CHILDREN'S CODE

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CHILDREN'S CODE

CHAPTER 1. GENERAL PROVISIONS

Section 1-101. Purpose.

(A) Proceedings in children's cases shall be regarded as civil proceedings in which the Court may exercise certain equitable powers.

(B) This Article shall be interpreted and construed to carry out the following purposes:

(1) To preserve the unity of the family.

(2) To provide for the care, protection, mental and physical development of the children who come within the provisions of this Article.

(3) To ensure that a program of supervision, care and rehabilitation will be available to those children who come within the provisions of this Article.

(4) To achieve the foregoing purpose in a family environment whenever possible, separation of the child from his parents to be considered only when no alternative disposition is suitable to the child's welfare or in the interest of public safety.

(5) To provide fair procedures by which the provisions of this Article are enforced and the rights of the parties are recognized and protected to give full consideration to religious and traditional preferences and practices of children during the disposition of a matter.

Section 1-102. Definitions.

(A) "Abandoned" means the failure of the parent to provide reasonable support or to maintain regular contact with his or her child when such failure is intended by the parent to continue for an indefinite period in the future. Failure to maintain a parental relationship with the child without just cause for a period of six months (6) shall constitute evidence of abandonment.

(B) "Abuse" means the infliction of physical injury, sexual molestation and/or neglect, and shall include failure to maintain reasonable care and treatment to such an extent that health or emotional well-being is endangered

(C) "Adult" means a person eighteen (18) years of age or older.

(D) "Child" means a person under the age of eighteen (18) years.

(E) "Counsel" means a person who has been recognized by the Colorado River Indian Tribal Court as qualified to represent individuals in proceedings before the Court.

(F) "Custodian" means either:

(1) A person other than a parent or legal guardian, to whom physical custody and control of the child has been given by a parent.

(2) A person other than a parent or legal guardian, to whom legal custody of the child has been given by order of the Court.

(G) "Custody or Legal Custody" means the vesting either by court order or by other means of the following rights and responsibilities:

(1) The right to have physical custody of the child.

(2) The right and duty to protect, train and discipline the child.

(3) The responsibility to provide the child with food, shelter, education, and medical care, provided that such rights and responsibilities shall be exercised subject to the existing powers, rights, duties and responsibilities of a guardian or a parent.

(H) "Detention" means withholding the child from the physical custody and control of his parents, guardians or custodians, either in secure custody or in shelter care.

(I) "Extended Family Member" means a person, eighteen (18) years of age or older, who is the child's grandparent, aunt or uncle, brother or sister, cousin, or step-parent.

(J) "Extrajudicial Statement" means a statement, including a confession, admission, or other statement against interest made to a prosecutor, law enforcement officer, an official of the Tribes or a person acting for or on behalf of any of the foregoing officials.

(K) "Foster Home" means a home maintained by one or more persons suitable for placement of children, not immediately related by blood or the legal wards of such person, either for a temporary or an indefinite period of time.

(L) "Guardian" means a person who has been appointed by a court of competent jurisdiction to care for the person and property of a child. The rights and powers of a guardian include, but are not necessarily limited to, the following:

(1) The authority to consent to marriage, to enlistment in the armed forces of the United States and to major medical, psychiatric and surgical treatment, to represent the minor in legal action, and make other decisions of substantial legal significance concerning the child.

(2) The right of reasonable visitation.

(3) The rights and responsibilities of legal custody.

(4) The authority to consent to an adoption if there are no living parents or if all parental rights have been terminated by a court of competent jurisdiction.

(M) "Guardian Ad Litem" means a person appointed by the Court to protect the interest of a child in a particular case before the Court.

(N) “Judge” means a judge of the Juvenile Court.

(O) "Judicial Clerk" means the Judicial Clerk of the Tribal Court.

(P) "Juvenile Court" means the Colorado River Indian Tribal Court when exercising its jurisdiction over children.

(Q) "Minor" means a person under the age of eighteen (18) years.

(R) "Parent" means the natural or adoptive parent of a child.

(S) "Parent-Child Relationship" includes all rights, privileges, duties and obligations existing between parent and child.

(T) "Shelter Care" means care and placement of a child in a foster home or institution maintained by individuals or organizations to receive, care for and control children either on a temporary basis or for an indefinite period of time.

(U) "Ward of the Court" means a status declared by the Court wherein the Court undertakes the protection of a child and possesses all powers of a guardian, excluding the duty of support, but including the right to change custody of a child and make necessary order for maintenance.

(V) “Working Day" means any day except a Saturday, Sunday or a holiday declared by the Chairman of the Tribes.

Section 1-103. The Court System.

(A) Judges. The Chief Judge of the Tribal Court may appoint an Associate Judge to sit and hear juvenile cases. In the absence of a Juvenile Judge, any Judge of the Tribal Court may sit as Judge of the Juvenile Court until the vacancy is filled or a Judge of the Juvenile Court is available.

(B) Powers and Duties of Juvenile Court Judges. In carrying out the duties and powers specifically enumerated under the Juvenile Code, Judges of the Juvenile Court shall have the same powers and duties as Judges of the Colorado River Indian Tribal Court. Judges shall

have the authority and duty to determine a course of action which least restricts the child's freedom and is consistent with the objectives of the Juvenile Code, but subject to its limitations. Juvenile Court judges shall have the authority and duty to:

(1) Advise the child and the parent, guardian or custodian of their rights.

(2) Appoint counsel for a child, parent, guardian or custodian.

(3) Order that a child be taken into custody.

(4) Cooperate and participate with any federal, state, tribal or private agency providing rehabilitative or social services designed to assist a child to become a viable member of the community.

(C) Authority of the Juvenile Court.

(1) The Court is authorized to cooperate fully with any federal, state, tribal, community, public or private agency in order to participate in any diversion, rehabilitation, training or other program, including grants-in-aid, with which will improve the Court system and carry out the purpose of the Juvenile Court, subject to prior approval by the Tribal Council of any expenditure of funds.

(2) The Court and other officers under its supervision and control may utilize such social services as may be furnished by the Tribes, the federal government, other tribes, communities, states or private entities, provided that such use is economically administered without unnecessary duplication and expense, and that all applicable regulations are complied with.

(3) The Court may negotiate a contract on behalf of the Tribal Council with federal, tribal, community and state agencies and departments and private entities for the care and placement of minors whose status is adjudicated under this Article, subject to the final approval of the Tribal Council.

(D) Court Officers; Appointment and Salary. The Court, with the approval of the Tribal Council, shall appoint Probation Officers, Assistant Probation Officers, and other persons as may be required to carry out the work of the Juvenile Court. The compensation of all employees of the Court shall be set by the Chief Judge of the Tribal Court, subject to approval by the Tribal Council.

(E) Court Officers; Duties and Powers. In addition to the duties and powers provided elsewhere under this Article, Probation Officers shall have the following duties and powers:

(1) Keep written reports of all investigations or studies.

(2) Make reports to the Court as provided in this Article or as directed by the Court.

(3) Explain to the minor and his parents, guardians or custodians the meaning and conditions of probation or protective supervision upon the placement of the minor on probation or under protective supervision.

(4) Keep informed concerning the conduct and condition of each minor on probation or under protective supervision and report their status to the Court.

(5) Use all suitable methods to bring about improvement in the conduct or conditions of minors on probation or under protective supervision.

(6) Perform such other duties in connection with care, custody, or transportation of minors as the Court may require.

(7) Make appropriate referrals of cases to other agencies if their assistance appears to be needed or desirable.

(8) Provide family counseling and any other functions designated by the Court.

(9) Perform such other duties as designated by the Court.

(10) Identify and develop resources calculated to resolve the problems presented in petitions filed in the Juvenile Court.

(11) Not be employed as, or perform the duties of a prosecutor or a law enforcement officer except as expressly provided for in Chapters 3 and 4 of this Article.

(12) Identify and develop resources designed to enhance the child's potential as a viable member of the community.

Section 1-104. Jurisdiction of Juvenile Court.

(A) The Juvenile Court shall have exclusive original jurisdiction of all proceedings pursuant to this Article in which a child is alleged to be a "child-in-need-of-care," a "child offender," or a "child status offender."

(B) The Juvenile Court shall have exclusive original jurisdiction of the following proceedings notwithstanding any other laws relating to the same:

(1) Termination of parental rights.

(2) Adoption of a child.

(3) Determination of custody, or appointment of a custodian or guardian for a child.

(4) Commitment of a mentally retarded or mentally ill child.

(C) Jurisdiction of the Juvenile Court over a child is retained until terminated by any of the following situations:

(1) The child becomes an adult, except in a case involving a child who becomes an adult during the pendency of "child offender" proceedings in the Juvenile Court.

(2) The case is transferred by the Juvenile Court to another court.

(3) The Juvenile Court dismisses a petition or enters an order terminating ward status.

Section 1-105. Conduct of Proceedings; Confidentiality.

(A) Hearings on petitions shall be conducted in accordance with the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) and with the practice in civil cases before the Colorado River Indian Tribal Court.

(B) Unless requested by the child concerning whom the petition has been filed or any parent, guardian or custodian, the public shall not be admitted to a proceeding under this Article. The Court may nevertheless admit such persons as have been given notice or as are found to have a direct interest in the case, The Court may require the presence of such other witnesses as it deems necessary. Any person admitted to a proceeding under this Article shall not disclose any information obtained at the hearing.

Section 1-106. Omitted Issues; Curative Procedure.

When it appears during the course of any proceeding under this Article that an issue has been omitted from a petition or pleading, and appears from the facts to be appropriate, the Court may, on motion by the prosecutor or counsel for the parties, amend the petition or pleading. The Court shall then proceed as though the issue was originally and properly brought.

Section 1-107. Contempt of Court.

The Court has the power to punish an adult for contempt of court and may do so pursuant to Section 107 of the Law and Order Code.

Section 1-108. Medical or Dental Care.

(A) Whenever a child is taken into temporary custody under this Article and is in need of medical, surgical, dental, or other remedial care, the Probation Officer or Department of Health and Social Services Worker may authorize the performance of such medical, surgical, dental or other remedial care. The Probation Officer or Department of Health and Social

Services Worker shall notify the parent, guardian, or custodian of the child of the care found to be needed before such care is provided, and if the parent, guardian or custodian objects, such care shall be given only upon order of the court in the exercise of its discretion.

(B) Whenever it appears to the Juvenile Court that any child concerning whom a petition has been filed with the Court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or custodian capable of authorizing or unwilling to authorize such remedial care or treatment for such child, the Court may, after due notice to the parent, guardian or custodian, make an order authorizing the performance of the necessary medical, surgical, dental or other remedial care for such child.

(C) Whenever it appears that a child otherwise within the provisions of Subsection (B) of this Section, requires immediate emergency medical, surgical, dental or other remedial care, or whenever the Probation Officer or Department of Health and Social Services Worker cannot, with reasonable diligence, locate and notify the parent, guardian or custodian of the need of the child for such care, the Court may make an order authorizing the performance of such care as is reasonably necessary under the circumstances, without notice to the parent, guardian or custodian.

Section 1-109. Appeals.

(A) Any party may appeal a judgment or order of the Juvenile Court to the Appeals Court in the manner provided by the Law and Order Code.

(B) A child or indigent person who has filed a Notice of Appeal shall be furnished with a transcript of the proceedings, or as much of it as is requested, without cost.

(C) The pendency of an appeal shall not suspend an order or judgment of the Juvenile Court unless the Colorado River Indian Tribal Appeals Court specifically orders otherwise. Before ordering a stay or suspension of a Juvenile Court order or judgment pending appeal, the Appeals Court shall hold a hearing on the advisability of such action.

Section 1-110. Effect of Proceedings.

(A) No adjudication under this Article shall be considered to be a conviction of a crime or shall impose any civil disabilities resulting from a conviction of a crime.

(B) Upon the dismissal of a petition or termination of the Court's jurisdiction over a child, the child's care shall be deemed never to have occurred and the child may reply accordingly to any inquiry into the matter.

(C) The record of testimony given and adjudications made in proceedings under this Article shall not be admissible as evidence in any other Court proceeding whatsoever.

Section 1-111. Record of Hearings and Proceedings; Papers; Inspection.

(A) A record of all hearings, held under this Article shall be made and preserved by stenographic, mechanical, or electronic recording.

(B) The official Juvenile Court file for a proceeding shall include complaints, petitions, motions, memoranda, briefs, reports, findings of the court, court orders, and any other reports or papers filed in the action.

(C) The official Juvenile Court file shall be held confidential and open to inspection only by the child, the child's parent, guardian or custodian, their respective counsel, officials of the Juvenile Court and such other persons as may be designated by the Court. Notwithstanding this subsection, juvenile records shall be made accessible to law enforcement who are involved in the enforcement of the CRIT Sex Offender Registration Code ("SORC"), as provided for in SORC § 1-901.

Section 1-112. Law Enforcement Records.

(A) Law enforcement records and files concerning a child shall be kept separate from the records and files of adults, except in proceedings where jurisdiction is transferred to a criminal court. Only those records of the specific offense charged shall be placed in criminal court files upon transfer from the Juvenile Court.

(B) Law enforcement records and files concerning children shall be held confidential and open only to the inspection by the Tribal prosecutor, Juvenile Court personnel, the child and the child's parent, guardian, or custodian and their respective counsel. Notwithstanding this subsection, juvenile records of sex offenders subject to the SORC shall be made accessible to law enforcement who are involved in the enforcement of the SORC, as provided for in SORC § 1-901.

Section 1-113. Sealing of Records; Expungement.

(A) When a child who has been the subject of any proceeding before the Juvenile Court attains his eighteenth (18th) birthday, the Court shall order the Clerk of the Court to seal the Court records concerning the proceeding. The person who is the subject of the records sealed pursuant to this may petition the Court to permit inspection of the records and the Court may so order. Otherwise such records shall not be open to inspection by any person, except as provided by SORC § 1-901.

(B) Upon the eighteenth (18th) birthday of a child or upon termination of Juvenile Court jurisdiction, whichever occurs later, the Court shall order the expungement of all law enforcement files and records, including fingerprints. Notwithstanding this subsection, juvenile records of sex offenders subject to the SORC shall not be expunged and shall be kept as prescribed by SORC § 1-902.

(C) Notice of the expungement order shall be sent to every agency which the Juvenile Court has reason to believe may have information concerning the law enforcement files and records of the child. An Agency receiving notice of the expungement order shall transmit

copies of the notice to all agencies to which it has forwarded information concerning the law enforcement files and records, including fingerprints.

(D) After receipt of notice of an expungement order, each agency shall expunge all records ordered to be expunged, including the expungement order.

(E) After the entry of the expungement order, a proceeding conducted under this Article shall be deemed never to have occurred.

(F) As used in this Section, "expungement" means the physical destruction of files and records.

Section 1-114. Confidentiality of Information.

(A) A person injured by a failure to act as required by Section 1-113 shall have cause of action in tort against any person who fails to comply with Section 1-113. A failure to meet the requirements of Section 1-113 shall constitute sufficient grounds for the dismissal of a Tribal Employee.

(B) A person may bring an action in tort against any individual who has willingly and knowingly released confidential information or records concerning him, except where that individual acted pursuant to the SORC.

(C) A person may bring an action to enjoin the release of confidential information or records.

Section 1-115. Department of Health and Social Services Workers; Duties and Powers.

In addition to the duties and powers provided elsewhere under this Article, Child Protective Services Officers, employed and designated as such by the Tribal Department of Health and Social Services, shall have all of the powers and duties that Probation Officers have under Chapter 4 of this Article, and shall also have the powers listed in Section 1-103(E) of this Article.

CHAPTER 2. DUTY TO REPORT ABUSE AND NEGLECT OF CHILDREN

Section 1-201. Persons Required to Report Abuse and Neglect.

(A) Any physician, hospital intern or resident, surgeon, religious practitioner, dentist, osteopath, chiropractor, podiatrist, coroner, registered nurse, licensed practical nurse, nurse's aide, psychiatrist, social worker, school personnel, law enforcement officer, or any other such person having substantial responsibility for the care of children, whose observation or examination of any child discloses evidence of injury, sexual molestation, abuse, or physical neglect which appears to have been inflicted upon such child by other than accidental means

or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to a Tribal law enforcement official. Such reports shall be made by telephone or in person, and shall be followed by written report. Such reports shall contain:

(1) The names and addresses of the child and his parents or the person having custody of such child, if known.

(2) The child's age, sex and the nature and extent of his injuries, molestation, abuse or physical neglect, including any evidence of previous injuries, molestation, abuse or physical neglect.

(3) Any other information that such person believes might be helpful in establishing the cause of the injury, molestation, abuse or physical neglect.

(B) When such telephone or in-person reports are received by a Tribal law enforcement official, he shall immediately notify a Probation Officer and make such information available to him.

(C) Any person required to make reports pursuant to Subsection (A) of this Section may take or cause to be taken photographs of the child and the vicinity involved. If medically indicated, further examinations and tests, including but not limited to, radiological examinations, of the involved child may be performed.

(D) The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Chapter.

(E) Any other person who has knowledge of or observes a child whom he reasonably suspects has been a victim of child abuse or neglect may report such suspected instances of child abuse or neglect to a Probation Officer or law enforcement officer.

Section 1-202. Authority to Admit.

Whenever a child is brought to a medical facility within the boundaries of the Colorado River Indian Reservation for medical treatment and the child appears to have been injured by other than accidental means the child may be admitted to such medical facility for further observation and examination. A physician acting pursuant to this Section shall have the authority to admit, detain, or hold the child, without the consent of the parent, guardian or custodian, for up to forty-eight (48) hours, excluding Saturdays, Sundays and holidays. The admitting physician shall contact a Probation Officer immediately upon such admission. Department of Health and Social Services Workers and Tribal law enforcement officials shall assist the admitting physician in carrying out the provisions of this if necessary.

Section 1-203. Immunity of Participants; Nonprivileged Communications.

Any person making a complaint, or providing information pursuant to Section 1-201, or otherwise participating in the program authorized by this Chapter shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice and without probable cause.

Section 1-204. Violation of Chapter; Penalties.

(A) Any person who knowingly violates any provision of this Chapter is guilty of a misdemeanor and may be punished by a fine not to exceed $500.00 or not more than 180 days imprisonment, or both.

(B) Any person who refuses to provide any information which is required to be furnished pursuant to Section 1-201 or 1-202 of this Chapter shall be subject to civil penalties not to exceed Five Hundred Dollars ($500.00) per day for each day that such information is not furnished after it is first requested.

CHAPTER 3. CHILD OFFENDERS

Section 1-301. Definition of Child Offender.

(A) For purposes of this Chapter a child offender shall be defined as a child who commits an act which, if committed by an adult, would be a crime under the Law and Order Code or a Tribal Ordinance.

(B) Except in unusual circumstances, in lieu of proceedings under this Chapter, a child offender under the age of ten (10) years shall be treated as a "child-in-need-of-care" under Section 1-401 of this Article.

Section 1-302. Probation Officer; Authority; Taking a Child into Custody.

(A) Probation Officers shall be employed by the Tribes.

(B) A Probation Officer shall cooperate with tribal, state, federal and private social services agencies to achieve the purpose of this Chapter.

(C) A Probation Officer shall:

(1) Receive reports regarding child offenders and provide temporary shelter or detention for such children on a twenty-four (24) hour basis, if necessary.

(2) Receive from any source, oral or written, information regarding a child who may be a child offender.

(3) Upon receipt of any report pursuant to (1) and (2) above immediately:

(a) Notify the Colorado River Indian Tribes Police Department if advisable; and

(b) Make a prompt and thorough investigation of the circumstances alleged for the purpose of determining whether proceedings under this Article are called for. Such investigations shall include all the matters set forth in Section 1-304 of this Chapter.

(4) Take a child into temporary custody, without a warrant, when a Tribal court order so directs or when there is reasonable cause to believe that a Tribal Court order concerning the custody of the child has been violated. A child taken into custody pursuant to this Section shall be immediately given the following warnings:

(a) The child has the right to remain silent.

(b) Anything the child says can be used against the child in Court.

(c) The child has a right to the presence of counsel during questioning.

(d) If the child cannot afford counsel, the Court may appoint counsel for the child at no cost to the child.

(e) Any other warnings mandated by the Tribal Court.

(D) A Probation Officer shall have the powers of a Tribal law enforcement official for the purposes of this Article, but shall exercise such power only in urgent situations when a Police Officer is not immediately available.

(E) Regardless of whether a child is in temporary custody or not, a Probation Officer may file or cause to be filed a petition under Section 1-313 of this Chapter.

(F) A Probation Officer may make a referral to an appropriate agency or agencies to recommend social, mental and behavioral health services available for the child and parent(s), guardian(s), or custodian(s).

(G) The Probation Officer may condition the release of the child upon the child's participation and completion of the Diversion Program. Upon the discretion of the Officer, the Officer may file a petition pursuant to Section 1-313 with the Court or re-order the child to participate in the Diversion Program; the Officer will dismiss the case and will not file a petition with the Court pursuant to Section 1-313 if the child successfully completes the Diversion Program.

Section 1-303. Police Officer's Taking a Child into Custody.

(A) A Police Officer may take a child into custody without a warrant in the following situations:

(1) When a Tribal Court order so directs, or when there is reasonable cause to believe that a Tribal Court order concerning the child has been violated.

(2) When probable cause would exist for the arrest of an adult in identical circumstances.

(3) When there is reasonable cause to believe that the child has run away from his parent(s), guardian(s) or custodian(s).

(B) A child taken into custody pursuant to this Section shall be immediately given the following warnings:

(1) The child has the right to remain silent.

(2) Anything the child says can be used against the child in Court.

(3) The child has a right to the presence of counsel during questioning.

(4) If the child cannot afford counsel the Court may appoint counsel for the child at no cost to the child.

(5) Any other warnings mandated by the Tribal Court.

(C) An Officer who takes a child into custody under this Section shall thereafter proceed as follows:

(1) He may release the child to the child's parent(s), guardian(s) or custodian(s), or to a member of the child's extended family, when such parent(s), guardian(s) or custodian(s) cannot be located, provided that such extended family member consents to such temporary custody; or

(2) A Police Officer may make a referral to an appropriate agency or agencies to recommend social, mental and behavioral health services available for the child and parent(s), guardian(s), or custodian(s); or

(3) He may prepare in duplicate a written notice to appear before a Probation Officer at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons such child was taken into custody. He shall deliver one copy of the notice to such child or to a parent, guardian, or custodian of such child and may require such child or his parent, guardian, or custodian, or both, to sign a written promise that either or both will appear at the time and place designated in the notice. Upon the execution of the promise to appear, he shall immediately release such child. He shall, as soon as practicable, file one copy of the notice with the Probation Officer; or

(4) If the child is not released, the Officer shall, as soon as practical and no later

then the next working day inform the Probation Officer of police custody of such child.

(5) When an Officer informs a Probation Officer of police custody of said child he shall make reasonable and, if necessary, recurring efforts to notify the child's parents, guardians or custodians that the child is in custody and of the place where he is being held. The child's parents, guardians, or custodians shall also be informed of the child's rights listed in Subsection (B) of this Section.

Section 1-304. Investigation by Probation Officer.

Once a Probation Officer is informed of a child that has been taken into custody a Police Officer, the Probation Officer shall:

(A) Ascertain whether or not the child's parents, guardians or custodians have been notified that the child is in custody and of his whereabouts. If no notice has been given, the Probation Officer shall make reasonable efforts to provide such notification. The child's parents, guardians, or custodians shall also be informed of the child's rights listed in Section 1-303 of this Chapter.

(B) Immediately investigate the circumstances and environment of the child and the facts surrounding his being taken into custody. Such investigation shall cover all pertinent facts and matters and shall consider both the interests of the child and the interests of the public. The following factors shall be considered in any such investigation:

(1) Seriousness of the offense(s).

(2) Impact of the offense(s) upon any individual or the community.

(3) Previous number of Juvenile Court contacts.

(4) Age and maturity of the child.

(5) Attitude of the child regarding the offense and toward his parents, guardians, or custodians.

(6) Attitude of parents, guardians, or custodians toward the child's responsibility in relation to the offense(s) and toward the discipline of the child.

(7) School attendance.

(8) Resources available in the community for the care and treatment of the child.

Section 1-305. Criteria for Release or Further Detention of Child.

(A) As soon as possible after the immediate investigation required by 1-304, and in no event later than forty-eight (48) hours, excluding Saturdays, Sundays and holidays, after the

child has been taken into custody, a Probation Officer shall release the child to his parent(s) guardian(s) or custodian(s) unless one or more of the following conditions exist:

(1) Reasonable cause exists to believe the child has no parent, guardian, or custodian able to provide adequate supervision, and to care for him; or

(2) Reasonable cause exists to believe the child will commit injury to persons or property of others or cause injury to himself or be subject to injury by others; or

(3) Reasonable cause exists to believe the child will run away, or be made unavailable for proceedings of the Court.

(B) A Probation Officer may make a referral to an appropriate agency or agencies to recommend social, mental and behavioral health services available for the child and parent(s), guardian(s), or custodian(s).

Section 1-306. Procedures upon Further Detention.

If Probation Officer does not release the child in accordance with 1-305 he shall:

(A) Immediately, and in no event later than forty-eight (48) hours, excluding Saturdays, Sundays and holidays, after the child has been taken into custody, cause to be filed a petition pursuant to Section 1-313 of this Chapter.

(B) A petition may be filed by the Tribal Prosecutor upon the request of a Probation Officer.

Section 1-307. Notice of Detention Hearing.

(A) Upon filing of the petition under Section 1-313, the Clerk of the Juvenile Court shall set the matter for a detention hearing to be held within twenty-four (24) hours.

(B) Upon setting the detention hearing, the Court shall cause notice of the hearing to be served on the child's parents, guardians, or custodians.

(C) A copy of the Petition shall be attached to each notice of hearing.

(D) Service of the notice of hearing shall be in the manner provided by Section 108 of the Law and Order Code, or by telephone call to any person requiring notice.

Section 1-308. Detention Hearing.

(A) If at least one parent, guardian, or custodian of the child is not present at the hearing the Court shall determine what efforts have been made to notify and to obtain the presence of such persons. If it appears to the Court that further efforts are likely to produce a parent, guardian or custodian, the Court shall recess the case not more than twenty-four (24)

hours and direct appropriate officials to make continued efforts to obtain the presence of a parent, guardian or custodian.

(B) At the beginning of the hearing the Judge shall explain that the nature of the detention hearing is to determine only whether or not the child will be detained or kept in custody pending a future hearing on the petition filed.

(C) The Court shall further inform the parent(s), guardian(s) or custodian(s) of their right to be represented by counsel. If it appears to the Court that the parent(s), guardian(s) or custodian(s) desire counsel but are unable to afford counsel, the Court may appoint counsel for such person(s).

(D) The Court shall take testimony concerning the circumstances surrounding the taking of the child into custody and the need for further detention. The Court shall give the child an opportunity to introduce evidence, to be heard in his own behalf, and to examine witnesses. The child may not be compelled to be a witness against himself nor otherwise incriminate himself.

(E) The extrajudicial statement of a child in custody under fourteen (14) years of age shall not be admissible under any circumstances against the child. The extrajudicial statement of a child in custody fourteen (14) years of age or older shall not be admissible against the child unless the statement would have been admissible in an adult criminal proceeding and the statement is made in the presence of a parent, guardian or custodian of the child who is not then requesting or agreeing to removal of the child from his custody.

Section 1-309. Order after Hearing.

(A) After hearing evidence concerning the circumstances of the child and the alleged offense, the Court shall by written order release the child to his parent(s), guardian(s) or custodian(s) unless the Court finds that:

(1) There is reasonable cause to believe that there is substantial danger to the physical health of the child and there are no reasonable means by which to guard against such danger without removing the child from the physical custody of the parent(s), guardian(s) or custodian(s); or

(2) There is reasonable cause to believe that the child will be removed, hidden or will otherwise not be available for further Court proceedings if not further detained; or

(3) There is reasonable cause to believe that it is immediately and urgently necessary for the protection of the person or property of another that the child be further detained. The circumstances and gravity of the alleged offense may be considered to determine whether or not it is immediately and urgently necessary that the child be further detained.

(4) There is reasonable cause to believe that the best interests of the child will

best be served by giving temporary custody to an extended family member, provided that such extended family member consents to such temporary custody.

(B) If the Court finds further detention is necessary or gives temporary custody to an extended family member, it shall specify in writing the factual grounds upon which such decision is made.

(C) When ordering the further detention of the child, the Court shall designate in its order a suitable place of detention. A child shall not be detained in a jail facility used for the incarceration of adults.

(D) The Court may make a referral to an appropriate agency or agencies to recommend social, mental and behavioral health services available for the child and parent(s), guardian(s), or custodian(s).

Section 1-310. Continuance.

Upon the motion of the child or his parent(s), guardian(s) or custodian(s), the Court shall continue any preliminary detention hearing for one (1) day, excluding Saturdays, Sundays and holidays.

Section 1-311. Transfer of Jurisdiction to Criminal Court.

(A) Upon motion of the Tribal Prosecutor, the Juvenile Court may transfer jurisdiction over a child to a court of criminal jurisdiction if the child is alleged to have committed an offense on or after his sixteenth (16) birthday, and if the alleged offense would, if committed by an adult, be a crime.

(B) Prior to such transfer, the Juvenile Court shall hold a hearing to determine whether jurisdiction should be transferred. Any such hearing shall be held not more than ten (10) days after the petition under Section 1-313 is filed.

(C) At least three (3) days prior to the transfer hearing required by this Section, the Probation Officer shall file with the Court a predispositional study covering at least the following matters:

(1) The nature and seriousness of the offense(s) with which the child is charged.

(2) The nature and condition of the child as evidence by age, mental and physical condition, past record of offenses, and responses to past rehabilitation efforts.

(3) The available resources designed for the care and assistance of children.

(D) Written notice of a transfer hearing shall be given to the child and his parents, guardians or custodians and their respective counsel, in the manner provided in Section 108 of the Law and Order Code, not less than forty-eight (48) hours before the date set for the hearing. A copy of the predisposition study required by this Section shall be attached to each notice of hearing.

(E) All hearings under this Section shall be held in conformity with the procedures set forth in Section 1-321, excluding Subsections (G), (H) and (I).

(F) At a transfer hearing, the Court shall first determine whether probable cause exists to believe the child committed the alleged offense(s).

(G) Upon a finding of probable cause, the Court shall receive into evidence and consider the predispositional study required by this Section, as well as any other relevant and material evidence as may be offered on the advisability of a transfer of jurisdiction to a criminal court.

(H) The Juvenile Court may transfer jurisdiction to a court of criminal jurisdiction if the Court finds by clear and convincing evidence that:

(1) The offense(s) allegedly committed by the child and his past record of adjudicated offenses evidence a pattern of conduct which constitutes a substantial danger to the public; and

(2) There are no reasonable prospects for rehabilitating the child through available resources designed for the care and assistance of children.

(I) If the Juvenile Court transfers jurisdiction to a court of criminal jurisdiction, the Court shall issue a written transfer order containing the specific findings upon which the order is based.

(J) Testimony of the child at a transfer hearing conducted pursuant to this shall not be admissible in a trial in a court of criminal jurisdiction.

(K) Any Judge presiding at a transfer hearing shall not preside at a subsequent adjudicative hearing concerning the offense(s) alleged in the petition.

Section 1-312. Request to Probation Officer for Action.

(A) When any person has reason to believe that a child is a child offender, such person, by filing a written complaint therewith, may request a Probation Officer to file or cause to be filed a petition under Section 1-313 of this Chapter.

(B) Upon such a request being made, a Probation Officer shall immediately make such investigation as is necessary to determine whether proceedings in Juvenile Court are called for.

(C) Within thirty (30) days of a request for action under this Section, a Probation Officer shall notify in writing the person making such a request of any action taken on the request or the reasons no action was taken.

(D) When a Probation Officer declines to take action on a request made under this Section, the person making such request may seek judicial review in the Juvenile Court of the Probation Officer's decision within forty-five (45) days after the date the request was made. The Court may either affirm the decision of the Probation Officer or order him to commence Juvenile Court proceedings.

Section 1-313. Initiation of Proceedings by Petition.

(A) Proceedings in the Juvenile Court to declare a child to be a child offender shall be initiated by the filing of a petition.

(B) A petition may be filed by the Tribal Prosecutor upon the request of a Probation Officer.

(C) All petitions shall contain the following information:

(1) The name, sex, date and place of birth, current residence and tribal membership of the child, or the reasons such information is unavailable.

(2) Facts establishing the Court's jurisdiction.

(3) The names and last known addresses of the parents, guardians or custodians of the child, or the reasons that such information is unavailable.

(4) An allegation that the child is a child offender, along with the specific reference to one or more of the following:

(a) Any criminal provision(s) of the Tribal Law and Order Code alleged to have been violated.

(b) Any criminal provision(s) of any Tribal ordinance(s) alleged to have been violated.

(5) A plain and concise statement of facts upon which all allegations are based, including the dates on which and the locations where the acts are alleged to have occurred.

(6) The name and signature of the Probation Officer who recommended that a petition be filed and the date of such recommendation.

Section 1-314. Notice of Hearing on Petition.

(A) Upon the filing of the petition, the Judicial Clerk shall set a time and a place for a hearing on the petition.

(1) The hearing shall be set no later than fifteen (15) days from the date the petition is filed when the child is in custody.

(2) The hearing shall be set no later than thirty (30) days from the date the petition is filed when the child is not in custody.

(B) Upon setting of the hearing on the petition, the Court shall issue a summons to the child's parents, guardians, or custodians requiring them to be present at the hearing and to appear with the child at the hearing if the child is not in custody.

(C) A summons shall be issued to the child.

(D) A copy of the petition shall be attached to each summons.

(1) A summons issued to a child shall contain a statement substantially as follows: "You have the right to have counsel represent you. If you cannot afford counsel, the Court may appoint counsel at no cost to you. If you would like to have counsel appointed to represent you, appear before (Judge) at (Location) as soon as possible."

(2) A summons issued to a parent, guardian, or custodian shall contain a statement substantially as follows: "You and your child have the right to have counsel represent you. If you cannot afford counsel, the Court may appoint counsel for you and/or your child at no cost to you. If you would like counsel appointed to represent you and/or your child, appear before (Judge) at (Location) as soon as possible."

(E) Service of the summons shall be in the manner provided by Section 108 of the Law and Order Code and shall be made at least ten (10) days before the hearing date set.

Section 1-315. Responsive Pleading.

Responsive pleading admitting or denying allegations shall be filed with the Court and served on all parties at least five (5) days before the hearing date set. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 1-316. Continuance.

(A) Upon request of the child, the Court may continue any hearing under Sections 1-321 or 1-324 of this Chapter beyond the time limit within which the hearing is otherwise required to be held.

(B) Upon request of the Tribal Prosecutor or a parent, guardian or custodian of the child, the Court may for good cause continue any hearing under Section 1-321 or 1-324 of this Chapter for such period of time as is necessary.

(C) In no event may any hearing under Section 1-321 or 1-324 of this Chapter be postponed or continued for more than one hundred eighty (180) days after the filing of the petition.

Section 1-317. Discovery.

(A) The Tribal Prosecutor shall provide the child and his parents, guardians, or custodians or their respective counsel with a list of names of all witnesses that will be called at any hearing under this Chapter, except a detention hearing. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

(B) If the child intends to offer testimony to establish an alibi as a defense to an allegation, the child shall list the names of all witnesses to be called to establish the alibi and provide such list to the Tribal Prosecutor at least five (5) days prior to the hearing date set. The Tribal Prosecutor shall list the names of all witnesses to be called to refute the alibi and provide such list to the child at least forty-eight (48) hours prior to the hearing.

Section 1-318. Identification Procedures.

With the prior consent of the Court, any law enforcement official who has reasonable grounds to believe that any latent fingerprints found during the investigation of an offense are those of a child in custody, may fingerprint such child. All copies of the child's fingerprints shall be immediately destroyed if the comparison is negative.

Section 1-319. Subpoenas.

Upon request of the Probation Officer, Tribal Prosecutor, the child or the child's parent(s), guardian(s) or custodian(s), or on the Court's own motion, the Court or the Judicial Clerk shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Chapter.

Section 1-320. Pretrial Motions.

All pretrial motions, including any motion to suppress as evidence any tangible or intangible thin obtained as a result of an unlawful search or seizure, shall be heard and disposed of prior to the adjudicatory hearing on the petition.

Section 1-321. Adjudicatory Hearing on the Petition.

(A) At the beginning of the hearing on the petition the Judge shall first read the petition to those present and explain to the child and his parents, guardians or custodians the nature of the hearing, its procedures and possible consequences.

(B) If counsel has been retained for the child by his parent(s), guardian(s) or custodian(s) the Court shall determine whether counsel is acceptable to the child and whether counsel has been retained to represent the child's interests. If the Court determines that counsel will not represent the best interests of the child, the Court may remove retained counsel and in such event shall appoint either new counsel or a guardian ad litem.

(C) If counsel has not been retained by or for the child, the Court may appoint such counsel. A child over the age of fourteen (14) years may waive his right to counsel if the Court finds that the child has made voluntary, knowing and intelligent waiver of the right, and a parent, guardian or custodian with whom the child resides or resided immediately prior to the filing of the petition concurs within the waiver.

(D) The Court shall further inform the parent(s), guardian(s), or custodian(s) of their right to be represented by counsel. If it appears to the Court that the parent(s), guardian(s) or custodian(s) desire counsel, but are unable to afford counsel, the Court may appoint counsel for such person(s).

(E) The Court shall determine that the parent(s), guardian(s) or custodian(s) understand their right to counsel and consequences of not having counsel.

(F) The Court may continue the proceeding for a period not to exceed seven (7) days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself with the case, or to determine whether the parent(s), guardian(s), or custodian(s) are unable to afford counsel at their own expense.

(G) After giving the child an opportunity to consult with counsel, the Court shall give the child an opportunity to plead to the allegations.

(H) If the child admits the allegations of the petition, the Court shall find the admission to be presumptive evidence of the truth of the allegations, provided that the Court finds all of the following:

(1) The child fully understands his rights as set forth in Section 1-303 of this Chapter and fully understands the potential consequences of his admission of the allegations.

(2) The child voluntarily, intelligently and knowingly admits all facts necessary to constitute a basis for Juvenile Court action under this Chapter.

(3) The child has not, in his purported admission of allegations, set forth facts that would, if found to be true, constitute a defense to the allegations.

(I) At the hearing, the Court shall consider only the question whether the child is a child offender, and for this purpose any matter or information relevant and material to the circumstances or acts which are alleged is admissible and may be received in evidence. Proof beyond a reasonable doubt must be adduced to support a finding that the child is a child offender.

(J) The Court shall give the child an opportunity to introduce evidence, to be heard on his own behalf, and to examine witnesses. The child need not be a witness against himself nor otherwise incriminate himself.

(K) The extrajudicial statement of a child in custody under fourteen (14) years of age shall not be admissible under any circumstances against the child. The extrajudicial statement of a child in custody fourteen (14) years of age or older shall not be admissible against the child unless the statement would have been admissible in an adult criminal proceeding and the statement is made in the presence of a parent, guardian, or custodian of the child who is not then requesting or agreeing to removal of the child from his custody.

Section 1-322. Order After Adjudicatory Hearing.

(A) After hearing the evidence presented at the hearing, the Court shall make a finding whether or not the child is a child offender.

(B) If the Court finds the child is not a child offender, it shall order the petition dismissed and the child returned to his parent(s), guardian(s) or custodian(s).

(C) If the Court finds a child is a child offender, such child may be declared a ward of the Court, and a dispositional hearing shall be held.

Section 1-323. Dispositional Report.

(A) Prior to the dispositional hearing, a Probation Officer shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. The report shall contain:

(1) A specific plan for care of and assistance to child which is calculated to resolve the problems presented in the petition.

(2) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan.

(3) If placement with the child's parent(s), guardian(s) or custodian(s) is not recommended, specific and detailed reasons why such recommendation is not made.

(4) A report of consultation with the Department of Health and Social Services if foster home or institutional placement is proposed.

(B) The Department of Health and Social Services may submit a written dispositional report addressing the same matters as specified in Subsection (A) of this Section.

(C) The dispositional reports provided for in this shall be provided to the child and his parents, guardians or custodians or their respective counsel at least five (5) days prior to the date set for the dispositional hearing.

Section 1-324. Dispositional Hearing.

(A) All hearings under this shall be conducted in conformity with the procedures set

forth in section 1-321 excluding Subsections (G), (H), and (I).

(B) When reasonably possible, the Judge who presided at the adjudicatory hearing shall preside at the dispositional hearing.

(C) At the hearing the Court shall consider the question of the proper disposition to be made of the child.

(D) The Court shall receive into evidence and shall consider the dispositional reports provided for in Section 1-323 of this Chapter, as well as any other relevant and material evidence as may be offered.

Section 1-325. Dispositional Order.

(A) Once a child has been adjudged a child offender, the Court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such child, including medical treatment, subject to further order of the Court; provided, that if the child is to be subject to the continuing jurisdiction of the Court, the Court shall declare the child to be a ward of the Court.

(B) In determining the disposition of a child, the Court shall prefer the alternative which least restricts the child's freedom of movement, provided such alternative is compatible with the best interests of the child and the community.

(C) The Court may, as necessary, limit the control to be exercised over such child by any parent, guardian, or custodian and shall in its order clearly and specifically set forth any such limitations.

(D) The Court may order the child be placed on probation and order a Probation Officer to supervise and assist the child and his parent(s), guardian(s), or custodian(s) so as to rectify the conditions that resulted in child offender adjudication. The Court may order specific terms of supervision, which prescribe or proscribe the child's activities and which are within the ability of the child to perform. An order of supervision may include the following requirements:

(1) Participation in a constructive program of service or education designed to impress upon the child a sense of responsibility for the injuries caused to the person or property of another.

(2) Restitution not in excess of actual damage caused by the child, to be paid from his earnings or those of his parents or guardians or by performance of services acceptable to the victim which are reasonable and capable of being performed within one (1) year; provided that nothing herein shall be construed to preclude any responsibility of the child's parent(s) or guardian(s) for damage caused by the child.

(3) Participation in appropriate counseling programs available through social services or mental health agencies.

(4) Additionally, the Court may order parent(s), guardian(s), and custodian(s) the following:

i. Stay home and monitor child.

ii. Submit to drug and alcohol testing when there is a reasonable suspicion of drug and/or alcohol use.

iii. Attend and successfully complete alcohol and drug education, treatment and/or other counseling services.

iv. Attend and successfully complete parenting education, treatment and/or other counseling services.

v. Order any other term and condition that is reasonable and in the best interests of the child's rehabilitation.

(E) No child shall be taken from the physical custody of his parent, guardian, or custodian unless the Court finds by clear and convincing evidence that:

(1) There is a substantial danger to the physical or emotional health of the child and there are no acceptable and reasonable means by which the child's well-being can be protected without removal of the child from physical custody of the parent, guardian or custodian; or

(2) The child poses a substantial threat of danger to the persons or property of others and there are no acceptable and reasonable means by which such threat can be guarded against without removal of the child from the physical custody of the parent, guardian or custodian; or

(3) The parent, guardian or custodian is unwilling to have physical custody of the child; or

(4) The parent, guardian, or custodian is incapable of providing or has failed or neglected to provide proper supervision and care for the child; or

(5) The child has in the past been placed on probation in his home and rehabilitation has failed.

(F) If a child is taken from the physical control of his parents, guardians or custodians, the Court may place the child in shelter care and under the supervision of a Probation Officer. In any shelter care placement, the child shall be placed in his community wherever possible and placement shall be in the following order:

(1) A member of the child's extended family; A friend of the family;

(2) A foster family;

(3) A group boarding home;

(4) An institution for children.

(G) The Court may order that the child be detained in an appropriate detention facility.

(H) A child shall not be held in detention awaiting placement for more than fourteen (14) days after the entry of the dispositional order.

(I) A dispositional order made pursuant to this shall remain in force no longer than the maximum period of confinement or probation that an adult could receive for the offense(s) committed.

(J) The dispositional order of the Court shall set forth the findings of fact upon which the order is based together with clear and concise reasons for the order.

Section 1-326. Six-Month Review Hearing.

(A) The Court shall conduct a hearing to review each disposition under this Chapter not less than once every six (6) months after the entry of the dispositional order, until the jurisdiction of the Court over the child is terminated.

(B) A Probation Officer shall, at least fifteen (15) days prior to the hearing, file a supplemental report on the services offered to the child, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his parent, guardian or custodian and make his recommendation for disposition. The supplemental report shall contain the same matters as are required in Section 1-323 of this Article.

(C) Notice in writing of the hearing shall be given to the child and his parent(s), guardian(s) or custodian(s), and their respective counsel, not less than five (5) days before the hearing. Such notice shall include a copy of the supplemental report made to the Court by the Probation Officer.

(D) Notice of the hearing shall be given in the manner provided by Section 108 of the Law and Order Code.

(E) All hearings under this shall be conducted in conformity with the procedures set forth in Section 1-321 excluding Subsections (G), (H), and (I).

(F) The Court shall review the supplemental report required by this Section, shall consider the efforts or progress demonstrated by the child and his parents, guardians or

custodians and the extent to which they cooperated and availed themselves of services provided and shall make appropriate findings.

(G) Based on the findings made under Subsection (F) of this Section, the Court may do any of the following:

(1) If there has been no material change of circumstances, continue the current dispositional order in effect.

(2) Order removal of the child from the physical custody of his parent(s), guardian(s) or custodian(s) if current facts justify such removal under the standards set forth in Section 1-325 E. of this Chapter.

(3) Order any additional services reasonably believed to be necessary.

(4) Order a child returned to the physical custody of his parent(s), guardian(s) or custodian(s) with any limitation, condition or supervision authorized by Section 1-325 of this Chapter.

(5) Make any order otherwise authorized under Section 1-325 of this Chapter.

(6) Terminate the child's status as a ward of the Court and order the child immediately returned to the physical custody of his parent(s), guardian(s) or custodian(s).

Section 1-327. Motion to Change or set Aside Previous Order or to Terminate Ward Status.

(A) A child, his parents, or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be a child offender, request the Court to change or set aside any previous court order on the grounds of change of circumstances or new evidence. A request to terminate the child's status as a ward of the Court may be made in the same manner and upon the same grounds.

(B A motion made under Subsection A. of this Section shall identify the person making the motion and relationship to or interest in the child and shall further set forth in clear and concise terms any change of circumstance or new evidence which is alleged as grounds for such change of order or termination of ward status.

(C) The Court shall hold a hearing on all motions filed under this upon prior notice given to the child and the child's parents, guardians, or custodians in the manner provided by Section 108 of the Law and Order Code. Such notice shall include a copy of the motion filed.

(D) All hearings under this shall be in conformity with the procedures set forth in Section 1-321, excluding Subsections (G), (H), and (I).

CHAPTER 4. CHILDREN IN NEED OF CARE

Section 1-401. Definition of Child-In-Need-Of-Care.

For purposes of this Chapter a child-in-need-of-care shall be defined as one:

(1) Who has no parent, guardian, or custodian available and willing to care for him; or

(2) Who has not been provided with adequate food, shelter, clothing, medical care or education necessary for his health and well-being; or

(3) Whose parent(s), guardian(s), or custodian(s) have knowingly, intentionally, or recklessly subjected the child to cruel and inhumane treatment or placed the child in a situation that endangers his life or health; or

(4) Who is without proper parental care and control or supervision because of the disappearance or the prolonged absence of his parent(s), guardian(s) or custodian(s); or

(5) Those parent(s), guardian(s) or custodian(s) are unable to provide for the child because of incarceration or hospitalization for a physical or mental condition; or

(6) Who has been intentionally or recklessly subjected to sexual abuse by a parent, guardian, or custodian; or

(7) Who has been placed in custodial care for violation of the law, which violation is the result of parental pressure, guidance or approval; or

(8) Whose parent(s), guardian(s), or custodian(s) have knowingly, intentionally or recklessly subjected the child to emotional abuse; or

(9) Who under the age of ten (10) years, is a child offender; or,

(10) Being subject to compulsory school attendance, is habitually truant from school; or

(11) Habitually disobeys the reasonable and lawful commands and directions of his parent, guardian, or custodian, and is ungovernable and beyond their control; or

(12) Has committed a Tribal offense applicable only to minors; or

(13) Is absent from home for an unreasonable period of time without permission of a parent, guardian or custodian.

Section 1-402. Child Protective Services Officers; Authority; Taking Child into Custody.

(A) Child Protective Services Officers shall cooperate with tribal, state, federal and private social services agencies to achieve the purpose of this Chapter.

(B) A Child Protective Services Officers shall:

(1) Receive reports of children-in-need-of-care and provide temporary shelter care for such children on a twenty-four (24) hour basis, if necessary.

(2) Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.

(3) Upon receipt of any report pursuant to (1) and (2) above, immediately:

(a) Notify the Colorado River Indian Tribes' Police Department if advisable; and

(b) Make a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests, and the name, age and condition of other children in the home.

(4) Take a child into temporary custody, without a warrant, in the following situations:

(a) When there is reasonable cause to believe the child is a child-in-need-of-care and will be harmed or removed or hidden from the jurisdiction of the Court if not taken into custody.

(b) When a Tribal Court order so directs, or when there is reasonable cause to believe that a Tribal Court order concerning the custody of the child has been violated.

(C) Law enforcement officers shall cooperate with Child Protective Services Officers to remove a child from the custody of his parent(s), guardian(s) or custodian(s) when necessary.

(D) With or without taking a child into temporary custody, a Child Protective Services Officer may cause to be filed a petition under Section 1-412 of this Chapter.

(E) Before offering protective services to a family, an Officer shall make it clear that he has no legal authority to compel the family to receive such services, and may inform the family of his authority to petition the Juvenile Court for a determination that a child is in need of care.

(F) Nothing in this shall be construed to prevent a Child Protective Services Officer from filing a petition at any time if the Officer otherwise believes it would be in the child's best interests.

(G) Within thirty (30) days after receipt of the initial information, a Child Protective Services Officer may render a written report of his investigation and evaluation to the Arizona State Central Registry if that is where the complaint originated.

Section 1-403. Police Officer's Taking a Child into Custody.

(A) A Police Officer may, without a warrant, take a child into temporary custody in accordance with terms set forth in Section 1-402 (B)(4), of this Chapter.

(B) An Officer who takes a child into temporary custody under this shall thereafter proceed as follows:

(1) He may release the child to the child's parent(s), guardian(s) or custodian(s), or to a member of the child's extended family, when such parent(s), guardian(s) or custodian(s) cannot be located provided that such extended family member consents to such temporary custody, and file a subsequent report of the incident with the Child Protective Services Department; or

(2) If the child is not released, the Officer shall, as soon as practical and no later than the next working day, take the child before a Child Protective Services Officer and deliver custody of the child to such person.

(3) When an Officer takes a child before a Child Protective Services Officer, he shall make reasonable and, if necessary, recurring efforts to notify the child's parents, guardians or custodians that the child is in custody and the place where he is being held.

(4) A Police Officer may make a referral to an appropriate agency or agencies to recommend social, mental and behavioral health services available for the child and parent(s), guardian(s), or custodian(s).

Section 1-404. Investigation by Child Protective Services Department.

Once a child has been taken into custody by, or delivered to, a Child Protective Services Officer, the Child Protective Services Officer shall:

(1) Ascertain whether or not the child's parents, guardians or custodians have been notified that the child is in custody and of his whereabouts. If no notice has been given, a Child Protective Services Officer shall make reasonable efforts to provide such notification.

(2) Immediately investigate the circumstances and environment of the child and the facts surrounding his being taken into custody. Such investigation shall cover all pertinent facts and matters, including risks, if any, to other children in the same home.

Section 1-405. Criteria for Release or Further Custody of Child.

As soon as possible after the immediate investigation required by Section 1-404, and in no event later than forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, after the

child has been taken into custody, the Child Protective Services Officer shall release the child to his parent(s), guardian(s) or custodian(s) unless one or more of the following conditions exist:

(1) Reasonable cause exists to believe the child has no parent, guardian or custodian able to provide adequate supervision and to care for him, or

(2) Reasonable cause exists to believe the child will commit injury to persons or property of others or cause injury to himself or be subject to injury by others, or

(3) Reasonable cause exists to believe the child will run away or be made unavailable for proceedings of the Court.

Section 1-406. Procedures Upon Further Custody.

If the Child Protective Services Officer does not release the child in accordance with Section 1-404, he shall immediately, and in no event later than forty-eight (48) hours, excluding Saturdays, Sundays and holidays, after the child has been taken into custody, cause to be filed a petition pursuant to Section 1-412 of this Chapter. Such petition shall include the names and addresses of extended family members who have a direct or substantial interest in the child.

Section 1-407. Notice of Preliminary Custody Hearing.

(A) Upon filing of the petition under Section 1-412, the Judicial Clerk shall set the matter for a preliminary custody hearing to be held within twenty-four (24) hours.

(B) Upon setting of the preliminary custody hearing, the Court shall issue a summons to the child's parents, guardians or custodians requiring them to be present at the hearing.

(C) Notice shall be given to extended family members who have been so named in the petition, or whom the Court knows to have a direct or substantial interest in the child.

(D) A copy of the petition shall be attached to each summons and the summons shall contain a statement substantially as follows:

"You have the right to have counsel represent you. If you cannot afford counsel, the Court will appoint counsel at no cost to you. If you would like to have counsel appointed to represent you, appear before (Judge) at (Location) as soon as possible."

(E) Service of the summons and notice shall be in the manner provided by Section 108 of the Law and Order Code.

Section 1-408. Preliminary Custody Hearing.

(A) If at least one parent, guardian, or custodian of the child is not present at the hearing, the Court shall determine what efforts have been made to notify and to obtain the presence of such persons. If it appears to the Court that further efforts are likely to produce a parent, guardian or custodian, the Court shall recess the case not more than twenty-four (24) hours and direct appropriate officials to make continued efforts to obtain the presence of a parent, guardian or custodian.

(B) At the beginning of the hearing the Judge shall explain that the nature of the preliminary custody hearing is to determine only whether or not the child will be detained or kept in custody pending a future hearing on the petition filed.

(C) If counsel has been retained for the child by his parent(s), guardian(s) or custodian(s), the Court shall determine whether counsel is acceptable to the child and whether counsel has been retained to represent the child's interests. If the Court determines that counsel will not represent the best interests of the child, the Court may remove retained counsel and in such event shall appoint either new counsel or a guardian ad litem.

(D) If counsel has not been retained by or for the child, the Court may appoint such counsel. A child over the age of fourteen (14) years of age may waive his right to counsel if the Court finds that the child has made a voluntary, knowing and intelligent waiver of the right, and a parent, guardian or custodian with whom the child resides or resided immediately prior to the filing of the petition concurs with the waiver.

(E) The Court shall further inform the parent(s), guardian(s) or custodian(s) of their right to be represented by counsel. If it appears to the Court that the parent(s), guardian(s) or custodian(s) desire counsel but are unable to afford counsel, the Court may appoint counsel for such person(s).

(F) The Court shall determine that the parent(s), guardian(s) or custodian(s) understand their right to counsel, the consequences of not having counsel and the potential consequences of the hearing.

(G) The Court shall take testimony concerning the circumstances surrounding the taking of the child into custody and the need for further detention. The Court shall give the child and his parents, guardians, or custodians an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses.

Section 1-409. Order after Hearing.

(A) After hearing evidence concerning the circumstances of the child, the Court shall by written order release the child to his parent(s), guardian(s) or custodian(s) unless the Court finds that:

(1) There is good cause to believe that there is a substantial danger to the physical health of the child and there are no reasonable means by which to guard against such danger without removing the child from the physical custody of the parent(s), guardian(s) or

custodian(s); or

(2) There is good cause to believe that the child will be removed, hidden or will otherwise not be available for further court proceedings if not further detained; or

(3) There is good cause to believe that it is a matter of immediate and urgent necessity for the protection of the person or property of another that the child be further detained.

(4) There is reasonable cause to believe that the best interests of the child will best be served by giving temporary custody to an extended family member, provided that such extended family member consents to such temporary custody.

(B) If the Court finds further detention is necessary, it shall specify in writing the factual grounds upon which such decision is made.

(C) When ordering the further detention of the child, the Court shall include in its order a suitable place of detention or suitable person to be vested with temporary custody. A child shall not be detained in a jail facility used for the incarceration of adults. Except when absolutely necessary, a child shall not be placed in the same room as a child offender or alleged child offender.

Section 1-410. Continuance.

Upon the motion of the child or his parent(s), guardian(s) or custodian(s), the Court shall continue any preliminary detention hearing for one (1) day, excluding Saturdays, Sundays and holidays.

Section 1-411. Request to Child Protective Services Department for Action.

(A) When any person has reason to believe that a child is a child-in-need-of-care, such person may request a Child Protective Services Officer to cause to be filed a petition under Section 1-412 of this Chapter.

(B) A Child Protective Services Officer shall immediately make such investigation as is necessary to determine whether proceedings in Juvenile Court are called for.

(C) A Child Protective Services Officer shall within thirty (30) days of a request for action under this Section, notify in writing the person making such a request of any action taken on the request or the reasons no action was taken.

(D) When a Child Protective Services Officer declines to take action on a request made under this Section, the person making such request may seek judicial review of the Child Protective Services Officer's decision within forty-five (45) days after the date the request

was made. The Court may either affirm the decision of the Child Protective Services Officer or order him to commence Juvenile Court proceedings.

Section 1-412. Initiation of Custody Proceedings by Petition.

(A) Proceedings in the Juvenile Court to declare a child to be a child-in-need-of-care shall be initiated by the filing of a petition.

(B) A petition may be filed by the Tribal Prosecutor upon the request of a Child Protective Services Officer.

(C) All petitions shall contain the following information:

(1) The name, sex, date and place of birth, current residence and tribal membership of the child, extended family members who have a direct or substantial interest in the child, or the reasons such information is unavailable.

(2) Facts establishing the Court's jurisdiction.

(3) The names and last known addresses of the parents, guardians, or custodians of the child, or the reasons that such information is unavailable.

(4) An allegation that the child is a child-in-need-of-care, along with a specific reference to one or more of the definitions of child-in-need-of-care given in Section 1-401 of this Chapter.

(5) A plain and concise statement of facts upon which all allegations are based, including the dates on which and the locations where the acts are alleged to have occurred.

(6) The name and signature of the Child Protective Services Officer who recommended that a petition be filed and the date of such recommendation.

Section 1-413. Notice of Hearing on Petition.

(A) Upon the filing of the petition, the Judicial Clerk shall set a time and a place for a hearing on the petition.

(1) The hearing shall be set no later than fifteen (15) days from the date the petition is filed when the child is in custody.

(2) The hearing shall be set no later than thirty (30) days from the date the petition is filed when the child is not in custody.

(B) Upon setting of the hearing on the petition, the Court shall issue a summons to the child's parents, guardians or custodians requiring them to be present at the hearing and to appear with the child at the hearing if the child is not in custody.

(C) Notice shall be given to extended family members who have been so named in the petition, or whom the Court knows to have a direct or substantial interest in the child.

(D) A summons shall be issued to the child if the child is over the age of twelve (12) years. A copy of the petition shall be attached to each summons and the summons shall contain a statement substantially as follows:

"You have the right to have counsel represent you. If you cannot afford counsel, the Court will appoint counsel at no cost to you. If you would like to have counsel appointed to represent you, appear before (Judge) at (Location) as soon as possible."

(E) Written notice of the hearing shall be given to the Department of Health and Social Services at least ten (10) days before the hearing date set.

(F) Service of the summons and notice shall be in the manner provided by Section 108 of the Law and Order Code and shall be made at least ten (10) days before the hearing date set.

Section 1-414. Responsive Pleading.

Any responsive pleading shall be filed with the Court and served on all parties at least five (5) days before the hearing date set.

Section 1-415. Continuance.

(A) Upon request of the child, the Court may continue any hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held.

(B) Upon request of the Tribal Prosecutor or a parent, guardian, or custodian of the child, the Court may for good cause continue any hearing under this Chapter for such period of time as is necessary.

(C) In no event may any hearing under this Chapter be postponed or continued for more than one hundred eighty (180) days after the filing of the petition.

Section 1-416. Discovery.

The Tribal Prosecutor shall provide the child and his parents, guardian or custodians or their respective counsel with a list of names of all witnesses that will be called at any hearing under this Chapter, except a preliminary custody hearing. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

Section 1-417. Subpoenas.

Upon request of the Child Protective Services Officer, Tribal Prosecutor, the child or the child's parent(s), guardian(s) or custodian(s), or on the Court's own motion, the Court or the Judicial Clerk shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Chapter.

Section 1-418. Adjudicatory Hearing on the Petition.

(A) At the beginning of the hearing on the petition the Judge shall first read the petition to those present and explain to the child and his parents, guardian or custodians the nature of the hearing, its procedures and possible consequences.

(B) If counsel has been retained for the child by his parent(s), guardian(s), or custodian(s), the Court shall determine whether counsel is acceptable to the child and whether counsel has been retained to represent the child's interests. If the Court determines that counsel will not represent the best interests of the child, the Court may remove retained counsel and in such event shall appoint either new counsel or a guardian ad litem.

(C) If counsel has not been retained by or for the child, the Court may appoint such counsel. A child over the age of fourteen (14) years of age may waive his right to counsel if the Court finds that the child has made a voluntary, knowing and intelligent waiver of the right, and a parent, guardian, or custodian with whom the child resides or resided immediately prior to the filing of the petition concurs with the waiver.

(D) The Court shall further inform the parent(s), guardian(s), or custodian(s) of their right to be represented by counsel. If it appears to the Court that the parent(s), guardian(s), or custodian(s) desire counsel but are unable to afford counsel, the Court may appoint counsel for such person(s).

(E) The Court shall determine that the parent(s), guardian(s), or custodian(s) understands their right to counsel and consequences of not having counsel.

(F) The Court may continue the proceeding for a period not to exceed seven (7) days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself with the case, or to determine whether the parent(s), guardian(s), or custodian(s) are unable to afford counsel at their own expense.

(G) At the hearing, the Court shall consider only the question whether the child is a child-in-need-of-care under Section 1-401, and for this purpose any matter or information relevant and material to the circumstances or acts which are alleged is admissible and may be received in evidence; however, proof by clear and convincing evidence must be adduced to support a finding that the child is a child-in-need-of-care.

(H) The Court shall give the child and his parents, guardian or custodians an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses.

Section 1-419. Order after Adjudicatory Hearing.

(A) After hearing the evidence presented at the hearing; the Court shall make a finding whether or not the child is a child-in-need-of-care.

(B) If the Court finds the child is not a child-in-need-of-care, it shall order that the petition be dismissed and the child be returned to his parent(s), guardian(s) or custodian(s).

(C) If the Court finds a child is a child-in-need-of-care, such child may be declared a ward of the Court, the Department of Health and Social Services shall be notified and a copy of all relevant documents and orders sent thereto, and a dispositional hearing shall be held.

Section 1-420. Dispositional Report.

(A) Prior to the dispositional hearing, a Department of Health and Social Services Worker shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. All Court records and Child Protective Services Department records shall be made available for this purpose. The report shall contain:

(1) A specific plan for care of and assistance to the child which is calculated to resolve the problems presented in the petition.

(2) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan.

(3) If placement with the child's parent(s), guardian(s), or custodian(s) is not recommended, specific and detailed reasons why such recommendation is not made and a specific plan for reunification or an explanation for the lack of such plan.

(4) Whether an action to terminate parental rights appears to be advisable.

(B) The dispositional report required by this Section shall be provided to the child and his parents, guardian or custodians and extended family members who have appeared at the adjudicatory hearing, or their respective counsel, at least five (5) days prior to the date set for the dispositional hearing.

Section 1-421. Disposition & Hearing.

(A) All hearings under this Section shall be conducted in conformity with the procedures set forth in Section 1-418, excluding Subsection (G).

(B) When reasonably possible, the Judge who presided at the adjudicatory hearing shall preside at the dispositional hearing.

(C) At the hearing the Court shall consider the question of the proper disposition to be made of the child.

(D) The Court shall receive into evidence and shall consider the dispositional report required by Section 1-420 of this Chapter, as well as any other relevant and material evidence as may be offered.

Section 1-422. Dispositional Order.

(A) Once a child has been adjudged a child-in-need-of-care, the Court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such child, including medical treatment, subject to further order of the Court; provided, that if the child is to be subject to the continuing jurisdiction of the Court, the Court shall declare the child to be a ward of the Court.

(B) The Court may, as necessary, limit the control to be exercised over such child by any parent, guardian, or custodian and shall in its order clearly and specifically set forth any such limitations.

(C) The Court may order the Department of Health and Social Services to supervise and assist the child and his parent(s), guardian(s) or custodian(s) so as to rectify the conditions that resulted in a child-in-need-of-care adjudication.

(D) No child shall be taken from the physical custody of a parent, guardian, or custodian unless the Court finds by clear and convincing evidence that:

(1) There is substantial danger to the physical or emotional health of the child and there are no acceptable and reasonable means by which the child's well-being can be protected without removal of the child from the physical custody of the parent, guardian, or custodian; or

(2) The child's parent, guardian, or custodian is unwilling to have physical custody of the child.

(E) If a child is taken from the physical custody of his parents, guardian or custodians, the Court shall place the child in shelter care and under the supervision of the Department of Health and Social Services. In any shelter care placement, the child shall be placed in his community wherever possible and placement shall be in the following order:

(1) A member of the child's extended family;

(2) A friend of the family;

(3) A foster family;

(4) A group boarding home;

(5) An institution for children.

(F) If a child is taken from the physical custody of his parents, guardian or custodians, the dispositional order of the Court shall designate the person, persons or agency which shall be vested with the authority to consent to and make decisions concerning the child's medical treatment, education, residence and discipline.

(G) The Court may, in proper circumstances, order the initiation of proceedings to terminate parental rights as provided in Chapter 5. of this Article.

(H) The dispositional order of the Court shall set forth the findings of fact upon which the order is based, together with clear and concise reasons for the order.

Section 1-423. Six-Month Review Hearing.

(A) The Court shall conduct a hearing to review each disposition under this Chapter not less than once every six (6) months after the entry of the dispositional order, until the jurisdiction of the Court over the child is terminated.

(B) The Department of Health and Social Services shall, at least fifteen (15) days prior to the hearing, file a supplemental report of the services offered to the family, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his parent(s), guardian(s), or custodian(s), and make his recommendation for disposition.

(C) Notice in writing of the hearing shall be given to the child and his parents, guardian or custodians, and extended family members who have appeared at the adjudicatory or dispositional hearings, or their respective counsel, not less than five (5) days before the hearing. Such notice shall include a copy of the supplemental report made to the Court by the Department of Health and Social Services.

(D) Notice of the hearing shall be given in the manner provided by Section 108 of the Law and Order Code.

(E) All hearings under this shall be conducted in conformity with the procedures set forth in Section 1-418, excluding Subsection (G).

(F) The Court shall review the supplemental report required under this Section and shall consider the efforts or progress demonstrated by the parent(s), guardian(s) or custodian(s) and the extent to which they cooperated and availed themselves of services provided and shall make appropriate findings.

(G) Based on the findings made under Subsection F. of this Section, the Court may do any of the following:

(1) If there has been no material change of circumstances, continue the current dispositional order in effect.

(2) Order removal of the child from the physical custody of his parent(s),

guardian(s) or custodian(s) if current facts justify such a removal under the standards set forth in Section 1-422 D. of this Chapter.

(3) Order any additional services reasonably believed to be necessary.

(4) Order a child returned to the physical custody of his parent(s), guardian(s) or custodian(s) with any limitation, condition or supervision authorized by Section 1-422 of this Chapter.

(5) Make any order otherwise authorized under Section 1-422 of this Chapter.

(6) Terminate the child's status as a child-in-need-of-care and order the child immediately returned to the physical custody of his parent(s), guardian(s), or custodian(s).

Section 1-424. Motion to Change or Set Aside Previous Order or to Terminate Ward Status.

(A) A child, his parent(s), or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be a child-in-need-of-care, request the Court to change or set aside any previous court order on the grounds of change of circumstances or new evidence. A request to terminate the child's status as a ward of the Court may be made in the same manner and upon the same grounds.

(B) A motion made under this Section shall identify the person making the motion and his relationship to or interest in the child and shall further set forth in clear and concise terms any change of circumstance or new evidence which is alleged as grounds for such change or order or termination of ward status.

(C) The Court shall hold a hearing on all motions filed under this upon prior notice given to the child and the child's parents, guardian or custodians in the manner provided by Section 108 of the Law and Order Code. Such notice shall include a copy of the motion filed.

(D) All hearings under this shall be in conformity with the procedures set forth in Section 1-418, excluding Subsection (G).

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS

Section 1-501. Termination of Parental Rights.

The Court may order a permanent termination of parental rights as provided herein concerning a child for whom the jurisdiction of the Court has been invoked. The rights of one parent may be terminated without affecting the rights of the other. Parental rights may not be terminated with respect to any parent over whom the Court has not obtained jurisdiction.

Section 1-502. Petition; Who May File; Grounds.

Any person or entity who has a legitimate interest in the welfare of a child may file a petition for the termination of the parent-child relationship if one or more of the following grounds exist:

(1) That the parent has intentionally abandoned the child and the parent has made no effort to maintain a parental relationship. Intent to abandon will be presumed when a child has been left by both his parents or one parent in the physical custody of another for a period of six (6) months, or by one parent in the physical custody of the other parent for a period of one (1) year, without adequate provisions for his care and without communication. If in the opinion of the Court the evidence indicates that only token efforts to provide care or communicate have been made, the Court may declare the child abandoned.

(2) That a parent who has refused to receive or is receiving services under Sections 1-402 or 1-422 of this Article to assist such parent in caring for the child, has inflicted or attempted to inflict, or willfully allowed the infliction of, further injury or cruel abuse or punishment upon the child or has continued to refuse to or neglect to provide the child with necessary food, clothing, shelter, medical care or education.

(3) That the parent is, and will remain, incapable of supporting or controlling the child in a proper manner because of mental deficiency or mental illness, if there is testimony to this effect from two physicians, each of whom have been certified by the American Board of Psychiatry, or from two licensed psychologists who have a masters degree in psychology and at least five (5) years of post-graduate experience in the diagnosis and treatment of emotional and mental disorders, or from one of each.

(4) That the parent has willfully or recklessly subjected the child to sexual abuse.

Section 1-503. Contents of Petition.

(A) A petition for termination of parental rights filed pursuant to this Chapter shall include to the best information or belief of the petitioner:

(1) The name and address of the petitioner.

(2) The name, sex, date and place of birth, current residence and tribal membership of the child.

(3) Facts establishing the Court's jurisdiction.

(4) The relationship of the petitioner to the child.

(5) The names, and last known addresses of the parents, or the reasons that such information is unavailable.

(6) The names and addresses of the persons having legal custody or guardianship of the child.

(7) The grounds upon which termination of the parent-child relationship is sought.

Section 1-504. Investigation.

(A) Upon the filing of a petition for termination of parental rights, the Judicial Clerk shall immediately and in writing notify the Department of Health and Social Services, who shall immediately investigate the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child and other such facts as may be pertinent.

(B) The Department of Health and Social Services shall file with the Court a written report of the investigation with a recommendation, and the reasons therefore, as to whether or not the parent-child relationship should be terminated.

Section 1-505. Notice of Hearing on Petition; Service.

(A) Upon the filing of a petition for termination of parental rights, the Court shall set a time and place for a hearing on the petition and shall issue a summons to the child's parents, guardian or custodians requiring them to appear with the child at the time and place stated in the summons.

(B) Notice of the hearing shall also be given in writing to the Department of Health and Social Services.

(C) A summons shall be issued to the child if the child is over the age of twelve (12) years.

(D) A copy of the petition shall be attached to each summons and the summons shall contain a statement substantially as follows:

"You have the right to have counsel represent you. If you cannot afford counsel, the Court may appoint counsel at no cost to you. If you would like to have counsel appointed to represent you, appear before (Judge) at (Location) as soon as possible."

(E) Service of the summons shall be in the manner provided by Section 108 of the Law and Order Code and shall be made at least ten (10) days before the hearing date set.

Section 1-506. Responsive Pleading.

Any responsive pleading shall be filed with the Court and served on all parties at least five (5) days before the hearing date set.

Section 1-507. Continuance.

(A) Upon request of the petitioner, the child, or the parent, the Court may for good cause continue any hearing under this Chapter for such period of time as is absolutely necessary.

(B) In no event may any hearing under this Chapter be postponed or continued for more than one hundred eighty (180) days after the filing of the petition.

Section 1-508. Subpoenas.

Upon request of the petitioner, the child or the parent, or on the Courts own motion, the Court or the Clerk of the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Chapter.

Section 1-509. Hearing.

(A) At the beginning of the hearing on the petition, the Court shall first read the petition to the child's parent and explain to the parent and to the child the effect of the granting of the petition. The Court may appoint counsel to represent the child. The Court shall further inform the parent of his right to be represented by counsel. If it appears to the Court that the parent desires counsel but is unable to afford counsel, the Court may appoint such counsel. The Court shall determine that the parent understands his right to counsel and the consequences of not having counsel. The Court may continue the proceeding for not to exceed thirty (30) days, as necessary to make an appointment of counsel, or to enable counsel to acquaint himself with the case, or to determine whether the parent is unable to afford counsel at his own expense.

(B) The Court's findings with respect to grounds for termination of parental rights shall be based on the evidentiary standard of proof beyond a reasonable doubt. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

Section 1-510. Order Terminating Parental Rights.

(A) Every order terminating a parent-child relationship shall be in writing and shall recite the findings upon which such order is based, including the findings upon which the Court's jurisdiction is grounded.

(B) An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other; provided however, that the status of the child as an enrolled member of the Tribes, or his eligibility to be so enrolled, and his right to Tribal benefits and privileges shall not be affected.

(C) If an order terminates the parent-child relationship of both parents, the Court shall at the same time appoint a guardian for the child.

CHAPTER 6. ADOPTIONS

Section 1-601. Who May Be Adopted.

Any child who is a resident of the Colorado River Indian Reservation or who is a member of the Tribes, or is eligible to be a member of the Tribes, and for whom jurisdiction of the Juvenile Court has been invoked pursuant to Section 101 of the Law and Order Code, may be adopted.

Section 1-602. Who May Adopt.

(A) Any adult is eligible to adopt a child; provided, that no non-member who is not a member of the child's extended family may adopt a child who is a member of the Tribes, or is eligible to be a member of the Tribes, except in compelling circumstances as determined by the Court, when the best interests of the Tribes or the child so require.

(B) A husband and wife may jointly adopt children but a person may not adopt a child without the approval of the adopting person's spouse.

Section 1-603. Consent to Adoption; Who Shall Consent; Waiver.

(A) No adoption shall be granted unless consent to adopt has been obtained and filed with the Court from the following:

(1) Both parents, if living, except in the following cases:

a. Consent is not necessary from a parent whose parental rights have been terminated by a court of competent jurisdiction.

b. Consent is not necessary from the father of a child born out of wedlock, unless the father has acknowledged his paternity by written document filed with the Court, or by subsequent marriage to the mother, or unless the father's paternity has been adjudicated by a court of competent jurisdiction.

(2) The guardian of the child or any official appointed by a court of competent jurisdiction and given authority by it to consent to the child's adoption.

(3) An agency which has been given consent to place the child for adoption by a parent whose consent would be necessary under (I) of this Subsection, or which has been given authority in other legal proceedings to place the child for adoption.

(B) If the child is twelve (12) years of age or older, he shall not be adopted without his consent. Such consent shall be given in open court and after an explanation of the legal consequences of the adoption and the rights of the child under this Chapter.

(C) The Court may waive any requirement for the consent of any person, except a parent and the child, when after a hearing, the Court determines that the best interests of the child will be promoted thereby. In such a case, the Court shall make written findings of all facts upon which its order is based.

Section 1-604. Form of Consent.

(A) A consent by a parent to an adoption shall be in writing and recorded before a judge of a court of competent jurisdiction and shall be accompanied by the presiding judge's certificate that:

(1) The terms and consequences of the consent were fully explained in detail and were fully understood by the parent.

(2) The parent fully understood the explanation in English or it was interpreted to him into a language that the parent understood.

(B) A consent given prior to, or within, ten (10) days after the birth of the child shall not be valid.

(C) A consent by a parent to an adoption shall designate one of the following:

(1) An agency authorized to place the child for adoption.

(2) A particular person or persons authorized to adopt the child.

(D) A consent which purports to permit a third person, other than an agency to locate or nominate an adoptive parent shall be invalid.

(E) A consent by a minor parent to an adoption shall not be valid unless prior written approval from the Juvenile Court is obtained. Any consent given in accordance with this Section shall not be subject to revocation by reason of the parent's minority.

(F) All consents to an adoption shall be in writing, signed by the person giving the consent and witnessed by two (2) or more credible witnesses who are at least eighteen (18) years of age and who sign their names in the presence of the person giving consent.

Section 1-605. Withdrawal of Consent to Adoption.

(A) At any time prior to the entry of a decree of adoption, a parent may for any reason withdraw his or her consent to an adoption.

(B) The child shall be returned to the parent withdrawing consent if such parent would otherwise be entitled to the custody and control of the child.

Section 1-606. Petition for Adoption.

(A) Any person desiring to adopt a child may for that purpose petition the Juvenile Court.

(B) The Judicial Clerk shall immediately in writing notify the Department of Health and Social Services of the pendency of the action and of any subsequent action taken.

(C) A husband and wife desiring to adopt a child shall file a joint petition for adoption.

(D) A petition for adoption shall be verified by the petitioner(s) and shall specify:

(1) The full names, ages, place of residence and tribal membership of the petitioner(s), if any, and, if married, the date and place of marriage, and the relationship, if any, to the child to be adopted.

(2) Facts establishing the Court's jurisdiction.

(3) The date, if applicable, when the petitioner(s) acquired custody of the child and from whom.

(4) The name, sex, date and place of birth, current residence and tribal membership of the child, if known to the petitioner(s). If this information is held confidential from the petitioner(s) and known to an official or investigator of the Court, it shall be provided to the Court by separate record and preserved as confidential.

(5) The names and addresses of the child's parents and members of his extended family, if known to the petitioner(s). If this information is held confidential from the petitioner(s) and known to an official or investigator of the Court, it shall be provided to the Court by separate report and preserved as confidential.

(6) The adoptive name of the child, if a change of name is desired.

(7) That it is the desire of the petitioner(s) to adopt the child.

(8) A full description and statement of the value of all property owned or possessed by the child if known by petitioner(s).

(9) Data regarding any consents which have been given or the reason that consents need not be given.

(10) Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.

(E) Any written consent required by this Chapter may be attached to the petition or may be filed with the Court at or prior to the hearing.

Section 1-607. Investigation.

(A) It shall be the duty of the Department of Health and Social Services to investigate the proposed adoption and to submit to the Court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition within ninety (90) days after the filing of the petition. In those cases in which the investigation establishes that there is substantial question concerning the suitability of the petitioner(s) or the care provided the child or the availability of the consent to adoption, the report shall be filed immediately. The Court may allow such additional time for the filing of said report as in its discretion it may see fit, after at least five (5) days notice to the petitioner(s) and opportunity for such petitioner(s) to be heard with respect to the allowance for additional time.

(B) The investigation required by this shall consider all relevant and material facts concerning the petitioner(s)' fitness to adopt children, and shall include, but not be limited to, the following factors concerning the petitioner(s) and the members of their household:

(1) Social history.

(2) Financial condition.

(3) Moral fitness.

(4) Religious and community background.

(5) Mental and physical conditions.

(6) All other facts bearing on the issue of the fitness of the petitioner(s) and their household that may be deemed relevant.

(C) If a petitioner is not a member of the Tribes and if the child to be adopted is a member of the Tribes, or is eligible to be a member of the Tribes, the investigation shall also include the reasons the nonmember should be considered suitable to adopt a member.

(D) As soon as identity of the child to be adopted is known, the investigation shall also include:

(1) Whether the parent or parents, if living, are willing to consent to the child being adopted and the reasons therefore.

(2) Whether the parent or parents of the child have consented to the adoption of the child in accordance with Section 1-604 of this Chapter.

(3) Whether the parent-child relationship between the child and his parent or parents has been terminated by a court of competent jurisdiction.

(4) The background of the child, his mental and physical condition, and, so far

as is ascertainable, the medical background of the child's natural parents.

(5) The existing and proposed arrangements for custody of the child.

(6) The adoptability of the child and the suitability of the child's placement with the petitioner(s).

(7) The desire of the child, to the extent it may be determined.

(E) The investigator shall at all times observe strict standards of confidentiality and shall at no time reveal the identity of the parties to the adoption to each other.

Section 1-608. Notice of Hearing on Petition for Adoption; Service.

Upon receipt of the investigation and recommendation required by Section 1-607 of this Chapter, the Court shall set a time and place for a hearing on the petition and shall cause notice thereof to be served, in the manner provided by Section 108 of the Law and Order Code, on:

(1) The petitioner(s).

(2) The person having custody of or responsibility for the child, if any.

(3) The Department of Health and Social Services.

(4) Any person required by this Chapter to give consents to the adoption.

Section 1-609. Hearing.

(A) Petitions filed under this Chapter shall be heard by the Court and such hearing shall be as informal as the requirements of due process and fairness permit. In no event shall a hearing be held less than forty-five (45) days after the report of investigations and recommendations from the Department of Health and Social Services received by the Court. The petitioner(s) and the child to be adopted shall attend unless the Court orders otherwise upon a showing of good cause.

(B) The Court shall examine all persons appearing before it pursuant to this Section. The examination of each person shall be conducted separately but within the physical presence of each such other person(s) unless the Court, in its discretion, shall order otherwise.

(C) The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing. The Court's findings shall be based upon a preponderance of the evidence.

Section 1-610. Decree of Adoption.

If after the hearing and consideration of all reports and evidence, the Court is satisfied that the requirements of this Chapter have been met and that the adoption is in the best interests of the child, the Court shall enter a decree of adoption of the child. The decree may change the name of the child if requested. The decree of the Court shall be in writing and shall recite the findings of fact upon which the decree is based, including findings pertaining to the Court's jurisdiction. Such decree shall be effective and binding on all persons from the date of entry.

Section 1-611. Rights Under Adoption Decree.

(A) Upon entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent the same as though the child were born naturally to the adoptive parent in lawful wedlock. The adopted child shall be entitled to inherit real and personal property from and through the adoptive parent and the adoptive parent shall be entitled to inherit real and personal property from and through the adopted child. If an inheriting adoptive child or parent is not an enrolled member of the Tribes, then said child or parent shall not be eligible to inherit any interest which the deceased Tribal member's estate may have to any Tribal privilege, right, land, or property of any kind.

(B) Upon entry of the decree of adoption, the relationship of parent and child between the adopted child and any persons other than his adoptive parents by that adoption shall be completely terminated and all the legal rights, privileges, duties, obligations and other legal consequences of such relationship shall cease to exist, including the right of inheritance. When the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the decree of adoption.

(C) Notwithstanding anything in this Section to the contrary, the decree of adoption shall not extinguish any status, rights or privileges due to the child's Indian ancestry, heritage or tribal membership.

Section **1-612. Withdrawal or Denial of Petition; Custody.**

In any case in which a petition for adoption is withdrawn or denied, the Court shall order the removal of the child from the proposed adoptive home, if the Court finds that such removal is in the child's best interest. If such removal is ordered, the Court shall vest temporary legal custody in a person with the ability to care for the child's welfare. The Court may make orders for the temporary support of the child and such other orders as may be necessary for the child's welfare.

Section 1-613. Dismissal After Death; Exception.

In the event of the death of the petitioner prior to adoption, the petition shall be dismissed, except that, if there are two petitioners, the proceeding shall continue as to the surviving petitioner, unless withdrawn by the survivor.

Section 1-614. Irregularities; Curative Period.

After two (2) years from the date that a decree of adoption is entered, any irregularity in the proceeding, including lack of jurisdiction, shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.

Section 1-615. Sealing of Records.

Notwithstanding any provision of this Article to the contrary, upon entry of a decree of adoption the Court shall order all Court records relating to such proceeding sealed. A person may petition the Court for permission to inspect such records, but permission shall not be granted except in extraordinary circumstances and for compelling cause shown.

CHAPTER 7. EMANCIPATION

Section 1-701. Rights of Emancipation.

Any minor sixteen (16) years of age or older, or parent of such minor, may file a petition with the Juvenile Court for emancipation of such minor. The Tribal Prosecutor shall file a petition upon request of the minor or the parent.

Section 1-702. Petition; Contents.

(A) A petition for emancipation shall include:

(1) The name, date and place of birth and residence of the minor.

(2) The names and addresses of the parents, guardian or custodians of the minor.

(B) A written statement of the reason for requesting emancipation. Any affidavits supporting the request may be attached to the petition.

Section 1-703. Hearing; Notice; Waiver.

(A) After the petition has been filed, the Judicial Clerk shall set a time and place for the hearing. The Court shall give notice of the hearing, and an explanation of the meaning and consequences of emancipation to the minor and his parents, guardian or custodians. Service of the notice of hearing shall be in the manner provided by Section 103 of the Law and Order Code.

(B) A parent, guardian, or custodian of the minor may waive appearance at the emancipation hearing, except that a parent may not waive such appearance where he has initiated the petition. To be effective, the waiver must be in writing, be attested to by a notary public and contain a statement that the parent, guardian, or custodian understands the meaning

and consequences of the waiver and the emancipation.

(C) The emancipation hearing shall take place no later than forty-five (45) days after the filing of the petition.

(D) If the Court finds that the notice and other requirements of this have been met, the emancipation hearing may be conducted informally and without appearance of the parents, guardian or custodians of the minor. The minor shall be present at the hearing and the Court may require the presence of any parties or witnesses deemed necessary for disposition of the petition.

Section 1-704. Criteria for Emancipation; Order of Emancipation.

(A) In determining whether to order emancipation of the minor, the Court shall consider at least the following factors as evidence of the minor's ability to be independent:

(1) Whether the minor is able to manage his or her affairs independently of his parents, guardian or custodians.

(2) Whether the minor is living separately or paying room and board at home.

(3) Whether the minor is employed and the history of the minor's employment.

(4) Whether the minor is married.

(5) Whether the minor is enlisted in the Armed Services.

(6) Whether emancipation is in the best interests of the minor.

(7) Any other facts deemed relevant by the Court.

(B) After hearing and considering the facts, the Court may order the emancipation of a minor. Consent of the minor or of the parents, guardian or custodians of the minor is not required for emancipation.

(C) An order of emancipation shall be in writing and shall recite the findings of fact upon which the order is based and shall include a statement of the effect of emancipation. Such order shall be conclusive and binding on all persons from the date of entry.

Section 1-705. Effect of Emancipation.

(A) Notwithstanding any other provision of law, an order of emancipation of a minor means that such minor may, in the same manner as an adult:

(1) Sue and be sued.

(2) Buy, sell and dispose of property.

(3) Enter into contracts.

(4) Earn, keep and spend wages.

(5) Consent to or obtain medical, dental, psychiatric, legal and educational services.

(6) Obtain a driver's license.

(7) Live apart from such minor's parents, guardian or custodians.

(B) An order of emancipation releases the minor's parents, guardian or custodians of all liability for agreements, contracts, obligations, torts and crimes of such minor during the period of emancipation.

(C) The order does not affect or alter any law relating to age requirement for voting or holding public office.

Section 1-706. Review and Revocation.

At any time before an emancipated minor reaches eighteen (18) years of age, the minor or his parents, guardian or custodians may file a petition with the Court for a review of the emancipation order. The Court may revoke the order only if a parent, guardian, or custodian of the minor agrees to accept such liability for the acts of the minor during the period of emancipation as there would have been had there been no decree of emancipation.

CERTIFICATION

The foregoing Ordinance was on August 5, 2008, duly approved by a vote of 5 for, 0 against and 0 abstaining, by the Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Article VI of the Constitution of the Tribes, ratified by the Tribes on March 1, 1975 and approved by the Secretary of the Interior on May 29, 1975, pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984). This Ordinance is effective as of the date of its enactment.

COLORADO RIVER TRIBAL COUNCIL

ACTING Chairman

Secretary