

Pueblo of Zuni



Zuni Children's Code Title IX of the Zuni Tribal Code

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TITLE IX. ZUNI CHILDREN'S CODE

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TITLE IX. ZUNI CHILDREN'S CODE

CHAPTER 1. GENERAL PROVISIONS

§9-1-1. Title

This Code is known as the Zuni Children's Code.

§9-1-2. Purpose, Construction and Severability

A. Purpose - It is the purpose of this Children's Code to:

1. Recognize that the young people are the Zuni Pueblo's most important resource and that their welfare is paramount;
2. Secure for each child before the Court the care and guidance that is in the best interest of the child and consistent with the customs, cultural values, and laws of the Pueblo of Zuni;
3. Whenever possible, preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted community member;
4. Protect the peace, safety and security of the Pueblo of Zuni and its community members;
5. Foster cooperative intergovernmental relations between the Pueblo of Zuni and the state of New Mexico and other states and tribes, with regard to the welfare of children and families; and
6. Protect the rights of Zuni parents and the sovereign and traditional right of the Zuni Pueblo to determine the best interests of children and families.

B. Construction – This Code shall be liberally interpreted to fulfill its purpose.

C. Severability - If any part or application of this Code is held invalid, the remaining provisions or applications shall not be affected.

§9-1-3. Definitions

A. General

1. For purposes of this Code, the words and phrases defined shall have the meaning respectively attributed to them.
2. The use of he or his also means she or her.
3. Singular includes plural.

B. Specific Definitions

1. Abandonment – The failure of a parent, guardian, or custodian to provide reasonable support or care for a child as determined by the Court. The failure to provide reasonable support or care for a period of six months shall be prima facie evidence of abandonment.
2. Abuse
 - a. The infliction or allowing of physical injury, impairment, or disfigurement;
 - b. The infliction or allowing of serious emotional damage that causes severe anxiety, depression, withdrawal, or extreme aggressive behavior, as diagnosed by a medical doctor or psychologist; or
 - c. An act which would constitute sexual abuse, sexual contact with a minor, or sexual exploitation under the laws of the Zuni Pueblo or the State of New Mexico.
3. Adult – A person eighteen years of age or older.
4. Advocate or Lay Counsel – A non-attorney who is authorized to practice before the Zuni Courts.
5. Best Interests of the Child – The standards designated in Section 9-2-1 for the benefit and welfare of a child.
6. Cessation of Parental Rights – The permanent severance of the legal relationship between the parent and child, commonly referred to as a termination of parental rights in other jurisdictions.
7. Child – A person under eighteen years of age.
8. Child Welfare Caseworker – A Social Services Department employee who reports to the Court and performs the duties under this Code for a minor-in-need-of-care.
9. Contempt of Court – The willful disobedience or interference with any order of the Court, as defined in Sections 1-4-1 to 1-4-3 of the Tribal Code.
10. Court – The Pueblo of Zuni Children’s Court, unless otherwise specified.
11. Court Appointed Special Advocate (CASA) – An advocate trained under the CASA Program and appointed by the

Court on behalf of a child to provide the Court with independent information on a case.

12. Custodian – A person, other than a parent or guardian who exercises physical control, care or custody of a child, including an employee of a residential facility.
13. Delinquent Act – An act, which if committed by an adult, would be designated as a crime under the Zuni Criminal Code or the laws of the State of New Mexico. The term 'delinquent act' shall also include the possession or consumption of alcohol by a minor.
14. Detention Facility – A facility in which a minor may be placed pursuant to this Code that physically restricts his freedom of movement.
15. Extended Family Member – An adult who is a person's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, step-parent, god-parent, or who is otherwise considered a person's family member by Zuni clanship or custom.
16. Family – The parents, siblings, and others who live in a child's home and are considered by the child as a family member.
17. Foster Care – Care provided for a child who is in the custody of the Social Services Department in a home, group home, or facility licensed, certified, or approved by the Department, whether on or off the reservation.
18. Guardian – A person other than the minor's parent who is lawfully responsible for the care and custody of that minor or his estate or both.
19. Guardian Ad Litem – An attorney, advocate, CASA, or other adult appointed by the Court for the protection of the child's interest to represent a child in a proceeding.
20. Indian – A person who is member or eligible to be a member of a federally recognized tribe, band, community, or native Alaska village, group or regional corporation as defined in 43 U. S. C. §1601, *et seq.*
21. Juvenile Offender – A person who commits a delinquent act prior to his eighteenth birthday, and includes a person who remains subject to the jurisdiction of the Court because of an act committed prior to age eighteen.

22. Legal Custody – A legal status created by a court that vests in a person the right and duty to support and care for a minor, subject to the rights and duties of the parent or guardian, unless otherwise authorized by the Court.
23. Minor – A person under eighteen years of age.
24. Minor-in-Need-of-Care – A minor who is:
 - a. Neglected by a parent, guardian, custodian or other care-provider;
 - b. Abused by a parent, guardian, custodian, other adult, or other care-provider; or
 - c. A status offender.
25. Neglect – A condition in which a minor:
 - a. Has been abandoned;
 - b. Has suffered or is likely to suffer abuse, as defined in this section;
 - c. Has not been provided with food, clothing, shelter, medical care, education or supervision adequate for his needs; or
 - d. Has committed delinquent acts as a result of parental pressure, guidance, approval, or lack of supervision.
26. Parent – A natural or adoptive parent, but does not include persons whose parental rights have been severed by court order, nor does it include the alleged biological father whose paternity has not been established.
27. Reservation – The Zuni Indian Reservation.
28. Shelter Care – A temporary home for a minor.
29. Social Services Department – The Zuni Pueblo Social Services Department.
30. Status Offender – A minor who:
 - a. Does not comply with the requirements of the compulsory school attendance chapter of this Code;
 - b. Continually and habitually disobeys the reasonable and lawful demands of his parent, guardian or custodian and is beyond parental control; or
 - c. Has left the home of his parent, guardian or custodian without consent and remained away for at least 24 hours.

31. Tribe – The Zuni Tribe of the Zuni Indian Reservation, also known as the Zuni Pueblo.

CHAPTER 2. STANDARDS FOR THE PROTECTION AND BENEFIT OF CHILDREN

§9-2-1. Best Interests of the Child

All actions and decisions made under the authority of this Code shall be implemented to serve the best interests of the child. In determining the best interests of the child the following principles govern:

- A. A child's need for love, nurturing, protection, and stability. A child must have a safe and nurturing home environment offering emotional support and comfort; the basic needs of food, clothing and shelter; reasonable medical care and protection from danger, violence, or exposure to harmful conduct including drug or alcohol abuse.
- B. A child's need for family. A child must have connection to loving family members for guidance and nurturing. Although not all children have the benefit of family care, nothing can replace the primary role of loving parents and family in a child's life.
- C. A child's need for identity and development. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child's cultural community. This is done by participation in cultural activities, speaking one's native language, and having opportunities and encouragement to pursue education and enrichment.
- D. A child's need for happiness. A child cannot be happy unless his or her primary needs are met; but a child also needs opportunities for play and recreation, leisure time and other activities the child enjoys, and possession of toys and other personal items of importance to the child.

§9-2-2. Placement Priorities

- A. Any placement under this Code shall be made for the best interests of the child. All placement decisions should support the child's affiliation with Pueblo or Indian culture and provide the least restrictive environment which meets the child's needs, and in the case of detention, assures the safety and protection of the public.

- B. With the understanding that the prioritization must be interpreted with flexibility and recognizing that the best interests of the child are primary, the following order of priority shall guide all placements:
 - 1. The child to remain with the child's family in the child's home under conditions and restrictions established by the Court;
 - 2. Placement in the home of an extended family member residing on the reservation;
 - 3. Placement in the home of an extended family member residing off the reservation;
 - 4. Placement in a facility or home within the reservation which is licensed, certified, or approved by the Department; or
 - 5. Placement in a facility or home outside the reservation which is licensed or certified by the Department, or licensed or certified for such placement by the state and approved by the Department.

- C. The child shall be permitted to have appropriate involvement with family, tribal, and cultural activities.

§9-2-3. Shelter Standards

- A. Regulations - The Social Services Department, with the approval of the Tribal Council, shall adopt written regulations for the operation of a shelter care facility, foster care home or detention facility licensed, certified or approved by the Department. The regulations shall include standards for cleanliness, sanitation, heat and light, personnel, visiting privileges, occupancy limits, provisions for medical, dental and mental health care, and provisions for food, clothing and the possession of personal items.

- B. Mandatory Standards for Treatment of Children – The Department shall enforce the following standards and develop regulations consistent with such standards, for the treatment of minors in a shelter care facility, foster care home, or detention facility:
 - 1. A minor shall not be punished, ridiculed or criticized for expressing through speech, custom or dress the minor's Indian or tribal heritage.
 - 2. Subject to legitimate institutional regulations, a minor shall be allowed to wear his hair as he chooses.
 - 3. Incoming and outgoing mail may be inspected for contraband but shall not be read.

4. Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. If the circumstances do not permit the minor to attend his regular school, arrangements shall be made to permit the minor to continue his education.
5. A minor shall be allowed to attend family events and traditional ceremonies, provided that he is accompanied by a parent, guardian or custodian.-
6. A minor shall be given the opportunity to engage in physical exercise for at least one hour every day.
7. A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
8. A minor shall perform reasonable work duties such as maintenance of his bed and personal property, but shall not be required to perform work duties not commensurate with his age, physical, mental or emotional abilities.

C. Special Standards for Detention Facilities - In addition to and notwithstanding the provisions of Paragraph B, the following standards shall apply to any placement in a detention facility:

1. A minor shall wear only the clothing supplied by the detention facility.
2. If the minor is unable to attend a local school, schoolwork and educational assistance at the minor's level of development shall be provided for the minor.
3. With prior Court order, a minor shall be allowed to attend the funeral and related activities of family or extended family members, or to attend traditional ceremonies, provided that he is accompanied by a parent, guardian or custodian, and returns immediately to the detention facility at the conclusion of the period set by the Court.
4. If there exists a reasonable belief that a minor may cause physical injury to himself or others, he shall be placed in a supervised holding cell and monitored on a prescribed schedule and referred for immediate treatment by medical authorities.

§9-2-4. Duty to Report Abuse and Neglect

- A. Basis of Report - Persons who have a reasonable cause to suspect a minor has been abused or neglected shall report the abuse or neglect to the Social Services Department or Police Department.

- B. Persons Required to Report – Those persons who are required to report suspected abuse or neglect are any physician, nurse, or other medical or mental health professional; principal, teacher or other school official; social worker; child care worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer; judge, attorney, other judicial officer and any other person required to report pursuant to federal or tribal law. This paragraph shall not be interpreted to override ethical rules defining the attorney-client privilege.
- C. Other Persons Reporting - Any person may make a report of suspected abuse or neglect.
- D. Anonymity - Those persons reporting, except those specified in Paragraph B, may remain anonymous if the Court so determines.
- E. Immunity from Liability – All persons or agencies reporting in good faith abuse or neglect shall be immune from civil or criminal liability.

§9-2-5. Records Maintenance and Protection

- A. Production of Records – A record of all hearings under this Code shall be made and preserved until the jurisdiction of the Court has ended. All Court and law enforcement records concerning a minor shall be kept separate from the records of adults.
- B. Confidentiality – All records are confidential and shall not be open to inspection other than by Court personnel and the following persons, and subject to regulations adopted by the Court:
 - 1. The minor and his attorney;
 - 2. The minor's parent, guardian or custodian;
 - 3. The juvenile probation officer or child welfare caseworker;
 - 4. The prosecutor; and
 - 5. Any other person granted permission by Court order.
- C. Oath – Each person who inspects a minor's records shall in writing agree to maintain the confidentiality of the records. Failure to abide by the agreement shall constitute contempt of the Court.
- D. Protection of Records – All records of a minor shall be sealed when the minor is no longer subject to the Court's jurisdiction, and thereafter, released only by Court order following notice to the parties and only if needed for a court proceeding concerning a serious criminal charge or similar circumstance of compelling need. This paragraph shall not be construed to permit the release of

information for other purposes, such as background checks conducted for employment, licensing or security clearances. Adoption records shall be released as allowed in Section 9-11-12.

§9-2-6. Confidentiality

Any record or information obtained as result of a proceeding covered by this Code and not otherwise covered by Section 9-2-5 are confidential and shall be made available only to a party and his representative, and the minor's parent, guardian or custodian, or to such other person the Court determines has valid reasons to see such records.

§9-2-7. Confidentiality of Detention

The Court may order that the place of detention or shelter care be kept confidential to protect the best interests of the minor.

§9-2-8. Fingerprints and Photographs

A minor may be fingerprinted or photographed without Court order only under the following circumstances:

- A. If necessary for identification;
- B. To compare to fingerprints found during an investigation, provided that a law enforcement officer has reasonable cause to believe the fingerprints are those of the minor; or
- C. If there is reasonable cause to believe the minor has been subjected to abuse or neglect.
- D. Copies of the fingerprints and photographs shall be immediately destroyed if the minor is not referred to the Court, unless needed for a criminal investigation.

CHAPTER 3. CHILDREN'S COURT

§9-3-1. Children's Court, Establishment and Jurisdiction

- A. Original Jurisdiction - There is hereby established the Zuni Tribe Children's Court. Except as may otherwise be provided in this Code, the Children's Court has original jurisdiction over all proceedings brought under the Zuni Children's Code, and any other proceeding for the commitment of a minor, or the appointment of a guardian or custodian or similar arrangements for the care, custody, protection or best interests of a minor, whether or not arising from a proceeding under this Code.

- B. Concurrent Jurisdiction - The Children's Court shall have concurrent jurisdiction over any minor who, within another jurisdiction, commits an act deemed illegal by the criminal laws of that jurisdiction provided that the minor is a resident of the Zuni Reservation or under the jurisdiction of the Court.
- C. Composition - The Court shall include the Healing to Wellness Court and other forums for alternate dispute resolution and mediation under the supervision and authority of the Court.
- D. Appeals - All final rulings and orders of the Court may be appealed to the Zuni Court of Appeals.

§9-3-2. Powers of the Children's Court

In addition to the powers and responsibilities under this Code, the Court shall have the following powers:

- A. Cooperation - Cooperate with any federal, state, tribal, public, or private agency for diversion, rehabilitation, or training programs.
- B. Social Services - Utilize social service programs as may be furnished by the Tribe or other available federal or state program.
- C. Transfer from State Courts or Other Tribes - Accept or decline transfers from any state or tribal court.
- D. Transfer to State Courts or Other Tribes - Transfer cases to an appropriate state or other tribal court in which the Court determines there is a significant interest in the child.
- E. Zuni Judicial Code – To exercise all powers of a Tribal Court as provided by the Zuni Tribal Code, Title I, Chapter 3.

§9-3-3. Personnel in Court Proceedings

- A. Judges - The Court shall consist of one or more judges appointed by the Tribal Council. The qualifications for appointment shall be as provided in the Tribal Code, Title I, Chapter 3.
- B. Prosecutor - The Tribe shall appoint a Children's Court Prosecutor to carry out the duties and responsibilities in this Code.
- C. Juvenile Probation Officer
 - 1. Appointment and Duties - The Court shall assign a Juvenile Probation Officer who shall make social summaries, reports

and other investigations as the Court may direct, or as provided in this Code, keep written records of such investigations and reports, and perform the duties provided in this Code, and as may be assigned by the Court.

2. Law Enforcement Authority – The juvenile probation officer shall have the powers of a police officer for purposes designated in this Code, but shall refrain from exercising such powers except in urgent situations in which a regular police officer is not available.
- D. Child Welfare Caseworker – The Child Welfare Caseworker, designated by the Social Services Department, shall conduct investigations and make reports to the Court, and perform other duties under this Code for a minor-in-need-of-care.
- E. Clerk - The Clerk of the Tribal Court or designee shall act as Children's Court Clerk and keep a record of the Court proceedings, issue all processes and notices required herein, and perform such other duties as may be assigned.
- F. CASA – The Court may authorize activities in a proceeding of a CASA, pursuant to funding and guidelines authorized by the Tribe.

§9-3-4. Transfer to Tribal Court of Alleged Juvenile Offender

- A. Petition - The prosecutor may file a petition requesting the Court to transfer an alleged juvenile offender to the jurisdiction of Tribal Court if the minor is at least 16 years of age and is alleged to have committed an act, which if committed by an adult, would be a Class A offense under the Criminal Code or a felony under the laws of another jurisdiction.
- B. Hearing - The Court shall conduct a hearing within ten days of filing to determine whether the matter should be transferred.
- C. Report - The juvenile probation officer shall prepare and present a written report to the Court at least three days before the transfer hearing containing information on the alleged offense; and the minor's condition, as evidenced by his age, mental and physical condition; past record of offenses; and rehabilitation efforts. Within the same time limit, the prosecutor and other parties may also file written recommendations.
- D. Deciding Factors - The following factors shall be considered by the Court in determining whether to transfer jurisdiction:
 1. The nature and seriousness of the offense, as set forth in the petition;

2. The minor's emotional maturity, mental condition as indicated in the reports provided to the Court; and
 3. The past record of offenses and rehabilitation efforts.
- E. Standard of Proof and Findings - The Court may transfer the matter to the Tribal Court if it finds by a preponderance of the evidence no reasonable prospect for rehabilitating the minor through resources available to the Court, and either of the following exist:
1. The past offenses committed by the minor indicate a pattern of conduct constituting a substantial danger to the public; or
 2. The offense with which the minor is charged indicates conduct that constitutes substantial danger to the public.
- F. The Court's order is a final order for purposes of appeal.
- G. The Children's Court Judge may not preside over a case that has been transferred to the Tribal Court.

§9-3-5. Adults

A. Parental Responsibility

1. Parent as Party - The parent of an alleged juvenile offender or minor-in-need-of-care may be made a party.
2. Dispositions - The Court may order the parent to:
 - a. Submit to counseling or education;
 - b. Participate in any probation, Healing-to-Wellness Court or other program ordered by the Court; or
 - c. Participate in any treatment or counseling program ordered for the minor.
3. Restitution, Fines and Costs – The parent is not liable for any fine his child may be ordered to pay; however, the Court may hold the parent liable for restitution and court costs, in whole or in part.
4. Cost of Support - The Court shall order the parent to pay the reasonable cost or part of the cost of support and treatment of the child that the parent is able to pay if the child is found to be a minor-in-need-of-care or a juvenile offender.

5. The Court may assign public assistance, social security and child support payments received for the child's benefit to the Social Services Department for the custodian's use.

B. Other Adults - The Court shall join as a party any adult necessary for proper disposition of a case heard pursuant to this Code.

§9-3-6. Retention of Jurisdiction

Jurisdiction over a child shall continue until the child becomes 18 years of age, unless such jurisdiction is terminated prior thereto, provided that the Court shall maintain jurisdiction over a person who becomes 18 years of age for up to one year from events which occurred prior to the person's 18th birthday.

§9-3-7. Enforcement of Foreign Judgments and Orders

The Court will enforce the orders of state or other tribal courts pursuant to rules of court then in effect.

§9-3-8. Investigations and Reports

The Court may require that an investigation be made and a written report be submitted to the Court in all cases, except civil traffic, fish and game, and boating cases. Reports for juvenile offenders shall be submitted to the Court for dispositional purposes after an adjudication finding the minor committed the alleged acts. Reports may be received in evidence, but the Court may require that the person who prepared the report to appear as a witness, if reasonably available.

§9-3-9. Medical Examinations

The Court may order medical, forensic, psychological, and/or substance abuse examination for a minor or other party if relevant to the issues.

CHAPTER 4. PROCEDURES

§9-4-1. Rules of Procedure

The Chief Judge, with Tribal Council approval, may adopt rules of procedure for the conduct of the Children's Court.

§9-4-2. Commencement of Action

A. Petition - Except as otherwise provided in this Code, proceedings are begun by petition.

B. Exceptions to Petition – No petition is needed to commence an action for civil traffic, boating, or fish and game cases.

§9-4-3. Petition

- A. Content - A petition shall be entitled, "In the Matter of _____, a Minor," and shall set forth:
 - 1. The minor's name, birth date and residence;
 - 2. The name and residence of the minor's parent, guardian or custodian;
 - 3. The section of this Code which gives the Court jurisdiction;
 - 4. Where applicable, the section of the Criminal Code which the minor is alleged to have violated;
 - 5. If the minor is in custody, the place and time of custody; and
 - 6. A concise statement of facts.
- B. Preparation - The statements in the petition may be made upon information and belief and the petition shall be verified and signed.

§9-4-4. Summons

- A. When Required - After a petition is filed and after such further investigation as the Court may direct, the Court shall issue a summons. No summons is required for any person who appears voluntarily or who files a written waiver of service with the Court Clerk at or prior to the hearing.
- B. Content - The summons shall contain the name of the Court, the title of the proceedings, and, except for a published summons, a brief summary of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the Court.
- C. Who to Receive - The summons shall be served on all parties and the person(s) having physical custody of the child requiring them to appear personally and bring the child before the Court at the time and place stated. If the person summoned is not the parent or guardian of the child, then a summons shall also be served on the parent or guardian, notifying them of the case and the time and place for the hearing. No summons is needed for a parent whose parental rights have been severed.

§9-4-5. Manner of Service of Court Orders

- A. Who Serves Court Orders - Service of summons, subpoena or other Court order shall be made by Tribal Police officer, court bailiff; or other peace officer, or suitable person selected by the Court.
- B. Place of Service - Service of summons, subpoena or other court order may be made by delivering a copy to the person summoned

or subpoenaed; provided, however, that parents who live in the same home may both be served personally by delivering to either parent copies of the summons, one copy for each parent.

- C. Service by Mail - If the Court is satisfied that personal service is impractical, it may order service by registered mail, return receipt requested, to be signed by the addressee only, to be addressed to the last known address of the person. Service shall be complete upon return to the Court of the signed receipt.
- D. Service by Publication - If the address or whereabouts of a person to be served cannot be ascertained by diligent inquiry, service may be completed by publishing a summons in a newspaper having general circulation on the Reservation. The summons shall be published once a week for four successive weeks. Service shall be complete on the day of the last publication and proof of service shall be filed with the Court.

§9-4-6. Service – Time Requirement

- A. Summons – For service on the Reservation, service completed not less than five days before the time set in the summons shall be sufficient to confer jurisdiction. For service outside the Reservation, service completed not less than eight days before the time set in the summons shall be sufficient to confer jurisdiction.
- B. Subpoenas and Other Court Orders - Subpoenas and other court orders, including the subpoena of witnesses shall be served not less than 24 hours before the time set for hearing.

§9-4-7. Warrants and Orders for Custody

- A. Custodial Warrant - The Court may issue a warrant directing that a minor be taken into custody upon a sworn written statement of facts showing probable cause to believe the minor is a juvenile offender and that custody is mandated under Section 9-6-3 C.
- B. Emergency Custody Order – The Court may issue an emergency custody order upon a sworn written statement of facts showing probable cause exists to believe a minor is a minor-in-need-of-care and in immediate danger from his surroundings.
- C. Search Warrant
 - 1. The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender, or an emergency custody order has been issued for a minor alleged to be a minor-in-need-of-care; or

2. The Court may issue a warrant authorizing a police officer to search for and seize property when probable cause has been established that the property would be material evidence in any proceeding.

D. Bench Warrant - The Court may issue a warrant for a person's arrest for contempt of court immediately upon the failure to appear in Court as ordered.

§9-4-8. Contempt of Court

The Court may hold an adult, service provider, or parties in an action accountable for contempt of court after a hearing.

§9-4-9. Civil Proceedings

Children's cases are civil proceedings governed by the Rules of Civil Procedure, except as modified by this Code.

§9-4-10. Conduct of Hearings

A. Private and Closed - Hearings shall be separate from other proceedings and closed to the public, except for civil traffic, fish and game and boating violation hearings. Only the parties, their advocate, attorney, witnesses, victims, and other persons requested by the parties and approved by the Court may be present at the hearing.

B. Informal, Non-Jury Hearing - All hearings shall be without a jury and conducted in an informal manner so long as the rights under this Code of every person are protected.

C. Alternative Measures – This section shall not be interpreted to preclude the use of alternate dispute resolution measures and alternative forums, including the Healing to Wellness Court.

§9-4-11. Standard of Proof

The standard of proof for an adjudicatory hearing for a juvenile offender shall be beyond a reasonable doubt, the standard for an adjudicatory hearing for a minor-in-need-of-care shall be clear and convincing evidence, for all other matters, unless otherwise provided, the standard shall be a preponderance of the evidence.

§9-4-12. Consolidation

When more than one child is involved in a matter the proceedings may be consolidated, except that separate hearings may be held for disposition.

§9-4-13. Amendment of Pleadings - Postponements

When it appears during a proceeding that the evidence alleges material facts not alleged in the petition, the Court may consider the additional matters raised by the evidence. In such event, the Court, on motion of a party or on its own motion, shall direct that the petition be amended to conform to the evidence. The Court shall grant such postponements as justice may require when a petition is amended.

§9-4-14. Special Rules of Procedure – Traffic, Fish and Game, Boating Laws

The Court may adopt special rules of procedure to govern proceedings involving violations of civil traffic, fish and game and boating laws.

§9-4-15. Presence of Child, Parent, Guardian, or Custodian

- A. If the minor's parent, guardian or custodian is not present at a hearing, the Court shall recess for not more than twenty-four hours if it appears that efforts to obtain the presence of a parent, guardian, custodian, or extended family will be successful.
- B. The Court may excuse the presence of the child, or the child's parent or guardian at any stage of the proceedings when it is in the child's best interest. Lay counsel, attorney and guardian ad litem shall be permitted to continue to participate in a proceeding during the absence of the child, parent, guardian, or custodian. At the discretion of the Court, and for the best interest of the child, the Court may permit a child to testify by videotape, or take other steps necessary to protect the child in proceedings.

§9-4-16. Modification, Revocation or Extension of an Order

The Court may modify, revoke or extend an order at any time upon the motion of a party following a hearing.

§9-4-17. Judgment

The Court shall file a written judgment including the findings, decision and disposition within five days of the date of the disposition.

§9-4-18. Computation of Time

- A. Computation – In calculating any period of time under this Code, the day of the event from which the period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday or court holiday in which case the last day is the next business day. When the period of time prescribed is less than seven days, including any time period prescribed in hours, intermediate Saturdays, Sundays, and court holidays shall be excluded in the calculation. Notwithstanding the foregoing, when a minor is taken into custody, if the last day under the time period for notification to the minor's parent, guardian or

custodian falls on a weekend or legal holiday, the notification shall be made on that actual day, not the following business day.

- B. Failure to Comply with Time Limits – Failure to comply with time limits is not grounds to dismiss an action, grant a new hearing or vacate or modify a judgment or order unless Court rules expressly provide otherwise, or refusal to take such action appears to the Court to work a substantial injustice.

§9-4-19. Guardian Ad Litem/CASA

The Court, at any stage of a proceeding, shall appoint a guardian ad litem or CASA for a minor if the minor has no parent, guardian or custodian appearing on behalf of the minor, if the interest of the minor conflicts with the interest of parent, guardian or custodian, or when it appears to the Court that the child's best interests warrant the appointment.

CHAPTER 5. RIGHTS OF PARTIES

§9-5-1. Due Process Guaranteed

All provisions of this Code shall be interpreted and applied to provide due process of law to all parties.

§9-5-2. Parties; Intervention

- A. In juvenile offender proceedings the child and the Tribe are parties. An adult may be made party pursuant to Section 9-3-5.
- B. In minor-in-need-of-care proceedings the parties to the action are:
1. The Tribe;
 2. The parents;
 3. The child alleged to be a minor-in-need-of-care; and
 4. Any party permitted by the Court to intervene in accordance with this section.
- C. The following persons may be permitted to intervene in a minor-in-need-of-care proceeding under terms and conditions as the Court may prescribe:
1. A foster parent with whom the child resides;
 2. An extended family member with whom the child resides;

3. A custodian appointed by the Court;
 4. A stepparent with whom the child has resided; or
 5. A person who wishes to become the child's adoptive parent or permanent guardian.
- D. In determining whether a person in Paragraph C may intervene, the Court shall consider the best interests of the child and whether intervention might unreasonably delay the proceedings.

§9-5-3. Right to Participate in Proceedings

Each party has the following rights in all proceedings:

- A. To be represented by an attorney or advocate at his own expense.
- B. To speak or testify at an appropriate stage of a proceeding.
- C. To subpoena witnesses and have witnesses testify on his behalf, and to cross-examine witnesses.
- D. To receive notice of all proceedings.
- E. To file an appeal as set out in this Code.

CHAPTER 6. JUVENILE OFFENDER PROVISIONS

§9-6-1. Taking a Minor into Custody

A law enforcement officer may take a minor into custody if:

- A. The officer has a reasonable belief that the minor has committed a delinquent act in his presence;
- B. A warrant has been issued for the minor; or
- C. The officer has a reasonable belief that a minor who is subject to the Court's jurisdiction is leaving the jurisdiction of the Court.

§9-6-2. Advisement of Rights

When taken into custody a minor shall be given the following warnings:

- A. The minor has a right to remain silent;
- B. Anything the minor says will be used against the minor in Court;

- C. The minor has a right to the presence of an attorney or other lay counsel at his own expense during questioning.

§9-6-3. Release of Minor from Custody

- A. Law Enforcement Officer - A law enforcement officer taking a minor into custody shall;

1. Immediately release the minor to his parent, guardian or custodian and issue verbal counsel as appropriate; or
2. Immediately deliver the minor to the juvenile probation officer or to detention or shelter care. If the minor is not delivered to the juvenile probation officer, the law enforcement officer shall immediately notify the juvenile probation officer of the custody and location of the minor.

- B. Juvenile Probation Officer – The juvenile probation officer immediately upon notification or delivery of the minor shall review the need for detention or shelter care, and either:

1. Release the minor to his parent, guardian or custodian, or
2. If detention or shelter care is appropriate pursuant to this section, immediately notify the parent, guardian or custodian. The juvenile probation officer shall also advise the parent, guardian or custodian of the location of the custody, unless there are reasonable grounds to believe that disclosure of the location could jeopardize the minor's safety.

- C. Exception - A minor may not be released from custody if:

1. A court order forbids release;
2. It appears the minor is in immediate danger of physical harm, or is a danger to others;
3. The minor's parents, guardian, or custodian cannot be located; or
4. Reasonable cause exists to believe the minor will run away.

- D. Release - The minor shall be released to his parent, guardian or custodian within 72 hours of the time taken into custody unless the Court orders the custody to continue.

§9-6-4. Questioning of Minor in Custody

A minor in custody alleged to be a juvenile offender shall not be questioned except in the presence of his parent, guardian, custodian, attorney, or advocate except to determine identity and immediate needs, or except as permitted by Court order granted on an ex parte or

emergency basis when warranted by compelling circumstances. A minor at least 16 years of age may select the person to be present during questioning.

§9-6-5. Petition

- A. Filing – The petition shall be filed within 24 hours of taking the minor into custody.
- B. Form and Content - The petition shall be the form authorized pursuant to the order of the Tribal Court and contain the provisions required in Chapter 4.
- C. Review - The juvenile probation officer shall review all petitions prior to filing.

§9-6-6. Preliminary Inquiry

- A. Purpose - The preliminary inquiry shall be to determine whether probable cause exists to believe the minor committed the alleged act and whether detention or shelter care is necessary pending further proceedings. The parties may present testimony and if needed, the Court may continue the Preliminary Inquiry for a period of not more than ten days for an additional evidentiary hearing to determine the probable cause for the arrest.
- B. Time Limit
 - 1. Minor Held in Custody - The preliminary inquiry shall be held within 72 hours of arrest of a minor held in custody. If a minor is released prior to 72 hours, the preliminary inquiry shall be held within 72 hours from the time of release.
 - 2. Minor Not Held in Custody - If the minor was not held in custody, the preliminary inquiry shall be held within ten days of the filing of a petition.
- C. Juvenile Probation Officer Report – The juvenile probation officer will report on the circumstances and the best interests of the minor and the Tribe. The juvenile probation officer may also recommend the appropriate steps or proceedings to resolve the matter.
- D. Determination of Probable Cause - If the Court determines there is no probable cause to believe the minor committed the delinquent act, the petition shall be dismissed without prejudice and the minor released from custody. If the Court determines there is probable cause to believe the minor committed the delinquent act, the Court shall order mediation, adjudication, or other procedures, as provided in this Chapter.

- E. Plea and Disposition - If the minor wishes to admit he committed the delinquent act, the Court may proceed to the dispositional hearing as allowed by this Code, but it must first determine that:
1. The minor fully understands his rights under this Code;
 2. The minor fully understands the consequences of admitting he committed the delinquent act; and
 3. No facts have been not stated which would be a defense.

§9-6-7. Continuation of Detention or Shelter Care

- A. Placement - Pending further hearing or mediation, the Court may order the minor held in detention or shelter care only if:
1. The alleged act is serious enough to warrant continued detention or shelter care;
 2. There is reasonable cause to believe the minor will run away;
 3. There is reasonable cause to believe the minor is in immediate danger of harm, will commit harm to himself or others, or commit serious property damage; or
 4. It is found, with the consent of the parent(s), guardian, or custodian, that continued detention or shelter care is in the minor's best interest.
- B. Adult Detention - An alleged juvenile offender who is sixteen years of age or older may be held in a adult detention facility only if:
1. He is charged with an offense that would subject him to a jail sentence if he were an adult;
 2. No other adequate facility is available;
 3. Detention is in a cell separate from sight and sound of adults certified by the B.I.A. as safe for holding minors; and
 4. Adequate supervision is provided twenty-four hours a day and the minor is regularly checked in person.

§9-6-8. Mediation

- A. Standards and Procedures – Mediation is allowed if it would be in the best interest of the minor and the Tribe, and the minor and his parent, guardian, custodian, advocate or attorney voluntarily consent to mediation. The victim must also consent to and have

the opportunity to participate in the mediation. The juvenile probation officer and the parties may conduct the mediation or they may request a neutral third-person authorized by the court to conduct the meditation. The mediation shall be held within ten days of the preliminary inquiry, except as otherwise ordered.

B. Outcome - Through agreement with the parties the juvenile probation officer may:

1. Refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
2. Order terms of supervision calculated to benefit the minor and his parent, guardian or custodian and which are within their ability to perform; and/or
3. Accept an offer of restitution.

C. Mediation Agreement

1. Form - The juvenile probation officer shall set out the agreement, compliance requirements and conclusions reached. All parties shall sign and receive a copy of the agreement.
2. Term - The term of a mediation agreement shall not exceed six months.
3. Notice to Prosecutor - A mediation agreement shall be sent to the prosecutor who must accept, reject or propose an amendment to the agreement within five days. All parties shall be advised prior to mediation that the prosecutor has the authority to accept, reject, or amend any agreement the parties reach.
4. Notice of Agreement to Court – After acceptance by the prosecutor, the juvenile probation officer shall file a notice with the Court that a mediation agreement has been reached and provide a copy of such agreement.
5. Review - The juvenile probation officer shall review the minor's progress every thirty days. If at any time during the term of the agreement the officer concludes that positive results are not being achieved, the officer shall recommend that the prosecutor proceed with adjudication.
6. Dismissal of Petition - If the minor successfully complies with the mediation agreement for the term of the agreement, the prosecutor shall dismiss the petition with prejudice.

- D. Admission May Not be Used Against Minor – No written or oral admission in a mediation may be used against the minor if an adjudication is pursued.
- E. No Agreement – If the parties do not reach a mediation agreement, or if the terms of the agreement have not been met, the juvenile probation officer shall advise the prosecutor. The prosecutor shall then file with the Court a notice to proceed. The Court shall reconvene within ten days of the filing of the notice to review and schedule the matter for resolution under Section 9-6-6 C, D, and E.

§9-6-9. Hearing on the Petition (Adjudication)

- A. Time Limit - A hearing on the petition shall be held within ten days after the Court's order at the preliminary inquiry.
- B. Purpose - The Court shall conduct the hearing for the purpose of determining if a minor committed the alleged delinquent act.
- C. Disposition - If the Court finds that the minor committed the delinquent act, the Court shall dispose of the matter in a manner least restrictive for the minor and consistent with the best interests of the minor and the Tribe as allowed in Chapter 8 of this Code.
- D. Final Order - A finding that the minor is a juvenile offender is a final order.

CHAPTER 7. MINOR-IN-NEED-OF-CARE PROVISIONS

§9-7-1. Taking a Minor into Custody

- A. A law enforcement officer or child welfare worker shall take a minor into custody if:
 - 1. He has a reasonable belief that the minor is a minor-in-need-of-care;
 - 2. He has a reasonable belief that the minor is in immediate danger in his home environment and that removal is necessary; or
 - 3. An emergency custody order has been issued for the minor.
- B. The minor's parent, guardian, or custodian shall be notified immediately of the custody, and the location of the custody, unless there are reasonable grounds to believe that disclosure of the location could jeopardize the minor's safety.

§9-7-2. Release of Minor From Custody

- A. Return to Home Environment - Except as provided below, a child taken into custody shall be released to the parent, guardian, or custodian. The law enforcement officer or child welfare caseworker shall provide verbal counsel as appropriate for the child's welfare and the child welfare caseworker shall complete a follow-up review to determine whether additional measures are needed.
- B. Delivery to Shelter Care - Any child taken into custody shall be delivered to shelter care if there are reasonable grounds to believe the child would be in immediate danger in his home. The child welfare caseworker shall immediately notify the child's parent, guardian, or custodian of the custody.
- C. Release - The minor shall be released to his parent, guardian, or custodian within 48 hours of the time taken into custody unless a petition is filed with the Court.

§9-7-3. Petition

- A. Filing - The petition shall be filed within 48 hours from the time the minor is taken into custody.-
- B. Form and Content - The petition shall be the form authorized pursuant to the order of the Tribal Court and contain the provisions required in Chapter 4.
- C. Review and Assistance – The child welfare caseworker shall assess the circumstances which are the grounds for the petition.

§9-7-4. Preliminary Inquiry

- A. Purpose - The purpose of the preliminary inquiry is to determine whether probable cause exists to believe a child is a minor-in-need-of-care, and whether shelter care is necessary pending further proceedings. If needed, the Court may hear testimony from the parties to determine probable cause.
- B. Time Limit
 - 1. Minor Held in Custody – If a minor is held in shelter care the preliminary inquiry shall be held within 72 hours from the time the petition is filed. If the minor is released prior to filing the petition, the preliminary inquiry shall be held within ten days of the filing of the petition.
 - 2. Minor Not Held in Custody - If the minor was not held in shelter care the preliminary inquiry shall be held within ten days of the filing of the petition.

- C. Child Welfare Caseworker Report – The child welfare caseworker will complete a preliminary investigation into the circumstances, including the risks of the home environment and provide a report on the findings at the preliminary inquiry. The child welfare caseworker shall make a recommendation on the steps or proceedings to pursue, based upon the best interests of the minor. The child welfare caseworker will provide to law enforcement information obtained at any stage of the proceedings that may be relevant to filing criminal charges against an adult.
- D. Determination of Probable Cause - If the Court determines there is no probable cause to believe the minor is a minor-in-need-of-care, the petition shall be dismissed without prejudice and the minor released to the parent, guardian, or custodian. If the Court determines there is probable cause to believe the minor is a minor-in-need-of-care, the Court shall order mediation, adjudication, or other procedures, as provided in this Chapter.

§9-7-5. Consideration of Shelter Care

- A. Determination – If the Court determines there is probable cause to believe the minor is a minor-in-need-of-care it may:
 - 1. Release the minor to his parent, guardian, custodian, or extended family member with a written explanation of the conditions of release, including the behavioral expectations of the child and caretakers for the best interests of the child pending final disposition; or
 - 2. Order the minor's custody or continued custody, provided that one or more of the following conditions exists:
 - a. No parent, guardian, custodian, extended family or other designated adult is able or willing to provide adequate supervision and care for the minor;
 - b. The minor is in immediate danger within his home environment; or
 - c. The minor will run away and be unavailable for further proceedings.
- B. Placements Allowed – Placement of a minor alleged to be a minor-in-need-of-care shall comply Section 2-2-2. A minor who is alleged to be a minor-in-need-of-care shall not be detained in a juvenile or adult detention facility.

§9-7-6. Mediation

- A. Standards and Procedures – Mediation is allowed if it would be in the best interest of the minor and the Tribe, and the minor and his parent, guardian, custodian, advocate or attorney voluntarily consent to mediation. The child welfare caseworker and the parties may conduct the mediation or they may request a neutral third-person authorized by the court to conduct the meditation. The mediation shall be held within ten days of the preliminary inquiry, except as otherwise ordered by the Court.
- B. Outcome - Through agreement with the parties, the child welfare caseworker may:
1. Refer the minor and the parent, guardian, extended family or custodian to a community agency for family counseling, treatment or other needed assistance; and/or
 2. Order terms of supervision, calculated to serve the best interests of the minor which regulate and monitor the activities of the minor and his parents, guardian, extended family, or custodian and which are within their ability to perform.
- C. Mediation Agreement
1. Form - The child welfare caseworker shall set out the agreement and conclusions reached at the mediation. All parties shall sign and receive a copy of the agreement.
 2. Term – The mediation agreement shall not exceed a term of six months.
 3. Notice to Prosecutor – A mediation recommendation shall be sent to the prosecutor who must accept, reject, or propose an amendment to the agreement within five days. All parties shall be advised prior to the mediation that the prosecutor has the authority to accept, reject or amend any agreement the parties reach.
 4. Notice of Agreement to Court – After acceptance by the prosecutor, the child welfare caseworker shall file a notice with the Court that a mediation agreement has been reached and provide such agreement to the Court.
 5. Review - The child welfare caseworker shall review the family progress every thirty days. If at any time during the term of the agreement the caseworker concludes that positive results are not being achieved, the caseworker shall recommend that the prosecutor proceed with adjudication.

6. Dismissal of Petition – If the parties successfully comply with the mediation conditions for the entire agreement, the prosecutor shall dismiss the petition with prejudice.

D. No Agreement - If the parties do not reach a mediation agreement, or if the terms of the mediation agreement have not been met, the child welfare caseworker shall advise the prosecutor. The prosecutor shall then file with the Court a notice to proceed. The Court shall reconvene within ten days of the filing of the notice in order to review and schedule the matter for resolution pursuant to Section 9-7-4 C and E.

§9-7-7. Hearing on the Petition (Adjudication)

A. Time Limit – An adjudicatory hearing shall be held within ten days after the preliminary inquiry, unless extended by order of the Court for good cause for a period of not more than 30 days.

B. Purpose – The Court shall conduct the hearing to determine if a minor is a minor-in-need-of-care.

C. Disposition – If the Court finds the minor is a minor-in-need-of-care, it shall dispose of the matter in a manner consistent with the best interest of the minor as allowed in Chapter 8 of this Code.

D. Final Order - A finding that a minor is a minor-in-need-of-care is a final order.

CHAPTER 8. DISPOSITION

§9-8-1. Pre-Dispositional Report

A. Who Prepares - The Court may order the juvenile probation officer to prepare a report to the Court for the disposition of a juvenile offender and the child welfare caseworker to prepare a report for the disposition of a minor in need of care if needed.

B. Time Limit – The report shall be filed at least two days before a dispositional hearing.

C. Contents - The report shall contain a specific plan for the care of the minor, including recommendations regarding the minor's parents, guardian or custodian calculated to resolve the problems presented in the petition. The report shall be limited to options which are the least restrictive to the minor and which promote a safe environment consistent with the Tribe's interests. The report shall cover home life, school attendance and requirements, a monitoring and support plan, and parent/guardian expectations. The report shall also contain conditions and expectations for the juvenile probation officer or child welfare caseworker, as appropriate, for the best interests of the child.

- D. Copies – A copy of the report shall be available to the minor, his parent, guardian or custodian and any other party as soon as they are provided to the Court.
- E. Additional Reports – The prosecutor and attorneys or advocates for any of the parties may also submit written reports within the same time limit.

§9-8-2. Dispositional Hearing

A dispositional hearing shall be held within five days of the adjudication, except that the Court may hold the dispositional hearing immediately after the adjudication if it would be in the best interest of the minor.

§9-8-3. Juvenile Offender - Dispositions

If a minor has been adjudged a juvenile offender, the Court may make any or all of the following dispositions:

- A. Any disposition that is authorized for the disposition of a juvenile offender;
- B. Place the minor on probation subject to conditions set by the Court;
- C. Place the minor in an institution;
- D. Place the minor in the tribal detention facility;
- E. Require the minor to make restitution in accordance with tribal custom; and/or
- F. In cases of violations of traffic laws, the Court may, in addition to any other disposition, restrain the child's driving privileges for a period of time the Court deems necessary.

§9-8-4. Minor-in-Need-of-Care – Dispositions

- A. If a minor has been adjudged a minor-in-need-of-care, the Court shall direct that a care and monitoring plan be completed by the Social Services Department to provide services to the child and family.
- B. In addition to the care and monitoring plan, the Court may order a placement for the child in compliance with Section 2-2-2.
- C. Where circumstances warrant, and it is determined to be in the child's best interests, the Court may transfer custody to a tribal, county or state agency, or to an extended family member or other person qualified to receive and care for the child, subject to such limitations and conditions as the Court may prescribe.

- D. The Court may also direct that proceedings be initiated to sever parental rights or grant full or partial emancipation for the child.

§9-8-5. Conditions Set by Court

The conditions the Court may set shall be designed to improve the condition or behavior of the child. Such conditions may include but are not limited to counseling, therapy, traditional healing, restriction on visits with one or both parents, payment of support or other necessary costs, attendance at school, participation in social, cultural or religious activities, volunteer or community service work, restrictions on associations, curfew, or any other dispositions as set out in this Code.

§9-8-6. Off-Reservation Agreements

Whenever a minor is placed in a home or facility outside the Reservation boundaries, the Court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned upon order of the Court. Absent such a signed agreement, any person or institution shall be deemed to have consented to return such child by having taken placement under this Code.

§9-8-7. Review of Disposition

- A. Review – Dispositional orders are to be reviewed at the Court’s discretion, but at least once every six months. On a monthly basis the juvenile probation officer shall review the status of each dispositional order for juvenile offenders and provide a report of each active case to the Court.
- B. Discretionary Review – An interested party as recognized by the Court may request the Court for a review of disposition at any time. The granting of such a request is at the discretion of the Court.

§9-8-8. Probation Revocation Hearing

- A. A minor who is alleged to have violated his terms of probation may be proceeded against in a probation revocation hearing. All procedures applicable to juvenile offender petitions shall be followed in a probation revocation proceeding.
- B. If the Court finds a minor has violated probation terms it may:
 - 1. Extend the period of probation; or
 - 2. Make a disposition that would have been appropriate in the original disposition.

§9-8-9. Final Order

A dispositional order is a final order for purposes of appeal.

CHAPTER 9. PERIODIC REVIEW OF PLACEMENTS

§9-9-1. Definitions

- A. Administrative Review Panel - A case review system to review the case plan and the placement of each child receiving foster care maintenance payments by a panel of no less than three appropriate representatives of tribal service or community agencies. The review shall be led by the Social Services Department and meet the minimum requirements of the Social Security Act as amended.
- B. Case Plan-Child Welfare Proceedings - A written document for each child receiving foster care maintenance payments designed to achieve placement in compliance with the standards of Section 2-2-2. The case plan shall meet the applicable minimum requirements of the Social Security Act, as amended by the Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272 and the Adoption and Safe Families Act of 1997, P.L. 105-89, as amended.
- C. Case Review System - A procedure to review the status of each child in foster care, and the foster care home environment no less than once every six months by the Court and the administrative review panel.

§9-9-2. Periodic Review of Placement; Periodic Review

Within six months of the original dispositional hearing, a permanency plan must be developed with the input of the parents, extended family and social service workers in accordance with BIA and tribal regulations, and case review system. Every six months thereafter so long as a child remains in foster care, the status of a child will be reviewed under the case review system, with reports and recommendations made to the Court. The review shall include the following:

- A. Provide an assessment within 30 days of placement to determine the continuing need for and appropriateness of the placement and documents the need for the safety of the child;
- B. Determine the extent of compliance with the case and permanency plans;
- C. Determine the extent of progress made toward easing or lessening the cause(s) requiring the placement in foster care; and
- D. Project a likely date by which the child may be returned home or placed for adoption or legal guardianship.—

§9-9-3. Permanency Planning Hearing; Disposition

Within 12 months of the original placement and every six months thereafter, the Court shall hold a permanency plan hearing to determine

the future status of the child. Recommendations made as a result of the administrative review shall be presented to the Court and the Court shall adopt the recommendations it finds good cause to the contrary. The permanency plan hearing may be combined with the periodic review. The Court may order, but is not limited to, any of the following dispositions:

- A. Return the child to the parent(s);
- B. Place the child with an extended family member;
- C. Appoint a guardian and place the child with the guardian;
- D. Continue the child in foster care for a specific period;
- E. Continue the child in foster care on a long term basis; or
- F. Recommend proceedings to cease parental rights place the child for adoption.

§9-9-4. Procedures for Review Hearings

The Court shall return a child to the custody of his parent or guardian unless by a preponderance of evidence it finds that returning the child would cause a substantial risk to the well-being of the child. The Court shall review the Administrative Review Panel reports, consider any other evidence and may order any additional services for the child.

§9-9-5. Periodic Reviews After Permanency Planning Hearing

Periodic reviews conducted by the Court after the initial permanency planning hearing shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child. By the end of the 12th month of foster care, a decision regarding the permanent placement of the minor shall be made.

§9-9-6. Permanent Placement Reports and Recommendations

- A. Tribal Social Services Department Duties – To achieve permanent placement as required by this Code, the Department shall prepare recommendations for the administrative review panel and provide the recommendations to the panel members, the child and his parent, guardian or custodian, any other person or entity ordered by the Administrative Review Panel at least five days before the permanency plan hearing and at least two days before each periodic review.
- B. Reports and Recommendations – Each report shall recommend whether the minor should be immediately returned to his parent or guardian. If the Department recommends against return, the report should indicate whether the minor can expected to return to his

parent's or custodian's custody within a reasonable time. If the report is prepared for a permanency plan hearing and the Department determines there is substantial probability that the child cannot be returned to his parent or guardian within six months, the report should address other permanent placement options.

CHAPTER 10. CESSATION OF PARENTAL RIGHTS

§9-10-1. Purpose

This chapter is to provide for voluntary or involuntary cessation of the parent-child relationship by court order. Involuntary cessation of parental rights over a child is a serious matter that the Court may take only after all remedies to maintain the family structure have been exhausted.

§9-10-2. Enrollment and Inheritance Status

Cessation of parental rights shall not affect a child's Tribal enrollment or Indian blood quantum, nor affect a child's rights of inheritance from his natural parents so long as the child has not been adopted.

§9-10-3. Grounds for Involuntary Cessation

- A. Cessation Allowed – The Court may order the cessation of parental rights when the Court finds beyond a reasonable doubt that the conduct or condition of the parent is such as to render him unable to care for the child and that such conduct or condition is unlikely to change within one year.
- B. Factors to be Considered – The Court shall consider, but is not limited to, the following:
 - 1. Emotional or mental illness or mental deficiency of the parent;
 - 2. Abuse, neglect or abandonment of the minor;
 - 3. Excessive use of intoxicating liquors or illegal substances;
 - 4. Adjudication by a court that the parent caused the death or serious injury of a minor's sibling;
 - 5. Failure to provide reasonable substitute care and maintenance where custody is lodged with others;
 - 6. Failure to maintain regular contact with the child under a plan to reunite the child and parent; or
 - 7. Failure to maintain regular contact with the child for over a period of one year.

- C. Parent Unknown – The Court may order the cessation of parental rights if it finds that the child has been left under circumstances such that the parent's identity is unknown and cannot be ascertained despite diligent searching. Efforts to locate the parent(s) shall be not less than the standards governing the service of process in Section 9-4-6.
- C. Best Interests of Child – The Court's decision shall be guided by the best interests of the child.

§9-10-4. Reports

- A. Child Welfare Caseworker Report – The child welfare caseworker shall prepare and present a written report to the Court at least ten days before the cessation of parental rights hearing. The report shall contain the recommendations of all professionals consulted on the social history of the parent and child and all other pertinent facts. A copy shall be available to the parent whose rights are being severed at the time the report is provided to the Court.
- B. Additional Reports - A parent whose rights are being severed may also file a written report. The Court may also order other persons or agencies to submit written reports. All reports shall be filed ten days prior to the hearing and provided to all parties when filed.

§9-10-5. Appointment of Guardian Ad Litem

In any proceeding for cessation of parental rights, whether voluntary or involuntary, or any rehearing or appeal thereon, the Court shall appoint a guardian ad litem on behalf of the minor.-

§9-10-6. Hearing

A hearing shall be held within 30 days after the petition is filed. The Court shall subpoena experts who have knowledge of the case, including physicians, psychiatrists, mental health professionals, social workers and individuals from the community cognizant of traditional child-rearing methods and cultural standards.

§9-10-7. Judgment

If the Court finds cause to order the cessation of parental rights, the Court shall issue its judgment detailing the reasons for the decision, and order the disposition of the minor as follows:

- A. Place the minor with an extended family member or placement pursuant to Section 2-2-2;-
- B. Proceed to the Adoption chapter of the Code;

- C. Reassign guardianship to an extended family member, or other custodian as deemed appropriate.

§9-10-8. Appeal

A judgment of involuntary cessation of parental rights is a final order for purpose of appeal.

§9-10-9. Voluntary Cessation of Parental Rights

- A. Initial Procedures - The Court may order the voluntary cessation of parental rights, subject to the following limitations:

1. The petition may not be filed before a child is ten days old; and
2. No voluntary cessation shall occur until a report is submitted by the Social Services Department indicating that counseling has been offered to the parent, that the consequences of the actions have been fully explained and are understood by the parent, and that the action is in the best interest of the child.

- B. Counseling - If the Court questions the petitioner's ability to understand the consequences of his decision, the Court shall place the child with the Family Services Division for up to 30 days to allow the parent to consider his decision. The Court shall order legal and psychological counseling for the parent to assure his understanding of the consequences of his decision.

- C. Procedures After Counseling - Immediately after the 30-day period based upon the report received by the Court, the Court shall either:

1. Return custody of the child to the parent;
2. Process the petition for voluntary cessation of parental rights; or
3. Extend the period for not more than 30 days to allow additional counseling. At the expiration of the additional counseling the Court shall proceed as allowed by this Code.

§9-10-10. Interpreter for Voluntary Cessation of Parental Rights and Consent to Adoption

A parent who elects to sever his parental rights or consents to adoption shall be provided an interpreter if he does not understand English.

CHAPTER 11. ADOPTION

§9-11-1. Who May Adopt, Conditions and Notice

- A. Who May Adopt - The following persons may adopt:
1. Any adult;
 2. In the case of married persons maintaining a home together, both spouses shall be petitioners except that, if one of the spouses is the natural parent of the minor to be adopted, the natural parent shall not be a party to the petition;
 3. A married person legally separated may adopt without the consent of his spouse.
- B. Conditions to Adoption
1. The best interests of the child shall be primary;
 2. A person petitioning to adopt shall be at least ten years older than the minor;
 3. Preference in adoption shall be given in the following order:
 - a. Extended family member;
 - b. Enrolled Zuni Pueblo member;
 - c. Member of other Pueblo;
 - d. Member of other Indian tribe; or
 - e. Non-Indian.
 4. The Social Services Department shall be notified within five days after the petition is filed.

§9-11-2. Who May Be Adopted

The following persons may be adopted:

- A. A minor enrolled in or eligible for enrollment in the Tribe.
- B. An adult enrolled in or eligible for enrollment in the Tribe and whose parents are both dead.

§9-11-3. Petition

The petition filed with the Court shall contain:

- A. The full name, residence, place of birth, date, sex and clan membership of the child, with attached documentary proof of the date and place of the birth of the child to be adopted;

- B. Documentary proof of the child's enrollment with the Tribe, and, if available, documentation of the child's clan membership;
- C. The full name, residence, date and place of birth, and occupation of the adoptive parent(s), a statement of relationship to child, with proof of their marital status, provided that this shall not be interpreted to prohibit single parent adoptions;
- D. Proof of parental consent, except in cases where the parental rights have been severed or the parents cannot be located;
- E. An agreement by the adopting parent that includes terms for an appropriate relationship with the natural parents and family, unless the rights of the natural parents have been severed;
- F. A description and statement of value of all property owned, possessed or held in trust by and for the child;
- G. A citation to the section of this Code which gives the Court jurisdiction over the proceedings; and
- H. A brief and concise statement of the facts.

§9-11-4. Investigative Report

- A. Child Welfare Caseworker – Within 60 days of the filing of the petition the child welfare caseworker shall undertake a home study and prepare and present to the Court a report detailing the suitability of the child for adoption, and the suitability, home environment, and financial, moral, physical, and emotional fitness and background of the adopting parent(s). The child welfare caseworker shall contact agencies and individuals having knowledge of the character and fitness of the adopting parents, and such information shall be included in the report. The report may include a recommendation for or against the proposed adoption.
- B. Other Agencies; Individuals – The Court may also order other appropriate agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination.
- C. Copies – Copies of reports shall be served on the petitioner at the same time they are filed with the Court.

§9-11-5. Consent to Adoption

Written consent to adoption is required of:

- A. Each biological, adoptive and acknowledged parent whose parental right has not been severed and has not been declared incompetent;
- B. The guardian or custodian, but only if empowered to consent to an adoption; and
- C. The minor, if he is over fourteen years of age.

- B. Documentary proof of the child's enrollment with the Tribe, and, if available, documentation of the child's clan membership;
- C. The full name, residence, date and place of birth, and occupation of the adoptive parent(s), a statement of relationship to child, with proof of their marital status, provided that this shall not be interpreted to prohibit single parent adoptions;
- D. Proof of parental consent, except in cases where the parental rights have been severed or the parents cannot be located;
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§9-11-6. Procedure for Signing the Consent to Adopt

Written consents, where required by this Code, shall be attached to the petition for adoption and acknowledged before the Court. Consent shall not be accepted by the Court unless signed and acknowledged more than ten days after birth of the child.

§9-11-7. Withdrawal of Consent to Adopt

Consent to an adoption cannot be withdrawn after the entry of a final order of adoption, but may be withdrawn prior to the final order for any reason.

§9-11-8. Hearing on Adoption

- A. Purpose. Time Limit – A hearing shall be held within 90 days of receipt of an adoption petition to determine if it is in the minor’s best interest to be placed with petitioners.
- B. Procedure at Hearing - The adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent who is consenting to the adoption must appear personally so that the Court can determine the understanding with which the consent is given.
- C. Order
 1. Granting the Petition - If the Court finds it is in the child’s best interests the Court may enter a final decree of adoption as follows:
 - a. For a child who has lived with the adoptive parent for more than one year before the petition was filed, the final decree of adoption shall be entered immediately;
 - b. In all other cases, the Court shall order that the child be placed in the adoptive parent’s custody for one year; at the expiration of the year, the Court shall request a supplemental report and if the Court determines that the best interests of the child are served by the adoption, it shall enter the final decree of adoption.
 2. Denying the Petition - If the Court determines that the adoption petition is not in the child’s best interests or if there is a showing that consent was not voluntary, the petition shall be denied. The Court may request the Social Services Department or other agencies to assist in the placement and care of the child consistent with this Code.

§9-11-9. Contents of Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearing.

§9-11-10. Adoptive Birth Certificate; Release of Original Certificate

Within five days after the final decree of adoption has been entered, the Clerk of Court shall provide a certified copy of the final decree to the Social Services Department and the Division of Vital Statistics of the State Board of Health of the state which issued the original certificate of birth so that a new record of birth in the new name and with the name or names of the adopting parents can be recorded.

§9-11-11. Name and Legal Status of Adopted Child

Persons adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise. They shall be entitled to the same rights as heirs of the persons adopting them; however, adoption does not confer tribal membership status on the adopted person who would not be otherwise eligible.

§9-11-12. Adoption Records

- A. Confidentiality – All adoption records shall be sealed and not available for release, except as provided below.
- B. Release of Information. Notice to Biological Parent - Information contained in adoption records shall be released upon petition to the Court by the adopted person after reaching the age of majority, or upon order of the Court upon showing of good cause by other persons. In either case, no information shall be released unless:
 - 1. The biological parents have been given notice by the Court of a petition for release of information, or notice of intent to issue such information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and
 - 2. The biological parent has consented in writing before the Court to the release of information, or the Court determines that the need for information is greater than the biological parent's right to privacy. The Court may refuse to divulge the biological parent's name but release other information that will not lead to the discovery of the parent's name.

CHAPTER 12 COMPULSORY SCHOOL ATTENDANCE

§9-12-1. Compulsory School Attendance; Responsibility

- A. Any minor who is eligible to be a qualified student for purposes of the New Mexico Public School Finance Act shall attend a public or private school. A minor shall be excused from this requirement if:
 - 1. Exempted by Court order;
 - 2. The minor has graduated from a high school or has successfully completed the GED exams and received a diploma;
 - 3. The minor is at least seventeen years of age and excused by the Zuni Board of Education upon a finding he will be employed in a gainful trade or occupation or an alternative form of education sufficient for his educational needs and his parent, guardian or custodian consents; or
 - 4. Exempted by the superintendent of schools of the district in which the minor is a resident, with the consent of the minor's parents, guardian, or custodian.
- B. A minor shall attend school for the length of time during the school year established for the school.
- C. The parent, guardian, or custodian is responsible for the minor's school attendance.

§9-12-2. Traditional Religious Participation or Healing

A student may be excused to participate in tribal religious or healing activities with the written consent of the parent, guardian, or custodian.

§9-12-3. School Attendance of Students who are Not Tribal Members

Minors who are not members of the Zuni Tribe may attend public or private schools under the same conditions as members of the Tribe.

§9-12-4. Enforcement of Attendance Law

- A. Responsibility for Enforcement – The Zuni Board of Education and the governing authorities of private schools shall enforce this Chapter for students enrolled in their respective schools.
- B. Procedure – To initiate enforcement, a local school board or governing representatives shall give written notice by certified mail or personal service on the child's parent, guardian or custodian and be directed to attend a meeting at the school conducted pursuant to procedures the school may establish to resolve the matter.
- C. Mandatory Report - A responsible school official shall be required to report to the Social Services Department for investigation any continuing violation of the attendance law occurring after the notice and meeting required in Paragraph B. The report must provide documentation of the notice and meeting and shall be investigated

as suspected minor in need of care. If the school files a petition on the matter in the Court, the petition shall document compliance with the procedures of this section. The school shall provide a copy of the petition to the Social Services Department.

CHAPTER 13. EMANCIPATION

§9-13-1. Requirements

The Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative if the child:

- A. Is at least sixteen years of age at the time of filing a petition;
- B. Wishes to be free from and no longer needs parental control and protection, and understands the consequences of such decision;
- C. Demonstrates his independence from his parents in matters of care, custody and earnings through independent means and establishment of an acceptable plan for independent living
- D. Has evidence of agreement to emancipation from parents.

§9-13-2. Procedure for Emancipation

- A. Petition - A minor, at least 16 years of age may petition for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation.
- B. Notice - Before the petition is heard, notice shall be given to the minor's parent(s), guardian or custodian.
- C. Findings - If the Court finds the requirements of Section 9-13-1 are met, it may grant all or part of the petition and issue a declaration of emancipation, unless, after having considered all evidence, it finds that emancipation is not in the best interest of the child.

CHAPTER 14. ESTABLISHMENT OF PARENTAGE AND SUPPORT

§9-14-1. Child's Right to Support

The father and mother of a child, whether married or not, are jointly liable for the support of a child until he reaches 18 years of age, is emancipated, or their parental rights are severed. Notwithstanding the foregoing, the father and mother of a child may be liable for claims of restitution brought within the applicable claims period after the child reaches 18 years of age.

§9-14-2. Establishing Parentage

The parentage of a child may be established by:

- A. A written acknowledgement filed with the Court by a parent that he is the father or she is the mother of the child; or
- B. A judicial determination by the Court.

§9-14-3. Proceedings to Establish Parentage and Compel Support

- A. Proceedings to establish parentage may be brought at any time after the child is born and before the child is 18 years of age by a parent or by the minor acting through a guardian if the complainant parent dies or becomes disabled, or by the Tribe.
- B. Proceedings to compel support from a parent may be brought in the Court at any time after the child is born or last supported by the parent and shall be brought by a complaining parent, by the minor if the complainant parent dies or becomes disabled, or by the Tribe.
- C. To determine parentage, the Court shall consider evidence including but not limited to, DNA test results, testimony of the alleged father, birth and baptismal certificates, testimony of the alleged parents' extended family members, clanship, and other demonstrations of family ties, including purification rites and care provided to the minor.
- D. To determine support obligations, the Court shall consider each parent's capacity for financial support and in-kind contributions and, if necessary, order wage-withholding to enforce a support order. To achieve equitable and adequate child support standards, the Court may adapt and utilize as tribal law the provisions from the State of New Mexico child support guidelines, until such time as child support guidelines have been adopted by the Tribe.
- E. Nothing in this section shall preclude an action in the Tribal Court to establish parentage or support. A final ruling in the Children's Court on the matter will be binding on the Tribal Court and a final ruling in the Tribal Court on the matter will be binding on the Children's Court, as consistent with the rules of court.

CHAPTER 15. APPEAL

§9-15-1. Procedure

An appeal to the Tribal Appellate Court may be taken from any order or judgment of the Children's Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or orders of the Tribal Court. Except as otherwise provided in this Code, the appeal must be taken within one month from the entry of the order or judgment appealed from. The name of the child shall not appear on the record.

§9-15-2. Stay Pending Appeal

Unless the Court stays its order, an appeal shall not stay the order or judgment appealed. Where the order or judgment appealed directs a change of custody of a child, the appeal shall be heard and decided at the earliest practicable time.