the Tribal Police. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Indian Child Welfare Department.
- (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, residents and interns;
  - (2) Child health associate or community health representative;
  - (3) Medical examiner or coroner;
  - (4) Dentist or dental hygienist;
  - (e) Emergency medical technician or paramedic;
  - (6) Osteopath;
  - (7) Optometrist;
  - (8) Chiropractor;
  - (9) Chiropodist or podiatrist;
  - (10) Registered nurse or licensed practical nurse;
  - (11) Hospital personnel engaged in the admission, care, or treatment of patients;
  - (12) Veterinarian;

- (13) School official or employee, included but not limited to, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant or school bus driver;
  - (14) Social worker or worker in a family care home or child care center, child day care worker, head start teacher, public assistance worker, worker in a group home or residential or day care facility, licensed or unlicensed marriage, family, or children's counselor;
  - (15) Mental health professional;
  - (16) Any law enforcement personnel;
  - (17) The Tribal Prosecutor or 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, whether or not a citizen of the Absentee Shawnee Tribe, shall report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Indian Child Welfare Department or the Tribal Police.
- (d) The privileged communication between patient and physician between husband and wife or any other privilege or contract shall not relieve any person from the reporting requirements to this section.
- (e) Any person under the jurisdiction of the Absentee Shawnee Tribe who willfully violates the provisions of this Section, any person who inhibits or prevents a person described in subsection (b) from making a report, or any person who knowingly and willfully makes a false report or a report that the person knows lacks factual foundation:
- (1) Shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00); and
  - (2) Shall be liable for associated administrative costs incurred by the Tribe as a result; and
  - (3) Shall be liable for court costs; and
  - (4) Shall be liable for damages approximately caused thereby.
- (g) Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent guardian or custodian, in good faith, allows the child to be provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof.

### **§304. Reporting Procedures**

- (a) Reports of known or suspected child abuse or neglect made pursuant to this Chapter shall be made immediately to the Indian Child Welfare Department or Tribal Police 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 Indian Child Welfare Department.
- (b) Such reports, when possible, shall include the following information:
  - (1) The name, address, age, sex, blood quantum km, and social security number of the child;
  - (2) The name and address of the parent, guardian, or custodian;
  - (3) The nature and extent of the child's in injuries, including any evidence of previously known or suspected abuse neglect to the child or the child's siblings;
  - (4) The names and addresses of the alleged perpetrators of 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, including times, locations, and dates;
  - (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 Indian Child Welfare Department to the Tribal Prosecutor and Absentee Shawnee Tribal Police.
- (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.

### **§305. Action Upon Receipt of Report**

- (a) The Indian Child Welfare Department 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 shall include a written report which, to the extent that it is reasonably possible, shall address the following:
- (1) The nature, extent and cause of the abuse or neglect;
  - (2) The identity of the person or persons rest responsible for such abuse or neglect;
  - (3) The names and conditions of other children who may be subject to similar abuse or neglect because of proximity to or association with the suspected perpetrators;
  - (4) The written report shall, at a minimum, include the results of an interview with the child, and a physical description of the child(ren), including any visible evidence of abuse or neglect. Such a description shall be obtained through direct observation of the child(ren), and the Indian Child Welfare worker shall take or cause to be take of all such evidence as soon as reasonably possible.
- (c) Whenever possible the interview shall take place at the child's residence or the place in which the abuse or neglect reportedly occurred; a description of all other pertinent data observed at the interview location shall be included in the report.
- (d) If admission to such residence or location cannot be obtained, the Court, upon good cause shown, shall order the responsible person(s) to allow the interview, examination, photography, and investigation. Should the responsible person(s) refuse to allow the interview, examination, photo photography and investigation, the Court shall hold an immediate hearing to show cause why the responsible person(s) should riot be held in contempt of court.
- (e) Upon receipt of a report, if the Indian Child Welfare Department has a confirmed report, it shall immediately offer social services to the child(ren) and the family and may cause a petition to be filed by the Tribal Prosecutor in the Tribal Court. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal Police is necessary for the protection of the child or other children under the same care, the Tribal Police and the District Judge 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) The Indian Child Welfare Department shall be the receiving agency responsible for the coordination of all investigations of all report of known or suspected child abuse or neglect. The Indian Child Welfare 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 as signed. The Indian Child Welfare Department may conduct the investigation independently or in conjunction with the Tribal Police Department or may arrange for the initial investigation to be conducted by another agency in cooperation with the Indian Child Welfare Department. The Indian Child Welfare Department shall provide for persons to be continuously available to respond to such reports. Tribal, state and federal agencies shall 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 or pager not necessarily located in the premises ordinarily used for business by the Indian Child Welfare Department or to have such arrangements made through agreements with the Tribal Police local law enforcement agencies.

- (g) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Indian Child Welfare Department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Indian Child Welfare Department, it shall refer the matter immediately to the Tribal Police for a complete investigation by the Indian Child Welfare Department and the Tribal Police. The Tribal Police, 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 Indian Child Welfare Department.

### **§306. Interference with Investigation and Retaliation Prohibited Civil Penalty**

- (a) No person shall interfere with a lawful investigation of suspected child abuse.
- (b) No person shall retaliate by any means against any person who has made a good faith report of suspected child abuse or who cooperates with an investigation of suspected child abuse.
- (c) Any person who violates subsections (a) or (b) of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to \$500.00 per occurrence. The penalty shall be assessed by the Tribal Court only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred.

### **§307. 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 Police, the Tribal Prosecutor, and the Indian Child Welfare Department.
- (b) The tribal department with such report shall forward a copy of such report to the central registry.

### **§308. 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 reasonably believed to have 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 Indian Child Welfare

### **§309. Immunity from Liability**

Any person participating in good faith in the making a report or in a judicial proceeding held pursuant to this Code, 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 Code shall be immune from any liability, civil or criminal, 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.

### **§310. Temporary Protective Custody**

The Judge of the Absentee Shawnee Tribal Court shall be responsible for making available a person appointed by the Chief Justice, who may be the Juvenile Judge, or any other officer of the Court, to be available by telephone at all times to act with the authorization and be the authority of the Juvenile Division of the Court when no judicial officer is present in the Court, to issue written or verbal temporary protective orders, or in the alternative or in addition thereto, the 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 Indian Child Welfare 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 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 Indian Child Welfare Department shall be notified of such action immediately by the Court appointed official in order that child protective proceedings may be initiated. In every case in which a temporary protective custody order has been issued, the Indian Child Welfare Department through the Tribal Prosecutor shall file a dependency or neglect petition, within five (5) working days unless a petition has already been filed.

### **§311. 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 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 of 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 Tribal Police or their cooperative agencies, Indian Child Welfare Department staff and cooperating departments and agencies investigating a report of alleged 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 of a parent, guardian, 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 to be abused or neglected or, if a minor or other incompetent, at the time of the request, is named in the report, the guardian ad litem;
  - (5) A parent, guardian, custodian, or other person responsible for the health and 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 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/case management system of child protection;
  - (8) Members of the child protection team;
  - (9) The Tribal Prosecutor and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary,

- (10) Such other person as a Court may determine, for good cause.
- (e) After a child who is subject of a report reaches the age of eighteen (18) years, access to the record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (d) 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 Indian Child Welfare Department Director. 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 Indian Child Welfare Department 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 by the Tribal Prosecutor or a Tribal Police officer and the purpose is to initiate court action or unless he is the subject of a report.

### **§312. Duty to Provide Summary to Person Being Investigated**

As soon as possible after initiating an investigation of a parent or other person having responsibility for the health or welfare of a child, the Indian Child Welfare Department shall provide to the parent or person a brief and easily understood summary of:

- (a) The procedures of the Indian Child Welfare Department for conducting an investigation of alleged child abuse or neglect, including:
- (1) a description of the circumstances under - which the Indian Child Welfare Department would seek to remove the child from the home through the judicial system, and
  - (2) an explanation that the law requires the Indian Child Welfare Department to refer all reports of alleged criminal child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;
- (b) The procedures to follow if there is a complaint regarding the actions of the Indian Child Welfare Department or to request a review of the findings made by the Indian Child Welfare Department in the investigation;
- (c) The person's right to review all records filed with the Court concerning the investigation, provided review shall not include the name of the person who filed the report and provided the review would not jeopardize an ongoing criminal investigation or adjudicatory hearing;
- (d) The person's right to seek legal counsel; and
- (e) The process the person may use to acquire access to the child if the child is removed from the home.

### **§313. Child Protection Teams - Purpose**

Utilization of a child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members. Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions.

### **§314. Child Protection Teams - Meetings**

It is the intent of this legislation to mandate the maintenance of an effective child protection team. The Director of the Indian Child Welfare Department.- shall have responsibility for inaugurating the child protection team.

- (a) The child protection team shall staff anonymous cases (no names, addresses, or identifiers mentioned) and make recommendations regarding the diagnostic, prognostic, and treatment services being offered to the child or family in connection with the reported abuse.
- (b) At each meeting, each member of the child protection team shall be provided with necessary information in the case(s) to be considered.
- (c) The public shall not 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 discussions, the team shall not disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.
- (d) At the beginning of the discussion of each case, a designated team member shall state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe 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. In no case shall the informant's name or other Identifying information about the informant be revealed. The team shall also state whether the child was hospitalized and whether the child's medical records were checked.
- (e) At this session, and immediately after any sessions at which a child abuse or neglect case is discussed, the child protection team shall review the responses of public and private agencies to each report of child abuse or neglect, shall state whether such responses were timely, adequate, and in compliance with

provisions of this Chapter, and shall report information relating to any inadequate responses, specifically indicating the public and private agencies involved.

- (f) After this mandatory discussion of agency responses, the child protection team shall 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.
- (g) At the CPT's next regularly scheduled meeting, or at the earliest possible time, the team shall report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.
- (h) The CPT shall make a report of its recommendation to the Absentee Shawnee Tribal Court and the Indian Child Welfare Department, with suggestions for further action. Tribal, 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 represented. At the behest of the Absentee Shawnee Executive Committee, a representative to the CPT shall be selected and serve on the team.
- (j) The director of Indian Child Welfare or a designee thereof shall be deemed to be the coordinator of the child protection team.
- (k) The coordinator shall insure that all difficult case's of child abuse are discussed with the child protection team. The coordinator shall make and complete, within ninety (90) days of CPT review, a report to the District Judge regarding the recommendations of the CPT in a particular case. It is the responsibility of the Indian Child Welfare Department to report to the federal registry when necessary or required.

### **§315. Child Protection Team - Authority and Functions**

- (a) The Absentee Shawnee Tribal Child Protection. Team shall be designated as the entity for screening all referrals by the Indian Child Welfare Department related to child abuse or neglect. Utilization of the existing county child protection team serves to provide professional screening of difficult cases, promotes confidentiality and avoids needless duplication of agencies serving the same client population. Through broad-based representation, including representation from the tribal membership, Indian Child Welfare Department- and the local school district, the county child protection team can provide a broad range of referral services, which will maximize treatment options available to families.
- (b) The child protection team is technical and advisory in nature; it is not intended to undermine the authority and responsibility of individual agencies. It is designed to

promote cooperation, communication and consistency among agencies. Although it is appropriate for the child protection team debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies, the child protection team's purpose shall be to facilitate rather than hinder the decision-making process.

- (c) Strict confidentiality shall be maintained by all child protection team members.
- (d) Recommendations are to be made by the protection team to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and appropriate family members.

### **§316. Child Protection Teams - Duties**

- (a) The child protection team shall report its recommendations to the Indian Child Welfare Department with suggestions for further action or a statement that the team has no recommendations or suggestions.
- (b) The duties of the child protection team include:
  - (1) Monitoring child abuse and neglect reports to insure that adequate preventive, protective, and corrective services are provided.
  - (2) Reviewing and tracking of all child abuse and neglect cases which have been referred.
  - (3) Reviewing referrals for recommendations related to the filing of dependency/neglect petitions.
  - (4) Reviewing case plans for their adequacy.
  - (5) Maintaining confidentiality of information.
  - (6) Sending local child protection team data to area child protection teams.
  - (7) Developing standards to determine which cases should be investigated.
  - (8) Providing information and technical recommendations to the Indian Child Welfare Department.
  - (9) Educating communities about child abuse and neglect problems and solutions.
  - (10) Identifying danger signs which prompt intervention and/or preventive actions.

- (11) Assisting in the development and implementation of plans to promote the long-term well-being of children and their families.
- (12) Assisting in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling and rewarding lives. These environments should promote the dignity, self-worth, self-respect and self-sufficiency of community members.

### **§317. Central Registry/Case Management System**

- (a) To insure the same level of protection for Indian children as offered to other children of the State of Oklahoma there shall be established a central registry of child protection in the Indian Child Welfare 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 Code.
- (c) The Director of the Indian Child Welfare Department shall have charge of the central registry. Subject to available appropriations, the Director shall equip the Indian Child Welfare Department so that data in the central registry may be made available during non-business hours through the use of computer technology. Such computerized records shall be password coded and only Indian Child Welfare Department personnel, judges, and Tribal Police 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 the record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in §303(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 Indian Child Welfare Department Director. 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 Indian Child Welfare Department and the information released-states

whether or not the report is founded or unfounded. A person given access to the names or other information not identifying the subject of a report shall not divulge or make public any identifying information unless by the Tribal Prosecutor or a Tribal Police officer 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 the alleged bias, all information identifying the subject of the report shall be expunged from the central registry and destroyed within three (3) years. The decision to expunge or destroy the record shall be made by the Director of the central registry.
- (f) In all other cases, the record of the reports to the central registry shall be sealed no later than four (4) years after the child's eighteenth (18th) birthday. Once sealed, the record shall not otherwise be available unless the Director of the central registry, pursuant to rules promulgated by the Indian Child Welfare Department and upon notice to the subject of the report, gives personal approval for an appropriate reason. In any case and at any time, the Director may amend, seal, or expunge or destroy 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 is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subs investigation which may be detrimental to the safety or interest of such person.
- (h) At any time subsequent to the completion of an investigation, subject of the report may request the Director to amend, seal, or expunge the record of the report. If the Director does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have right to a fair hearing before the District Court to determine whether the record of the report in a 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 Indian Child Welfare Department shall be given notice of the hearing. The burden in such a hearing shall be on the Indian Child Welfare 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, expungement, or order to destroy made pursuant to the provisions of this Code shall be given to the subject of such report and to the Indian Child Welfare Department. The latter, upon receipt of such notice shall take appropriate action regarding such information in its files.
- (j) Any person who willfully or who encourages the release of data or information contained in the central registry to person not permitted access to such information by the Chapter shall be subject to a civil penalty not in excess of Five Hundred Dollars (500.00) and any actual damages sustained for breach of confidentiality.

- (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.

**§318. 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 the legal or actual physical custodians or guardians of the child. In every such case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.
- (b) The court in every case filed under this Chapter shall appoint, if funds are available 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 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 deemed necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster/alternative parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine 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 Court of this proceeding, 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.

**§319. Child Abuse and Child Neglect Diversion Program**

- (a) The Tribal Prosecutor, upon recommendation of a 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 Indian Child Welfare Department and the Tribal Prosecutor. If a person is so diverted from the criminal justice system, the Tribal Prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the Indian Child Welfare Department and the Tribal Prosecutor 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 a one (1) year period by the Tribal Prosecutor, if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Indian Child Welfare Department and the Tribal Prosecutor.

- (c) If the person diverted successfully completes the diversion program to the satisfaction of the Indian Child Welfare Department and the Tribal Attorney, said person shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made.
- (d) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

**§320. 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 Proceeding resulting from a report pursuant to this Chapter.

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**Chapter 4**

**Alternative Placement**

**§401. Definitions**

- (a) "Foster care" or "a alternative care" means continuous twenty-four hour care and supportive services provided for a child in foster placement while the child needs out-of-home placement;
- (b) "Foster child" means a child placed in foster placement;
- (c) "Foster family" means all persons living in a foster family home, other than a foster child;
- (d) "Foster home" or alternative care home" means a facility for the care of not more than ten (10) children in a family type setting, 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;
- (e) "Foster parent" or "foster care provider" means any individual maintaining a foster family home, who is responsible for the care of a foster child;
- (f) "Foster placement" means a foster family home providing foster care services;
- (g) "Out-of-home placement" means a placement, other than a placement in the home of the parent or guardian from whose custody the Court has removed the child, until the child is reunified with the child's parents or a permanent placement is made; and

- (h) "Relative" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or any other person related to the child within the fourth degree of consanguinity.

#### **§402. Foster Care Placement**

Except as otherwise provided in this Chapter, no child in the custody of the Indian Child Welfare Department shall be placed with any foster placement unless the foster placement has a current license or authorization issued by the Indian Child Welfare Department or a license with the State or another Tribal Indian Child Welfare.

#### **§403. Responsibility of Recruiting Foster Care Homes**

It shall be the responsibility of the Indian Child Welfare Department to recruit, screen, and approve alternative care homes for children in accordance with this Chapter. Emphasis should be placed on finding tribal and relative foster care families.

#### **§404. Approval of Alternative Care Homes**

The Indian Child Welfare Department pursuant to rules not inconsistent with this Chapter which it shall develop and file, shall have the authority to approve foster care and other alternative care homes for children.

#### **§405. Written Contract**

- (a) The Indian Child Welfare Department shall prior to any out-of-home foster placement, enter into a written contract with the foster care placement provider. The contract shall provide, at a minimum:
- (1) That the Indian Child Welfare Department shall have access at all times to the child and to the foster placement;
  - (2) A listing of any specific requirements, specific duties or restrictions in providing foster care services;
  - (3) That any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child's attorney; and
  - (4) That the foster care placement provider shall comply with the written rules and regulations established by this Chapter and the Indian Child Welfare Department in their regulation of foster care homes.
- (b) The Indian Child Welfare Department shall provide the following information to the foster parents, along with a copy of the written contract required pursuant to subsection (a) of this section:

- (1) The names and telephone numbers of the child's case worker, and the case workers' supervisors;
  - (2) A copy of the grievance procedure established by the Director of the Indian Child Welfare Department;
  - (3) Information detailing the foster parents' ability to submit written reports to the Court, or to petition the Court directly for review of a decision by the Indian Child Welfare Department to remove a foster child who has been placed with the foster parent, in accordance with the limitations and requirements of this Chapter; and
  - (4) A copy of the policies and procedures of the Indian Child Welfare Department which pertain to placement operations of the Department, and which may be necessary to properly inform the out-of-home placement providers of the duties, rights and responsibilities of the out-of-home placement providers and the Indian Child Welfare Department.
- (c) The Indian Child Welfare Department shall maintain supervision of all children placed in foster placement and shall maintain supervision of and make regular visits to such foster placement. The Indian Child Welfare Department shall visit each foster placement no less than once every month. After each visit the worker shall prepare and maintain a written report of the findings for each visit.

**§406. Previous Foster Parent Preferred Placement**

Unless there is a relative placement available, a foster parent shall be considered as a preferred placement option when the foster child who was formerly placed with the foster parent is to be reentered into foster care at the same level and type of care, if that placement is consistent with the best interests of the child and other children in the foster parent's home.

**§407. Removal from Foster Home**

- (a) In making placements in foster care the Indian Child Welfare Department shall, if possible, arrange for a preplacement visit for the child with the persons who will be providing foster care.
- (b) If a child in the custody of the Indian Child Welfare Department has resided with a foster parent for three (3) or more months, except in an emergency, shall:
  - (1) give a minimum of five (5) days' advance notice to the foster care family before removing a child from such family's care, and
  - (2) at the time of such notification, provide the foster family with a written statement of the reasons for removing a child.

**§408. Investigation**

- (a) The Indian Child Welfare Department shall not place a child in an out-of-home placement unless a criminal background investigation has been completed.
- (b) The Indian Child Welfare Department shall conduct a home study of an out-of-home placement, unless the Indian Child Welfare Department has a home study less than one year old on file.
- (c) The Indian Child Welfare Department shall insure that the child to be placed in out-of-home placement receives a complete medical examination within thirty (30) days of initial placement, unless there was an examination conducted on the child upon removal of the child and the Court finds no need for further examination.

#### **§409. Basic Standards for Alternative Care Families**

In considering alternative parents the primary consideration should be the capacity to provide love and understanding to a child or children in distress; and maintain reasonable cultural contact.

#### **§410. Basic Requirements of Alternative Care Families**

Alternative care families shall meet the following personal criteria:

- (a) The age of alternative parent(s) shall be consideration only if it affects their physical capability, flexibility, and ability to care for a specific child.
- (b) A written statement from a physician, regarding alternative care parent(s) and their children's general health, specific illnesses, or disabilities shall be a routine part of the study evaluation process. Alternative care parent(s) and all other adults and the children present in the home shall submit to tuberculin tests and have been found free of disease; other tests may be required as indicated.
- (c) Physical handicaps of alternative care parent(s) shall be a consideration only as it affects their ability to provide adequate care to alternative children or may affect an individual child's adjustment to the family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

#### **§411. Income of Alternative Care Families**

- (a) When the Indian Child Welfare Department does not have a plan or funds for cost reimbursement for alternative care families, it shall determine that the alternative care family's income is stable and sufficient for the maintenance of the family and the child or children placed with the family.
- (b) Employment of alternative care parent(s) outside the home:

- (1) Alternative care parents, either or both spouses, may work outside the home as long as the needs of the child can be met.
- (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 Indian Child Welfare Department, for care and supervision of the child after school and during the summer while parent(s) are at work. Alternative care parent(s) must make appropriate and advance plans for the care of children when not personally available.

#### **§412. Physical Facilities**

- (a) Physical facilities of the alternative care home shall present no hazard to the safety of the children.
- (b) Alternative care homes shall meet Tribal zoning and housing requirements and/or be inspected by the Indian Child Welfare Department.
- (c) Physical standards for the alternative care home I be set according to individual living standards for the community in which the alternative care 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. Such standards shall be no more or less stringent than any common cultural morals of Absentee Shawnee citizens.
- (d) Comfort and privacy:
  - (1) It is preferable that children, regardless of the number, be allowed "their own space", however large or small. Sharing of rooms is appropriate as long as there is sufficient individual space# ace for each child and personal belongings.
  - (2) The sharing of sleeping rooms by children of opposite sexes is acceptable for small children, but undesirable for children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
  - (3) Individual space shall be provided for the child's personal belongings.
- (e) Alternative care family homes shall be reasonable (accessible to schools, recreation, ceremonial grounds, churches, other community facilities, and special resources, such as medical clinics, as needed).
- (f) If the home is otherwise suitable, the alternative care family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

### **§413. Family Composition**

- (a) Single or two parent households are appropriate, dependent on the particular needs of a child.
- (b) The presence of other children and other adults in the home will be considered in terms of the affect upon another child.
- (c) The number and ages of children in a home shall be considered on a case by case basis, taking into account the alternative parent(s) ability to meet the needs of all children present in the home, physical accommodation of the home, and especially the affect which an additional child would have on the family as a unit. It is preferable that:
  - (1) Alternative care parent(s) shall care for not more than the number of infants it appears they are capable of providing for adequately.
  - (2) Alternative care families should have sufficient resources for all children in the home. Exceptions shall be made in order to keep siblings together.
  - (3) The age range of the children in an alternative care home shall be agreed upon by parent(s) and Indian Child Welfare.
  - (4) All placement situations shall consider the affect of having some children in the home whose parent(s) or custodian(s) visit them and other children whose parent(s) or custodian(s) do not.
  - (5) Alternative care homes shall not provide placements for more than one agency at a time without written agreement delineating the responsibilities of all parties involved.

### **§414. Personal Characteristics**

Prospective alternative 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, i.e. parent-child, sibling, or other relationships.
- (b) Role identification and acceptance.
- (c) Reactions to experiences of separation and loss, i.e. through death, desertion, divorce.
- (d) Education, employment, and patterns of interpersonal relationships.

- (e) General social, intellectual and cultural level of Family.
- (f) Level of everyday functioning:
  - (1) Home and money management ability;
  - (2) Daily routine and habits;
  - (3) Reactions to stress.
- (g) Affect responses, i.e. 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.

**§415. Alternative Care Parenting Abilities**

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

- (a) Motivation for application.
- (b) Characteristics & number of children best suited to family.
- (c) Existing relationships, attitudes, and expectations regarding children and parent-child relationships, especially where such existing attitudes and relationships might affect the child.
- (d) Attitudes of members of the extended family regarding child placement.
- (e) Ability to accept and love a child as he or she is,
- (f) Capacity to absorb the child into family life functioning without undue disruption.
- (g) Capacity of parent(s) to provide for child's needs, while giving proper consideration to other children.
- (h) Biological children's attitudes towards accepting children.
- (i) Realistic assessment of various aspects of 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 relate to neglectful and abusive natural parent(s).
- (m) Ability to accept child's relationship with own family, including extended family.
- (n) Ability, where appropriate, to care for children, with special needs, i.e. physical handicaps, emotional disturbances, etc.
- (o) Areas in which on-going social work assistance may be needed.
- (p) Ability to help a child return home or be placed for adoption/permanency and gain satisfaction from the experience.

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## **Chapter 5**

### **Juvenile Code**

#### **§501. Definitions**

- (a) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of this Chapter are supported by the evidence and whether a juvenile should be adjudged to be a ward of the Court;
- (b) "Adult" means a person eighteen years of age or over or an emancipated minor; 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 Code for the purpose of adjudication and disposition of the delinquent act.
- (c) "Child" or "juvenile" means any person under the age of eighteen(18) years of age, except for any person certified as an adult for purposes of this Code;
- (d) "Child or juvenile in need of mental health treatment" means juvenile in need of mental health treatment as defined by Oklahoma's Inpatient Mental Health Treatment of Children Act, 43A O.S. §5-501 et seq.;

- (e) "Child or juvenile in need of supervision" means any child:
- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of parents, legal guardians, or other custodians; or
  - (2) Who is willfully and voluntarily absent from the home without the consent of parents, guardians, or legal custodians 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; or
  - (4) Who has been served with an ex parte or final protective order;
- (f) "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;
- (g) "Delinquent child or juvenile" means a juvenile who:
- (1) has violated any tribal, federal, or state law or municipal ordinance except a traffic statute or traffic ordinance, has violated any lawful order of the Court made pursuant to the provisions of the Absentee Shawnee Juvenile Code or the Oklahoma Juvenile Code, or
  - (2) has habitually violated traffic laws or ordinances;
- (h) "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;
- (i) "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the Court to 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;
- (j) "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building set of buildings which is used for the lawful custody and treatment of juveniles;
- (k) "Indian Child Welfare" or "Indian Child Welfare Department " means the Indian Child Welfare program of the Absentee Shawnee Tribe;
- (l) "Institution" means a residential facility offerings, care and treatment for more than twenty residents. Said institution may:

- (1) have a program which includes community participation and community-based services, or
  - (2) be a secure facility with a program exclusively designed for a particular category of resident;
- (m) "intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of this Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;
  - (n) "Juvenile Court" or "Court" means the Juvenile Division of the Absentee Shawnee Tribal Court System, or the Juvenile Court or C.F.R. Court established for other Indian Tribes, or as state Juvenile Courts is appropriate from the context;
  - (o) "Juvenile detention facility" means a secure facility which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children;
  - (p) "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a facility directly or by contract under prescribed conditions and under supervision by the Tribe, subject to return to the court for violation of any of the conditions prescribed;

**§502. Taking Children into Custody**

A child may be taken into temporary custody by a law enforcement officer or an officer of the Court prior to the filing of a petition alleging the child is delinquent or in need of supervision when:

- (a) The child has committed an act which would be a major crime, misdemeanor, or Tribal ordinance violation if committed by an adult in the presence of the law enforcement officer or officer of the Court,
- (b) The child has run away or escaped from parents, guardians, or custodians.
- (c) The child has violated the conditions of probation and he is under the continuing jurisdiction of the Juvenile Court.
- (d) A child may be taken into temporary custody pursuant to an order of the Court issued on the application of the Tribal Prosecutor. The application presented by the Tribal Prosecutor shall be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the Court that there is probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the Court.

- (e) A child may be taken into temporary custody when the child is in need of medical or mental health treatment or other action in order to protect the child's health or welfare and the parent, legal guardian, custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or mental health treatment or other action.

### **§503. Notification of Parties**

When a child is taken into temporary custody, the Indian Child Welfare Department shall notify a parent, guardian, or custodian without unnecessary delay and inform that, if the child is placed in detention, all parties have a right to a hearing within 96 hours 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 custodian cannot be located. If the officer or worker 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 jailer in whose physical custody the child is placed.

### **§504. Notification of Court Officers**

Whenever a law enforcement officer or the Indian Child Welfare Department takes a child to a detention or shelter facility, or admits a child to a medical facility and determines not to release said child, the officer or Indian Child Welfare worker who took the child to a detention or shelter facility shall notify the Court, at the earliest opportunity that the child has been taken into custody and where he has been taken. A brief written report shall be filed to 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.

### **§505. Release of Detained Child**

- (a) Except as provided in paragraph (b) of this section, a child shall not be detained by law enforcement officials or Indian Child Welfare any longer than is reasonably necessary to obtain name, age, residence and other necessary information and to contact parents, guardians, or custodians.
- (b) The child shall be released to the care of parents or other responsible adult, unless his immediate welfare or the protection of the community requires that the child be detained. The parent or other person to whom the child is released may be required to sign a written promise to bring the child to the court at a time set or to be set by the Court.
- (c) If the child is not released as provided in subsection (a) of this section, the child 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.

- (d) No child shall be detained pursuant to subsection (b) for a period exceeding ninety six hours 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 custodian.

**§506. 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 at. 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 Prosecutor, 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.

**§507. 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 §506 of this Code, from detention or shelter care without holding a Hearing, either without restriction or upon written promise of the parent, guardian, or custodian to bring the child to the Court at a time set or to be set by the Court.

**§508. 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 (24) hours.

**§509. Detention and shelter**

- (a) A child who must be taken from the home but who does not require physical restriction shall be given temporary care in a shelter facility approved and designated by the Indian Child Welfare 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. An exception may 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 Prosecutor immediately when a child who is or appears to be under the age of eighteen is received at the facility, except for a child ordered by the Court to be held for criminal proceedings.

#### **§510. 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 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 Code or pursuant to court order.
  - (2) 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 physical custody of the child

#### **§511. 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 Indian Child Welfare department for seventy-two (72) hour treatment and evaluation. Upon the advice

of a physician the treatment and evaluation period may be extended for a period not exceeding ten (10) days.

### **§ 512. Intake**

- (a) Each allegation of delinquency, in need of supervision, in need of treatment within the Court's jurisdiction shall be investigated by the Indian Child Welfare Department and/or the Tribal Police.
- (b) An intake refers to the initial process of gathering information which may be pertinent to provide services or proceeds with an investigation.
- (c) All intakes shall have a written record.
- (d) If the Child Welfare officer or Tribal Police officer determines that the interests of the child or of the community require that court action be taken, he shall request in writing that the Tribal Prosecutor file a petition and deliver a copy of the entire case file to the Tribal Prosecutor.
- (e) If the Child Welfare officer or Tribal Police officer determines that the interests of the child or of the Tribe do not require court action, Indian Child Welfare may offer such services and make such referrals to other agencies as may be feasible to help the family with any defined problems.

### **§513. Tribal Prosecutor Intake/Duties**

- (a) The Tribal Prosecutor may become involved in a case at any point in any proceeding.
- (b) No case shall be entered into in which insufficient evidence exists in order to prosecute unless there is imminent danger to the child, family, or community.
- (c) Petitions and any information in any case shall be presented to the Tribal Prosecutor upon request at any reasonable hour.

### **§514. Deferred prosecution Agreements/Contracts**

- (a) Prior to the filing of a Petition, either the Court, or the Tribal Prosecutor with the consent of the Indian Child Welfare Department may divert any children's case, except a case subject to §506 of this Code 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 Indian Child Welfare Department and the Tribal Prosecutor agree 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 other agencies 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 each of 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 of the Juvenile Court.

**§515. Deferred Prosecution Agreements/Contracts Admissible**

The diversion contract and any statements or admission of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The parents, guardian, or custodian may choose to 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.

**§516. Court Diversion by Stipulation**

- (a) After filing a petition, Indian Child Welfare and the Tribal Prosecutor may divert any children's case, except a case subject to §506 or §517 of this Code from the adjudicatory process with the consent of the respondents and the Court by stipulation to the validity of the allegations in the petition if:
- (1) The Court has informed the child and his parents, guardian, or 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 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 stage 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.

**§517. 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.

**§518. Petition Form**

A petition in a delinquent child proceeding may be filed by the Tribal Prosecutor to determine if further action is necessary. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially this following form:

DISTRICT (SUPREME) COURT OF THE  
 ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
 JUVENILE DIVISION

In the Interest of: \_\_\_\_\_ )  
 \_\_\_\_\_ ) Case No.  
 An Alleged \_\_\_\_\_ )  
 \_\_\_\_\_ )

**§519. 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 custodian or of his nearest relative if no parent, guardian, or other custodian is known.
- (b) Any action pertaining to the possible termination of the legal relationship between parent(s) and child(ren) must contain a motion for such action based on continued disregard for the reasonable orders of the Courts of the Absentee Shawnee Tribe. The petition shall be signed by the Tribal Prosecutor or designee.

**§520. Amended Petitions**

A petition may be amended by order of the court at any time before an order of adjudication has been made, provided that the Court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the Court shall not amend the adjudicatory category prayed for in the petition.

**§521. Summons**

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE DISTRICT COURT OF THE  
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA  
JUVENILE DIVISION  
SUMMONS

THE ABSENTEE SHAWNEE TRIBE to:

,Respondents.

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the District Court of the Absentee Shawnee Tribe alleging that the above named is a (delinquent) (deprived) (neglected) child (in need of supervision) and that as the (parent.) (guardian) (custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the District Court of the Absentee Shawnee Tribe, (Address of the Court), on the \_\_\_ day of at the hour of o'clock \_\_\_m.. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in \_\_\_ physical custody or subject to your control, to bring, the child to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

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Court Clerk {Seal}

(Return as in other civil cases)

**§522. 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.

**§523. Service of Summons**

- (a) Summons shall be served personally, pursuant to the Tribal rules of civil procedure.
- (b) If the parents, guardian, or other custodian of 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 other 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.

- (c) The Court shall not hold a hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian.
- (d) If notice is published, the Court shall not hold the hearing until at least ten (10) days after the date of publication.

**§524. 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 maybe issued for the parents, guardian, or other custodian of for the child, or a Pick Up Order 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.

**§525. 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 this Chapter when:
  - (1) No parent, guardian, 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 parent, guardian, or other custodian; or
  - (3) The Court finds that it is in the child's interests and welfare, and necessary, whether or not a parent, guardian, or other custodian is present.
- (b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to this Code 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, the conservator 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 there is no guardian of the 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 non-accidental injury, a guardian ad litem may be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.
- (e) All guardians ad litem shall, whenever, practical, be required to personally visit the place of residence of the child.

#### **§526. Custodial Interrogations**

No information gained by a custodial interrogation of a child under sixteen (16) years of age nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the child unless the custodial interrogation about any alleged offense by any law enforcement officer or the Indian Child Welfare Department is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or custodian of the child. No such custodial interrogation shall commence until the child and the parents, guardian, attorney, adult relative, adult caretaker, or custodian of the child have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings

#### **§527. Adjudicatory Hearing**

- (a) At the adjudicatory hearing, which shall be conducted as provided in the rules of criminal procedure, the Court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt; 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.
- (c) In such event, the Court, on the motion of any party to the case 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 party to the case, 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.

#### **§528. 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 (30) days; in the custody and control of the Indian Child Welfare Department.

- (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, during, 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 treating is 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 a person 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 the person lacks sufficient control, judgment, and discretion to manage property or affairs or who, by reason of this deficiency and for the persons own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care.

### **§529. Court Diversion**

At any time during the adjudicatory process, but prior to the entry of order sustaining the petition as provided in §531 of this Code, a Court Diversion by virtue of Stipulation maybe entered as provided in §516 of this Code.

### **§530. Dismissal of Petition**

When the Court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other custodian shall also be discharged from any restriction previously ordered.

### **§531. Sustaining Petition**

When the Court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt, the Court shall sustain the petition and make an order of adjudication setting forth that the child is delinquent and making the child a ward of the Court.

### **§532. 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 or may choose of its own volition to hold a dispositional hearing at any reasonable time.

### **§533. 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.

### **§534. Social Studies and Reports**

- (a) The Court may order any agency within its jurisdiction and/or request any other agency to prepare and submit to the Court at any point in the proceedings 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) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at the earliest opportunity.

### **§535. Case Plan/Service Plan**

- (a) In every case the Court shall order Indian Child Welfare to prepare a detailed case plan for the treatment and disposition of the problems identified in the adjudication.
- (b) The case plan shall contain:
  - (1) A brief social and family history.
  - (2) A brief statement of the causes of the Court exercising its jurisdiction.

- (3) Identification of the specific services to be provided to the child to remediate or alleviate the conditions that led to the adjudication, including but not limited to educational, medical, drug or alcohol abuse treatment, or counseling or other treatment services.
  - (4) Identification of the services to be provided to the parent, legal guardian, custodian, stepparent, other adult person living in the home or other family members, to remediate or alleviate the conditions that led to the adjudication, including services needed to assist the family to provide proper care and supervision of the child. If the child is placed outside the home, the service plan shall include the services to be provided during and after any such placement.
  - (5) If the child is placed outside the home the service plan shall state the reasons for such placement and a statement as to the unavailability or inappropriateness of local placement, or other good cause, for any placement more than forty (40) miles from the home of the child.
  - (6) If the child is placed outside the home the service plan shall state the services to be provided to the child while in such placement and the projected date of discharge.
  - (7) If the child is placed outside the home the service plan shall state the services necessary to assist the child to reintegrate with the child's family or other community-based placement.
  - (8) If the child is placed outside the home the service plan shall state, if the child is age sixteen (16) or older, the services necessary to make the transition from community placement to independent living.
  - (9) What the performance criteria will measure to insure progress for the child and family toward completion of the plan.
  - (10) A projected date for completion of the service plan.
- (c) The case plan shall be filed with the Court and a copy delivered to the parties or their attorney at the earliest opportunity.
- (1) The case plan must contain reasonable goals that can be accomplished. Innovative plans shall be utilized in order to gain a higher prospective degree of success.

**§536. 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.

**§537. 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.

**§538. 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.

**§539. Continuance**

- (a) The Court may continue a hearing, either on its own motion or on the motion of any party to the case, for a reasonable period to receive reports or other evidence, but the Court may continue the hearing for good cause on the motion of any party to the case 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 release in the custody of 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..

**§540. Child in Need of Supervision - Disposition**

When a child has been adjudicated as being in need of Supervision, the Court shall enter an order 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 §239 of this Code.

- (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, not exceeding one year.
- (d) The Court may place legal custody in the Indian Child Welfare Department for placement in a family care home or child care facility, or it may place the child in a child care center.
- (e) If 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. The Court may commit the child to any institute or group care facility designated by the Indian Child Welfare Department and approved by the Court.

**§541. Delinquent Child - Disposition**

If the 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.

- (a) 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.
- (b) A commitment of a child to a designated institution under this Section shall be for an indeterminate period not to exceed two years.
- (c) The Indian Child Welfare Department may petition the 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.
- (d) Each commitment to a designated institution shall be reviewed no later than six (6) months after it is entered and each six (6) months thereafter.

**§542. 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 (14) years of age or older, but less than eighteen (18) 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. Each child placed on probation shall be given a written statement of the terms and conditions of probation and shall have the terms and conditions fully explained in language that he or she understands.
- (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 (6) months.
- (c) The Court may release a child from probation or modify the terms and conditions of his or her probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation shall be released from probation, and the jurisdiction of the Court shall be terminated.
  - (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 parents, guardian, or other custodian, and any other parties to the proceedings.
  - (2) The child, parents, guardian, or other 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.
- (d) 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.
- (e) If the Court finds that the child did not violate time terms and conditions of probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.
- (f) If the Court revokes the probation of a person over eighteen (18) years of age, in addition to other action permitted by this Chapter, the Court may incarcerate for a period not to exceed one hundred eighty (180) days during which the probationer may be released during the day for school attendance, job training, or employment, as ordered by the Court.

**§543. New Hearing Authorized**

- (a) A parent, guardian, custodian, or next friend of any child adjudicated under this Code, or any person affected by an order 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 order, 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 of the facts and circumstances and the best interest of the child.

#### **§544. Continuing Jurisdiction**

Except as otherwise provided in this Chapter, the jurisdiction of the Court over any child adjudicated as in need of supervision, or delinquent shall continue until he becomes nineteen years of age unless terminated.

#### **§545. Modification of Decrees or Orders**

Any decree or order made pursuant to this Chapter may be modified by the Court at any time; provided, however, that an order terminating parental rights shall not be modified.

#### **§546. 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 custodian's means after a hearing, whether the child has been placed in his own home or elsewhere.
- (c) When Indian Child Welfare is paying for placement for such child, the contribution of the parent shall be paid to the Court Clerk and dispensed by court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances.

#### **§547. Expungement/Destruction 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 expungement of his record and shall be so informed at the time of

adjudication, or the Court, on its own motion may initiate expungement 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 expungement 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 expungement or entering of a court order, the Court shall set a date for hearing and shall notify the Tribal Prosecutor and anyone else whom the Court has a reason to believe may have relevant information related to the, expungement of the record, including all agencies or officials known to have relevant files relating to the individual.
- (c) The Court shall destroy 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 Code 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 Code is pending or being instituted against him;
  - (3) The rehabilitation of the person has been attained to the satisfaction of the Court.
- (d) Upon the entry of an order to destroy 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) 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.

**§548. Certification as an Adult**

- (a) In order to transfer to the adult tribal court, the tribal prosecutor may file a petition requesting the Juvenile Court to transfer the child to the jurisdiction of the adult Tribal Court if the child is fourteen (14) years of age or older and is alleged to have committed

an act that would be considered a serious crime if committed by an adult. The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to adult Tribal Court. The transfer hearing shall be held within ten (10) days of the filing of the petition. Written notice of the hearing shall be given to the child and the child's parent, guardian, or custodian at least seventy-two (72) hours prior to the hearing. The following factors shall be considered when determining whether to transfer jurisdiction of the child to the adult Tribal Court:

- (1) The nature and seriousness of the offense with which the child is charged;
  - (2) The nature and condition of the child, as evidenced by his age, mental and physical condition and emotional and psychological stability;
  - (3) The child's record of offenses, and responses to past Juvenile Court efforts at rehabilitation.
- (b) The Juvenile Court may transfer jurisdiction of the child to the adult Tribal Court if the Juvenile Court finds clear and convincing evidence that both of the following exist:
- (1) There are no reasonable prospects for rehabilitating the child through resources available to the Juvenile Court; and
  - (2) The offense allegedly committed by the child evidences a pattern of conduct which constitutes a substantial danger to the public.
- (c) When a minor is transferred to Tribal Court, the Juvenile Court shall issue a written transfer order containing specific findings and reasons for the transfer. The transfer order constitutes a final order for purposes of appeal.

## **Chapter 6**

### **Guardianships**

#### **§601. Purpose**

It is the purpose of this Chapter to promote the general welfare of minor Absentee Shawnee Tribal citizens or minors eligible to be Absentee Shawnee citizens by establishing a system of general and limited guardianships for minors which provides for the protection of their rights and the management of their financial resources.

#### **§602. Definitions As used in this Chapter**

- (a) "Confidential information" means medical records , physical, psychological or other evaluations of a ward or subject of the proceeding, initial and subsequent guardianship

plans, reports of guardians, limited guardians and conservators, and financial records and information submitted to the Court in connection with a proceeding pursuant to this Chapter;

- (b) "Estate" means the property of the person whose affairs are subject to a guardianship proceeding;
- (c) "Guardian" means a person appointed as general or limited guardian of the person, general or limited guardian of the property, special guardian and temporary guardian, but does not include a person appointed as guardian ad litem;
- (d) "Guardian ad litem" means, with respect to a guardianship proceeding, a person appointed by the Court to assist the subject of the proceeding in making decisions with regard to the guardianship proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance;
- (e) "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, and
  - (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, notwithstanding the emergency protection of a child
- (f) "Guardianship plan" means the plan for the care and treatment of a ward, the plan for the management of the financial resources of a ward, or both;
- (g) "Guardianship proceeding" means a proceeding for the appointment of a guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a minor, or an individual alleged or found to be an incapacitated or partially incapacitated person;

- (h) "Guardianship report" means any report required by the provisions of §616 of this Chapter;
- (i) "Initial review hearing" means the first hearing held by the Court for review of the guardianship proceeding after entry of the Order appointing a guardian for a minor;
- (j) "Letters" means a document issued by the Court, subsequent to the appointment of a guardian which designates the name of the guardian and specifies the authority and powers of said guardian. Such document shall be endorsed thereon with the oath of the guardian that he will perform the duties of his office as guardian according to law;
- (k) "Minor" means a person under eighteen (18) years of age;
  - (1) "Person" means an individual;
- (m) "Property" means real property, personal property, income, any interest in such real or personal property and includes anything that may be the subject of ownership;
- (n) "Subject of the proceeding" means a minor:
  - (1) who is the subject of a petition requesting the appointment of a guardian, limited guardian, or temporary guardian, or
  - (2) for whom a guardian or limited guardian has been appointed by the Court.
- (o) "Ward" means the person over whom, or over whose property, a guardian is appointed;

### **§603. Types of Guardianships**

There are four types of guardianships, general, limited, temporary and special.

- (a) A general guardian is a guardian of the person or of all the property of the ward or both.
- (b) A limited guardian is a person authorized by the Court to exercise limited powers over the person of the ward, or over the property of the ward or both.
- (c) A temporary guardian is a person appointed by the Court in accordance with §615 of this Chapter
- (d) A special guardian is all other guardians who may be appointed by the Court for a situation not covered by this Chapter and appointed in the same manner as for the appointment of a temporary guardian.

### **§604. Jurisdiction**

- (a) The Tribal Court shall have the authority, whenever it appears necessary, to appoint a guardian for the person and/or property of any child who is subject to the jurisdiction of the Juvenile Court.
- (b) The Tribal Court in connection with the probating of an estate may refer matters concerning the guardianship of a child to the Juvenile Court for appointment of a guardian.
  - (1) In the probate of an estate for which there is a valid will, which names a guardian for a minor child, the Court may appoint the person designated as guardian of the child involved without the necessity of a separate guardianship hearing.
  - (2) If the person named in the will is unable or unwilling to serve or if such person's appointment is objected to by any child over twelve (12) years of age, by a relative or by the Indian Child Welfare Department, or if the Court determines it to be in the minor's best interest, a separate guardianship hearing shall be held.

**§605. Powers of Court**

- (a) In all cases the Court making the appointment of a guardian has exclusive jurisdiction to control such guardian in the management and disposition of the person and property of the ward.
- (b) The Court has jurisdiction over guardianship proceedings and cases, and has the following powers, which must be exercised in the manner prescribed by this Chapter, to:
  - (1) appoint and remove guardians for minors;
  - (2) issue and revoke letters of guardianship;
  - (3) control the conduct of guardians with regard to the care and treatment provided to their wards;
  - (4) control the conduct of guardians with regard to the management of the financial resources of their wards;
  - (5) compel guardians to submit plans, reports, inventories and accountings, to the Court,
  - (6) compel payment and delivery by guardians of property belonging to their wards,
  - (7) order the payment of debts, the sale of property, and order and regulate the distribution of property which has been placed under the control or management of a guardian, and
  - (8) settle the accounts of guardians;

- (9) appoint appraisers of the property of wards;
- (10) compel the attendance of witnesses and the production of documents and property; and
- (11) exercise all powers conferred by this Chapter and to make such orders as may be necessary for the exercise of said powers.

**§606. Guardians ad litem**

- (a) Nothing contained in this Chapter affects or impairs the power of the Court to appoint a guardian ad litem to defend the interests of any minor interested in any suit or matter pending therein.
- (b) At any point in a guardianship proceeding, the subject of the proceeding, his attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian ad litem appointed by the Court, or the Court on its own motion may appoint a guardian ad litem.

**§607. Duties and Powers of Guardians**

- (a) Except as otherwise ordered or limited by the Court:
  - (1) A guardian of a child shall have the right to take or provide for his physical custody and shall be required to care for his health, safety and welfare, and provide for his education and medical care.
  - (2) In a legal action, the guardian shall have the authority to represent the interests of the child in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ counsel and settle or compromise suits or claims subject to the approval of the Court.
  - (3) A guardian of the property of the child shall have the authority to invest, manage and dispose of the child's property in a prudent and reasonable manner. The guardian may expend such portions of the property, income and principal as shall be reasonably necessary for the education of the child and care of the child, including medical care, unless the guardianship order states that the child's property may not be used for the child's care and support, but rather that it be managed for the child until he reaches the age of eighteen (18) or an emancipation occurs.
- (b) A guardian may petition the Court at any time for authority to do any act, if he is uncertain of his authority. The Court may grant such authority, after notice and hearing, if this appears to be consistent with the best interests of the child.

- (c) A guardian shall report to the Court any change in the residence of a ward within ten (10) days following such change unless a prior order of approval of such change has been entered by the Court.
- (d) Every guardian, whether of the person and/or property of a child, shall:
  - (1) Stand in a fiduciary relationship to the child
  - (2) Exercise a high degree of care in managing the child's property;
  - (3) Derive no personal benefit of any kind from the management of the child's property; and
  - (4) Shall be liable to the child for any losses attributable to breach of these duties.
- (e) Any action to enforce liability against the guardian may be brought by the child or a subsequently appointed guardian on behalf of the child within two (2) years after the appointment of a new guardian, or the discovery of the breach of duties, or attainment of the age of eighteen (18) by the child.
- (f) The Court shall hold annual review hearings in guardianship cases. Every guardian, whether of the person and/or property of a child shall file a progress report with the Court annually, at least thirty days prior to the annual review hearing.

#### **§608. Confidential Information Filed with Court**

Confidential information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Chapter shall not constitute a public record. Access to confidential information shall be strictly controlled. Except upon Court order, no confidential information shall be disclosed to persons other than:

- (a) the subject of the proceeding and his attorney-,
- (b) the guardian ad litem;
- (c) if the subject of the confidential information is a ward, the guardian or conservator of such ward;
- (d) if the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator; and
- (e) Tribal or Bureau of Indian Affairs governmental entities necessary to provide services to the ward.

#### **§609. Letters of Guardianship**

Letters of guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the letters, of a ward to the guardian. An order terminating a guardianship is evidence of transfer of the management or administration of all assets subject to the guardianship from the guardian to the ward, or to successors of the ward.

**§610. Filing of Petition and Eligibility**

- (a) Guardianship proceedings shall be started by the filing of a petition. Any person eighteen (18) years of age or older, the child if he/she is twelve (12) years of age or older, or any representative of the Indian Child Welfare Department may file a petition.
- (b) Any person eighteen (18) years of age or older and subject to the jurisdiction of the Juvenile Court may serve as guardian.
- (c) Preference shall be given to relatives and to the person preferred by a child twelve (12) years of age or older; however, in all cases, the Court shall determine the guardian on the basis of the best interests of the child.

**§611. Contents of Petition**

The petition shall set forth the following:

- (a) The basis for the Court's jurisdiction;
- (b) The full name, address and tribal affiliation of the petitioner;
- (c) The full name, sex, date of birth, residence and tribal affiliation of the child;
- (d) The petitioner's relationship to the child;
- (e) The name and address of the person or agency having custody of the child;
- (f) The names and addresses of all known relatives of the child, insofar as these are known to the petitioner;
- (g) The type of guardianship requested;

**§613. Nomination of Guardian**

- (a) A guardian of the person or estate, or of both, of a child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the parent so nominating:
  - (1) If the child is born in wedlock, by either parent or by both parents.

- (2) If the child is born out of wedlock, by the mother of the child or by the natural father of the child, if said natural father has acknowledged paternity or has been judicially or administratively determined to be the father of the child at a paternity proceeding, or by both such mother and father.
- (b) A nomination made by a parent who has relinquished parental rights pursuant to an adoption proceeding or whose parental rights have been terminated by a Court shall have no effect.

**§614. Minor Ward Age Fourteen (14) of Older**

- (a) If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian, who, if approved by the Court must be appointed accordingly.
- (b) When a guardian has been appointed by the Court for a minor under the age of fourteen (14) years, the minor, at any time after he has attained age fourteen (14), may nominate his own guardian, subject to the approval of the Court.
- (c) If a guardian nominated by a minor who has attained the age of fourteen (14) years is not approved by the Court or if, after being notified by the Court, the minor neglects for ten (10) days to nominate a suitable person, the Court may name and appoint a guardian in the same manner as if the minor was under the age of fourteen (14) years.

**§615. Temporary Guardianship**

- (a) The Court may appoint a temporary guardian under such terms and conditions as the Court deems appropriate.
- (b) Temporary guardianship shall be for a limited duration, and the length of the guardianship shall be set forth in the court order along with such other terms and conditions as the Court finds appropriate.
- (c) A temporary guardianship may be terminated if the Court determines that it is in the child's best interests to change guardians or to return the child to the parent(s) or custodian(s).
- (d) The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds that the visitation would endanger the child or significantly impair his emotional development.

**§616. Guardianship Report**

- (a) Upon the filing of a guardianship petition, the Court shall immediately request that the Indian Child Welfare Department conduct, or arrange to have conducted, a guardianship report. The report shall contain information necessary to determine the best interests of

the child, including data pertaining to the child, the biological parent(s), the extended family and the circumstances requiring the appointment of a guardian.

- (b) The guardianship report shall be submitted to the Court and copies shall be finished prior to the hearing to all interested parties no later than five (5) days before the hearing.

### **§617. Permanent Guardianship**

- (a) A permanent guardianship awards permanent care and control of a child to a person other than the child's parent, although there is no termination of parental rights.
- (b) The Court may appoint a permanent guardian for a child under such terms and conditions as the Court deems appropriate.
- (c) The child's parents, grandparents and other family members shall have rights of reasonable visitation unless the Court finds the visitation would endanger the child or significantly impair his emotional development.
- (d) There shall be a presumption of continued permanent guardianship in order to provide stability for the child. A permanent guardianship shall be terminated only upon the grounds that the permanent guardian is no longer suitable rather than the competence or suitability of the parent.
- (e) The Court shall not terminate the guardianship unless it finds that a change has occurred in the circumstances such that a termination of the guardianship is necessary to serve the best interests of the child. The Court shall retain the current guardian unless:
  - (1) The guardian agrees to the termination; or
  - (2) The child has been integrated into the family of another with the consent of the current guardian; or
  - (3) The child's present environment endangers his health or significantly impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

### **§618. Order of Guardianship**

The Court shall specify in writing the facts, grounds and code sections upon which it relied in making its decision. The terms and conditions of the guardianship shall be clearly set forth, together with any bond requirements. Copies of the order shall be furnished to all parties.

### **§619. Guardianship Plan**

A plan for the care and treatment of a ward and/or the plan for the management of the financial resources of a ward shall be filed by the guardian at the initial review hearing.

### **§620. Setting of Initial Review Hearing**

- (a) In the order appointing the guardian of a minor, the Court shall set the date for the initial review hearing, which shall be not more than two (2) months following the date of entry of the order appointing such guardian.
- (b) When any person is appointed guardian of a minor, the Court may include in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education and welfare of the minor.

### **§621. Inventory and Appraisal**

- (a) Within ten (10) days after the appointment of a general guardian, or guardian of the property of a child, the guardian shall prepare and file with the Court an inventory and appraisal of the child's property.
- (b) The appraisal shall be made by a disinterested person, who shall certify under oath to his appraisal and may receive reasonable compensation for this service.
- (c) No appraisal shall be required of items of obvious value, where the value of the estate is reasonably believed to be less than Three Thousand Dollars (\$3,000.00). If no appraisal is required, then the guardian shall certify under oath to the estimated value of the child's property.

### **§622. Compensation**

- (a) No guardian shall receive any compensation for acting as such without prior approval of the Court.
- (b) The guardian of any estate valued in excess of Five Thousand Dollars (\$5,000.00) may receive reasonable annual compensation for actual services in an amount approved by the Court.
- (c) The right to receive compensation shall be deemed waived for any year in which it is not requested and received.

### **§623. Bond**

In the event a guardian receives any funds or property of the child at the time of appointment or during the term of his guardianship, he shall be required by the Court to post a bond with sufficient surety in such amount as the Court may order to assure the guardian's faithful performance of the duties of his trust. Any surety of such bond must consent to the jurisdiction of the Court for purposes of an action against the bond.

### **§624. Trust Property**

The guardian may be appointed to manage trust property of a child. Any sale of an interest in trust property belonging to the child must be for an adequate and fair price and must be authorized by the Court and approved by the Superintendent of the BIA. The Court may approve the sale if it is in the best interests of the child.

#### **§625. Annual Accounting**

The guardian of property valued in excess of Five Thousand Dollars (\$5,000.00) shall submit an annual accounting which shall be verified under oath to the Court for approval. The accounting shall be required for every year in which the value of the estate is over Five Thousand Dollars (\$5,000.00), and shall contain information on all additions to, and withdrawals from the property. All supporting documentation, including canceled checks, vouchers (hers, receipts and bank statements, shall be attached to the accounting.

#### **§626. Power of Guardian Appointed by Parent Ceases**

The power of a guardian appointed for a minor ceases upon:

- (a) the removal of the guardian;
- (b) the solemnized marriage of the ward; or
- (c) the ward's attaining majority.

#### **§627. Release of Minor Ward at Majority**

After a minor ward has come to his majority, such ward may settle accounts with his guardian and give him a release, which is valid, subject to approval of the Court, if obtained fairly and without undue influence.

#### **§628. Discharge of Guardian**

- (a) Every guardian shall serve until discharged by the Court.
- (b) A guardian of a minor appointed by the Court is entitled to his discharge until one (1) year after the majority of the ward unless the Court determines that the minor has earlier validly released said guardian after a final accounting.

## **Chapter 7**

### **Adoptions**

### **§701. 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 relationship by blood. Adoptions pursuant to this Chapter 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.

### **§702. Definitions**

- (a) "Adult" means an individual who has attained the age of eighteen (18) years or an emancipated minor;
- (b) "Contested proceeding" means any proceeding in which an interested party enters an appearance to contest the petition;
- (c) "Guardian" means an individual other than a parent, appointed by a Court to be the guardian of the person of a minor;
- (d) "Minor" means any person who has not attained the age of eighteen (18) years of age;
- (e) "Parent" means an individual who is the biological or adoptive parent of a child or who is legally recognized as a mother or father of a child. The term "parent" does not include an individual whose parental relationship to a child has been terminated;
- (f) "Permanent relinquishment" means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor to the Indian Child Welfare Department or any person with the assent of the Court, by a minor's parent or guardian, for purposes of the minor's adoption; and
- (g) "Stepparent" means an individual who is the spouse or surviving spouse of a parent of a minor, but who is not a legal parent of the minor.

### **§703. 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 (18) years of age unless special circumstances exist, and either:
  - (1) An Absentee Shawnee Tribal member, or
  - (2) Is eligible for enrollment in the Absentee Shawnee Tribe and is the biological child of an Absentee Shawnee Tribal member, or

- (3) Whose case has been transferred to the Juvenile Division of the District Court from the courts of a state or a Tribe which has assumed jurisdiction over said child.
- (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 regardless of residence or domicile, or
    - (3) An Absentee Shawnee tribal member.

#### **§704. Foreign Decree**

When the relationship of parent and child has been created by a decree of adoption by any Court of competent jurisdiction of any other nation, or its political subdivisions having the 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 §740 of this Chapter.

#### **§705. Types of Adoptions**

There shall be three types of adoptions recognized by the Absentee Shawnee Tribe, namely:

- (a) Statutory adoptions under Tribal law.
- (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. 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.

#### **§706. In Camera Determination of Enrollment**

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 request the Tribal Secretary to

determine whether the child is enrolled or eligible for enrollment so that the Court can 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. 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.

**§§707-709. Reserved**

**§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 Chapter.

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

The following persons are eligible to adopt a child pursuant to this Chapter, and subject to the placement preferences of §239 of this Title:

- (a) a husband and wife;
- (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;
- (f) Any other arrangements by the Court by virtue of common customs and traditions of the Absentee Shawnee Tribe.

**§712. Consent to 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 his/her consent only with the written consent of one of his/her parents, 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 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 of 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 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 (10) days after the birth of a child shall not be valid.
- (d) A consent to adoption of a minor shall be in writing, recorded by the Court and executed before a judge of the Tribal Court and must contain:

**§713 Written Consent Must State**

- (a) A consent to adoption of a minor child shall be in writing, recorded by the Court, and executed before a judge of the Tribal Court and must contain:
- (1) The date, place, and time of the execution of consent;
  - (2) The name and date of birth of the person executing the consent;
  - (3) The current mailing address, telephone number, and social security number of the person executing the consent; and
  - (4) Instructions that the consent is irrevocable, except upon the specific grounds specified in 717, upon which the consent can be revoked and the manner in which a motion to set aside the consent must be filed.
- (b) A consent must state:
- (1) That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;

- (2) An understanding that after the permanent relinquishment is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized in this Chapter;
- (3) that the person executing the permanent relinquishment is represented by counsel or has waived any right to counsel;
- (4) That the execution of the permanent relinquishment does not terminate any duty of the person executing the permanent relinquishment to support the minor until the adoption is completed;
- (5) That the person executing the permanent relinquishment has not received or been promised any money or anything of value for the permanent relinquishment, except for payments authorized by law; and
- (6) That the person believes the adoption of the minor is in the minor's best interest.

#### **§714. Voluntary Relinquishment**

- (a) Any parent, legal custodian, traditional custodian, or other guardian of a child may relinquish, subject to the terms of §§712(b),(c), and (d) of this Chapter, 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 Indian Child Welfare Department, Tribal Prosecutor, 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 specifically to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court. Relinquishment may be made only to the Indian Child Welfare Department or any other person, with the written consent of the Department or Court.
- (b) Any parent desiring to relinquish his or her parental rights shall first obtain counseling from a tribal or county department of social services.
- (c) If after counseling, the parent still desires to relinquish his parental rights, he may petition the Juvenile Court on forms supplied by the Court. Affidavit(s) verifying that the parent(s) have received counseling, fully understood the implications of the relinquishment and confirming that no undue pressure has been placed on the parent(s) shall be attached to the petition.
- (d) Upon receipt of a petition, the Court shall set the matter for hearing.
- (e) The Court shall not issue an order of relinquishment unless it is satisfied that:

- (1) The relinquishing parent(s) and the child, if twelve years of age or older, have been counseled pursuant to subsection (1) of this section.
  - (2) The consequences of the relinquishment are fully understood by all parties.
  - (3) Notice has been properly given to all interested parties.
  - (4) The parent requesting relinquishment is not motivated primarily by a desire to avoid obligations of financial support to the child.
  - (5) It is in the best interest of the child for an order of relinquishment to be entered.
- (f) If the Court is satisfied that all the procedural requirements of this section have been met and that the relinquishment would best serve the interests of all parties concerned, including the child, it shall enter an order of relinquishment.
  - (g) If the Court is not satisfied that said requirements have been met or that the relinquishment is in the child's best interests, it may continue the matter and request a report from Indian Child Welfare and/or the Tribal Department of Social Services addressing the best interests of the child.
  - (h) If the Court believes that a relinquishment is not in the best interests of the parties, including the child, it shall enter an order dismissing the action.
  - (i) If the Court finds that it would be in the best interests of the child to appoint a guardian ad litem, such appointment shall be made.
  - (j) The Court may interview the child in chambers to ascertain the child's wishes as to the relinquishment proceedings with the guardian ad litem present.

**§715. Written Relinquishment Must State**

A permanent relinquishment must be in writing and must state the following:

- (a) That the person executing the document is voluntarily and unequivocally consenting to the adoption of the minor;
- (b) An understanding that after the permanent relinquishment is executed, it is final and, except for fraud or duress, may not be revoked or set aside for any reason except as otherwise authorized in this Chapter;
- (c) that the person executing the permanent relinquishment is represented by counsel or has waived any right to counsel;

- (d) That the execution of the permanent relinquishment does not terminate any duty of the person executing the permanent relinquishment to support the minor until the adoption is completed;
- (e) That the person executing the permanent relinquishment has not received or been promised any money or anything of value for the permanent relinquishment, except for payments authorized by law; and
- (f) That the person believes the adoption of the minor is in the minor's best interest.

#### **§716. Adoptive Placement Designations**

Biological parents may designate a specific applicant with whom they wish to place their child for adoption. The Indian Child Welfare Department shall begin a written assessment of the designated placement upon the request of the parties. After review of such assessment, the Court may grant guardianship of the child to the designated applicant(s) pending hearings on relinquishment and adoption.

#### **§717. Withdrawal of Consent or Revocation of Voluntary-Relinquishment**

After one consents to adoption or voluntarily relinquishes parental rights the consent or relinquishment can only be withdrawn or revoked if:

- (a) Proven by clear and convincing evidence of fraud, before a decree of adoption is issued, or within three (3) months of the discovery of fraud that the consent was obtained by fraud or duress; or
- (b) Proven by a preponderance of the evidence no petition to adopt was filed within nine (9) months of the consent or relinquishment.

#### **§718. Notice of Motion to Set Aside Consent or Relinquishment**

Notice of the motion to set aside the consent or permanent relinquishment and hearing on the motion shall be provided to:

- (a) The person who filed for adoption of the minor;
- (b) The Indian Child Welfare Department; and
- (c) To any person in whose favor the consent was given.

#### **§719. Disposition of Child Following Voluntary Relinquishment of Parental Rights**

- (a) No arrangement for placement of any child who is voluntarily relinquished shall be arranged by any person or agency other than the Indian Child Welfare Department or a licensed placement agency approved by the Indian Child Welfare Department.

- (1) In cases involving an unborn child whose parent(s) are planning to relinquish parental rights at the time of the child's birth, every effort shall be made by the Indian Child Welfare Department to study and approve the prospective adoptive placement prior to the child's birth so that interim foster care can be avoided.
  - (2) The same care shall be taken to place any older child, who is voluntarily relinquished, in the home which affords the most likely probability of being a permanent adoptive home.
- (b) The Indian Child Welfare Department may place a child in pre-adoptive placement pending a court hearing on the relinquishment and proposed adoption providing that the home meets the minimum standards required by the Indian Child Welfare Department for pre-adoptive placements.
- (c) The relinquishment forms and a petition requesting approval of the pre-adoptive placement shall be filed in the Juvenile Court within forty-eight (48) hours of the child's placement. The petition shall set forth the following:
- (1) The basis of the Court's jurisdiction;
  - (2) The full name, sex, date of birth, residence and tribal affiliation of the child and the relinquishing parent(s);
  - (3) A full description of the relinquishment procedures and the placement plan for the child.
- (d) The Court upon review of the petition, shall make findings that the child is a ward of the Absentee Shawnee Court under the care, control and supervision of the Indian Child Welfare Department until such time as a final order of adoption is issued or in those cases involving non-adoptive placement, until further order of the Court.

**§§720-729. Reserved**

**§730. Confidential nature of proceedings and record**

Unless the Court shall otherwise order, all hearing held in proceedings under this chapter shall be confidential and shall be held in closed court without admission of any person other than interested parties and witnesses. Further, all papers, records or files pertaining to proceedings under this chapter, except the final decree of adoption, kept by the Court or by Indian Child Welfare Department shall be confidential and withheld from inspection except upon order of the Court for good cause shown. Upon application and for good cause being shown, the Court, by written order reciting its findings, may permit the necessary information to be released, or may restrict the purposes for which it shall be used. Any person in charge of adoption records or having access to adoption records or information who discloses any information, including, but not limited to, all records and reports relevant to the case and any records and reports of examination of the minor's parent or other custodian pertaining to an adoption proceeding,

contrary to the provisions of this Chapter, may be charged criminally with a misdemeanor or be held civilly liable.

### **§731. Appointment of Guardian Ad Litem**

The Court shall appoint a guardian ad litem in a contested proceeding and may appoint a guardian ad litem in an uncontested proceeding. Any person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

### **§732. 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 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.
- (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 or membership 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, any tribal affiliation by blood and membership, including tribal roll or membership 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 by 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 must be 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.

**§733. Investigation/Contents of Adoptive Assessment**

- (a) Upon the filing of a petition for adoption the Court shall request the Indian Child Welfare Department, with the technical assistance of the state and other government branches of welfare, to make an investigation of the petitioners. such investigation shall include the history of the child; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption or custody and of which the Court should have knowledge.
- (b) A written assessment, completed by the Indian Child Welfare Department shall accompany all petitions for adoption, including stepparent adoptions. Such assessments shall include, but not be limited to, the following:
- (1) The reasons for the availability of the child for adoption, including background information related to the biological parents.
  - (2) The length of time the child has been in the care of the petitioner(s) and the adjustment of the child to that living arrangement.
  - (3) An evaluation of the physical, mental and emotional health of the petitioner(s), all other members of the household and the child who is the subject of the petition.
  - (4) An evaluation of the proposed physical setting in which the child will be placed with attention to safety issues.
  - (5) A discussion of how the proposed placement resembles or is compatible with the child's culture, identity and tribal affiliation.
  - (6) A discussion of the petitioner's plans and ability to promote the child's healthy growth and development.
  - (7) A recommendation for placement which specifically addresses the best interests of the child.

**§734. Compensation**

- (a) No person shall offer, give, charge, or receive any money or other consideration or thing of value in connection with the relinquishment and adoption, except attorney fees and such other charges and fees as may be approved by the Court.
- (b) No person, other than an adoption exchange whose membership includes county departments and child placement agencies, a licensed child placement agency, or a county department shall offer, give, charge, or receive any money or other consideration or thing of value in connection with locating or identifying for purposes of adoption any

child, natural parent, expectant natural parent, or prospective adoptive parent; except that physicians and attorneys may charge reasonable fees for professional services customarily performed by such persons.

- (c) Any person who violates the provisions of this section shall be punished by a civil penalty of a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

### **§735. When Consent of Parents Unnecessary**

Adoption of a child maybe decreed without the consent required in §712 of this Chapter 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 (12) months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of the 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 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.

### **§736. Notice and Hearing for Adoptions Without Consent**

Before the Court hears a petition for adoption without the consent of the parents as provided in §735 of this Chapter, except proceedings pursuant to §735(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 (24) hours prior to the hearing on the adoption.

### **§737. Consent of Child**

Whenever a child be of sufficient maturity and understanding the Court may, and in every case of a child over twelve (12) 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

### **§738. Interlocutory decree**

Upon the examination of the report required in §733 of this chapter, and after hearing, the Court may issue an interlocutory decree of adoption giving the care and custody of the child to the petitioners or any suitable person or persons, pending further order of the Court; provided, that if the child is a blood relative of one of the petitioners within the first or second degree, or is the stepchild of a petitioner, or has been living in the home of a petitioner for more than one year preceding the date of the filing of the petition of adoption, the Court may waive the entry of an interlocutory decree of adoption, and immediately enter a final decree of adoption. Where an interlocutory decree of adoption is entered, the Indian Child Welfare Department may observe the child in his home and report to the Court within six (6) months on any circumstances or conditions which may have a bearing on the adoption or custody.

### **§739. Final decree**

- (a) Upon the application by the petitioner after six months from the date of the interlocutory decree, or upon the Court's own motion at any time, the Court may set a time and place for additional hearing. Notice of the time and place of the hearing shall be served on the Indian Child Welfare Department. The Indian Child Welfare Department shall file with the Court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the interlocutory decree. After such hearing, the Court may enter a final decree of adoption, if satisfied that the adoption is in the best interest of the child, or may make such other order as it sees fit.
- (b) If the Court finds that the adoption will not be in the child's best interests or finds that the procedural requirements have not been met, it may dismiss the petitions or continue the matter and make those orders it deems necessary for the care, control and supervision of the child.

- (c) If the Court finds that the requirements of this article have been met and that the adoption is in the child's best interest, it shall issue an interlocutory order of adoption pending the final adoption on the matter.
- (d) No sooner than six (6) months from the date of the initial hearing, the Court may enter a final decree of adoption upon the recommendation of the Indian Child Welfare Department. The Court shall specify in writing the facts, grounds and code sections upon which it relied in making its decision. Copies of the order shall be furnished to all parties.

#### **§740. Effect of final decree**

- (a) After the final decree of adoption is entered the relations of parent and child and the rights, duties, obligations and other legal consequences of the natural relation of the child and parent shall thereafter exist between the child and the adoptive parents. The status of the child as a citizen of the Absentee Shawnee Tribe of Oklahoma shall not be affected by any adoption, and such child shall not forfeit his rights to inherit from his natural parents by descent or distribution or otherwise.
- (b) After the final decree of adoption is entered, the natural parents of the adoptive child, except a natural parent who is also an adoptive parent or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such child and have no rights over such child or to his property by descent or distribution or otherwise.

#### **§741. Registration of final decree; amendment of records; inspection**

- (a) Upon the entry of a final decree of adoption the Court shall forward a copy thereof to the Indian Child Welfare Department for its records.
- (b) The order of the Court shall order the appropriate agencies to so amend family listings, and other records, to properly reflect the final decree of adoption entered by the Court. These amended records which contain the names and addresses or other information concerning the adopted child and the adopting parents shall cease to be available for public inspection. The intent of this subsection is that any information concerning the whereabouts of the adopting parents and adopted child will not be available to the natural parents or parent or other unauthorized persons after final decree of adoption is entered.

#### **§742. Reversing a Final Decree of Adoption**

No final decree of adoption shall be challenged by reason- of fraud or jurisdictional or substantial procedural error after the expiration of one year following the entry of the final decree unless the affected parent did not learn of the basis for challenging the decree until after one year. In such circumstances, the parent will be entitled to a period of three (3) months from the date of discovery of the facts underlying the reasons for reversal to file a petition requesting annulment of the adoption.

#### **§743. Appeals**

An appeal from a decision in an adoption proceeding may be taken in the same manner as appeals in civil cases.

**§744. Tribe's Right to Intervene**

It is the right of the Absentee Shawnee Tribe to intervene in both voluntary and involuntary proceedings regarding its children; and must be given notice of adoptions in all instances where parental rights are terminated by any means. A request for anonymity from a relinquishing parent must be followed by an announcement, whether written or oral, that the Absentee Shawnee Tribe must be notified and may intervene at any point in the proceedings.

**Chapter 8**

**GRANDPARENTAL VISITATION RIGHTS**

**§801. Jurisdiction**

The Court is vested with jurisdiction to issue orders granting grandparental visitation rights and enforce such visitation rights, upon the filing of a verified petition for such visitation rights or enforcement thereof Notice as ordered by the Court shall be given to the person or parent having custody of said child.

**§802. Best Interest of the Child Standard**

Pursuant to the provisions of this section, any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the Court deems it to be in the best interests of the child. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by order of the Court. Visitation may be subject to supervision as directed by the Court.

**§803. Grandparent Defined**

For the purposes of this Chapter grandparent means:

- (a) A biological grandparent, or
- (b) The brothers and sisters of a biological grandparent, and their spouses, or
- (c) Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws or customs of any Indian Tribe or state, would come within the terms of subparagraphs (1) or (2) of this subsection.

**§804. Child Born Out of Wedlock**

If a child is born out of wedlock, the parents of the father of such child shall not have the right of visitation authorized by this section unless such father has been judicially determined to

be the father of the child or the grandparents have had an existing or on-going grandparental relationship with the child born out of wedlock.

**§805. Remarriage of Surviving Parent**

If one natural parent is deceased and the surviving natural parent remarries, any subsequent adoption proceedings shall not terminate any court-granted grandparental rights belonging to the parents of the deceased natural parent unless said termination of visitation rights is ordered by the Court after opportunity to be heard, and the Court determines it to be in the best interest of the child.

**§806. Parental Rights Previously Terminated**

If the parental rights of one or both parents have been terminated, any person who is the parent of the person whose parental rights have been terminated may be given reasonable visitation rights if the Court determines it to be in the best interest of the child.

- (a) If the child has been born out of wedlock and the parental rights of the father of the child have been terminated, the parents of the father of such child shall not have a right of visitation authorized by this section to such child unless:
  - (1) the father of such child has been judicially determined to be the father of the child;
  - (2) the Court determines that a previous grandparental relationship existed between the grandparents and the child; and
  - (3) the Court determines such visitation rights to be in the best interest of the child.
- (b) If the child is born out of wedlock and the parental rights of the mother of the child have been terminated, the parents of the mother of such child shall not have a right of visitation authorized by this section to such child unless:
  - (1) the Court determines that a previous grandparental relationship existed between the grandparents and the child; and
  - (2) the Court determines such visitation rights to be in the best interest of the child.
- (c) The Court shall not grant to the grandparents of an unmarried minor child, visitation rights to that child:
  - (1) subsequent to the adoption of the child, provided, however, any subsequent adoption proceedings shall not terminate any prior Court granted grandparental visitation rights unless said termination of visitation

rights is ordered by the Court after opportunity to be heard and the Court determines it to be in the best interest of the child, or

- (2) if the child had been placed for adoption prior to attaining six (6) months of age.

**§807. Costs of Visitation**

Any transportation costs or other costs arising from any visitation ordered pursuant to this section shall be paid by the grandparent(s) requesting such visitation.

**§808. Full Faith and Credit**

Orders of state courts and other tribal courts involving grandparental visitation rights to children over whom the Court could assume jurisdiction shall be recognized and given full faith and credit if:

- (a) The issuing court had jurisdiction over the parties and the subject matter;
- (b) The procedures specified in the Indian Child Welfare Act, if applicable, were properly followed; and
- (c) Due process and other rights provided by the Indian Civil Rights Act were accorded all interested parties.

*Letter dated July 17, 2000 from Merrilyn B. Livermon, Tribal Attorney states this is the newly adopted Juvenile Code.*