

# JUVENILE CODE

CONFEDERATED TRIBES  
OF THE  
UMATILLA INDIAN RESERVATION

**JUVENILE CODE**

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## **JUVENILE CODE**

### **CHAPTER 1. GENERAL PROVISIONS**

#### **SECTION 1.01. PURPOSE**

Recognizing that children are the Confederated Tribes of the Umatilla Indian Reservation's most important resource and that children are vital to the continuing existence of the Confederated Tribes, this Juvenile Code has been developed as a means of safeguarding the health, safety, welfare, and culture of the Confederated Tribes for all future generations. The purpose of the Juvenile Code is to ensure the future of the Confederated Tribes by establishing procedures and laws to protect the best interest of children and the Confederated Tribes. This Code shall be liberally construed to achieve this purpose.

#### **SECTION 1.02. POLICY**

It shall be the policy of the Confederated Tribes of the Umatilla Indian Reservation to:

- A. Exert and utilize the full extent of the authority of the Confederated Tribes to protect Indian children and keep them within the tribal community;
- B. Provide services to Indian children and their families consistent with the traditions, laws, and cultural values of the Confederated Tribes, whenever possible;
- C. Promote stability and security within the tribal community by establishing a judicial process for appropriately handling juvenile offender and Minor-in-need-of-care proceedings;
- D. Provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and the protection of their civil and other legal rights;
- E. Ensure that off-Reservation courts will be able to return Indian children to the Confederated Tribes for care and guidance;
- F. Provide for the care, protection, and development of Indian children and preserve and retain the unity of tribal families whenever possible;
- G. Provide a continuum of services for Indian children and their families, from prevention to residential treatment, with an emphasis whenever possible on prevention, early intervention, and community-based alternatives;
- H. Discourage delinquent acts, hold juveniles accountable for their behavior, and provide rehabilitation and guidance to juvenile offenders and their families;
- I. Encourage, guide, assist, and compel if necessary, parents, guardians, and custodians to provide a safe and nurturing physical and emotional environment for their children;
- J. Encourage the reporting and investigation of suspected child neglect and abuse, and where necessary to secure the safety and well-being of children in need of care, judicial intervention for removal and placement in tribally-approved homes and facilities that reflect the values and culture of the Confederated Tribes;
- K. Prefer permanent guardianships over adoption as a placement option for children found to be minors-in-need-of-care, where the placement is not inconsistent with other provisions of this code;
- L. Maintain the connection of Indian children to their families, the Confederated Tribes, and the tribal community, whenever possible in the best interest of the child; and

- M. Preserve traditional concepts, including, but not limited to, the importance of extended family and the obligations of family members to one another.

### SECTION 1.03. DEFINITIONS

- A. Terms used in this code shall be liberally construed so as not to limit the jurisdiction of the Confederated Tribes over Indian children, and to facilitate the authority of the Juvenile Court to act to protect the interests of Indian children and their families.
- B. As used in this code, the terms listed below shall have the following meanings:
1. **Abandon.** To fail to maintain contact with and provide reasonable support for a child for a substantial period of time, without good cause. Abandonment may include the intent, through words or behavior, to abdicate all further obligation or responsibility for the child. Failure to maintain contact with and provide reasonable support for a child without good cause for a period of 6 months shall constitute prima facie evidence of abandonment.
  2. **Abuse.** Any of the following, taken together or separately:
    - a. The infliction of physical, emotional, mental, or sexual harm on a child;
    - b. Failing to maintain reasonable care and treatment of a child;
    - c. Exploiting or overworking a child to such an extent that the child's health or well-being is endangered;
    - d. Subjecting a child to excessive physical discipline;
    - e. Failing to provide a safe environment for a child, free from persons who may harm the child;
    - f. Exposing a child to immediate danger from his or her surroundings, including, but not limited to, permitting a child to live in physical filth;
    - g. Exposing a child to or allowing the child to remain in a place where methamphetamines are or have been used or manufactured;
    - h. Exposing a child to illegal substances, including but not limited to the use of such substances in the child's presence;
    - i. Exposing a child to domestic violence;
    - j. Exposing a child to repeated alcohol or drug abuse;
    - k. Knowingly allowing a child to ride in a vehicle operated by a person whose driving abilities are impaired by alcohol or drug use; and
    - l. The use of alcohol or illegal drugs by a pregnant woman.
  3. **Adult.** Any person eighteen (18) years of age or older.
  4. **Age or Developmentally Appropriate.** Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

5. Child or Juvenile. Any person who is:
  - a. Under eighteen (18) years of age; or
  - b. Eighteen (18) years of age or older, and who was under the jurisdiction of the Juvenile Court immediately preceding his or her eighteenth (18<sup>th</sup>) birthday, and over whom the Court has continued to maintain jurisdiction beyond such eighteenth (18<sup>th</sup>) birthday. Those persons are considered juveniles until the Court releases them from jurisdiction, or until they turn twenty-five, which occurs sooner. .
6. Child Dependency Proceeding. A proceeding concerning a child who is alleged or found to be a Minor-In-Need-Of-Care including, but not limited to, proceedings for shelter care, foster care, guardianships, termination of parental rights, adoption, and emancipation, and the review of any such action.
7. Community Accountability Board. An adjunct and advisory panel established by the Juvenile Court to provide a forum for the alternative disposition of juvenile matters pending before the Court.
8. Confederated Tribes. The Confederated Tribes of the Umatilla Indian Reservation.
9. Contempt. Any interference with a Juvenile Court proceeding or the willful disobedience of any Juvenile Court order.
10. Counsel. An attorney or spokesperson admitted to practice in the Umatilla Tribal Juvenile Court.
11. Court. The Umatilla Tribal Juvenile Court.
12. Custodian. A person, other than a parent or guardian, who has temporary physical care, custody, and control of a child, including the duty to provide food, clothing, shelter, medical care, education, and supervision to the child.
13. DCFS. The Department of Children and Family Services of the Confederated Tribes.
14. Delinquent Act. An act enumerated as a offense under this Code, or an act that if committed by an adult would constitute a crime under the Criminal Code of the Confederated Tribes.
15. Detention Facility. A physically restrictive facility that is licensed to exercise authority over and care for juveniles.
16. Disposition. A determination by the Juvenile Court of a plan for a child that includes, but is not limited to, legal custody, physical custody, placement, sanctions, guidance, treatment, and services to the child, and the child's family, or both.
17. Domicile. The domicile of a child is generally that of the child's custodial parent or guardian, including the place the child's parent or guardian considers their permanent home. Domicile for the purposes of Juvenile Court jurisdiction is established at the time of the alleged acts.
18. Emancipation. A Juvenile Court process through which the legal duty of a child's parent(s) or guardian to provide care, shelter, and support for the child is terminated and the child is recognized as an adult for the purposes of the criminal laws of the Umatilla Tribe, as well as for the purposes of contracting and conveying, establishing a residence, and suing and being sued.

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19. Ex Parte. Situations in which only one party (and not the adversary) appears before a Juvenile Court Judge to discuss a Juvenile Court proceeding.
20. Expunge - to remove and destroy a judgment or order or to remove and destroy all records and all references to a particular matter.
21. Extended Family - the grandparents, aunts, uncles, brothers, sisters, brothers-in-law, sisters-in-law, nieces, nephews, first or second cousins, and/or step-parents of a child, and any other person who would be considered family according to tradition and custom.
22. Foster Home or Foster Care - substitute care for a child who has been voluntarily or involuntarily removed from parental care.
23. Guardian. A person, other than a parent, who is by law responsible for providing care, shelter, and control of a child and the management of the child's property.
24. Indian.
  - a. A member of, or any child eligible for enrollment with, the Confederated Tribes of the Umatilla Indian Reservation, any other federally recognized Indian tribe, or a Canadian tribe;
  - b. An Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. § 1606;
  - c. Any person within the territorial jurisdiction of the Confederated Tribes who has some identifiable blood quantum of the Confederated Tribes and who has at least one (1) parent who is living and currently enrolled with the Confederated Tribes; or
  - d. Any other person who resides within the territorial jurisdiction of the Confederated Tribes, has ancestors who lived in America before its settlement by Europeans, and is recognized by the tribal community as Indian.
25. Juvenile Offender. A person who commits a delinquent act, traffic offense, or status offense prior to his or her eighteenth (18<sup>th</sup>) birthday.
26. Legal Custody. A relationship created by order of the Juvenile Court which vests in the custodian any or all of the following duties and authorities, subject to the supervision of the Court:
  - a. To have physical custody and control of the child;
  - b. To supply or authorize the supplying of food, clothing, shelter, education, supervision, discipline, medical or dental care, and other necessities for the child; and
  - c. To make, authorize, or consent to decisions involving the child's behavior, health, safety, welfare, and morals, except decisions of major legal significance, which shall be made by the Juvenile Court.
27. Minor-In-Need-Of-Care. An unmarried child:
  - a. Whose parent(s), guardian, custodian, or other person responsible for the child's care has abandoned the child;
  - b. Whose parent(s), guardian, custodian, or other person responsible for the child's care has subjected the child to abuse or neglect;



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- c. Who has suffered a serious unexplained injury or a series of unexplained injuries while in the care or custody of the child's parent(s), guardian, custodian, or other person responsible for the child's care;
  - d. Whose behavior endangers the health, safety, or welfare of the child or others;
  - e. Whose life or health is in clear and substantial danger and for whom the intervention of the Juvenile Court is essential to provide the treatment, rehabilitation, and/or services needed by the child and/or the child's family;
  - f. Who is uncontrolled or beyond the control of the child's parent(s), guardian, or custodian;
  - g. Whose parent(s), guardian, custodian, or other person responsible for the child's care are unfit to provide adequate care for the child;
  - h. Who has special needs beyond the parenting abilities of the child's parent(s), guardian, or custodian;
  - i. Who has run away from the home of the child's parent(s), guardian, custodian, or other person responsible for the child's care;
  - j. Who has no permanent residence and is not under the care of a parent, guardian, or custodian, or
  - k. Who, while subject to compulsory school attendance, is habitually and without justification absent from school or habitually and without justification does not attend school on time.
28. Motion. A request, either written or oral, made to a court for an order.
29. Neglect. Failing to, for reasons other than poverty, provide a child with adequate food, clothing, shelter, education, supervision, or medical or dental care necessary for the child's health, safety, and well-being.
30. Parent. The natural or adoptive mother or father of the child, but not a person whose parental rights have been legally terminated. Any disputes regarding paternity shall be resolved pursuant to the procedures set forth in the Confederated Tribes' Domestic Relations Code.
31. Probation. A legal status created by a Juvenile Court order whereby a juvenile offender is under the supervision of a person designated by the Court. A juvenile offender on probation shall be ordered to return to Juvenile Court for further proceedings if the juvenile fails to comply with any of the conditions of the probation.
32. Protective Supervision - a legal status created by a Juvenile Court order whereby a juvenile offender is permitted to remain in the juvenile's home or is placed with a relative or other suitable individual, and supervision and assistance is provided to the juvenile by the Juvenile Delinquency Coordinator, the Department of Children and Family Services (DCFS), and/or other suitable agency. The Juvenile Court may specify particular requirements to be observed during the protective supervision.
33. Reasonable and Prudent Parent Standard. The standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the Tribe to participate in extracurricular, enrichment, cultural, and social activities. In this context, "caregiver" means a foster parent with

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whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

34. Reservation. The Umatilla Indian Reservation.
35. Restitution. Financial or other reimbursement to a victim of a juvenile offense, limited to ascertainable damages that are a direct and proximate result of the juvenile offense. Restitution may include reimbursement for injury to or loss of property, actual medical, psychiatric, and psychological treatment expenses, and lost wages that resulted from the injury, but shall not include reimbursement for mental anguish, pain and suffering, or other intangible losses.
36. Shelter Care Facility. A home or other residential facility that is licensed to care for children in an unrestricted setting and that is suitable for the safekeeping of a child who is taken into temporary custody pending investigation and disposition, including substance abuse shelters and halfway houses.
37. Status Offense. An act that is an offense because it is committed by a juvenile. Status offenses include curfew violations, possession of alcoholic beverages, and runaway and truancy violations.
38. Territorial Jurisdiction. All lands within the boundaries of the Umatilla Indian Reservation.
39. Umatilla Tribal Court or Tribal Court. The court established by the Board of Trustees to exercise jurisdiction over matters arising under the laws of the Confederated Tribes of the Umatilla Indian Reservation.
40. Umatilla Tribal Juvenile Court or Juvenile Court. The Umatilla Tribal Court when exercising jurisdiction under the Juvenile Code of the Confederated Tribes of the Umatilla Indian Reservation.
41. Unfit. The inability to care for a child due to conduct or a condition that is seriously detrimental to the child and that is not likely to change within a reasonable time. In assessing such conduct or conditions, the Juvenile Court shall consider:
  - a. Emotional illness, mental illness, or mental deficiency that is of such a nature and duration as to place the child's physical or mental health at risk, or to render the person incapable of providing proper care for the child for extended periods of time;
  - b. Conduct toward any child of an abusive, cruel, or sexual nature;
  - c. A substantial history of alcohol and/or drug abuse and/or addictive or habitual use of alcohol and/or drugs to the extent that parenting abilities have been substantially impaired;
  - d. Criminal conduct that impairs the ability to provide adequate care for the child; and
  - e. Imprisonment (actual or pending) for a significant period of time while the child is in the person's custody.

## **CHAPTER 2. JURISDICTION**

### **SECTION 2.01. JUVENILE COURT JURISDICTION**

- A. The Juvenile Court shall have original jurisdiction in any proceeding concerning an Indian child who is or is alleged to be a juvenile offender when the acts giving rise to the allegations that the child is a juvenile offender occur within the territorial jurisdiction of the Confederated Tribes.
- B. The Juvenile Court shall have exclusive jurisdiction in any child dependency proceeding concerning an Indian child residing or domiciled on the Umatilla Indian Reservation.
- C. The Juvenile Court shall have exclusive jurisdiction in any child dependency proceeding concerning an Indian child who is a ward of the Juvenile Court.
- D. The Juvenile Court shall have original jurisdiction in any child dependency proceeding concerning an Indian child when the acts giving rise to the allegations that the child is a minor-in-need-of-care occur within the territorial jurisdiction of the Confederated Tribes.
- E. The Juvenile Court shall have jurisdiction in any child dependency proceeding concerning an Indian child not residing or domiciled on the Umatilla Indian Reservation when jurisdiction is transferred to the Juvenile Court by a state, tribal, or other court and the Juvenile Court accepts the transfer of jurisdiction.
- F. The Juvenile Court shall have jurisdiction over the parent(s), guardian, or custodian of any child who is within the Court's jurisdiction, as necessary to protect the best interest of the child, if the child's parent(s), guardian, or custodian has been served with notice of the proceedings.

### **SECTION 2.02. TRANSFERRING JURISDICTION TO THE TRIBAL COURT**

- A. The Confederated Tribes' Office of Legal Counsel shall be the Confederated Tribes' agent for service of notice of child dependency proceedings involving Indian children in state, other tribal courts, or any other courts. Where notice is provided to the Confederated Tribes, the following procedures shall be followed:
  - 1. The Office of Legal Counsel shall ask the Department of Children and Family Services (DCFS) to investigate the matter. Within fourteen (14) days of receipt of the request, DCFS shall prepare an assessment of the child and the child's family situation, and shall make a written recommendation to the Office of Legal Counsel regarding whether the case should be transferred to the Juvenile Court. The recommendation shall consider, among other factors:
    - a. The age of the child;
    - b. The location and circumstances of the family;
    - c. Any special needs of the family, if any;
    - d. Whether the state, tribe, or other sovereign has made any serious attempts to reunite the family;
    - e. The availability of tribal services to address the child's needs;
    - f. The availability of a suitable tribal home for placement of the child;
    - g. Whether financial assistance for the care of the child will continue to be available if the transfer of jurisdiction occurs; and

- h. The cost to the Confederated Tribes of the legal services required to accomplish the transfer of jurisdiction.
  - 2. If the Office of Legal Counsel pursues the transfer of jurisdiction, the Office of Legal Counsel shall petition the Juvenile Court to accept jurisdiction. The Juvenile Court may decline the transfer of jurisdiction if the Court finds clear and convincing evidence that the transfer would not be in the best interest of the child, the child's family, or the Confederated Tribes.
  - 3. If the Juvenile Court issues an order indicating that the Court will accept jurisdiction over the proceedings, the Office of Legal Counsel shall file a petition with the state, tribal, or other court requesting the transfer. The Office of Legal Counsel shall provide notice to all parties that a petition to transfer jurisdiction has been filed.
  - 4. If the state, tribal, or other court grants the petition to transfer jurisdiction, the Juvenile Court shall immediately issue an order accepting the transfer of jurisdiction and asking the state, tribal, or other court to forward all files concerning the proceedings to the Juvenile Court.
- B. If an Indian child or the parent(s), guardian, or custodian of an Indian child petitions a state, other tribal courts, or any other court to transfer jurisdiction over a child dependency proceeding to the Juvenile Court, the transfer shall not be effective until the Juvenile Court accepts the transfer of jurisdiction. Requests to the Juvenile Court for acceptance of a transfer of jurisdiction shall be conducted in accordance with the following procedures:
  - 1. It shall be the duty of the party petitioning the state, tribal, or other court for the transfer of jurisdiction to file a petition with the Juvenile Court asking the Court to accept jurisdiction.
  - 2. Upon receipt of a petition asking the Juvenile Court to accept jurisdiction, the Juvenile Court shall order DCFS to investigate the matter and submit a written assessment to the Court within fourteen (14) days. The Juvenile Court shall issue a notice of hearing informing the child, the child's parent(s), guardian, or custodian, and the court from which the transfer has been requested of the date and time for the hearing. Hearings on a request to accept jurisdiction shall be held within fourteen (14) days of the filing of the petition requesting acceptance of jurisdiction, unless a longer time is agreed upon.
  - 3. If the Juvenile Court issues an order accepting the transfer of jurisdiction, the Court shall ask state, tribal, or other court to forward all files concerning the proceedings to the Juvenile Court.
- C. When jurisdiction over a child dependency proceeding is transferred to the Juvenile Court, a petition shall be filed and the case shall proceed in accordance with this code.

**SECTION 2.03. INTERVENTION IN CHILD DEPENDENCY PROCEEDINGS IN OTHER COURTS**

- A. The Confederated Tribes may intervene in any child dependency proceeding taking place in any state court, at any time in the proceeding, pursuant to the Indian Child Welfare Act.
- B. The Confederated Tribes may intervene in any child dependency proceeding taking place in any tribal or other court in accordance with applicable law.
- C. Intervention shall proceed in accordance with the following procedures:
  - 1. The Office of Legal Counsel shall be the Confederated Tribes' agent for notice regarding child dependency proceedings involving Indian children in state, other courts, or any other courts.

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As Amended through Resolution No. 17-029 (May 15, 2017)*

2. An Indian child involved in a child dependency proceeding in state court, the child's parent(s), guardian, or custodian, or the Office of Legal Counsel may ask the Confederated Tribes to intervene in the proceeding.
3. Where notice is provided to the Confederated Tribes requesting intervention or the Office of Legal Counsel seeks intervention, the Office of Legal Counsel shall ask DCFS to investigate the matter. Within fourteen (14) days of receipt of the request, DCFS shall prepare an assessment of the child and the child's family situation, and shall make a written recommendation to the Office of Legal Counsel regarding whether the Confederated Tribes should intervene in the proceedings. The recommendation shall consider, among other factors, the following:
  - a. The age of the child;
  - b. The location and circumstances of the family;
  - c. Any special needs of the family, if any;
  - d. Whether the state, tribe, or other sovereign has made any serious attempt to reunite the family; and
  - e. The cost to the Confederated Tribes of legal services required to accomplish the intervention.
4. If the Office of Legal Counsel determines that intervention is in the best interest of the child and the Confederated Tribes, the Office of Legal Counsel shall intervene in the proceedings in accordance with applicable law.

**SECTION 2.04. TRANSFERRING JURISDICTION FROM THE TRIBAL COURT**

- A. The Juvenile Court may transfer jurisdiction over any proceedings pending before the Court to an appropriate state, tribal, or other court.
- B. Any transfer of jurisdiction from the Juvenile Court shall proceed in accordance with the following procedures:
  1. Any person may petition the Juvenile Court to transfer jurisdiction over a proceeding to another court. The petition shall include the name, age, address, and tribal affiliation, if known, of the child who is the subject of the proceeding, and a concise statement of the reasons the transfer should be granted. The petition shall be served upon all interested persons and the DOJ by the person filing said petition.
  2. Upon receipt of a petition requesting a transfer of jurisdiction, the Juvenile Court shall issue a notice of hearing informing the child, the child's parent(s), guardian, or custodian, and the court to which the transfer of jurisdiction has been requested of the date and time for the hearing. Hearings on requests to transfer jurisdiction shall be held within thirty (30) days of the filing of the petition requesting the transfer, unless a longer time is agreed upon.
  3. The Juvenile Court may transfer jurisdiction over the proceeding if the Court determines that the state, tribe, or other sovereign has a significant interest in the child and that the transfer is in the best interest of the child. The wishes of the child's parent(s), guardian, or custodian and the wishes of the child if the child is over the age of fourteen (14) years shall be considered, but shall not be controlling, in the Juvenile Court's decision to accept or decline the request to transfer jurisdiction.

**SECTION 2.05. CONTINUING JURISDICTION.**

- A. The Juvenile Court shall retain jurisdiction over a child and the child's parent(s), guardian, or custodian until one of the following occurs:
1. The Court dismisses the petition or case;
  2. The Court transfers jurisdiction over the proceedings;
  3. The Court issues an order remanding a juvenile alleged to be a juvenile offender to the Umatilla Tribal Court to be tried as an adult;
  4. The Court issues an order terminating jurisdiction;
  5. The child who is the subject of the juvenile offender or child dependency proceedings reaches the age of twenty-five (25) years; or
  6. The child becomes emancipated.
- B. When the Juvenile Court asserts jurisdiction over a person pursuant to this code, the Court may retain jurisdiction over that person even if the person leaves the territorial boundaries of the Reservation.

**SECTION 2.06. FULL FAITH AND CREDIT**

- A. The Juvenile Court shall recognize and give full faith and credit to state court orders and orders of other tribal courts concerning children over whom the Juvenile Court could take jurisdiction if:
1. The state or tribal court had jurisdiction over the parties to the proceedings and the subject matter;
  2. The provisions of the Indian Child Welfare Act, if applicable, were properly followed;
  3. Due process was provided to all interested persons participating in the proceedings; and
  4. The proceedings did not violate the public policies, customs, or common law of the Confederated Tribes.

**CHAPTER 3. JUVENILE COURT GENERALLY**

**SECTION 3.01. ESTABLISHMENT**

There is established by and for the Confederated Tribes of the Umatilla Indian Reservation a court to be known as the Umatilla Tribal Juvenile Court.

**SECTION 3.02. AUTHORITY**

- A. Where a matter involving a child is within the jurisdiction of the Juvenile Court, the Court shall have broad authority to make orders for the care, custody, supervision, protection, placement, and physical residence of the child. The Juvenile Court's authority shall include, but is not limited to, the power:
1. To make a child a ward of the Juvenile Court;
  2. To place a child in the legal custody of the Department of Children of Family Services (DCFS) and order DCFS to arrange out-of-home placement of the child;

3. To order any actions, treatment, services, assessments, sanctions, or conditions on the activities of the child as the Juvenile Court may deem advisable, appropriate, and in the best interest of the child and the Confederated Tribes;
  4. To order any actions, treatment, services, assessments, sanctions, or conditions on the activities of the child's parent(s), guardian, or custodian as the Juvenile Court may deem advisable, appropriate, and in the best interest of the child and the Confederated Tribes, including the termination of parental rights;
  5. To order any person who is obligated by law to support a child within the jurisdiction of the Juvenile Court to pay for the cost of the Court proceedings, any services and/or treatment ordered by the Court, and/or for the support of the child if the child is placed outside the home, in an amount determined by the Court to be fair and reasonable. Such orders may be enforced in the same manner as other judgments for money under tribal law, including the contempt power of the Juvenile Court and the garnishment of per capita payments.
- B. The Juvenile Court may issue temporary orders providing for the protection, support, or medical treatment of any child for whom a petition has been filed, prior to the adjudication or disposition of the child's case, if the Court determines that such orders are in the best interest of the child.
- C. The Juvenile Court, with good cause, may modify, revoke, or extend an order at any time upon the motion of any party or on the Court's own motion.
- D. The Juvenile Court may utilize, but is not limited to, its contempt powers to enforce any orders it issues. Where the Juvenile Court's jurisdiction is limited by applicable law, the exclusion powers of the Court may provide a remedy for violations of this code.

### SECTION 3.03. CONSOLIDATION

Proceedings involving two (2) or more children, or two (2) or more proceedings involving the same child, may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

### SECTION 3.04. JUVENILE PARENTS

The mother or father of a child shall be deemed to have attained majority for Juvenile Court purposes and, regardless of age, may enter into agreements and provide authorizations, releases, and/or waivers in Juvenile Court proceedings concerning the care or custody of the child.

### SECTION 3.05. PARTIES IN JUVENILE COURT PROCEEDINGS

- A. The following may be parties to Juvenile Court actions under this code:
1. The petitioner, including the Prosecutor or the Department of Children and Families Services (DCFS);
  2. The child;
  3. The child's parent(s), guardian(s), and/or custodian(s);
  4. Any person the Juvenile Court deems necessary for the proper adjudication of the matter.
- B. If the Juvenile Court finds, at a hearing, that additional parties are necessary for the proper adjudication of the matter at hand, the Court may continue the hearing to allow those parties to be notified.

**SECTION 3.06. INTERVENTION**

Any adult member of a child's extended family, permanent guardian or current long-term foster care provider of a child within the jurisdiction of the Juvenile Court may file a motion to intervene in any Juvenile Court proceeding involving the custody, placement, or guardianship of the child. The Juvenile Court shall allow the motion for intervention if the Court determines that the proposed intervenor has a significant relationship with the child and that intervention is in the best interest of the child. The Juvenile Court shall determine what rights, similar to those of a party, shall be extended to an intervenor, in the best interest of the child.

**SECTION 3.07. TIMING**

- A. Whenever a Juvenile Court order or a provision of this code requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted, but the last day shall be counted, unless it is a Saturday, Sunday, or tribal holiday.
  - 1. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted.
  - 2. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.
- B. When an act is required or allowed to be done at or within a specified time pursuant to a Juvenile Court order or this code, the Court, for good cause, may in its discretion:
  - 1. Extend the time period if the request is made before the expiration of the time period; or
  - 2. Upon a motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

**SECTION 3.08. CONTINUANCES**

- A. At any stage of a Juvenile Court proceeding, the Court may grant a reasonable continuance upon its own motion or the motion of a party after a showing of good cause.
- B. Continuances shall be granted by the Court only for so long as is reasonably necessary.
- C. The Juvenile Court shall consider the objections of any party to a continuance.

**SECTION 3.09. FILING DOCUMENTS WITH THE JUVENILE COURT**

- A. Unless otherwise specified by the Juvenile Court or this code, motions, arguments, and other requests made to the Court do not have to be in writing. Parties are encouraged, however, to put such requests and arguments in writing, especially where the matters to be considered by the Court are complex. Where parties are required to submit something in writing, such as a request for a hearing, the Court clerk will provide simple motion or hearing request forms to any party.
- B. A copy of every petition, motion, subpoena, notice, agreement, order, or other document that records action taken by the parties and by the Juvenile Court during a Juvenile Court proceeding shall be filed with the Court clerk. The Court clerk shall provide the Juvenile Court Judge with a copy of every document filed in a Juvenile Court proceeding.
- C. A party who files any document with the Court clerk shall also provide a copy of the document to every other party in the case:
  - 1. If a party is represented by counsel, the document shall be provided to counsel.



2. Delivery of a copy as required by this subsection may be made either by giving it to the party in person or by mail.
- D. There shall be no required form for documents filed with the Juvenile Court, except that all documents filed with the Court shall be on 8 ½ by 11 inch paper. All documents filed with the Juvenile Court shall be clear and legible, and shall contain the name of the Court, the names of all parties, the Court file number of the case, and any other information required by this code.
1. Every document filed with the Juvenile Court shall be signed personally by counsel or the party themselves, in his or her individual name. The party's name, address and telephone number shall be typed or clearly printed on the document. Each attorney and unrepresented party has a continuing obligation to notify the Juvenile Court of any address change.
  2. By presenting a document to the Juvenile Court (whether by signing, filing, submitting, or later advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief:
    - a. The document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay;
    - b. The claims and other legal contentions are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
    - c. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
    - d. The denials of factual contentions are warranted on the evidence or are reasonably based on a lack of information or belief.
  3. If, after notice and a reasonable opportunity to respond, the Juvenile Court determines that this subsection has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the counsel or parties that have violated this subsection or are otherwise responsible for the violation. The counsel or party submitting a challenged document shall be given the opportunity to withdraw or correct their submission before the Juvenile Court issues a sanction.
- E. All communications, notices, orders, authorizations and requests authorized or required by this code may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

### SECTION 3.10. NOTICE OF HEARING

- A. The Juvenile Court shall provide all parties to Juvenile Court proceedings with notice of hearings. Notice of hearings shall be served in the same manner notice is served in other civil actions under tribal law and shall include a copy of the petition.
- B. If a foster care provider, pre-adoptive parent, or relative is currently providing care for a child, the Juvenile Court shall give the foster care provider, pre-adoptive parent, or relative notice of hearings concerning the child and an opportunity to be heard at the hearings. Except when permitted to formally intervene in the proceedings pursuant to this code, the foster care provider, pre-adoptive parent, or relative providing care for the child is not considered a party to the proceedings solely because of notice and the opportunity to be heard.

- C. When a legal grandparent of a child makes a written request and provides a mailing address to the Juvenile Court, the Court shall give the grandparent notice of hearings concerning the child and an opportunity to be heard at the hearings. Except when permitted to formally intervene in the proceedings pursuant to this code, a legal grandparent is not considered a party to the proceedings solely because of notice and the opportunity to be heard.
- D. If a party has not been served because the party has not been located, despite due diligence on the part of the petitioner or moving party, or for other good cause, the Juvenile Court may, at its discretion, proceed with the hearing.

#### SECTION 3.11. DISCOVERY

- A. The truth will be revealed more readily if all parties in Juvenile Court proceedings have access to all information and evidence related to the case. In preparation for hearings, the parties may ask each other for and shall make available to each other all information in each other's possession or control that can reasonably be expected to lead to admissible evidence. Parties may obtain discovery regarding any matter not privileged, which is relevant to the pending action, whether or not the information would be admissible at a hearing, if the discovery request appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of counsel's work product.
- B. Methods of discovery include, but are not limited to, written questions, oral examination, requests for witnesses' names, requests for admissions, physical inspection of property, requests to perform psychological or medical tests, and requests for documents. The party who makes a request for discovery shall be as clear and specific as possible in describing what he or she wants.
- C. A party who receives a request for information shall respond either with the information, with an indication where and when the information will be available, or with an objection within ten (10) days after receipt of the request.
  - 1. Information requested through discovery shall be served upon other counsel or unrepresented parties, but shall not be filed with the Juvenile Court, unless the Court orders the materials to be filed. The party preparing and responsible for service of the discovery materials shall retain the original and become the custodian of any such non-filed materials.
  - 2. A party may refuse to make requested information available:
    - a. To prevent undue annoyance, harassment, embarrassment, oppression, burden, or expense;
    - b. If the release of information would violate a confidence that it is tribal policy to protect; or
    - c. The information is protected by a recognized privilege in federal law;
    - d. If the release of information would violate the party's right to be free from forced self-incrimination.
  - 3. If the parties disagree about whether the responding party is required to release the information, the Juvenile Court Judge shall resolve the dispute. The Judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.
  - 4. If a party fails to respond or appear for discovery, the requesting party may move for an order to compel the defaulting party to perform. If the defaulting party fails to

perform after being ordered to do so by the Court, the Court may, upon the requesting party's motion:

- a. Order that a certain fact, claim, or defense be deemed established;
- b. Strike part of a claim or defense; or
- c. Dismiss the case or render an order by default against the defaulting party.

#### SECTION 3.12. JUVENILE COURT HEARINGS

- A. Juvenile Court hearings shall be held before the Juvenile Court Judge without a jury, and apart from other judicial proceedings.
- B. All Juvenile Court hearings shall be conducted in a dignified and respectful manner, but may be conducted in an informal manner. All persons participating in Juvenile Court hearings shall speak in a clear and courteous manner.
- C. The Judge may appoint a person to keep order in the courtroom. All persons who attend Juvenile Court hearings as parties, witnesses, or spectators shall be quiet and orderly while Court is in session. No spectator shall make loud noises or speak out during a Court session unless called as a witness. Persons who disrupt the Court proceedings or are disrespectful of the Court may be ordered to leave the courtroom. Persons who violate this section or any Court order intended to maintain order in the courtroom may be found in contempt of court.
- D. All Juvenile Court hearings shall be closed to the public unless the Court orders a hearing to be open to the public.
  1. The Juvenile Court may order a hearing to be closed to the public on the motion of any party or on the Court's own motion.
  2. If the Juvenile Court orders a hearing to be closed to the public, the order shall not prohibit the presence of law enforcement officers, any victim, or other persons essential to the determination of the matter before the Court unless their presence is prohibited by the Court.
- E. If the Juvenile Court finds that it is in the best interest of the child, the child may be temporarily excluded from the hearings, except while allegations of delinquency or need of supervision are being heard.
- F. Any party may request that a child's foster care provider(s) or custodian(s), or any other person, be excluded from all or any part of a hearing in which confidential or sensitive information is being presented.
- G. Juvenile Court proceedings shall be recorded by the Court clerk through electronic or mechanical means. If such methods are not used, the Juvenile Court shall keep full minutes of the proceedings. No other cameras or video recording devices may be used during Juvenile Court hearings, except by order of the Court.

#### SECTION 3.13. TESTIMONY OF A CHILD IN CHAMBERS OR BY VIDEOTAPE

- A. The Juvenile Court, on the motion of any party or on the Court's own motion, may take testimony from any child appearing as a witness in camera, in the judge's chambers, The Juvenile Court may exclude all parties, including the child's parent(s), if the Court determines that their exclusion is in the best interest of the child..
- B. The Juvenile Court may allow a child to testify by means of a videotape deposition, closed circuit television, or other appropriate method, if the Court determines that video testimony is in the best interest of the child and does not violate the rights of any party.

**SECTION 3.14. TELEPHONE APPEARANCES**

The Juvenile Court may permit a party to a Juvenile Court proceeding to participate in a hearing by telephone, at the party's own expense, if the Court determines that a telephone appearance will not prejudice any party.

**SECTION 3.15. EVIDENCE, GENERALLY**

- A. The purpose of the rules of evidence set forth in this section is to ensure that the Juvenile Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty.
- B. The rules of evidence used in state and federal courts shall not apply to Juvenile Court proceedings. All relevant and material evidence that is reliable and trustworthy may be admitted into evidence during a hearing and may be relied upon by the Juvenile Court to the extent of its probative value. Where there is more than one kind of evidence about the same subject, the Juvenile Court Judge should hear the most reliable kind of evidence.
- C. All issues regarding the admissibility of evidence shall be decided by the Juvenile Court Judge, who shall have discretion to exclude any evidence for good cause.
  - 1. When questioned by the Judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.
  - 2. When the relevance or reliability of evidence is challenged and the Judge decides whether or not to use the evidence, the Judge shall explain the decision and, if the evidence is admitted, state what importance the Judge assigns to the evidence.
- D. The Judge may take notice of facts which are a matter of official public record, even if no party introduces them into evidence.
- E. Excluded evidence may, upon request, be included in the Juvenile Court record for purposes of appeal and excluded oral testimony may be put into evidence by means of an offer of proof.

**SECTION 3.16. PHYSICAL EVIDENCE**

- A. Written documents and other physical evidence shall be received into evidence in Juvenile Court proceedings after being identified, authenticated, and shown to be relevant to the action.
  - 1. Whenever possible, documents presented as evidence shall be the originals.
  - 2. Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items.
- B. Written reports and other materials relating to the child's mental, physical, educational, and social history and condition may be required by the Juvenile Court for the purpose of establishing that a child is a minor-in-need-of-care, determining proper disposition of a child, and/or periodically reviewing a child's and family's progress. These reports may be received into evidence and may be considered by the Juvenile Court along with other evidence.
  - 1. The Juvenile Court may require that the person who wrote the report or prepared the material appear as a witness if that person is reasonably available.
  - 2. Hearsay contained in a written investigative report shall not prevent that report from being admitted into evidence, provided that the preparer of the report is present and available to provide testimony.

3. The parties shall be afforded an opportunity to examine and controvert written reports received by the Juvenile Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
- C. Official documents or an official law, record, or copy thereof may be admitted into evidence upon the testimony of an official having official knowledge of the official document, or without such testimony if the document or record or copy thereof is accompanied by a certificate stating that the document is a true and correct representation of what it purports to be.

#### SECTION 3.17. WITNESSES, GENERALLY

- A. A party may call any person to be a witness and may examine any witness on any matter relevant to the action. A party may impeach his own witness.
- B. At all hearings, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. Before testifying in the Juvenile Court, every witness shall first state before the Judge that he or she will answer with the truth and nothing but the truth.
- C. The Judge shall determine the order in which parties or their representatives shall be allowed to question witnesses.
- D. The Judge may call and/or question any witnesses on his or her own initiative.
- E. During the questioning of a witness, the Judge may exclude witnesses who have not yet testified from the courtroom upon request of either party or on its own.
- F. The Judge shall protect all witnesses from harassment and unnecessarily repetitive questioning.
- G. When questioning a witness, the parties or their representatives shall not ask leading questions; that is, they will not ask questions in such a way as to suggest the answer desired. This section does not apply to (1) cross-examination, (2) witnesses that are clearly hostile to the person asking questions, (3) young witnesses, or (4) witnesses that have difficulty communicating.
- H. Witnesses who testify from their personal knowledge, such as first-hand observation of or participation in the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.
1. A witness, including a party, may testify as to a statement made by a person not before the Juvenile Court if the witness heard the statement when it was uttered by the person alleged to have made the statement.
  2. The Juvenile Court may inquire into the circumstances surrounding the failure of the party offering the statement to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence.
- I. Testimony of a witness may be presented in written form if the witness is unable to appear in person to testify, if the evidence presented in writing is not contradicted by other parties, or if the written testimony is offered to support a motion or an uncontested request for relief. Written testimony should show clearly who gave it and when the witness gave it. If a party desires to use such written testimony in a hearing, notice must be provided to the opposing party no later than 10 days before said hearing. The opposing party must be given an opportunity to question the person providing the written testimony prior to the hearing. If such opportunity to question is denied, the opposing party may request that the Court exclude the written testimony.

**SECTION 3.18. PRIVILEGED COMMUNICATIONS**

- A. The following specific privileges may protect against the disclosure of privileged communications during the adjudicatory stages of Juvenile Court proceedings. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a Court-ordered examination, interview, or course of treatment.
- B. An attorney or other counsel shall not, without the consent of his or her client, be examined as to any communication made by the client to counsel or counsel's advice to the client in the course of professional employment. The privilege can only be asserted by the client as the holder of the privilege.
- C. The confidential communication between a client and a psychologist shall be privileged against compulsory disclosure. The privilege can only be asserted by the client as the holder of the privilege. Any person reporting or testifying in a judicial proceeding concerning alleged child abuse or neglect shall be immune from liability.
- D. A physician or surgeon shall not, without the patient's consent, be examined in a Juvenile Court proceeding as to information acquired during the treatment, diagnosis, or provision of medical advice to the patient that was necessary to enable the physician or surgeon to prescribe or act for the patient. The privilege does not extend to physicians consulted for purposes of litigation. The patient is the holder of the privilege, which may only be waived by the patient. An exception to the physician - patient privilege grants immunity from liability for reporting or testifying concerning child neglect or abuse.
- E. A clergyman or priest shall not be examined as to any confession made to the clergyman or priest in professional character in the course of discipline of his or her church without the consent of the person making the confession. The clergyman, as well as the penitent, is considered to be the holder of the privilege. An exception to the priest - penitent privilege grants immunity from liability for reporting or testifying concerning child neglect or abuse.
- F. The privilege against self-incrimination may be invoked in a Juvenile Court proceeding.

**SECTION 3.19. COMPELLING WITNESSES TO APPEAR – SUBPOENAS**

- A. Any party to a Juvenile Court proceeding shall have the right to compel witnesses to appear in Court on his or her behalf. Upon application of a party or the Judge, the Court clerk shall issue subpoenas requiring the attendance of witnesses to appear in Juvenile Court and/or to bring certain evidence or documents to Court.
- B. Every subpoena commanding a witness to appear shall be in writing and shall include the name of the Court, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence that the witness is required to bring.
- C. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served by a Tribal law enforcement officer or any person over eighteen (18) years of age authorized by the Juvenile Court.
  - 1. The summons may be delivered either by giving it to the witness directly or by leaving it at the witness' residence or place of employment with a person at least fourteen (14) years of age who lives or works there.
  - 2. A person who delivers a summons to a witness shall promptly file with the clerk a copy of the summons and a written signed statement describing where, when, and how delivery was made.

3. When a subpoena is served by a person other than a law enforcement officer, the certificate of service shall include the name, telephone number, and address of the person who served the subpoena.
- D. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court.
- E. A person present in Juvenile Court may be required to testify in the same manner as if he were in attendance upon a subpoena.
- F. Witnesses subpoenaed to give testimony shall be paid according to Tribal Court rules. Witness fees shall be paid by the party who subpoenas, or requests the Juvenile Court to subpoena, the witness. If the party requesting the subpoena is indigent, the Juvenile Court shall pay the fee. The judge may, in addition, order that the witness be paid reasonable travel and living expenses incurred in responding to the summons.

#### SECTION 3.20. AMENDMENT OF PETITIONS

- A. A party may amend a petition once before the opposing party has replied or if no reply is required, not less than twenty (20) days before a scheduled hearing. The opposing party may respond, if appropriate, and the hearing date be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Juvenile Court.
- B. When it appears during the course of any proceeding in a child's case that evidence presented points to material facts not alleged in the petition, the Juvenile Court may proceed to consider forthwith the additional or different matters raised by the evidence. When issues or evidence not raised in the petition are heard at a hearing, the judgment may conform to such issues or evidence without the necessity of amending the petition.

#### SECTION 3.21. EX PARTE COMMUNICATIONS

- A. No witness or party to any case shall under any circumstances, either before or during a Juvenile Court proceeding, attempt to discuss any case pending before the Court with any of the Juvenile Court Judges, except in open Court.
- B. There shall be no ex parte communication between any Juvenile Court Judge and any counsel of record in regards to any pending case.
- C. There shall be no ex parte communication between any member of the Confederated Tribes' Board of Trustees and any Juvenile Court Judge in an attempt to influence, by any means, the outcome or decision of the Juvenile Court.

#### SECTION 3.22. CONFIDENTIALITY AND MAINTENANCE OF RECORDS

- A. All records related to juvenile offender and minor-in-need-of-care proceedings kept and maintained by tribal departments shall be confidential and shall be maintained separate from other records.
- B. No person shall have access to juvenile offender or minor-in-need-of-care records except:
  1. The child, the child's parent(s), guardian, custodian, counsel for the parent(s), and counsel for the child;
  2. Juvenile Court system staff, the Prosecutor, the Office of Legal Counsel and DCFS staff directly involved in the handling of the case;
  3. Law enforcement officers, and then only for the purpose of preparing for a Juvenile Court hearing or as ordered by the Court;

4. Any other person having a legitimate interest in a particular case or the work of the Juvenile Court, and then only by order of the Court, with good cause shown; and
  5. Any outside child welfare agency upon prior approval from the Director of DCFS, a CPS investigator, the child welfare program manager or appointee.
- C. The Juvenile Court may order any party to a Juvenile Court proceeding to sign a release of information authorizing treatment and service providers to release records, reports, assessments, and other relevant information to Juvenile Court system staff directly involved in the handling of the case.
- D. At the completion of a juvenile offender or minor-in-need-of-care proceeding, Juvenile Court system staff shall seal the entire file. The records of the proceedings shall not be made available for inspection by the public except by order of the Juvenile Court, with good cause shown.

### SECTION 3.23. COOPERATIVE EFFORTS

The Juvenile Court is authorized to cooperate fully with any tribal, federal, state, public, or private agency to participate in any diversion, rehabilitation, or training program, and to receive grants-in-aid to carry out the purposes of the Juvenile Code. This authority shall be subject to the approval of the Board of Trustees if the cooperative efforts involve the expenditure of Tribal funds.

### SECTION 3.24. APPEALS

The Umatilla Tribal Court of Appeals, established in the Criminal Code of the Confederated Tribes of the Umatilla Indian Reservation, shall have jurisdiction to hear appeals of decisions from the Juvenile Court, as established in this Chapter.

#### A. Final Orders Appealable

1. Any party to a Juvenile Court hearing may appeal a final Juvenile Court order. A final order shall include:
  - a. Any order finding absence of jurisdiction;
  - b. Any order which in effect determined the action and prevents a judgment from which appeal might be taken;
  - c. Any order of disposition after a juvenile is found to be a juvenile offender; or
  - d. Any of the following orders in Minor-in Need-of Care proceedings:
    - i. An order finding the juvenile to be a Minor-in Need-of-Care;
    - ii. An order of permanent guardianship;
    - iii. An order of termination of parental rights.

#### B. Notice of Appeal; Stays

1. Any party seeking to appeal a final Juvenile Court order or disposition shall file a written Notice of Appeal with the Umatilla Tribal Court of Appeals within thirty (30) days of the denial of or decision on a Motion for Reconsideration. The party filing the Notice of Appeal shall be considered the appellant.
2. Within 30 days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum, or statement in support of the appeal.



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- a. The appellant shall file an original and three copies of the brief, memorandum, or statement with the Court clerk, and shall serve or mail one additional copy to each other party or the party's counsel.
  3. Parties wishing to respond to the Notice of Appeal shall have twenty (20) days after receipt of the appellant's brief, memorandum, or statement within which to file a reply, and shall file and serve the reply in the same manner as the appellant's brief, memorandum or statement.
  4. Unless the Juvenile Court stays its order, the order being appealed shall not be stayed during the appeals process. Where the order or decree appealed from arises from a Minor-in Need-of- Care proceeding, the appeal shall be heard and decided at the earliest practical time.
- C. Appellate Court Decisions
1. The Appellate Court shall decide all cases upon the briefs, memoranda, statements, and replies filed, plus the record of the Juvenile Court.
  2. For purposes of appeal, a record of proceedings shall be made available to the child, the child's parent(s), guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.
  3. The clearly erroneous standard shall be used in reviewing the findings of the Juvenile Court on appeal.
  4. The Appellate Court shall issue a written decision and all judgments on appeal shall be final
    - a. If the appeal arises from a Minor-in-Need-of-Care proceeding, the decision shall be issued no later than 90 days from the date of the oral argument.

**SECTION 3.25. SEVERABILITY**

If any provision, section, or portion of this code is found to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of the code shall remain in effect.

**CHAPTER 4. JUVENILE COURT SYSTEM DUTIES**

**SECTION 4.01. JUDGES**

- A. The Judges of the Juvenile Court shall be any of the appointed Judges of the Tribal Court, including Pro Tem Judges, when hearing a matter arising under the provisions of the Juvenile Code.
- B. In carrying out the duties and powers enumerated in this code, the Judges of the Juvenile Court shall have the same duties and powers as Judges of the Tribal Court, including, but not limited to, the contempt power and the power to issue orders, subpoenas, and custody, search, and arrest warrants.

**SECTION 4.02. COURT CLERK**

- A. The Court clerk shall perform all of the administrative duties of the Juvenile Court, as directed by the Juvenile Court Judge, including, but not limited to:
  1. Keeping records of all Juvenile Court hearings, maintaining the confidentiality of Juvenile Court records, and preserving Juvenile Court records in a secure location;

2. Destroying Juvenile Court records that have been expunged in accordance with this code; and
3. Any other duties in connection with the operation of the Juvenile Court as the Juvenile Court or a Juvenile Court Judge may require:

#### SECTION 4.03. JUVENILE DELIQUENCY COORDINATOR

- A. The Juvenile Delinquency Coordinator shall perform duties including, but not limited to:
  1. Making timely investigations as provided in this code or as directed by the Juvenile Court;
  2. Making timely reports to the Juvenile Court as provided in this code or as directed by the Court;
  3. Supervise the tribal Truancy Officer and truancy support staff, Community Services Coordinator for juvenile community service, and the Prevention Specialist;
  4. Conducting informal diversion conferences;
  5. Monitoring compliance of juveniles and their parents, guardians, and custodians with diversion programs and Formal Accountability Agreements;
  6. Identifying and developing juvenile justice resources for the Confederated Tribes, in conjunction with the Juvenile Court and the Board of Trustees;
  7. Assisting the Court in determining if a juvenile who has run away from home, or otherwise does not have a permanent residence and is not in the care of a parent, guardian, or custodian, should be referred to the Community Accountability Board; and
  8. Performing other duties in connection with the care, custody, transportation, and rehabilitation of juvenile offenders as provided in this code or as the Juvenile Court may require.
- B. The Juvenile Delinquency Coordinator shall receive significant training in juvenile matters.
- C. The Juvenile Delinquency Coordinator shall not perform the duties of a prosecutor or law enforcement officer.

#### SECTION 4.04. PROSECUTOR

- A. The Prosecutor shall perform duties including, but not limited to:
  1. Filing petitions with the Juvenile Court or Tribal Court as provided in this code;
  2. Representing the Confederated Tribes in all juvenile offender proceedings conducted pursuant to this code; and
  3. Performing such other duties as provided in this code or as the Juvenile Court or Tribal Court may order.
- B. The Prosecutor shall receive significant training in juvenile matters.

**SECTION 4.05. COMMUNITY ACCOUNTABILITY BOARD**

- A. The Community Accountability Board (CAB) has been established by the Juvenile Court and shall consist of volunteers from the tribal community, as appointed by the Juvenile Court Judge.
- B. They shall perform the following duties as directed by the Juvenile Court, pursuant to the rules and procedures of the CAB:
  - 1. Meet and consider matters referred to the CAB for diversion;
  - 2. Meet with juveniles, the parents, guardians, or custodians of juveniles, Juvenile Court system staff, and any other necessary persons to consider juvenile offender matters, or any other juvenile matter, referred for diversion by the Court;
  - 3. Enter into Formal Accountability Agreements with juvenile offenders and the parents, guardians, or custodians of juveniles, where appropriate, and monitor compliance with the agreements; and
  - 4. Other appropriate duties associated with holding juvenile offenders accountable for their behavior and providing guidance and rehabilitation to juveniles.
- C. The CAB shall receive significant training in juvenile matters.

**SECTION 4.06. OFFICE OF LEGAL COUNSEL**

- A. The Office of Legal Counsel shall perform duties including, but not limited to:
  - 1. Receiving notice on behalf of the Confederated Tribes regarding child dependency proceedings involving Indian children in state, tribal, and other courts;
  - 2. Filing petitions to transfer jurisdiction or intervene, where appropriate; and
  - 3. Performing other duties as appropriate for the administration of justice, and the welfare of Indian children residing on the Reservation, or the children of the Confederated Tribes, wherever domiciled.
- B. The Office of Legal Counsel shall receive significant training in juvenile matters.

**SECTION 4.07. DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

- A. The Department of Children and Family Services (DCFS) shall perform duties including, but not limited to:
  - 1. Making timely investigations and reports as provided in this code or as directed by the Juvenile Court;
  - 2. Following the provisions of this code when taking children into shelter care; and
  - 3. Performing other duties in connection with the care or custody of children and the rehabilitation of families as the Juvenile Court may require.
- B. The DCFS shall receive significant training in juvenile matters.
- C. Any DCFS employee having one of the following family relationships, by blood or by law, with any party receiving services from DCFS, or involved in a court proceeding, shall not participate in those services or the court proceeding: Great-grandparent; Great-grandchild; Grandparent; Grandchild; Aunt or Uncle; Parent; Stepparent; Child; Stepchild; Spouse; Sibling.

**SECTION 4.08. ADDITIONAL JUVENILE COURT STAFF**

The Juvenile Court may appoint additional staff including, but not limited to, Pro Tem Judges, referees, guardians ad litem, and court-appointed special advocates (CASAs), when the Court determines that the individual is adequately trained and that their appointment is in the best interest of a child and/or the Confederated Tribes. This provision regarding Court-appointed representation takes precedence over all other provisions in this code addressing who may appear in juvenile proceedings.

**CHAPTER 5. RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS**

**SECTION 5.01. RIGHTS OF CHILDREN AND DUTIES OF PARENTS**

- A. Children are individuals who have legal rights, including, but not limited to, the right to:
  - 1. A safe family;
  - 2. Freedom from neglect of their basic needs; and
  - 3. Freedom from physical, sexual, and emotional abuse or exploitation.
- B. Parents, guardians, and custodians have a duty to afford their children the rights enumerated in this section, and to remove any impediment to their ability to perform the parental duties that afford these rights to their children. When a parent, guardian, or custodian fails to fulfill these duties, the Juvenile Court may determine that it is in the best interest of the child to remove the child from the custody of the parent, guardian, or custodian on a temporary or permanent basis in accordance with this code.

**SECTION 5.02. PRIVILEGE AGAINST SELF-INCRIMINATION**

- A. When a child is taken into custody pursuant to this code, the child shall be advised of his or her rights before any questions are asked of the child, except for questions:
  - 1. To determine the child's identity;
  - 2. To determine the name(s) of the child's parent(s), guardian, or custodian; and
  - 3. To conduct a medical assessment or treatment for alcohol or substance abuse, when the child's health and well-being are in serious jeopardy.

**SECTION 5.03. RIGHT TO COUNSEL**

- A. In all Juvenile Court proceedings, the child, the child's parent(s), guardian, or custodian, and any other party to the case shall have the right to be represented by an attorney, lay advocate, or spokesperson, selected and retained at the party's own expense. Any such attorney, lay advocate or spokesperson must be admitted to the Umatilla Tribal Bar or otherwise approved to appear by the Court.
- B. If counsel is not retained, or if it does not appear that counsel will be retained, the Juvenile Court may appoint counsel for any party.
- C. If counsel is retained or appointed, counsel may be present during any questioning conducted pursuant to this code.

**SECTION 5.04. EXPLANATION OF RIGHTS**

- A. In all Juvenile Court proceedings, the Court shall inform the child, the child's parent(s), guardian, or custodian, and any other party to the case of:
  - 1. The allegations or contents of the petition before the Court;

2. The right to be represented by counsel at their own expense;
3. The child's right to have the child's parent(s), guardian, custodian, and/or counsel present during questioning;
4. The right to testify or remain silent, and that any statement made may be used against them;
5. The right to subpoena witnesses and to introduce evidence on their own behalf;
6. The right to cross-examine witnesses; and
7. The possible consequences if the Court determines that the allegations in the petition are true or grants the request made in the petition or motion.

#### SECTION 5.05. ADMISSIONS

- A. After the parties are advised of their rights and informed of the specific allegations in the petition, the parties shall be given an opportunity to admit or deny such allegations.
- B. If a party admits the allegations of the petition, the Juvenile Court shall proceed to the disposition stage only if the Court finds that:
  1. The party fully understands his or her rights and fully understands the potential consequences of the admission;
  2. The party voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and
  3. The party has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- C. If the party denies the allegations, the Juvenile Court shall proceed to hear evidence on the petition.

#### SECTION 5.06. FINGERPRINTING, PHOTOGRAPHS AND LINE-UPS

- A. An alleged juvenile offender shall not be fingerprinted or photographed for identification purposes except by order of the Juvenile Court. If an order of the Juvenile Court permits a juvenile's fingerprints or photographs to be taken, the fingerprints or photographs shall be used only as specified by the Court. Copies of the juvenile's fingerprints or photographs shall be immediately destroyed if the comparison is negative or if the matter is not referred to the Prosecutor for formal Juvenile Court proceedings.
- B. An alleged juvenile offender shall not be placed in a line up for identification purposes except by order of the Juvenile Court. The Juvenile Court may authorize a line up that includes an alleged juvenile offender for identification purposes only if the juvenile and the juvenile's parent(s), guardian, or custodian give their written consent to the line up and the juvenile is represented by counsel.
- C. An alleged juvenile offender shall not be photographed except by order of the Juvenile Court.
- D. A duly authorized law enforcement officer or employee of the Department of Children and Family Services (DCFS) may photograph or cause to have photographed any child who is the subject of a minor-in-need-of-care investigation for the purpose of preserving evidence of the child's condition at the time of the investigation.

**SECTION 5.07. STANDARDS FOR SHELTER CARE AND DETENTION FACILITIES AND FOSTER HOMES**

- A. Any child placed into shelter care, foster care or detention must be placed into a facility or home approved by DCFS.
- B. DCFS shall establish minimum standards applicable to shelter and foster care placements, which standards must include the following:
  - 1. No child shall be punished, ridiculed, or criticized for expressing, through speech, custom, or dress, the child's Indian or tribal heritage;
  - 2. A child shall be allowed to wear his or her hair according to the child's personal taste. The child shall not be punished, ridiculed, or criticized for the hairstyle he or she selects;
  - 3. Unless prohibited for safety reasons, a child may wear his or her own clothes, rather than clothes supplied by the facility or home, if the clothes comply with minimum standards of cleanliness;
  - 4. Whenever possible, a child shall be allowed to attend the school in which the child is enrolled. School work and educational assistance at the child's level of development shall be provided to the child at the facility or home;
  - 5. A child may be required to perform reasonable chores, such as the maintenance of his or her area and personal property, but no child shall be required to perform duties that are not commensurate with the child's age or physical or mental abilities.
- C. DCFS shall establish minimum standards applicable to detention facilities, which standards must include the following:
  - 1. No child shall be punished, ridiculed, or criticized for expressing, through speech, custom, or dress, the child's Indian or tribal heritage;
  - 2. A child shall be allowed to wear his or her hair according to the child's personal taste. The child shall not be punished, ridiculed, or criticized for the hairstyle he or she selects;
  - 3. Unless prohibited for safety reasons, a child may wear his or her own clothes, rather than clothes supplied by the facility or home, if the clothes comply with minimum standards of cleanliness;
  - 4. Incoming and outgoing mail may be inspected for contraband but shall not be read;
  - 5. Whenever possible, a child shall be allowed to attend the school in which the child is enrolled. School work and educational assistance at the child's level of development shall be provided to the child at the facility or home;
  - 6. A child shall be allowed to attend traditional ceremonies, funerals, and related events of the child's extended family if:
    - a. The Juvenile Court consents to the child's attendance at the event(s);
    - b. The child is accompanied by a parent, guardian, or custodian; and
    - c. The child's parent, guardian, or custodian agrees to return the child to the facility or home immediately following the ceremony, funeral, or related events;

7. No child shall be punished by physical force, the deprivation of meals, or the deprivation of family visits;
8. A child shall be given the opportunity to engage in physical exercise every day;
9. A child may be required to perform reasonable work duties, such as the maintenance of his or her bunk and personal property, but no child shall be required to perform work duties that are not commensurate with the child's age or physical or mental abilities; and
10. No child shall be locked alone in a room unless a reasonable belief exists that the child may cause physical injury to the child or others if not locked alone. Any child locked alone in a room shall be visited at least once every fifteen (15) minutes. The confinement shall not continue unnecessarily.

## **CHAPTER 6. JUVENILE OFFENSES**

### **SECTION 6.01. JUVENILE OFFENSES, GENERALLY**

- A. The commission of any delinquent act, traffic offense, or status offense by a juvenile shall be considered a juvenile offense actionable in the Juvenile Court, or in the Umatilla Tribal Court upon remand for trial as an adult.
- B. No adjudication upon the status of any juvenile offender within the jurisdiction of the Juvenile Court shall be deemed criminal or a conviction of a crime unless the matter is remanded to the Umatilla Tribal Court and heard as an adult case.

### **SECTION 6.02. DELINQUENT ACTS**

A juvenile commits a delinquent act if the juvenile commits an act that would constitute a crime under the Criminal Code of the Confederated Tribes if the act was committed by an adult.

### **SECTION 6.03. TRAFFIC OFFENSES**

A juvenile commits a traffic offense if the juvenile commits a traffic crime or an infraction violation of a traffic law as provided in the Criminal Code of the Confederated Tribes.

### **SECTION 6.04. STATUS OFFENSES**

A juvenile commits a status offense if the juvenile commits one of the offenses listed below:

- A. Curfew Violations
  1. Except as provided in paragraph three below, curfew for juveniles on the Umatilla Indian Reservation shall be as follows:
    - a. Juveniles under the age of fifteen (15) years shall not be on a public street, highway, or other place open to the public between the hours of 8:00 p.m. and 5:00 a.m.
    - b. Juveniles fifteen (15) or older shall not be on a public street, highway, or other place open to the public between the hours of 10:00 p.m. and 5:00 a.m.
  2. Curfew shall pertain to all juveniles unless:
    - a. A juvenile is attending a tribal, school, church, or community event at which juveniles are allowed or it is within one (1) hour from the termination of the event;

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- b. A juvenile is engaged in employment or is traveling to or from employment; or
  - c. A juvenile is accompanied by the juvenile's parent, guardian, custodian, or a competent adult granted permission by the juvenile's parent, guardian, or custodian.
3. During periods of daylight savings time when there is no school scheduled for the following day, juveniles age 13 and 14 shall not be on a public street, highway, or other place open to the public between the hours of 10:00 p.m. and 5:00 a.m.
- B. Possession of Alcoholic Beverages
1. No juvenile shall possess, consume, acquire, purchase, or attempt to purchase any alcoholic beverage.
  2. It is unlawful for a juvenile to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection does not apply if the person has consumed or is consuming an alcoholic beverage under circumstances described in subsection (3) of this section.
  3. This section does not prohibit the acceptance or consumption of sacramental wine as part of a bona fide religious rite or service, or the possession, consumption, acquisition, purchase, or attempt to purchase any official medicinal or pharmaceutical preparations containing alcohol when prescribed by a duly authorized physician or intended solely for medicinal purposes.
- C. Runaways
1. No juvenile sixteen (16) years of age or younger shall, without permission or authority, leave the home of his or her parent(s), guardian, or custodian with the apparent intention of remaining away.
  2. No juvenile sixteen (16) years of age or younger shall be without a permanent residence unless they are in the care of a parent, guardian, or custodian.
  3. The Community Accountability Board may hear cases involving juveniles who have run away from home, as well as cases involving juveniles who do not have a permanent residence and are not in the care of a parent, guardian, or custodian.
  4. A duly authorized law enforcement officer may detain a juvenile long enough to determine whether the juvenile is a runaway or does not have a permanent residence and is not in the care of a parent, guardian, or custodian. If the juvenile is a runaway, or does not have a permanent residence, the officer may:
    - a. Return the juvenile to the juvenile's parent(s), guardian, or custodian;
    - b. Take temporary custody of the juvenile in accordance with this code; or
    - c. Issue a citation alleging that the juvenile is a runaway.
- D. Compulsory School Attendance – Truancy and Tardiness Violations
1. Except as provided in this section, all juveniles five (5) to eighteen (18) years of age who have not completed the twelfth (12<sup>th</sup>) grade are required to attend each school



day, and on time, unless the juvenile has been excused from attendance for that day, or that time, by school authorities or good cause otherwise exists for the juvenile to miss school. The school may be a public school, charter school, alternative school, alternative course of instruction, or private parochial school, as long as the source of instruction is accredited by the Confederated Tribes or a state. Private home schooling that is not connected with a public school is prohibited.

2. Except as provided in this section, every person having care, custody, or control of a juvenile between the ages of five (5) and eighteen (18) who have not completed the twelfth (12<sup>th</sup>) grade is required to send the juvenile to, and maintain the juvenile in, regular, full-time school and ensure attendance is on time.
  - a. In the event a person having care, custody, or control of a juvenile between the ages of five (5) and eighteen (18) are unjustifiably unable to compel the child to attend school, or habitually fails to ensure the child attends on time, the court may order the filing of a Minor-In-Need-Of-Care case pursuant to section 1.03(B)(26)(k) of this code.
3. Juveniles sixteen (16) to eighteen (18) years of age, who are lawfully employed full-time, lawfully employed part-time and in school part-time, or engaged in equivalent activities are not required to attend school full-time.
4. A juvenile shall be considered truant or tardy if the juvenile fails to attend school or does not attend on time as required by this section for more than three (3) days for each month of school, or if the juvenile fails to maintain at least a 90% attendance rate or on time rate for each month of school. If the juvenile is found, in whole or in part, to be responsible for the truancy or tardiness, the court may issue any appropriate order designed to compel the juvenile to attend school and on time. Such order may include drug and alcohol, psychological, or other relevant evaluation and compliance with resulting recommendations as well as an order compelling the juvenile to seek appropriate services from the Department of Children and Family Services.
  - a. If a juvenile is truant beyond three (3) days, or fails to maintain at least an 90% attendance rate, or is not at school on time beyond three (3) days, or fails to maintain an on-time attendance rate of 90%, for each month of school, without justification or school approval, the Education Department shall notify the person having care, custody, or control of the juvenile in writing to produce the child at school, on time, the next school day.
    - i. Failure of a person having care, custody, or control of the truant or tardy juvenile, without justification, to produce the child as notified in this subsection, shall constitute a civil infraction subject to a fine of \$100 a day until the child returns to school and on time.
  - b. The school district superintendent, Tribal Court or Education Department designated truancy officer, tribal law enforcement officer, or tribal prosecutor may issue a citation to the person having care, custody, or control of the truant juvenile for violation of section 6.04(D)(4).
    - i. Citations issued under this subsection shall contain a time, date, and place for a hearing before the Tribal Court unless the Tribal Court otherwise issues a notice of court hearing. The citation shall contain the dates the child was unjustifiably truant or tardy. The citation shall also contain a notice that continued failure to produce the child at school, on time, the next day, will result in an additional \$100 fine for each day the child is truant or tardy.
      - a). Failure to include the \$100 fine warning in the citation shall not render the citation defective, but shall not subject the person to

an additional \$100 fine for each additional day the juvenile is truant or tardy.

- c. Any person who has been issued a citation as outlined in this section must show cause to the Tribal Court why the juvenile is not, or has not, attended school or has been tardy. Following a hearing, the Court may, in its discretion, enter an order:
  - i. compelling the person to send the child to school, and on time,
  - ii. requiring the payment of \$100 fine for each day of truancy or tardiness,
  - iii. requiring community service,
  - iv. requiring the filing of a Minor-In-Need-Of-Care case pursuant to section 1.03(B)(26)(k) of this code,
  - v. compelling the person to obtain a drug and alcohol evaluation, domestic violence evaluation, psychological evaluation, parenting classes, or such other relevant evaluation, and comply with the recommendations of such evaluation, failure of which to follow could result in a finding of contempt subject to penalties the Court deems appropriate,
  - vi. compelling such person to contact and seek appropriate assistance from the Department of Children and Family Services. Failure to do so may result in a finding of contempt subject to penalties the Court deems appropriate, and/or
  - vii. refer the matter to the Community Accountability Board.
5. A duly authorized law enforcement officer may detain a juvenile who is absent from school long enough to determine whether the juvenile has been excused from attendance or good cause otherwise exists for the juvenile to miss school. If the juvenile has not been excused from attendance and good cause does not otherwise exist for the juvenile to miss school, the officer may:
  - a. Return the juvenile to school;
  - b. Return the juvenile to the juvenile's parent(s), guardian, or custodian; and/or
  - c. Issue a citation alleging that the juvenile has committed a truancy or tardiness violation.
6. The Court may enforce its orders under this section, provided it is in compliance with the current Gaming Revenue Allocation Plan, by:
  - a. issuing an order seizing dividends issued by the tribal government to the person having care, custody, or control over a truant or tardy juvenile,
  - b. issuing an order that the juvenile's dividends not be released to the person having care, custody, or control over a truant or tardy juvenile,
  - c. issuing an order for the collection of fees owed by a person having care, custody, or control over a truant or tardy juvenile including the garnishment of wages, and/or

- d. issuing an order that a juvenile not be issued dividends until such time as they graduate from High School or passed a General Education Development (GED) test.

**CHAPTER 7. TEMPORARY CUSTODY AND DETENTION OF JUVENILE OFFENDERS**

**SECTION 7.01. CUSTODY AND SEARCH WARRANTS**

- A. The Juvenile Court may issue a warrant directing a duly authorized law enforcement officer to take a juvenile into custody if the Court determines that probable cause exists to believe that the juvenile has committed a juvenile offense.
- B. The Juvenile Court may issue a warrant authorizing a duly authorized law enforcement officer to search for a juvenile if the Court determines that probable cause exists to believe that the juvenile is within the Court's jurisdiction and a custody warrant has been issued for the juvenile.
- C. The Juvenile Court may issue a warrant authorizing a duly authorized law enforcement officer to search for and seize property.

**SECTION 7.02. CITATION IN LIEU OF CUSTODY**

In lieu of taking an alleged juvenile offender into custody, a law enforcement officer may issue a citation to the juvenile that refers the juvenile to the Juvenile Delinquency Coordinator and requires the juvenile to appear for a hearing on a date certain before the Juvenile Court. Law enforcement officers shall send copies of all citations issued to the Juvenile Delinquency Coordinator and the Prosecutor.

**SECTION 7.03. TAKING AN ALLEGED JUVENILE OFFENDER INTO TEMPORARY CUSTODY**

- A. A duly authorized law enforcement officer may take a juvenile into temporary custody if:
  - 1. The Juvenile Court has issued a custody order or warrant directing that the juvenile be taken into custody;
  - 2. The officer has probable cause to believe that the juvenile has committed a juvenile offense; or
  - 3. The officer has reasonable cause to believe that the juvenile is a juvenile offender and:
    - a. Immediate temporary custody is necessary for the protection of the health, safety, welfare, or morals of the juvenile or another;
    - b. To prevent the juvenile from committing a threatened or imminent criminal act; or
    - c. To prevent the juvenile from leaving the territorial jurisdiction of the Confederated Tribes.
- B. Temporary custody of a juvenile shall not be deemed a criminal arrest.
- C. A law enforcement officer taking a juvenile into temporary custody shall keep a record of the event. The law enforcement officer may issue a verbal warning or a citation ordering the juvenile to appear for a hearing on a date set by the Juvenile Court. Law enforcement officers shall send copies of all citations issued to the Juvenile Delinquency Coordinator and the Prosecutor.

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- D. The law enforcement officer shall immediately attempt to contact the juvenile's parent(s), guardian, custodian, or other responsible adult to advise them of the reasons for taking the juvenile into custody and the place of continued custody.
- E. Except as provided in this section, the law enforcement officer shall release the juvenile to the juvenile's parent(s), guardian, custodian, or other responsible adult. The officer may deliver the juvenile to a detention, shelter care, or medical facility for temporary detention or care if the officer has reasonable cause to believe that:
  - 1. The juvenile's parent(s), guardian, custodian, or other responsible adult cannot be located after diligent efforts;
  - 2. The juvenile's parent(s), guardian, custodian, or other responsible adult are unable or unwilling to allow the juvenile to return home;
  - 3. The juvenile is unwilling to return home;
  - 4. The offense(s) the juvenile is alleged to have committed are serious enough to warrant continued detention;
  - 5. If released, the juvenile is likely to commit a serious act causing damage to a person or property;
  - 6. The temporary detention of the juvenile is otherwise necessary to protect the best interest of the juvenile; or
  - 7. Protective custody is necessary to secure the juvenile's appearance before the Juvenile Court.
- F. The Juvenile Delinquency Coordinator or other official at the detention, shelter care, or medical facility shall, immediately upon delivery of the juvenile for temporary detention, review the need for continued custody of the juvenile and shall retain custody of the juvenile only if continued detention is warranted as provided in this section.

**SECTION 7.04. PRELIMINARY HEARINGS**

- A. Any juvenile taken into temporary custody and not released to the juvenile's parent(s), guardian, custodian, or other responsible adult shall be brought before the Juvenile Court for a preliminary hearing within one (1) working day after being taken into custody for the purpose of determining whether probable cause exists to believe that the juvenile committed the alleged juvenile offense and if so, whether continued detention is necessary pending further proceedings.
- B. Notice of the preliminary hearing shall be provided to the juvenile, the juvenile's parent(s), guardian, or custodian, and counsel, if any, as soon as the time for the hearing is set. The Juvenile Court shall give preliminary hearings priority over all other judicial proceedings. If a preliminary hearing is not held within one (1) working day, the juvenile shall be released to the juvenile's parent(s), guardian, custodian, or other responsible adult.
- C. The Juvenile Court shall order the juvenile to be released to the custody of the juvenile's parent(s), guardian, custodian, or other responsible adult unless the Court determines that:
  - 1. The juvenile's parent(s), guardian, custodian, or other responsible adult cannot be located after diligent efforts or are unable or unwilling to allow the juvenile to return home;
  - 2. The juvenile is unwilling to return home;

3. Probable cause exists to believe that the juvenile has committed the offense(s) alleged and the act is serious enough to warrant continued detention;
  4. If released, the juvenile is likely to commit a serious act causing damage to a person or property;
  5. The temporary detention of the juvenile is otherwise necessary to protect the best interest of the juvenile; or
  6. Protective custody is necessary to secure the juvenile's appearance before the Juvenile Court.
- D. If the juvenile is not released to the custody of the juvenile's parent(s), guardian, custodian, or other responsible adult, the Juvenile Court shall issue an order placing the juvenile in a detention, shelter care, or medical facility. The Juvenile Court shall order the Prosecutor to file a petition setting forth the behavior by which the juvenile is alleged to be a juvenile offender within one (1) working day, if a petition has not yet been filed. If the Prosecutor does not file a petition within one (1) working day, the juvenile shall be released to the juvenile's parent(s), guardian, custodian, or other responsible adult.

## **CHAPTER 8. JUVENILE OFFENDER PROCEEDINGS**

### **SECTION 8.01. JUVENILE DELINQUENCY COORDINATOR REVIEW**

- A. A duly authorized law enforcement officer or other person with probable cause to believe that a juvenile has committed a juvenile offense may, and any law enforcement officer taking a juvenile into temporary custody, shall file a report with the Juvenile Delinquency Coordinator and the Prosecutor setting forth the specific facts, incidents, or behavior by which the juvenile is alleged to be a juvenile offender. The report shall contain a sworn statement affirming the person's reasonable belief that the allegations contained in the report are true.
- B. The Juvenile Delinquency Coordinator shall investigate each report and shall, within two (2) working days from the date the report was filed, in consultation with the Prosecutor, determine whether the facts surrounding the alleged juvenile offense are legally sufficient to warrant further Juvenile Court involvement and whether further action should be taken.
- C. If the facts surrounding the alleged juvenile offense are legally sufficient to warrant further Juvenile Court involvement and the Juvenile Delinquency Coordinator determines that further action should be taken, the Juvenile Delinquency Coordinator shall decide whether to:
1. Invite the juvenile and the juvenile's parent(s), guardian, or custodian to attend an informal diversion conference;
  2. Ask the Prosecutor to file a petition alleging that the juvenile is a juvenile offender and seeking a referral to the Community Accountability Board; or
  3. Transmit the report and a summary of the matter to the Prosecutor and ask the Prosecutor to initiate formal Juvenile Court proceedings by filing a petition alleging that the juvenile is a juvenile offender.
- D. The Juvenile Delinquency Coordinator shall consider the following factors in determining how to proceed:
1. The nature and seriousness of the alleged offense;
  2. The juvenile's previous contacts with law enforcement, the Juvenile Delinquency Coordinator, or the Juvenile Court;

3. The age and maturity of the juvenile and the juvenile's attitude toward the alleged offense;
4. The willingness of the juvenile to participate in a diversion program; and
5. The anticipated level of input and participation from the juvenile's parent(s), guardian, or custodian.

#### SECTION 8.02. INFORMAL DIVERSION CONFERENCES

- A. The Juvenile Delinquency Coordinator may invite the juvenile and the juvenile's parent(s), guardian, or custodian to attend an informal diversion conference to consider alternatives to formal Juvenile Court proceedings if:
  1. The alleged facts, if true, would bring the matter within the jurisdiction of the Juvenile Court;
  2. An informal disposition of the matter would be in the best interest of the juvenile and the Confederated Tribes; and
  3. The juvenile and the juvenile's parent(s), guardian, or custodian voluntarily consent to an informal disposition of the matter. If the juvenile and the juvenile's parent(s), guardian, or custodian do not consent to an informal disposition of the matter, the Juvenile Delinquency Coordinator shall refer the matter to the Prosecutor to initiate formal Juvenile Court proceedings.
- B. Before the parties may agree to an informal disposition of the matter, the juvenile shall admit the allegations and explain the circumstances surrounding the offense in the juvenile's own words. If the parties cannot reach an informal agreement, statements made by the juvenile in the informal diversion conference shall not be used against the juvenile in Juvenile Court.
- C. If an agreement is reached by the parties at the informal diversion conference, the specific details of the agreement regarding the sanctions, services, programs, or activities that will be required of the juvenile and the juvenile's parent(s), guardian, or custodian shall be written down and signed by all parties to the agreement. The services, programs, or activities required shall not exceed six (6) months in duration. The Juvenile Delinquency Coordinator shall monitor the progress of the juvenile and the juvenile's parent(s), guardian, or custodian, and their compliance with the terms of the informal diversion agreement. If the juvenile and the juvenile's parent(s), guardian, or custodian comply with all of the terms of the informal diversion agreement, the matter shall be dropped and no further action shall be taken.
- D. If the juvenile or the juvenile's parent(s), guardian, or custodian fails to comply with any of the terms of the informal diversion agreement, the Juvenile Delinquency Coordinator shall hold another informal diversion conference or shall refer the matter to the Prosecutor to initiate formal Juvenile Court proceedings.

#### SECTION 8.03. PETITION ALLEGING THAT A JUVENILE IS A JUVENILE OFFENDER

- A. Upon request or referral from the Juvenile Delinquency Coordinator, the Prosecutor may file a petition with the Juvenile Court alleging that a juvenile is within the Court's jurisdiction as a juvenile offender. The statements in the petition may be made upon information and belief and shall be verified under oath. The petition shall set forth, in ordinary and concise language, the following facts that are known and indicate any facts which are not known:
  1. The name, address, date of birth, sex, and tribal affiliation of the juvenile;
  2. The name, address, and tribal affiliation of the juvenile's parent(s) and present guardian(s) or custodian(s), if any;

3. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  4. The specific facts, incidents, or behavior by which the juvenile is alleged to be a juvenile offender and the source of this information;
  5. The specific statutory provisions of the Juvenile Code that give the Juvenile Court jurisdiction over the matter; and
  6. Whether referral of the matter to the Community Accountability Board is requested.
- B. Upon receipt of a petition alleging that a juvenile is a juvenile offender, the Juvenile Court shall:
1. Issue a notice of hearing directing the juvenile and the juvenile's parent(s), guardian, or custodian to appear for a jurisdictional hearing at the time and place specified in the notice. Jurisdictional hearings shall be given priority on the Juvenile Court docket and shall be conducted as soon as possible after the petition is filed; or
  2. Refer the matter to the Community Accountability Board (CAB) and set a date for a CAB meeting. The Juvenile Court shall provide notice of the meeting to the members of the CAB, the Juvenile Delinquency Coordinator, the juvenile, the juvenile's parent(s), guardian, or custodian, appropriate Juvenile Court system staff, and any other necessary parties. The notice shall inform the juvenile and the juvenile's parent(s), guardian, or custodian that their participation in the CAB process is voluntary and that the matter shall be referred back to the Juvenile Court for formal proceedings if they do not consent to participate in the CAB diversion program.

#### SECTION 8.04. COMMUNITY ACCOUNTABILITY BOARD

- A. At a CAB meeting, the members of the CAB shall explain the diversion process, advise the juvenile of his or her rights, and interview the juvenile, the juvenile's parent(s), guardian, or custodian, and any other necessary party regarding the alleged offense. The CAB shall not consider a matter for diversion unless the juvenile, under oath, admits the allegations and explains the circumstances surrounding the offense in his or her own words. If the juvenile does not agree to the diversion plan or the CAB determines that a diversion is not appropriate, statements made by the juvenile in the CAB meeting shall not be used against the juvenile in Juvenile Court.
- B. After completing the interview process, the CAB shall meet privately to determine whether to offer the juvenile a diversion. If a diversion is offered, the CAB shall present the diversion plan, outlining the appropriate sanctions, services, programs, and activities required, to the juvenile and the juvenile's parent(s), guardian, or custodian.
1. If the juvenile and the juvenile's parent(s), guardian, or custodian agree to the diversion plan, the parties shall sign a written Formal Accountability Agreement. The Formal Accountability Agreement shall outline the specific terms of the plan and the requirements for monitoring, review, and follow-up. The sanctions, services, programs, and activities required shall not exceed six (6) months in duration.
    - a. If the juvenile and the juvenile's parent(s), guardian, or custodian comply with all of the terms of the diversion plan, the CAB shall release the juvenile from the Formal Accountability Agreement. Notice of the release shall be provided, in writing, to the juvenile, juvenile's parent(s), guardian, or custodian, and the Juvenile Court. Upon receipt of notice of the release, the Juvenile Court shall dismiss the matter.
    - b. If the juvenile and the juvenile's parent(s), guardian, or custodian fail to comply with any of the terms of the diversion plan, the Juvenile Delinquency

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Coordinator shall schedule a new meeting with the CAB or shall refer the matter to the Juvenile Court for formal proceedings.

2. If the juvenile does not agree to the diversion plan, the juvenile and the juvenile's parent(s), guardian, or custodian shall sign a document indicating the juvenile's refusal. The CAB shall refer the matter to the Juvenile Court for formal proceedings.
- C. If the CAB determines that a diversion is not appropriate, the CAB shall prepare a statement of its reasons for refusing the diversion and shall refer the matter to the Juvenile Court for formal proceedings.

**SECTION 8.05. PLEA AGREEMENTS**

At any time after the filing of a petition alleging that a juvenile is a juvenile offender and before the entry of a judgment, the Juvenile Court may accept a plea agreement voluntarily entered into by the juvenile and the Prosecutor. If the juvenile fails to fulfill the terms of the plea agreement, the Prosecutor may petition the Juvenile Court to resume proceedings.

**SECTION 8.06. PRE-JURISDICTIONAL HEARING DISCLOSURES**

- A. As soon as possible after a petition has been filed alleging that a juvenile is a juvenile offender and prior to the jurisdictional hearing, each party, including the Prosecutor, shall disclose to each other party the following information and material within their possession or control and upon which they intend to rely at the hearing:
1. The names and contact information for all persons the disclosing party intends to call as a witness at the jurisdictional hearing;
  2. Any written or recorded statements made by the juvenile that the disclosing party intends to use as evidence at the jurisdictional hearing;
  3. Any expert reports or statements made in connection with the matter, including the results of any physical or mental health examinations or alcohol and drug assessments; and
  4. Any books, papers, documents, or photographs that were obtained from or belong to any party that the disclosing party intends to use as evidence at the jurisdictional hearing.
- B. The obligation to make the disclosures required in this section is an ongoing obligation. If a party finds, either before or during the hearing, additional information or materials that are subject to disclosure, the party shall promptly disclose the information or materials.

**SECTION 8.07. REMAND TO TRIBAL COURT**

- A. A juvenile may be remanded by the Juvenile Court to the Tribal Court for disposition as an adult upon the motion of the Prosecutor, the juvenile, or the Court's own motion, if the Juvenile Court finds clear and convincing evidence that:
1. The juvenile at the time of remand is sixteen (16) years of age or older;
  2. The juvenile committed or is alleged to have committed an act that would constitute a crime if committed by an adult;
  3. The juvenile is not amenable to rehabilitation in programs or facilities available through the Juvenile Court; and
  4. Retaining Juvenile Court jurisdiction will not serve the best interest of the juvenile.



- B. The following factors shall be considered by the Juvenile Court when determining whether to remand a juvenile to the Tribal Court under this section:
1. The nature and seriousness of the offense the juvenile is alleged to have committed;
  2. The nature and condition of the juvenile, as evidenced by the juvenile's age and mental and physical condition;
  3. Any past record of offenses committed by the juvenile; and
  4. The success of past efforts at rehabilitating the juvenile.
- C. If the Juvenile Court remands a juvenile to the Tribal Court for disposition as an adult, the Juvenile Court shall issue a written order containing specific findings and the reasons for the remand. The Juvenile Court's jurisdiction over the juvenile shall terminate with respect to the juvenile offense(s) alleged in the petition.

#### SECTION 8.08. ADJUDICATORY HEARINGS

- A. The purpose of the adjudicatory hearing is to determine whether a juvenile has committed a juvenile offense, and is analogous to a trial in criminal court. If the parent(s), guardian, or custodian of an alleged juvenile offender is not present at the adjudicatory hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s), guardian, or custodian of the hearing and to obtain their presence. If it appears that further efforts are likely to produce the juvenile's parent(s), guardian, or custodian, the Juvenile Court shall recess for not more than ten (10) days and shall direct the Juvenile Delinquency Coordinator to make continued efforts to obtain their presence.
- B. If the juvenile admits the allegations in the petition at the adjudicatory hearing, the Juvenile Court shall proceed to or schedule a disposition hearing if the Court determines that:
1. The juvenile fully understands his or her rights and the consequences of the admission;
  2. The juvenile voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for Juvenile Court action; and
  3. The juvenile has not, in the juvenile's statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.
- C. If the juvenile denies the allegations in the petition, the Juvenile Court shall hear evidence regarding the allegations. If the Juvenile Court determines, based on a preponderance of the evidence, that the juvenile has committed a juvenile offense, the Court shall proceed to or schedule a disposition hearing.

#### SECTION 8.09. DISPOSITION HEARINGS

- A. The purpose of the disposition hearing is to determine how to resolve a matter after it has been determined that the juvenile has committed a juvenile offense. If the Juvenile Court determines that a juvenile has committed a juvenile offense, the disposition hearing may follow immediately after the jurisdictional hearing, or the Court may take the matter under advisement and hold a disposition hearing within ten (10) days. If the Juvenile Court schedules a disposition hearing for a later date, the Court shall provide notice of the disposition hearing date to all parties and shall make an order for the temporary placement of the juvenile pending the disposition hearing, where appropriate.
- B. The goal of the Juvenile Court shall be rehabilitation and guidance, not punishment. The Juvenile Court, in determining the appropriate disposition of each juvenile matter, shall endeavor to select the alternative that is the least restrictive upon the juvenile, consistent with the goal of rehabilitation.

**SECTION 8.10. PRE-DISPOSITION REPORTS AND ASSESSMENTS**

- A. When the Juvenile Delinquency Coordinator receives notice of a juvenile's intent to admit the allegations in a petition alleging that the juvenile is a juvenile offender or the Juvenile Court determines that a juvenile is a juvenile offender, the Juvenile Delinquency Coordinator shall prepare a written pre-disposition report concerning the juvenile, the juvenile's family and home environment, and any other matter relevant to the care, custody, control, and rehabilitation of the juvenile. The report shall contain a specific plan for the juvenile aimed at resolving the problems presented in the petition and a detailed explanation of the need for the proposed plan and the expected benefits to the juvenile. The Juvenile Delinquency Coordinator shall submit the pre-disposition report to the Juvenile Court, the parties, and counsel, if any, in a timely manner prior to the disposition hearing.
- B. The Juvenile Court may order a juvenile alleged or found to be a juvenile offender to undergo a medical, mental health, and/or substance abuse assessment where necessary to determine the juvenile's mental or physical state and the appropriate steps that should be taken to protect the juvenile's health and well-being. The Juvenile Court may order medical, mental health, and substance abuse assessments of a juvenile's parent(s), guardian, or custodian who consents to the examination and whose ability to care for or supervise the juvenile is an issue before the Court. The results of any assessment ordered by the Juvenile Court shall be submitted to the Court, the parties, and counsel, if any, in a timely manner prior to the next scheduled hearing.
- C. In determining the appropriate disposition of each matter, the Juvenile Court may consider the recommendations of the Juvenile Delinquency Coordinator, the Prosecutor, the juvenile's family, the victim, or any other interested person or agency.

**SECTION 8.11. DISPOSITION ALTERNATIVES**

- A. The Juvenile Court shall have broad discretionary power to make orders for the care, custody, control, and rehabilitation of juvenile offenders, including but not limited to, orders:
  - 1. Permitting the juvenile to remain with the juvenile's parent(s), guardian, or custodian, subject to any terms and conditions the Juvenile Court deems appropriate;
  - 2. Placing the juvenile in the physical custody of a relative or other suitable person, in accordance with the Minor-In-Need-Of-Care provisions of this code, subject to any terms and conditions the Juvenile Court deems appropriate;
  - 3. Placing the juvenile in a juvenile or treatment facility including, but not limited to, an alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, secure juvenile detention facility, medical facility, or school;
  - 4. Placing the juvenile on probation or under protective supervision, subject to any terms and conditions the Juvenile Court deems appropriate; and/or
  - 5. Any sanction, including but not limited to, suspending the juvenile offender's driving privileges, requiring the juvenile to perform community service, and/or requiring the juvenile or the juvenile's parent(s) or guardian(s) to make restitution for an injury or damage caused by the juvenile.
- B. The Juvenile Court may order or permit the removal of a juvenile from the territorial jurisdiction of the Confederated Tribes by the person, facility, or school in whose custody the juvenile is placed, on the condition that the custodian shall return the juvenile on order of the Court. Placement of a juvenile with a person, facility, or school located outside the boundaries of the Reservation shall be made only in extreme cases where no other appropriate placement is available on the Reservation.

**SECTION 8.12. SEX OFFENDER REGISTRY**

Any juvenile found to have committed a sex offense, as defined under tribal, state, or federal law, shall comply with the sex offender registration requirements and limitations set forth in the Criminal Code of the Confederated Tribes and other applicable laws.

**SECTION 8.13. EXPUNGING JUVENILE OFFENDER RECORDS**

- A. Any adult who is the subject of juvenile offender records may petition the Juvenile Court to expunge the records.
- B. The Juvenile Court shall provide the Prosecutor with notice of any petition to expunge juvenile offender records. The Prosecutor may consent to the petition or may contest the petition on the grounds that the juvenile offense was serious or violent and that the records should be maintained for the purposes of public safety. If the Prosecutor contests the motion to expunge, the Juvenile Court shall set a date for a hearing and shall provide notice of the hearing to all necessary parties.
- C. The Juvenile Court may order the records expunged if, after a hearing when the matter is contested, the Court determines that:
  - 1. The person who is the subject of the records is no longer a juvenile;
  - 2. At least two (2) years have elapsed since the event(s) that is the subject of the records occurred;
  - 3. Since the date the event(s) that is the subject of the records occurred, the person who is the subject of the records has not been convicted of any further juvenile or criminal offense; and
  - 4. No Juvenile Court or Tribal Court proceedings are pending against the person who is the subject of the records.
- D. If the Juvenile Court orders the records to be expunged, notice of the order shall be sent to all tribal departments that maintain records on juvenile offenders. All records and references to the juvenile offense shall be sealed and maintained rather than destroyed. Sealed juvenile offender records may be opened only by order of the Juvenile Court or Tribal Court. A person who is the subject of expunged records may assert that the records never existed and that the matter that was the subject of the records never occurred without incurring a penalty for perjury or false swearing.

**CHAPTER 9. REPORTING AND INVESTIGATING CHILD ABUSE AND NEGLECT**

**SECTION 9.01. DUTY TO REPORT SUSPECTED CHILD ABUSE OR NEGLECT**

- A. Any person who reasonably suspects that a child has been abused or neglected may report the abuse or neglect to a duly authorized law enforcement officer or the Department of Children and Family Services (DCFS). Any person reporting suspected child abuse or neglect, except a person required to report under this section, may remain anonymous.
- B. The following persons are required to report suspected child abuse or neglect:
  - 1. Any physician, nurse, dentist, optometrist, psychologist, psychiatrist, therapist, or any other medical or mental health professional;
  - 2. Any school principal, teacher, coach, or other school official;
  - 3. Any social worker, counselor, child day care center worker, other child care service provider, foster care provider, or residential care or institutional personnel; and

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4. Any police officer or other law enforcement officer, judge, attorney, advocate, spokesperson, court clerk, or judicial system official.
  - a. Lawyers, together with psychiatrists and psychologists, are not required to report communicated information if the communication would otherwise be privileged; and
  - b. A lawyer is not required to report child abuse based on information communicated to the lawyer in the course of representing a client, if disclosure would be detrimental to the client.
- C. A person is not required to report suspected child abuse or neglect under this section if the person acquires the information related to the suspected child abuse or neglect by reason of a report made under this section or by reason of a proceeding arising out of a report made under this section, and the person reasonably believes that the information is already known by a duly authorized law enforcement officer or DCFS.
- D. Any person required to report suspected child abuse or neglect who knowingly fails to report, or who willfully prevents someone else from reporting, shall be subject to a proceeding in either Juvenile Court or the Umatilla Tribal Court for violation of this code.
- E. Any person or agency reporting suspected child abuse or neglect in good faith shall be immune from any civil or criminal liability that might otherwise be incurred with respect to the making or contents of the report, or from participation in any judicial proceeding resulting from the report.
- F. Nothing in this section is intended to waive, or does waive, the sovereign immunity of the Confederated Tribes beyond the limitations of the Tort Claims Code of the Confederated Tribes.

**SECTION 9.02. INVESTIGATING SUSPECTED CHILD ABUSE AND NEGLECT**

- A. A duly authorized law enforcement officer or DCFS may receive a report from any person with knowledge of facts involving suspected child abuse or neglect. All reports received shall be forwarded to DCFS.
- B. DCFS shall review any report received and shall initiate an investigation in a timely manner to determine whether probable cause exists to believe that a child is a minor-in-need-of-care. In the course of the investigation, DCFS shall, as reasonable:
  1. Assess the child's current circumstances, including the child's home environment, the family's history, the parent(s), guardian, or custodian's current circumstances, the nature of the reported charges, and any information supporting or contravening those charges;
  2. Attempt to contact and interview all relevant parties, including child and the child's parent(s), and if appropriate, the child's guardian, custodian, extended family members, neighbors, teachers, and/or treatment personnel;
  3. Attempt to visit the home or place where the child is residing and assess the safety of the home. Where appropriate, this assessment may include testing for contamination resulting from the manufacture of methamphetamines;
  4. Determine whether the child can safely remain in the home with services provided, and if so, offer the services and encourage the child and the child's parent(s), guardian, or custodian to voluntarily accept the services;
  5. Seek out adult extended family members or other adults with whom the child is familiar and could be placed if the removal of the child from the home is necessary;

6. Make tentative conclusions as to what is in the best interest of the child, and how best to protect the child's health, safety, and welfare pending further investigation; and
  7. Where removal of the child from the home is necessary for the protection of the child, ask a duly authorized law enforcement officer to take the child into shelter care in accordance with this code.
- C. Upon notice by a law enforcement officer or the DCFS Director that a child abuse or neglect investigation is being conducted pursuant to this code, a tribal health care provider may permit the officer or DCFS Director to inspect and copy the medical records of the child involved in the investigation, without the consent of the child or the child's parent or guardian. A health care provider who in good faith discloses medical records to the law enforcement officer or the DCFS Director under this section shall not be civilly or criminally liable for the disclosure.

## **CHAPTER 10. EMERGENCY SHELTER CARE PROCEEDINGS**

### **SECTION 10.01. TAKING A CHILD INTO EMERGENCY SHELTER CARE**

- A. A duly authorized law enforcement officer may take a child into shelter care if:
1. It reasonably appears that the child has run away from home; or
  2. The officer has probable cause to believe that the child is a minor-in-need-of-care, that the child is in immediate danger from the child's surroundings, and that removal of the child from the home is necessary to protect the child.
- B. Upon taking a child into emergency shelter care pursuant to this subsection, the officer shall immediately request an emergency shelter care hearing with the Juvenile Court and file a case report.
- C. An officer who takes a child into emergency shelter care shall immediately attempt to contact the child's parent(s), guardian, or custodian. All reasonable efforts shall be made to advise the child's parent(s), guardian, or custodian of the reasons for taking the child into custody and the place of continued shelter care.
- D. When a child is taken into emergency shelter care, the Juvenile Court may authorize medical personnel to conduct a physical examination of the child for the purposes of preserving evidence if the Court determines that reasonable cause exists to believe that the child has been sexually or otherwise physically abused, that the physical evidence of the abuse exists and is likely to disappear, and that it is in the best interest of the child to have the examination. A child twelve (12) years of age or older may refuse to consent to the examination.
- E. The officer shall release the child to the physical custody of the child's parent(s), guardian, custodian, or other responsible person if:
1. Safeguards are in place that make it reasonable to believe that the child is no longer in immediate danger; or
  2. The parent, guardian, custodian, or other responsible person is not the person from whom the child was removed and reasonable cause exists to believe that the child is not at risk of harm while in their custody.
- F. If the officer releases the child to the physical custody of the child's parent(s), guardian, custodian, or other responsible person, the child shall remain in the legal custody of the Umatilla Tribal Police Department (UTPD) pending the emergency shelter care hearing. DCFS shall offer services and encourage the child and the child's parent(s), guardian, or custodian to voluntarily accept the services.

**SECTION 10.02. EMERGENCY SHELTER CARE PLACEMENTS**

- A. Pending an emergency shelter care hearing, DCFS shall assist the UTPD in placing a child with a licensed foster care provider consistent with the provisions of Section 13.03.
- B. In attempting to place the child pursuant to this section, DCFS shall consider, but not be limited to, the following:
  - 1. The ability of the placement being considered to meet the child's physical, emotional, and educational needs;
  - 2. The ability of the placement being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and a willingness to prevent anyone from influencing the child in regard to the allegations in the case;
  - 3. If more than one (1) placement is being considered, the person(s) that has the closest existing personal relationship with the child.
- C. If a child taken into emergency shelter care is placed in a facility that is used for the detention of juvenile offenders or alleged juvenile offenders, the child shall be placed in a room separate from juvenile offenders and alleged juvenile offenders.
- D. No child shall be detained in a jail, prison, police station, or other place where adults are detained, except that a child may be temporarily detained in a police station for up to five (5) hours when necessary to determine the child's name, age, residence, and other identifying information.

**SECTION 10.03. EMERGENCY SHELTER CARE HEARINGS**

- A. If a child is placed in emergency shelter care, the Juvenile Court shall conduct an emergency shelter care hearing within two (2) working days of the time the child was taken into emergency shelter care for the purpose of determining whether continued shelter care is necessary for the protection of the child, or whether the provision of reasonable and available services could make it possible for the child to return home immediately.
- B. If the child's parent(s), guardian, or custodian is not present at the emergency shelter care hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s), guardian, or custodian of the hearing and obtain their presence. If reasonable efforts have been made, the Juvenile Court may proceed with the hearing in their absence.
- C. If the Juvenile Court determines that continued shelter care is warranted or that DCFS services are necessary to protect a child that has been returned to the home, the Court shall make an order for the temporary placement of the child and/or requiring the necessary services. The Court's temporary custody order shall automatically expire thirty (30) days after the emergency shelter care hearing and DCFS shall return the child to the child's parent(s), guardian, or custodian unless a minor-in-need-of-care petition is filed.
- D. The Juvenile Court shall order the Prosecutor's Office to file a petition on DCFS's behalf alleging that the child is a minor-in-need-of-care within thirty (30) days, or to return the child to the legal custody of the child's parent(s), guardian, or custodian.

**CHAPTER 11. COMMENCEMENT OF MINOR-IN-NEED-OF-CARE PROCEEDINGS**

**SECTION 11.01. PETITION ALLEGING THAT A CHILD IS A MINOR-IN-NEED-OF-CARE**

- A. A minor-in-need-of-care proceeding shall commence when the Prosecutor's Office files a petition on behalf of DCFS alleging that a child is a minor-in-need-of-care.

- B. If DCFS determines that probable cause exists to believe that a child is a minor-in-need-of-care, DCFS shall have the Prosecutor's Office file a petition with the Juvenile Court alleging that the child is within the Court's jurisdiction as a minor-in-need-of-care. The statements in the petition may be made upon information and belief. The petition shall set forth, in ordinary and concise language, the following facts that are known and indicate any facts which are not known:
1. The name, address, date of birth, sex, and tribal affiliation of the child;
  2. The name, address, and tribal affiliation of the child's parent(s) and present guardian(s) or custodian(s), if any;
  3. The residences at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
  4. The specific statutory provisions of the Juvenile Code that give the Juvenile Court jurisdiction over the matter;
  5. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  6. A brief, concise statement of facts upon which the allegation that the child is a minor-in-need-of-care is based. These facts shall include the date, time, and location where the alleged events occurred, and any other information upon which the petitioner relies to form the belief that the child is a minor-in-need-of-care; and
  7. If the child is in detention or emergency shelter care, the place of detention or emergency shelter care, the time the child was taken into custody, the reason the child was removed from the home, and the reasonable efforts DCFS has made to prevent or eliminate the need for removal.
- C. Upon receipt of a petition alleging that a child is a minor-in-need-of-care, the Juvenile Court shall issue a notice of hearing directing the child and the child's parent(s), guardian, or custodian to appear in Court for a wardship hearing at the time and place specified in the notice. Wardship hearings shall be conducted within ten (10) days of the filing of a petition alleging that a child is a minor-in-need-of-care.

#### SECTION 11.02. INFORMAL ADJUSTMENT CONFERENCES

- A. At any time prior to a Court hearing, the Department of Children and Family Services (DCFS) may hold an informal conference with the parent(s), guardian, or custodian of a child alleged to be a minor-in-need-of-care, and the child where appropriate, to discuss alternatives to formal Juvenile Court proceedings. Counsel for the child and/or the child's parent(s), guardian, or custodian and any other persons approved by DCFS who may be helpful in the resolution of the matter may participate in the conference.
- B. Any informal disposition of the matter shall be in writing, signed by the parties, and submitted to the Juvenile Court. The parties entering into an informal adjustment agreement shall admit the allegations in the petition or other facts supporting a determination that the child is a minor-in-need-of-care. By these admissions the parties give up their right to a wardship hearing. If an agreement is not reached by the parties, statements made during the informal adjustment conference shall not be used against the family in Juvenile Court. The services, programs, activities, and/or supervision required in an agreement shall not exceed six (6) months in duration. An informal adjustment agreement shall include, but not limited to:
1. The areas in which the child and the child's parent(s), guardian, or custodian need assistance and the services, programs, activities, and/or supervision needed by the family to receive that assistance;

2. The agencies, organizations, or individuals that will provide those services, programs, activities, and/or supervision to the family, and how often;
  3. The timelines to which the family and DCFS will be held for completion of the services, programs, activities, and/or supervision; and
  4. How the family's progress will be monitored and measured.
- C. If the Juvenile Court approves the informal adjustment agreement, the Court shall issue an order continuing the petition and adopting the plan set forth in the agreement. DCFS shall, with the family whenever possible, review the family's progress every thirty (30) days. If at any time after the initial thirty (30) day period but before the end of the six (6) months DCFS concludes that positive results are not being achieved, DCFS shall ask the Juvenile Court to hold a formal hearing on the petition alleging that the child is a minor-in-need-of-care. At the end of the initial six (6) months, DCFS shall:
1. Petition the Court to dismiss the matter;
  2. Petition the Court for a formal hearing on the petition; or
  3. Extend the agreement for good cause, but for no longer than an additional ninety (90) days.
- D. Any party who declines to enter into an informal adjustment agreement has the right to a wardship hearing, regardless of whether any other party has entered into an agreement.

#### SECTION 11.03. PRE-WARDSHIP HEARING REPORTS AND DISCLOSURES

- A. At least ten (10) days prior to a wardship hearing, DCFS shall prepare and submit to the Juvenile Court a written report containing the facts uncovered during the investigation, the opinions of all professionals consulted, and DCFS's recommendation concerning whether the child is a minor-in-need-of-care. A copy of the report shall be sent to the Tribal Police, who shall also receive notice of all wardship hearings scheduled.
- B. As soon as possible after a petition has been filed alleging that a child is a minor-in-need-of-care and at least ten (10) days prior to the wardship hearing, each party, including DCFS, shall disclose to each other party the following information and material within their possession or control and upon which they intend to rely at the hearing:
1. The names and contact information for all persons the disclosing party intends to call as a witness at the wardship hearing;
  2. Any written or recorded statements made by the child or the child's parent(s), guardian, or custodian to any other party or an agent for any other party that the disclosing party intends to use as evidence at the wardship hearing;
  3. Any expert reports or statements made in connection with the matter, including the results of any physical or mental health examinations or alcohol and drug assessments; and
  4. Any books, papers, documents, or photographs that were obtained from or belong to any party that the disclosing party intends to use as evidence at the wardship hearing.
- C. The obligation to make the disclosures required in this section is an ongoing obligation. If a party finds, either before or during the hearing, additional information or materials that are subject to disclosure, the party shall promptly disclose the information or materials.
- D. Notice to any party's counsel, court-approved lay advocate or spokesperson, constitutes notice to a party.



**SECTION 11.04. WARDSHIP HEARINGS**

- A. The purpose of the wardship hearing is to hear evidence regarding whether the child is a minor-in-need-of-care as alleged in the petition. If the child's parent(s), guardian, or custodian is not present at the wardship hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s), guardian, or custodian of the hearing and to obtain their presence. If it appears that further efforts are likely to produce the child's parent(s), guardian or custodian, the Juvenile Court shall recess for not more than ten (10) days and shall direct DCFS to make continued efforts to obtain their presence.
- B. If the Juvenile Court determines that a child is a minor-in-need-of-care, the Court shall make the child a ward of the Juvenile Court and place the child in the legal custody of DCFS. The wardship shall continue until:
1. The Court issues an order terminating the wardship;
  2. The Court issues a Decree of Adoption for the child;
  3. The Court issues letters of Permanent Guardianship for the child; or
  4. The child reaches the age of eighteen (18) years, unless Juvenile Court jurisdiction over the child is continued by order of the Court.
- C. The Juvenile Court shall have broad discretionary power to make orders for the care, custody, and control of a child found to be a minor-in-need-of-care, including, but not limited to:
1. Permitting the child to remain in the physical custody of the child's parent(s), guardian, or custodian;
  2. Ordering DCFS to place the child in an appropriate out-of-home-placement, if the Juvenile Court finds clear and convincing evidence that continued custody by the child's parent(s), guardian, or custodian is likely to present a risk of serious emotional or physical harm to the child;
  3. Requiring compliance with DCFS's reunification plan for the family, which may include, but shall not be limited to, participation in services, programs, activities, and/or supervision;
  4. Requiring the child to be examined and/or treated by a physician, psychiatrist, or psychologist, or to receive other special care or treatment at a hospital or other health care facility;
  5. Recommending the initiation of proceedings for the termination of parental rights; and
  6. Recommending the initiation of proceedings for full or partial emancipation of the child.
- D. The Juvenile Court shall have the authority to impose conditions or limitations upon a child, the child's parent(s), guardian, or custodian, and any other party in order to protect the best interest of the child. The conditions or limitations shall be in the best interest of the child and may include, but are not limited to:
1. Counseling, therapy, treatment, and/or classes;
  2. Restrictions on visitation with the child's parent(s), guardian, or custodian;
  3. Payment of support or other necessary costs;

4. Garnishment of any Confederated Tribes per capita dividends that the parents are entitled to;
5. Participation in tribally-sponsored activities;
6. Restrictions on association with others;
7. Curfew restrictions; and
8. Any other conditions or dispositions that the Juvenile Court determines are necessary to protect the best interest of the child.

## **CHAPTER 12. POST-WARDSHIP HEARINGS**

### **SECTION 12.01. STATUS REVIEW HEARINGS**

- A. The Juvenile Court shall hold a hearing to review the status of a child found to be a minor-in-need-of-care within ninety (90) days of the disposition hearing and at least every six (6) months thereafter if a child remains within the jurisdiction of the Juvenile Court and a permanent plan for the child has not been established by Court order. At the status review hearing, the Juvenile Court shall:
  1. Assess the continuing need for and appropriateness of Juvenile Court jurisdiction over the child;
  2. Assess the continuing need for and appropriateness of the child's placement;
  3. Assess the extent of all parties' compliance with DCFS's reunification plan and the progress the family has made toward reunification;
  4. Assess whether the services provided to the family have been appropriate, accessible, and provided in a timely manner, and whether DCFS is making reasonable efforts to eliminate the need for the removal of the child from the home;
  5. Assess concurrent case planning, if any, and DCFS's efforts to create an alternative permanent plan for the child in the event that the child's parent(s), guardian, or custodian makes insufficient progress to restore custody; and
  6. Project a likely date for the return of the child to parental care or to put an alternative permanent plan into effect.
  7. For a child for whom another planned permanent living arrangement has been determined as the permanency plan, determine the steps DCFS is taking to ensure the child's foster family home or child care institution is following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.
- B. All parties, children over twelve (12) years of age, pre-adoptive parents and foster care providers shall be notified of their right to attend and be heard at each status review hearing.
- C. DCFS shall prepare, and any other party may prepare, a report to the Juvenile Court for each status review hearing. The report shall summarize the history of the case, the progress of the family, DCFS's efforts to offer services to the family, and the participation of the family in services since the last hearing. A copy of the report(s) shall be provided to each party and counsel, if any, as soon as possible prior to the status review hearing.
- D. Following the status review hearing, the Juvenile Court may issue, modify, revoke, or extend orders as appropriate for the care, custody, control, and protection of the child.

**SECTION 12.02. REVIEW HEARINGS**

- A. Any party may ask the Juvenile Court to hold a review hearing at any time. Upon receipt of a motion or request for a review hearing, the Juvenile Court shall examine the substance of the request and may set a date for a hearing if there appears to be a valid reason to do so.
- B. All parties, including children over twelve (12) years of age and foster care providers, shall be notified of their right to attend and be heard at each review hearing.
- C. Following the review hearing, the Juvenile Court may issue, modify, revoke, or extend orders as appropriate for the care, custody, control, and protection of the child.

**SECTION 12.03. PERMANENT PLAN HEARINGS**

- A. If reunification is not complete within twelve (12) months from the date a child is removed from the home or the date of the order making a child a ward of the Juvenile Court, whichever comes first, the Juvenile Court shall order DCFS to develop a permanent placement plan for the child, except for good cause shown. The hearing on the permanent plan shall be held within 90 days of such order. The permanent plan hearing may be combined with a status review hearing.
- B. All parties, including children over twelve (12) years of age and foster care providers, shall be notified of their right to attend and be heard at the permanent plan hearing.
- C. DCFS shall prepare, and any other party may prepare, a report to the Juvenile Court for the permanent plan hearing and shall provide a copy of the report to each party and counsel, if any, as soon as possible prior to the hearing. The report shall include, but not be limited to:
  - 1. A summary of the history of the case, the progress of the family, and DCFS's efforts to offer services to the family and the participation of the family in services since the last hearing;
  - 2. The specific details of DCFS's permanent plan for the child and the specific reasons the plan has been chosen, including why the plan meets the child's needs and is in the child's best interest; and
  - 3. If required by applicable federal law, the compelling reasons why the termination of parental rights is not being recommended as the permanent plan.
- D. A permanency hearing shall determine:
  - 1. Whether, and if applicable when, the child will be returned to the parent;
  - 2. Whether the child will be placed for adoption and DCFS will file a petition for termination of parental rights;
  - 3. Whether the child will be referred to legal guardianship;
  - 4. In the case of a child who has attained age 14, the services needed to assist the child to make the transition from foster care to successful adulthood; and
  - 5. If a child has attained 14 years of age, that the permanency plan developed for the child, and any revision or addition to the plan, has been developed in consultation with the child and, at the option of the child, with not more than 2 members of the permanency planning team who are selected by the child and who are not a foster parent of, or caseworker for, the child, except that DCFS may reject an individual so selected by the child if the agency has good cause to believe that the individual would not act in the best interests of the child, and 1 individual so selected by the child may

be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent standard to the child.

#### SECTION 12.04. PERMANENT PLAN REVIEW HEARINGS

- A. The Juvenile Court shall review the permanent plan for a child found to be a minor-in-need-of-care at least annually as follows:
1. If the child is a ward of the Juvenile Court and is in the custody of a permanent guardian, the guardian shall submit a report to the Court on a yearly basis. If the Juvenile Court determines that a permanent plan review hearing is necessary, the guardian shall appear at and provide information for the hearing;
  2. In all other cases in which the child remains a ward of the Juvenile Court, DCFS shall submit a report to the Court on a yearly basis and shall appear at and provide information for each permanent plan review hearing. The legal custodian of the child shall be responsible for immediately notifying the Juvenile Court of any changes in the child's placement or any substantial changes in the permanent plan; and
  3. No permanent plan review hearing is required for any child who has been adopted.

### CHAPTER 13. FOSTER CARE PLACEMENTS

#### SECTION 13.01. LICENSING FOSTER CARE PROVIDERS

- A. DCFS shall recruit, screen, license and monitor foster care providers for the care of children in accordance with DCFS's rules and procedures, any orders of the court, this Code, and any other applicable law.
- B. In assessing a candidate foster care provider, DCFS shall consider, but not be limited to, the following:
1. The ability and willingness of the candidate foster care provider to meet the child's physical, emotional, and educational needs;
  2. The ability and willingness of the candidate foster care provider to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and a willingness to prevent anyone from influencing the child in regard to the allegations in the case;
  3. The ability and willingness of the candidate foster care provider to support DCFS's efforts to implement the reunification plan for the child; and
  4. The ability and willingness of the candidate foster care provider to cooperate with DCFS and comply with its directives.
- C. No DCFS staff may be licensed to provide or shall provide foster care.
- D. DCFS shall establish specific standards for the homes of foster care providers, including standards for safety, cleanliness, privacy, comfort and so forth. Prior to licensure of a foster care provider, DCFS shall conduct an inspection of any residence that is likely to be used by the candidate foster care provider during the time in which a child would be placed with the provider. The inspection shall assess whether a candidate foster provider's residence meets DCFS's standards. No candidate shall be licensed to provide foster care whose home fails to pass inspection.
- E. DCFS shall establish specific standards for the backgrounds of foster care providers. DCFS shall conduct a background check of any candidate foster care provider and any persons who shall be in residence at the provider's home during the time in which a child would be placed

with the provider. DCFS may use any records maintained by the Confederated Tribes, including records of the Department of Public Safety, Department of Education, Housing Authority, Enrollment Office, and Tribal Court. An application for a foster care licensing waives the applicant's claims of confidentiality or privilege with regard to any records under the control of the Confederated Tribes. No person shall be licensed to provide foster care who fails to pass the background check.

- F. DCFS shall monitor the performance of licensed foster care providers to assure that they continue to meet the standards of this section. DCFS shall revoke the licenses of providers who fail to maintain these standards. DCFS is not required to provide notice or a reason for revocation of a foster care license, where doing so would be contrary to the best interest of a foster child. A decision by DCFS to revoke a foster care license is final and is not subject to review or appeal.

#### SECTION 13.02. DUTIES OF DCFS AND FOSTER CARE PROVIDERS

- A. DCFS is responsible to the Tribal Court for assuring that all reasonable measures are taken to protect the welfare of all wards of the court who are placed in the care of DCFS. DCFS shall assign a caseworker to each child placed in the care of DCFS. The caseworker shall be responsible for monitoring the progress of the parents and child toward reunification and for reporting on that progress to the court. The DCFS caseworker is also responsible for monitoring any foster care provider with whom a child is placed to assure that any placement of the child continues to serve the best interest of the child and otherwise meets the standards for licensure on an ongoing basis. DCFS shall provide support, services, monitoring, and follow-up to the child and the foster care provider with whom the child is placed on a regular and timely basis.
- B. Foster care providers are responsible to DCFS for the welfare of foster children placed by DCFS with the providers. Foster care providers shall comply at all times with guidelines and directives provided to them by DCFS. Foster care providers are encouraged to make inquiries of the DCFS caseworker assigned to the child in their care whenever foster care providers have questions about their duties.
- C. Children in foster care are in the legal custody of DCFS, not the foster care provider. Subject to guidance and direction from DCFS, when a child is placed into foster care, the foster care provider shall provide for the care, custody, control, supervision, and protection of the child as a substitute for regular parental care. Licensure as a foster care provider and placement of a child with a provider convey no liberty or property rights upon the provider and are revocable at the will of DCFS.
- D. Pursuant to chapters 3 and 12 of this Code, the Juvenile Court shall provide notice to each foster care provider of court proceedings involving foster care children who have been placed with the provider. The provider is entitled to appear at such proceedings and be heard. Current long term foster care providers may move to intervene as parties in the proceedings.
- E. In the case of sickness or injury to the child, the foster parent(s) or relative(s) with whom the child is placed shall immediately notify the Department of Children and Family Services (DCFS). Foster care providers with whom the child is placed may consent to surgery or other treatment for the child in a medical emergency, unless otherwise ordered by the Juvenile Court.
- F. DCFS shall coordinate visitation between the child and the child's parent(s) or guardian pursuant to orders of the Court. Visitation shall be designed to promote and expand the relationship between the child and the child's parent(s) or guardian(s) whenever possible.
- G. DCFS may make inquiries at any time regarding the care and condition of any children placed with a foster care provider. Foster care providers shall cooperate with any such inquiries. When DCFS concludes that doing so is necessary to protect the best interest of a foster child,

DCFS may, in its discretion, remove a foster child from a foster care placement without notice to the foster care provider and without stating a cause.

#### SECTION 13.03. PREFERENCES FOR FOSTER PLACEMENTS

- A. Where a child is placed in DCFS's legal custody for placement in foster care (either voluntarily or by order of the Juvenile Court), DCFS shall place the child with a licensed foster care provider, in the least restrictive setting that most approximates a family, within a reasonable proximity to the child's home, and in a placement in which the child's special needs, if any, are met.
- B. In accordance with the requirements of this section, DCFS shall give preference to placements in the following order:
1. Members of the child's or child's parent(s)'s extended family, licensed by DCFS;
  2. Persons recommended by the child's parent(s) and who are licensed by DCFS to provide foster care or who qualify for foster home licensing by DCFS;
  3. The foster home of an Indian family of the same tribe as the child, licensed by DCFS;
  4. The foster home of another Indian family, licensed by DCFS;
  5. The foster home of another Indian family, licensed by a state;
  6. The licensed foster home of any other family that can provide a suitable home for the child;
  7. A licensed shelter care or treatment facility.
- C. Where appropriate, DCFS may consider the following factors in placing a child:
1. The wishes of the child and the child's parent(s);
  2. The child's adjustment to a new home, school, or community;
  3. The mental and physical health of the child; and
  4. The need to promote continuity and stability in the life of the child.

#### SECTION 13.04. VOLUNTARY PLACEMENT OF A CHILD IN TEMPORARY FOSTER CARE

- A. To provide protection for a child and/or treatment for a family, DCFS is authorized to accept legal custody of a child for voluntary placement in temporary foster care if the transfer of custody is voluntarily consented to, in writing, by:
1. Both parents of the child if the child lives in the home of both parents;
  2. The custodial parent if one (1) parent received custody of the child pursuant to a divorce decree or other applicable law or order; or
  3. The child's legal guardian or custodian.
- B. A voluntary placement shall not exceed three (3) months in duration, unless extended by order of the Juvenile Court.
- C. This provision shall not be implemented so as to substantially interfere with the non-custodial parents visitation rights, unless such interference is in the best interest of the child;

- D. The child's parent(s), guardian, or custodian may withdraw their consent to the voluntary placement in temporary foster care at any time, and the child shall be returned within forty-eight (48) hours. If DCFS has reasonable cause to believe that the return of the child will result in minor-in-need-of-care status, then DCFS shall take the child into emergency shelter care and immediately file a request for a hearing with the Court.

#### SECTION 13.05. SUPPORT OF A CHILD IN FOSTER CARE

- A. When the Confederated Tribes or an agency is paying for foster care for a child, the child's parent(s) or guardian shall contribute to the costs of the child's support, in an amount determined by the Juvenile Court. The contribution by the child's parent(s) or guardian to the child's support shall be paid to the Office of Child Support Enforcement and dispensed by the Office of Child Support Enforcement as necessary and appropriate. The Juvenile Court may issue an order to garnish any Confederated Tribes' per capita dividends the parent(s) or guardians may be entitled to receive for so long as the child is a ward of the Court.
- B. The contribution for a child's support paid to a family providing foster care for the child shall be subject to the supervision of the Juvenile Court to prevent the waste or misuse of the funds.

### CHAPTER 14. GUARDIANSHIPS

#### SECTION 14.01. POWERS AND DUTIES OF A GUARDIAN OF A CHILD

- A. A guardian of a child shall exercise the powers and duties of a parent, including responsibility for the care, custody, and control of the child and the management of the child's property, except that a guardian is not legally obligated to provide for the child from the guardian's own funds, is not liable to a third party for the acts of the child by reason of the parental relationship, and shall not dispose of any real property or tribal member benefits of the child except by order of the Juvenile Court. Among other duties, a guardian:
1. Shall facilitate the child's educational, social, and other activities;
  2. Shall authorize medical or other professional care and treatment for the child. A guardian is not liable by reason of this consent for an injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented to the conduct;
  3. May receive money for the support of the child payable to the child's parent(s), guardian, or custodian under the terms of any statutory benefit, insurance system, private contract, devise, trust, conservatorship, or custodianship;
  4. May institute proceedings to compel the performance of a duty to support the child or to pay sums for the welfare of the child;
  5. May prosecute the claims of the child, including those for personal injuries;
  6. Shall take reasonable care of the child's personal effects and begin protective proceedings if necessary to protect the child's property;
  7. Shall report to the Juvenile Court on the condition of the child and the child's estate subject to the guardian's possession or control, on an annual basis or as ordered by the Court; and
  8. Shall file a detailed accounting with the Juvenile Court describing the money and property received on behalf of the child and the disposition of the money and property, on an annual basis or as ordered by the Court.
- B. Any money or property received under this section shall be applied to the child's current needs for support, care, and education. The use of funds or property for any other purpose

shall subject the guardian to an action for contempt of court and to criminal and civil penalties, and any remedies as provided under tribal, state, and federal law. The guardian shall exercise due care to conserve any excess funds or property for the child's future needs unless a conservator has been appointed for the estate of the child and excess funds are paid over at least annually to the conservator. Money or property received by the guardian shall not be used to compensate the guardian for services unless compensation has been approved by order of the Juvenile Court or as determined by a duly appointed conservator other than the guardian.

- C. By accepting appointment as a guardian of a child, a guardian submits personally to the jurisdiction of the Juvenile Court in any proceeding relating to the guardianship.

#### SECTION 14.02. PREFERENCES IN APPOINTING GUARDIANS

- A. In appointing a guardian of a child, the Juvenile Court shall prefer guardianships that maintain and preserve the child's connection to the Confederated Tribes and the child's extended family, where appropriate.
- B. In accordance with the requirements of this section, the Juvenile Court shall appoint a qualified and suitable guardian who is willing to serve, having due regard for the following factors:
1. Any request for the appointment of a guardian of a child that is contained in a will or other written instrument executed by a parent of the child;
  2. Any request for the appointment of a guardian of a child fourteen (14) years of age or older made by the child; and
  3. Any relationship by blood or marriage of the proposed guardian to the child.
- C. The following persons are not qualified to act, or to continue to act, as a guardian of a child:
1. A child;
  2. An incompetent person; and
  3. Any person who has been convicted of a felony, if the Juvenile Court determines that the facts underlying the conviction create a reasonable suspicion that the person will be unfaithful to or neglectful of a guardian's responsibilities to the child or that the appointment will not be in the best interest of the child.

#### SECTION 14.03. LETTERS OF GUARDIANSHIP

The Juvenile Court shall issue a Letter of Guardianship to a person accepting a guardianship or appointed as a guardian of a child. The Letter of Guardianship shall affirm that the named guardian has the authority to and shall perform the duties of a guardian of the named child as provided by law.

#### SECTION 14.04. VOLUNTARY TEMPORARY GUARDIANSHIPS

- A. A parent or guardian of a child, by a properly executed power of attorney, may voluntarily delegate to another person, for a period not to exceed six (6) months, the temporary guardianship of the child.
- B. A temporary guardian shall have the legal status of a guardian and shall perform any of the powers and duties of a guardian regarding the care, custody, or control of the child and the management of the child's property, except the power to consent to the marriage or adoption of the child.



**SECTION 14.05. PERMANENT GUARDIANSHIPS**

- A. Any adult interested in the welfare of an Indian child within the territorial jurisdiction of the Tribes may file a petition with the Juvenile Court asking to become the permanent guardian of the child. A petition for permanent guardianship shall be verified under oath and shall include:
1. The name, address, date of birth, sex, and tribal affiliation of the child;
  2. The name, address, and tribal affiliation of the child's parent(s) or present guardian(s), if known;
  3. Whether the juvenile is currently the subject of a Minor-in-Need-of-Care proceeding;
  4. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  5. The residences at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
  6. The name, address, date of birth, tribal affiliation, and occupation of the petitioner(s);
  7. The relationship of the petitioner(s) to the child;
  8. The reasons the guardianship is sought and the capacity of the petitioner(s) to fulfill the duties of a guardian;
  9. Whether the child's parent(s) consent to the proposed guardianship;
  10. A statement by the petitioner(s) of the desire that a relationship of guardian and ward be established between the petitioner and the child; and
  11. An agreement by the petitioner(s) to maintain ties between the child and the Confederated Tribes and the child's extended family, where appropriate.
- B. Upon receipt of a petition for permanent guardianship, the Juvenile Court shall order the Department of Children and Family Services (DCFS) to investigate the suitability of the petitioner(s) and the petitioner(s)'s home for the proposed guardianship, and may order any other agency to investigate the petitioner(s). DCFS and any other agency ordered to investigate shall submit a written report to the Juvenile Court within sixty (30) days outlining the results of the investigation and the agency's recommendation regarding whether the proposed guardianship is in the best interest of the child.
- C. The Juvenile Court shall issue a notice of hearing directing the petitioner(s), the child, the child's parent(s), guardian, or custodian, and DCFS to appear in Court for a hearing on the petition at the time and place specified in the notice. A hearing on a petition for guardianship shall be held within thirty (30) days of the filing of the petition.
- D. If the Juvenile Court determines that the required notices have been given, the petitioner(s) is qualified to be appointed as the child's guardian, and the requested appointment is in the child's best interest, the Court shall make the appointment. In any other case, the Juvenile Court may dismiss the proceedings or may make any further orders as appropriate and in the best interest of the child. If necessary, the Juvenile Court may appoint a temporary guardian of the child. A temporary guardian shall have the legal status of a guardian, but the appointment shall not exceed six (6) months.
- E. If, at any time in the proceeding, the Juvenile Court determines that the interests of the child are or may be inadequately represented, the Court may appoint counsel to represent the child, giving consideration to the preference of the child if the child is fourteen (14) years of age or older.

**SECTION 14.06. TERMINATION OF GUARDIANSHIPS**

- A. A guardian's responsibility for the care, custody, and control of a child and the management of the child's property shall terminate upon the death, resignation, or removal of the guardian or upon the death, adoption, marriage, emancipation, or eighteenth (18<sup>th</sup>) birthday of the child. The termination of a guardianship does not affect a guardian's liability for prior acts or the guardian's responsibility to account for or to discharge existing obligations from the child's funds and assets.
- B. A child fourteen (14) years of age or older or any person interested in the welfare of a child may petition the Juvenile Court for the removal of a guardian on the grounds that the removal would be in the best interest of the child.
- C. A guardian may petition the Juvenile Court for permission to resign from a guardianship. Resignation of a guardian does not terminate the guardianship until the resignation has been approved by the Juvenile Court.
- D. A petition for the removal or resignation of a guardian may, but need not, include a request for the appointment of a successor guardian. Upon receipt of a petition for the removal or resignation of a guardian, the Juvenile Court shall issue a notice of hearing directing the necessary parties to appear in Court for a hearing on the petition at the time and place specified in the notice. After hearing any objections to the petition, if any, the Juvenile Court may terminate the guardianship or make any further orders as appropriate and in the best interest of the child.

**CHAPTER 15. TERMINATION OF PARENTAL RIGHTS**

**SECTION 15.01. EFFECT OF TERMINATION OF PARENTAL RIGHTS**

- A. A Juvenile Court order terminating parental rights permanently terminates all rights of a parent to a child. A parent whose parental rights have been terminated shall have no standing to appear in any legal proceeding concerning the child, except a motion to revoke the relinquishment of parental rights or the appeal of an order terminating parental rights.
- B. An order terminating parental rights shall not affect the child's enrollment status as a member of the Confederated Tribes, the child's degree of blood quantum, or the child's rights of inheritance under tribal law from biological parents who die intestate.
- C. The rights of one (1) parent may be terminated without affecting the rights of the other parent.

**SECTION 15.02. VOLUNTARY TERMINATION (RELINQUISHMENT) OF PARENTAL RIGHTS**

- A. A parent may voluntarily terminate (relinquish) his or her parental rights if the relinquishment of parental rights is knowing and voluntary, in writing, and signed by the parent in the presence of and with the approval of the Juvenile Court.
- B. When the Juvenile Court receives notice that a parent intends to relinquish his or her parental rights, the Court shall set a date for a hearing to accept the parent's release and surrender of parental rights. The hearing shall be held within sixty (60) days of the receipt of notice.
- C. No voluntary termination of parental rights shall be accepted by the Juvenile Court prior to ten (10) days after the birth of the child to whom the parent seeks to terminate his or her parental rights.
- D. No voluntary termination of parental rights shall occur until a written report has been submitted to the Juvenile Court by the Department of Children and Family Services (DCFS) indicating that social services and counseling have been offered to the parent, that the

consequences of the parent's actions have been fully explained to and are understood by the parent, and that the voluntary termination of parental rights is in the best interest of the child.

- E. If the Juvenile Court has reasonable doubt concerning the emotional state of mind of the parent or of the parent's ability to fully understand the consequences of his or her decision to voluntarily terminate parental rights, the Court shall place the child in the legal custody of DCFS for an out-of-home placement for a period not to exceed thirty (30) days in order to allow the parent to consider his or her decision. The Juvenile Court shall further order legal and psychological counseling for the parent in order to educate the parent about consequences of his or her decision. A report indicating that counseling has been completed shall be made to the Juvenile Court. The Juvenile Court shall conduct a hearing at the end of the thirty (30) days period and shall:
1. Return custody of the child to the parent;
  2. Process the petition for voluntary termination of parental rights; or
  3. Extend the period for no more than thirty (30) additional days to allow for further counseling. Upon completion of the additional counseling, the Juvenile Court shall resume the hearing and shall proceed in accordance with this code.
- F. A parent may withdraw a voluntary termination of parental rights for any reason at any time prior to the entry of a Decree of Adoption for the child. After the entry of a Decree of Adoption, a parent may revoke a voluntary termination of parental rights upon a showing that the relinquishment of parental rights was obtained through fraud, duress, or coercion, except that no adoption in effect for more than two (2) years may be invalidated under this section. A parent showing that the relinquishment of parental rights was obtained through fraud, duress, or coercion may petition the Juvenile Court to vacate the Decree of Adoption.

#### SECTION 15.03. PETITION TO INVOLUNTARILY TERMINATE PARENTAL RIGHTS

- A. A child or the Prosecutor on behalf of DCFS may file a petition with the Juvenile Court to initiate a termination of parental rights hearing for the purpose of freeing a child for adoption. A petition to initiate a termination parental rights hearing shall be verified under oath and shall include:
1. The name, address, date of birth, sex, and tribal affiliation of the child;
  2. The name, address, and tribal affiliation of the child's parent(s) or present guardian(s), if known;
  3. The residences at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
  4. Whether the child is in a tribally-approved or relative placement and whether an adoptive resource is available;
  5. The facts upon which the petition is based which, if true, would prove beyond a reasonable doubt that the termination of parental rights is warranted and in the best interest of the child; and
  6. Facts showing that every reasonable effort has been made to prevent or correct the situation that has necessitated the filing of the petition.
- B. Except as provided in this section, in all Title IV-E cases, the Prosecutor on DCFS's behalf shall file a petition to terminate parental rights if:

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1. A child found to be a minor-in-need-of-care has been in the legal custody of DCFS and in an out-of-home, non-relative placement for fifteen (15) of the last twenty-two (22) months;
  2. The Juvenile Court has determined that the child has been abandoned; or
  3. The Juvenile Court has determined that the child's parent has committed, aided, abetted, attempted, conspired, or solicited the murder or voluntary manslaughter of the child or another child of the parent, or committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent.
- C. The Prosecutor on DCFS's behalf is not required to file a petition to terminate parental rights in Title IV-E cases if the Juvenile Court has made written findings that:
1. The child is being adequately cared for by a relative;
  2. DCFS has not provided the services to the family that are necessary for the safe return of the child to parental care; or
  3. DCFS has documented compelling reasons why the termination of parental rights would not be in the best interest of the child. Compelling reasons may include, but are not limited to the parent(s) successfully working to complete a service agreement or the existence of another permanent plan that is better suited to meet the needs of the child.
- D. Upon receipt of a petition seeking the termination of parental rights, the Juvenile Court shall issue a notice of hearing directing the child, the child's parent(s), guardian, and/or custodian, and DCFS to appear in Court for a hearing on the petition at the time and place specified in the notice.

**SECTION 15.04. TERMINATION OF PARENTAL RIGHTS HEARING AND DISPOSITION**

- A. If the child's parent(s) is not present at the termination of parental rights hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s) of the hearing and to obtain their presence. If it appears that further efforts are likely to produce the parent(s), the Juvenile Court shall recess for not more than ten (10) days and shall direct DCFS to make continued efforts to obtain the presence of the parent(s).
- B. If a parent has waived his or her right to appear at the termination hearing, the waiver shall be knowing and voluntary, in writing, and signed before the Juvenile Court.
- C. To terminate parental rights to a child, the Juvenile Court must determine, beyond a reasonable doubt, that the child is in a tribally-approved or relative placement, an adoptive resource for the child is available, the termination of parental rights is in the child's best interest, and termination of parental rights is warranted because:
1. The parent has abandoned the child;
  2. The parent is unfit and parental custody is likely to result in serious emotional or physical damage to the child;
  3. The parent has subjected the child to willful and repeated physical injuries that cause or create a substantial risk or death, disfigurement, or impairment of bodily functions;
  4. The parent has subjected the child to willful and repeated acts of sexual abuse; or
  5. The parent's voluntary termination (relinquishment) of parental rights has been acknowledged before the Juvenile Court.

- D. If the Juvenile Court makes the required determinations, the Court shall proceed to disposition or may take the matter under advisement and hold a disposition hearing within ten (10) days. If the Juvenile Court schedules a disposition hearing for a later date, the Court shall provide notice of the disposition hearing date to all parties.
- E. The Juvenile Court shall require DCFS to prepare a written pre-disposition report outlining a specific plan for the future permanent care and custody of the child, including, but not limited to, placing the child in a temporary physical custody placement pending transfer to the adoptive resource, or placing the child in the legal custody of DCFS for adoptive placement and in the physical custody of the adoptive parents. DCFS shall submit the pre-disposition report to the Juvenile Court, the parties, and counsel, if any, in a timely manner prior to the disposition hearing.

## **CHAPTER 16. ADOPTION**

### **SECTION 16.01. WHO MAY BE ADOPTED**

A child shall be eligible for adoption if the child is within the jurisdiction of the Juvenile Court and

- A. The parent(s) are deceased
- B. The parental rights of the child's parent(s) have been terminated, or
- C. The parent(s) have consented to adoption.

### **SECTION 16.02. PREFERENCE FOR ADOPTIVE PLACEMENTS**

- A. When consistent with the best interest of the child, preference for adoptive placement shall be given in the following order:
  - 1. The child's relatives or extended family members;
  - 2. Members of the child's tribe or descendants of members of the child's tribe;
  - 3. Other Indians or descendants; and
  - 4. Another family that can provide a suitable home for the child.
- B. Preference shall be given to adoptive placements that maintain and preserve the child's connection to the Confederated Tribes and the child's extended family, where appropriate.

### **SECTION 16.03. PETITION FOR ADOPTION**

- A. Any adult may file a petition with the Juvenile Court to adopt any child eligible for adoption. A petition for adoption shall be verified under oath and shall include:
  - 1. The name, address, date of birth, sex, and tribal affiliation of the child;
  - 2. The name, address, and tribal affiliation of the child's natural parent(s) or present guardian(s), if known;
  - 3. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  - 4. Whether the natural parents or other persons specified in this code have given their consent to the adoption. Where required by this code, written consents shall be attached to the petition for adoption;
  - 5. Name, address, date of birth, tribal affiliation, and marital status of petitioner(s);

6. The relationship of the petitioner(s) to the child, the reason the adoption is sought, and the capacity of the petitioner(s) to care for the child;
  7. A statement by the petitioner(s) of the desire that a parent-child relationship be established between the petitioner(s) and the child; and
  8. An agreement by petitioner(s) to maintain ties between the child and the Confederated Tribes and the child's extended family, where appropriate.
- B. A petition for adoption may include a request for a change of name, if desired.
- C. A petition for adoption filed by a married petitioner shall not be granted unless the petitioner's spouse joins in the petition.
- D. Upon receipt of a petition for adoption, the Juvenile Court shall issue a notice of hearing directing the parties to the adoption to appear in Court for a hearing at the time and place specified in the notice. The hearing shall be conducted within ninety (90) days of the filing of the petition.

#### SECTION 16.04. INVESTIGATION

- A. Upon receipt of a petition for adoption, the Juvenile Court shall order DCFS to investigate the suitability of the petitioner(s) and the petitioner(s)' home for the proposed adoption, and may order any other agency to investigate the petitioner(s). DCFS and any other agency ordered to investigate shall submit a written report to the Juvenile Court within sixty (60) days outlining the results of the investigation and the agency's recommendation regarding whether the proposed adoption is in the best interest of the child.
- B. The Juvenile Court may forward a copy of the petition for adoption to any other appropriate agency, program, or person with instructions that the agency, program, or person provide the Court with information on the status of the child and/or the suitability of the petitioner(s) and their home for the adoption of the child.

#### SECTION 16.05. CONSENT TO ADOPTION

- A. Written consent to an adoption is required of the following persons:
1. The child's biological or adoptive mother;
  2. The child's biological, adoptive, acknowledged or adjudicated father;
  3. The child's guardian, if the guardian is empowered to consent; and
  4. The child, if the child is twelve (12) years of age or older.
- B. Consent to the adoption of a child shall not be granted by the parents of the child until ten (10) days after the birth of the child, except by order of the Juvenile Court.
- C. Any child over the age of twelve (12) years may withdraw his or her consent to the adoption for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the child may withdraw his or her consent to the adoption upon a showing that the consent was obtained through fraud, duress, or coercion, except that no adoption in effect for more than two (2) years shall be invalidated under this section. Upon a showing that the consent was obtained through fraud, duress, or coercion, the child may petition the Juvenile Court to vacate the Decree of Adoption.
- D. Written consent to an adoption shall be knowing and voluntary, and shall be signed and acknowledged before the Juvenile Court. The Juvenile Court shall have the authority to inquire as to the circumstances behind the granting of consent under this section.

- E. Written consent to an adoption is not required if:
1. The parent(s)'s rights have been terminated involuntarily;
  2. The parent(s)'s rights have been voluntarily terminated; or
  3. The parent has been declared mentally incompetent by a competent tribunal.

#### SECTION 16.06. DECREE OF ADOPTION

- A. If the Juvenile Court determines that the proposed adoption is in the best interest of the child and that the necessary consent to the adoption has been provided, the Court shall issue a Decree of Adoption ordering that the child, for all legal intents and purposes, shall be the child of the petitioner(s) from the date of the Decree, as follows:
1. In the case of a child who has lived with petitioner(s) for more than one (1) year before the petition for adoption was filed, the Juvenile Court shall immediately issue a Decree of Adoption; and
  2. In all other cases, the Juvenile Court shall issue an order placing the child in the physical custody of the petitioner(s) for a period of time not to exceed one (1) year. At the conclusion of the stated period of time, DCFS shall investigate the placement and shall submit a supplemental report to the Juvenile Court. If the Juvenile Court determines that the adoption is in best interest of the child, the Court shall immediately issue a Decree of Adoption.
- B. A child adopted by order of the Juvenile Court shall be entitled to the same rights as a biological child of the adoptive parent(s) including, but not limited to, inheritance rights. Nothing in this code shall be interpreted to preclude any gift or devise to the adopted child.
- C. Except for any right of appeal provided by the Confederated Tribes, a Decree of Adoption shall be binding and conclusive on all parties. After the expiration of one year from the entry of a Decree of Adoption, the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of the Decree of Adoption. After the expiration of such one-year period no one may question the validity of the adoption for any reason, except where the right of appeal is provided by law.
- D. If the petition for adoption includes a request for a change of name for the child, the Decree of Adoption may decree the change of name.
- E. If the adoption includes a signed agreement between the adoptive parent(s) and the biological parent(s), the Juvenile Court shall incorporate the agreement into the Decree of Adoption. The Juvenile Court shall issue an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.
- F. Upon request by the petitioner(s), the Juvenile Court shall submit such documentation as is necessary to modify the child's birth certificate, tribal enrollment records, Bureau of Indian Affairs records, and any other official records affecting the adopted child. Any information provided by the Juvenile Court shall be sealed or otherwise kept confidential by the receiving agency.

## **CHAPTER 17. EMANCIPATION**

### **SECTION 17.01. PETITION FOR EMANCIPATION**

- A. Any child who is at least sixteen (16) years of age or the parent(s), guardian, or custodian of any child who is at least sixteen (16) years of age may petition the Juvenile Court for the emancipation of the child.
- B. The petition for emancipation shall be verified under oath and shall include:
  - 1. The name, address, date of birth, sex, and tribal affiliation of the child;
  - 2. The name, address, and tribal affiliation of the child's living parent(s) and the child's guardian or custodian, if any;
  - 3. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  - 4. The purposes for which emancipation is sought;
  - 5. Facts showing that the child is capable of arranging for the child's own support and for the management of the child's own financial affairs; and
  - 6. The reasons emancipation of the child would be in the best interest of the child.
- C. Upon receipt of a petition for emancipation, the Juvenile Court shall issue a notice of hearing directing the child, the child's parent(s), guardian, or custodian, and the Department of Children and Family Services (DCFS) to appear in Court for a hearing on the petition at the time and place specified in the notice.

### **SECTION 17.02. EMANCIPATION HEARINGS**

- A. The Juvenile Court may issue a Decree of Emancipation if the Court determines that:
  - 1. The Juvenile Court has jurisdiction over the child;
  - 2. The child is capable of arranging for the child's own support and the management of the child's own financial affairs;
  - 3. The child is living separate and apart from the child's parent(s), guardian, or custodian, the child is a parent, the child has special needs, or special circumstances exist necessitating emancipation; and
  - 4. Emancipation of the child would be in the best interest of the child.
- B. In determining whether to emancipate a child, the Juvenile Court shall consider:
  - 1. Whether the child's parent(s), guardian, or custodian consents to the proposed emancipation;
  - 2. Whether the child has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision;
  - 3. Whether the child can demonstrate to the satisfaction of the Court that the child is sufficiently mature and knowledgeable to manage his or her affairs without parental assistance; and
  - 4. Any recommendation of DCFS regarding the proposed emancipation.



**SECTION 17.03. DECREE OF EMANCIPATION**

- A. The Juvenile Court may order a child to be emancipated for general purposes or for limited purposes as specified in the Decree of Emancipation.
- B. A Decree of Emancipation may confer the rights of majority upon the emancipated child including, but not limited to:
  - 1. The termination of the parent(s) or guardian's duty to provide for the care, custody, and control of the child, including the obligation of financial support, and any other obligation the parent(s) or guardian or any social service agency may have to the child by virtue of the parent-child relationship or the minor status of the child;
  - 2. The right to establish a separate residence or domicile;
  - 3. The right to work and earn a living, subject only to health and safety regulations designed to protect children regardless of their legal status;
  - 4. The right to retain his or her own earnings;
  - 5. The right to act autonomously and with the power and capacity of an adult in all business relationships and property transactions;
  - 6. The right to enter into non-voidable contracts and to sue or be sued in his or her own name; and
  - 7. The right to give informed consent to health care services.
- C. An emancipated child shall be recognized as an adult for the purposes of the application of the Criminal Code of the Confederated Tribes, except when the emancipated child is a victim and the age of the victim is an element of the offense.
- D. An emancipated child shall not be recognized as an adult for the purposes of specific constitutional and statutory age requirements regarding voting, the possession of alcoholic beverages, the possession of firearms, the requirements for obtaining a marriage license, and other health and safety regulations relevant to the child because of the child's age.
- E. Once the Juvenile Court issues a Decree of Emancipation for a child, the order of emancipation cannot be revoked.

**CHAPTER 18. RECONSIDERATION**

**SECTION 18.01. MOTION FOR RECONSIDERATION**

- A. No later than thirty (30) days after a Juvenile Court judgment is final and prior to filing a Notice of Appeal, a party may ask the Juvenile Court for reconsideration, rehearing, correction, vacation, or modification of the judgment by filing a Motion for Reconsideration.
- B. Parties may include memoranda or affidavits in support of a Motion for Reconsideration, to which reply memoranda and affidavits shall be allowed if desired.
- C. The Juvenile Court may stay any order pending a ruling on the Motion for Reconsideration.
- D. If it appears to the Juvenile Court that the information included in a Motion for Reconsideration might affect its order or judgment, the Court may order a new hearing or may rule on the motion.

**SECTION 18.02. GROUNDS FOR RECONSIDERATION**

- A. The Juvenile Court may reconsider, rehear, correct, vacate, or modify a judgment if any of the following grounds exist:
  - 1. The Court denied the aggrieved party the opportunity to file a petition in the matter;
  - 2. The Court entered its order without providing the aggrieved party the opportunity to respond or to be heard in the matter;
  - 3. The aggrieved party did not receive a notice of hearing or service of the petition;
  - 4. The original judgment was based on or reached as a result of fraud or mistake;
  - 5. There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing in the case;
- B. A rehearing shall not be granted on the basis of a harmless error or irregularity that did not affect substantial justice.
- C. Clerical mistakes in judgments, order or other parts of the record or errors therein arising from oversight or omission may be corrected by the Juvenile Court at any time on its own discretion or motion of any party.

**SECTION 18.03. SERVICE AND HEARING**

- A. A hearing on a Motion for Reconsideration shall be held within twenty (20) working days after the Motion for Reconsideration is filed. The Court clerk shall have the Motion for Reconsideration and the hearing date served upon all parties.
- B. Any Motion for Reconsideration not docketed for hearing within twenty (20) working days of filing or not ruled upon within the ten (10) working days after the hearing shall be deemed denied and shall be considered a final order from which an appeal may be taken. A Notice of Appeal must then be filed within thirty (30) working days of the denial.
- C. A hearing on a Motion for Reconsideration shall be conducted in accordance with this code and the rules for dispositional hearings.
- D. After the hearing, the Juvenile Court shall enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.
  - 1. The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing of the motion, whichever the Juvenile Court in its discretion finds appropriate for the case.
  - 2. The Juvenile Court shall state the reasons for its decision on the motion on the record or in writing.

## APPENDIX A

### LEGISLATIVE HISTORY

## **JUVENILE CODE**

### **LEGISLATIVE HISTORY**

In Resolution No. 81-18 (January 7, 1981), the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation noted that criminal jurisdiction over the Umatilla Indian Reservation would soon be retroceded from the State of Oregon to the Confederated Tribes and the federal government (See the Legislative History for the Criminal Code for more details.). Although juvenile law is categorized as civil law, not criminal, it is closely related to criminal law. Consequently, the Board desired to establish a body of law governing juvenile matters on the Reservation at the same time that the tribe assumed authority over criminal matters. Resolution No. 81-18 adopted the juvenile law of the State of Oregon for use on the Umatilla Indian Reservation until a tribal Juvenile Code could be enacted.

In Resolution No. 82-53 (August 18, 1982), the Board enacted “as laws of the Confederated Tribes” five sections concerning purchase and possession of alcoholic beverages by persons under the age of 21. The resolution authorized the Tribal police and court to enforce these laws and directed that the sections “shall at an appropriate time be incorporated into the tribal code.”

In Resolution No. 83-70 (August 3, 1983), the Board enacted the Juvenile Code. The Juvenile Code established the Umatilla Tribal Juvenile Court and its procedures, and established procedures for juvenile delinquency matters and juvenile dependency (foster care, or Minor-In-Need-Of-Care). The delinquency portion included the sections originally enacted in Resolution 82-53. The Juvenile Code was amended three times: in Resolution 96-101 (November 20, 1996), Resolution No. 99-65 (August 18, 1999) and Resolution No. 00-29 (March 20, 2000).

In Resolution No. 07-004 (January 8, 2007) the Board enacted a revised Juvenile Code, which addressed the same matters as the original but in much greater detail, updating them to reflect changes in policy in the twenty three years since the original code was enacted and incorporating lessons learned from actual practice over that time period.

In Resolution No. 10-057 (July 12, 2010) the Board enacted a series of amendments to the revised Juvenile Code. Section 1.03(B)(1), which defines “abandon,” was updated such that failure to maintain contact with and provide support for a child for a six-month period constitutes prima facie evidence of abandonment. Section 3.12(D), concerning juvenile court hearings, was amended to make such hearings closed to the public. Section 3.22 concerning the confidentiality and maintenance of juvenile records was amended to provide access to such records to counsel for a child’s parents and to outside child welfare agencies upon prior approval. Section 6.04 was amended to render the possession of alcoholic beverages provision inapplicable to minors aged 18-20. In conjunction with Resolution 10-058 (July 12, 2010), possession or use of alcohol by minors aged 18-20 is now covered by the Criminal Code. Finally, section 10.03(C) was amended to state that a temporary custody order expires if a minor-in-need of care petition is not filed within 30 days after the emergency shelter care hearing.

In Resolution No. 14-041 (July 28, 2014) the Board enacted various amendments to the Juvenile Code changing the mandatory school age, beginning in the 2015-2016 school year, from 7-18 to 5-18; creating a process for juvenile runaways and “couch surfers” to be referred to the Community Accountability Board; requiring court ordered child support payments to be made to the Office of Child Support Enforcement, removing parents from guardianship provision (guardianships usually occur when placement is with someone other than a parent); and clarifying that MINOC petitions and other MINOC related formal court filings are to be filed by the Prosecutor’s Office on behalf of DCFS.

In Resolution No. 16-038 (June 20, 2016), the Board of Trustees amended the Juvenile Code to address new federal requirements for tribes to access Title IV-E funding for foster placements and guardianships. Specifically, the changes require that at any child dependency post-wardship review hearing, that the Confederated Tribes’ Department of Children and Family Services must take steps to ensure a child’s foster family follows the “reasonable and prudent parent standard” with regard to ongoing opportunities to engage in age or developmentally appropriate activities. Additionally, the

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new federal requirements require that permanency plans involving children 14 or older must be developed with the child's participation and that the court, at any permanency hearing involving a child 14 or older, determine services necessary to assist the child in transitioning from foster care to a successful adulthood.

In Resolution 17-029 (May 15, 2017), the Board of Trustees amended the Juvenile Code to address the Board of Trustees' goal of reducing absenteeism among CTUIR students. Measures authorized by the amendments include withholding of gaming dividends, prohibition of home schooling that is not connected with a public school, and the option to file a minor in need of care case in relation to absenteeism.