

**CITIZEN POTAWATOMI NATION  
JUVENILE CODE AND INDIAN CHILD WELFARE  
TITLE 17**

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## **PREFACE**

### **Section 17-0-001 Citation**

This Act may be cited as The Juvenile Procedure Act.

### **Section 17-0-002 Purpose**

The purposes of this Act are to:

- (A) Secure for each child subject to this Act care and guidance, preferably in their own home, as will best serve their welfare, interest of the Tribe and society;
- (B) Preserve and strengthen the ties between the child and The Tribe;
- (C) Preserve and strengthen families, improve the home and its environment;
- (D) Remove a child from the custody of parents or traditional custodians only when the child's welfare and safety or the protection of the public would be endangered;
- (E) Secure for any removed child the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of The Tribe and society;
- (F) Establish a working relationship between the Juvenile Court and Firelodge Children and Family Services.

To carry out these purposes, the provisions of this Act shall be liberally construed.

### **Section 17-0-003 Definitions**

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

- (A) "Adjudicatory hearing": a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in-need-of-supervision, or delinquent are supported by the evidence.
- (B) "Adult" means a person eighteen years of age or over; except any person alleged to have committed a delinquent act before he became eighteen years of age shall be considered a child for the purpose of adjudication and disposition of the delinquent Act.
- (C) "Aunt" means a person who; by blood or marriage, is:
  - (1) A female sibling of the biological parents, or

- (2) A female first cousin of the biological parents, or
  - (3) A female child of a grandparent, or
  - (4) Any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection.
- (D) “Brother”:
- (1) Any male sibling, or
  - (2) Any other male person, who, by virtue of an adoption either of themselves or of a members of their family pursuant to the laws of any Indian Tribe or state would hold the relationship of a sibling.
- (E) “Brother-in-law”: the husband of a sister by blood or marriage.
- (F) “Child”: a person under eighteen years of age.
- (G) “Child care center”: an institution or facility designed for the care of children licensed or approved pursuant to Tribal law, or by the law of the jurisdiction in which such facility is physically located, or both.
- (H) “Child in need of supervision”: a child:
- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of their parent, legal guardian, or other custodian; or
  - (2) Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
  - (3) Who is willfully, voluntarily, and habitually absent from school.
- (I) “Child placement agency”: an agency designed for the care or placement of children licensed or approved pursuant to Tribal law, by the law of the jurisdiction in which such facility is physically located or both.
- (J) “Commit”: to transfer legal custody.
- (K) “Cousin”: the child of an aunt or uncle.
- (L) “Custody”: guardianship of the person.

- (M) “Delinquent child”: a child who has violated any federal, Tribal, or state law, or any lawful order of the Court.
- (N) “Department”: the Tribal Indian Child Welfare Program.
- (O) “Deprivation of custody”: the transfer of legal custody from a parent or a previous legal custodian to another person, agency, or institution.
- (P) “Detention”: the temporary care of a child who requires secure custody in physically restricting facilities or a Court order for placement or commitment.
- (Q) “Dispositional hearing”: a hearing, after adjudication in which the Court must determine what treatment should be ordered for the family and child, and placement of the child should.
- (R) “Foster home”: a facility for the care of not more than six (6) total children in a family type setting, licensed or approved pursuant to Tribal law, or by the law of the jurisdiction in which such facility is physically located or both.
- (S) “Group care facilities”: places other than family care homes or child care centers providing care for small groups of children.
- (T) “Grandparent” means
- (1) A biological grandparent.
  - (2) The brothers and sisters of a biological grandparent, and their spouses.
  - (3) Any person who, by virtue of an adoption would come within the terms of subparagraphs (1) or (2) of this subsection.
- (U) “Guardianship of the person”: legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
- (1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment, and
  - (2) The authority to represent a child in legal actions and make decisions of substantial legal significance, and
  - (3) The authority to consent to adoption with express court authorization when the parent-child relationship has been terminated or the parents are deceased, and

- (4) The rights and responsibilities of physical and legal care, custody, and control of a child.
- (5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.
- (V) “Halfway house”: group care facilities for children who have been placed on probation or parole by being adjudicated delinquent, or in need of supervision.
- (W) “Juvenile Court” or “Court”: the Juvenile Court, Court established for other Indian Tribes and a state Juvenile Court.
- (X) “Neglected child” or “dependent child”: a child:
  - (1) Whose parent, guardian, or legal custodian has subjected them to mistreatment or abuse, or has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop or prevent such mistreatment or abuse; or
  - (2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or
  - (3) Whose environment is injurious to their welfare; or
  - (4) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well being, whether because of fault or because the lack ability or resources to provide for the child.
  - (5) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, or
  - (6) Whose parent, guardian, or legal custodian has abandoned them without apparent intent to return, or
  - (7) Who has placed them informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of nine months.
- (Y) “Nephew”: the male child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.
- (Z) “Niece”: the female child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

- (AA) “Parent”: either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity or paternity was established by judicial action.
- (BB) “Protective supervision”: a legal status under which the child is permitted to remain at home under the supervision of the Juvenile Court through the Tribal social services department during the period during treatment provided by the Tribal Social Services Department or other designated agencies.
- (CC) “Residual parental rights and responsibilities”: those rights and responsibilities remaining with the parent after legal custody, or guardianship a child has been vested in another person, agency, or institution, including, but not limited to, the responsibility for support, consent to adoption, inherit from the child, determine the child’s religious affiliation and reasonable visitation.
- (DD) “Shelter”: a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.
- (EE) “Stepparent”: a person married to a biological parent, but who is not a biological parent of the child.
- (FF) “Sister”:
- (1) Any female sibling.
  - (2) Any other female who, by virtue of an adoption would have the relationship of a sibling with the person in question.
- (GG) “Sister-in-law”: the wife of a brother by blood or marriage.
- (HH) “Termination of parental rights” or “termination of the parent-child legal relationship means the permanent elimination of all parental rights and duties, but not including the child’s right to inherit from the parent’s whose rights have been terminated.
- (II) “Traditional custodian”: those relatives of the child, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing support.
- (JJ) “Transfer proceeding”: any proceeding in the Juvenile Court to grant, accept, or decline transfer of any children’s case from or to the Courts of any Indian Tribe or state.
- (KK) “Tribal Court” shall mean the Tribal District Court.

**Section 17-0-004 Place of Sitting**

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

## **CHAPTER ONE GENERAL PROVISIONS**

### **Section 17-1-101 Juvenile Court Established**

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

### **Section 17-1-102 Jurisdiction**

- (A) Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:
  - (1) Concerning any child in need of supervision.
  - (2) Concerning any child who is delinquent, neglected or dependent.
  - (3) Concerning any transfer proceeding to or from a court of another sovereign.
  - (4) To determine the legal custody, appoint a guardian or legal custodian of any child.
  - (5) Issue of orders of support.
  - (6) To determine parentage and make an order of support.
  - (7) For the adoption of a person of any age.
  - (8) For judicial consent to the marriage, employment or enlistment of a child.
  - (9) For treatment or commitment of a mentally ill or developmentally disabled child.
- (B) The Court may issue temporary orders for protection, support, or medical or surgical treatment prior to adjudication or disposition.
- (C) This section shall not deprive the Tribal District Court of jurisdiction to appoint a guardian or to determine the legal custody of a child upon writ of habeas corpus

when the question of legal custody is incidental to the determination of a cause in the Tribal Court except:

- (1) If a petition is pending or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and
  - (2) The Tribal Court may request the Juvenile Court make recommendations pertaining to guardianship or legal custody.
- (D) Where a custody award has been made in a Tribal District Court Divorce action or another proceeding, The Juvenile Court may take jurisdiction in a case involving the same child if he is dependent or neglected.

### **Section 17-1-103 Indian Child Welfare Act Transfers from State Courts**

- (A) Pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911 (B), any state court may transfer any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member or eligible for membership, if the Juvenile Court finds the transfer would not be detrimental to the best interests of the child.
- (B) The Juvenile Court shall determine whether the transfer would be detrimental to the best interest of the child in a transfer hearing. The Court may consider:
- (1) Whether the child or family will need special services for physical, mental disease or defect which the Tribe and its resources are unable to provide, and
  - (2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear the Court may decline to accept the transfer until after the adjudication, and
  - (3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services.
- (C) A Court transferring a case shall transmit all documents and legal and social records, or certified copies. The Juvenile Court shall proceed as if the petition has been originally filed or the adjudication made in this Court. Transfer cases shall be assigned a juvenile division case number.

### **Section 17-1-104 Indian Child Welfare Transfers From Tribal Courts**

- (A) Any other Tribal Court may transfer any children's case concerning any child who is a member or eligible for membership, or, whose parents or guardian reside within

the jurisdiction of the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.

- (B) The Juvenile Court shall determine whether the transfer would be detrimental to the best interest of the child in a transfer hearing. The Court may consider:
  - (1) Whether the child or family will need special services for physically, mental disease or defect which the Tribe and its resources are unable to provide, and
  - (2) If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court may decline to accept the transfer until after the adjudication is completed.
  - (3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.
- (C) A Tribal Court transferring a case shall transmit all documents and legal and social records, or certified copies. The Juvenile Court shall proceed as if the petition had been originally filed or the adjudication made in the Juvenile Court.

#### **Section 17-1-105 Child Welfare Transfers to Tribal or State Courts**

- (A) The Juvenile Court is authorized to transfer any children's case if the child is not a member or eligible for membership, to the Court of the Child's Indian Tribe, or a non-Indian, to the Court of the State where the child is a resident or domiciled, upon the petition of the Tribal district attorney, either parent, a custodian or guardian, or an appropriate official of the child's state.
- (B) The Tribal Court may consider:
  - (1) The best interests of the child, and
  - (2) Any special needs mental or physical disease and defects of the child and family and the ability of the receiving jurisdiction to meet those needs, and
  - (3) If prior to adjudication, whether witnesses can attend in the receiving jurisdiction, and
  - (4) Emotional, cultural, and social ties of the child and family
  - (5) The likelihood that the same child and family would return to the Tribal jurisdiction and come before the Juvenile Court again.
- (C) Upon entering an order, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's

case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested or personal delivery. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer.

### **Section 17-1-106 through 17-1-109 Reserved**

### **Section 17-1-110 Notice of Legal Rights**

- (A) At the first appearance before the Court, the child and their parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:
  - (1) Their right to a jury trial upon demand in juvenile delinquency cases.
  - (2) Their right to be represented by an attorney, at their own expense, at every level of the proceeding.
  - (3) Their right to see, hear, and cross-examine all witnesses against them.
  - (4) Their right to call witnesses and to have court process compel the attendance of witnesses for themselves.
  - (5) In juvenile delinquency proceedings, the right of the child not to be compelled to testify against them.
- (B) The Court may appoint counsel without expense to the Tribe if it deems representation by counsel necessary to protect the interest of the child or other parties.
- (C) If the child and their parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

### **Section 17-1-111 Tribal District Attorney Duties**

The Tribal district attorney shall represent the Tribe in the interest of the child in all proceedings. In proceedings in which the Tribe is not a party, the Tribal district attorney, upon request of the Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian of the child.

### **Section 17-1-112 through 17-1-119 Reserved**

### **Section 17-1-120 Procedure**

- (A) The rules of juvenile procedure shall apply in all proceedings under this title. For any procedure not specifically set forth, the general rules of civil procedure shall apply.
- (B) In cases involving an allegation of delinquency by means of commission of a criminal offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case, except trial by jury and a burden of proof by clear and convincing evidence.
- (C) The Juvenile Court shall have the authority by written Court rule or ruling not inconsistent with this Act or the Rules of Civil Procedure to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases.

### **Section 17-1-121 Hearings**

- (A) Hearings shall be held before the Court without a jury and may be conducted in an informal manner, except an alleged delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public, to attend. The Court shall admit only persons who have an interest in the case, and may admit persons whom the parents or guardian wish to be present.
- (B) A record shall be taken of all proceedings which result in the deprivation of custody, including any hearing conducted by a referee, unless waived by the parties and ordered by the Judge or referee.
- (C) When more than one child is named, the hearings may be consolidated; or heard separately at any stage of the proceeding.
- (D) Children's cases shall be heard separately from adult's cases, and the child or their parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.
- (E) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates this provision is guilty of contempt of court and, upon conviction shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than thirty days, or by both.

### **Section 17-1-122 Home Study**

- (A) Unless waived by the Court, the Indian Child Welfare Program or other agency shall make a home study and report in writing in all children's cases, except:  
If the allegations of a petition filed under Section 102 are denied, the study shall not be made until the Court has entered an order of adjudication

**Section 17-1-123 Effect of Proceedings**

- (A) No adjudication or disposition in proceedings under Section 102 shall impose any civil disability upon a child or disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.
- (B) No adjudication, disposition, or evidence given in proceedings shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Act concerning the same child.

**Section 17-1-124 through 17-1-129 Reserved**

**Section 17-1-130 through 17-1-139 Reserved**

**Section 17-1-140 Inspection of Court Records**

- (A) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties. Court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.
- (B) With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest and by persons conducting pertinent research studies, except in formal relinquishment and formal adoptions proceedings.
- (C) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

**Section 17-1-141 Expungement of Records**

- (A) Any person who was the subject of a petition for delinquency or need of supervision may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungement proceedings. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years.
- (B) Upon a petition or entering of a court order, the Court shall notify the Tribal district attorney and anyone who may have relevant information, including all agencies or officials.

- (C) The Court shall order sealed all records in petitioner's case and any records of any other agency or official, if the Court finds that:
- (1) The subject of the hearing has not been convicted of a felony, an offense, punishable by banishment or of a misdemeanor involving moral turpitude and has not been adjudicated under this title, or;
  - (2) No proceeding concerning a felony, an offense punishable by banishment, a misdemeanor involving moral turpitude, or a petition under this title is pending or being instituted; and
  - (3) The person has been rehabilitated to the Court's satisfaction.
- (D) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply to any inquiry that no record exists with respect to such person.
- (E) Copies of the order shall be sent to each agency or official named.
- (F) Inspection of the records may be permitted by the Court only upon petition by the subject of such records and only to those persons named.
- (G) In any proceedings alleging delinquency or in need-of-supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order or expungement may be entered without delay upon petition of the child, any party or the Court's own motion.

### **Section 17-1-142 Law Enforcement Records**

- (A) The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under this Title shall be maintained separately from the records of arrest. They may not be inspected by or disclosed to the public, except:
- (1) When the child has escaped from an institution to which he has been committed;
  - (2) By order of the Court;
  - (3) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

### **Section 17-1-143 Department Records**

The records of the Indian Child Welfare Program concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public.

- (A) To the victim in each case when the child is found guilty of a delinquent act;
- (B) When the child has escaped from an institution to which he has been committed;
- (C) By order of the Court;
- (D) When the Court orders the child to be held for criminal proceedings; or
- (E) When there has been a criminal conviction and a presentence investigation is being made on an application for probation;
- (F) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

### **Section 17-1-144 through 17-1-149 Reserved**

### **Section 17-1-150 Search Warrants for the Protection of Children**

- (A) A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the territorial jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.
- (B) Such warrant shall be issued only on the condition that the application for the warrant shall:
  - (1) Be in writing and supported by affidavit sworn to or affirmed before the Court;
  - (2) Name or describe with particularity the child sought;
  - (3) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;
  - (4) State the address or legal description of the place to be searched;

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

### **Section 17-1-151 Issuance and Return of Search Warrant**

- (A) If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.
- (B) The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.
- (C) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support.
- (D) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at other times.
- (E) A copy of the warrant, the application, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.
- (F) If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility or medical facility.
- (G) The warrant shall be returned, immediately upon service, and the officer shall write on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Tribal district attorney. If the child was not found, such information should be written on the warrant.

### **Section 17-1-152 Expiration of Search Warrant**

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

### **Section 17-1-153 through 17-1-159 Reserved**

### **Section 17-1-160 Exclusion of Certain Statement by Alleged Delinquent**

- (A) No statements or admissions of a child made as a result of interrogation by law enforcement concerning acts alleged to have been committed which would constitute a crime if committed by an adult shall be admissible in evidence against that child, unless a parent, guardian, or legal custodian was present and the child

and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, and the right to the presence of an attorney during interrogation. If legal counsel is present at interrogation, statements or admissions may be admissible even though the child's parent, guardian, or legal custodian was not present.

- (B) Notwithstanding the provisions of subsection (A) above, statements or admissions of a child shall be admissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated or if the child is a runaway and is of sufficient age and understanding.

### **Section 17-1-161 through 17-1-190 Reserved**

## **CHAPTER TWO EMERGENCY CUSTODY**

### **Section 17-2-101 Taking Children into Custody**

- (A) A child may be taken into temporary custody by an Indian Child Welfare Program caseworker and/or law enforcement officer without order of the Court when there are reasonable grounds to believe that:
  - (1) They have committed an act which would be a major crime, misdemeanor, or Tribal law violation if committed by an adult;
  - (2) They are abandoned, lost, or endangered in their surroundings or endanger others and immediate removal appears to be necessary for their protection or the protection of others; or
  - (3) They have run away or escaped from their parents, guardian, or legal custodian.
  - (4) They have violated the conditions of probation, Court Order and are under the continuing jurisdiction of the Juvenile Court.
- (B) A child may be detained temporarily without Court Order by an adult if the child has committed or is committing an act in the presence of the adult which would be a violation of any federal or Tribal law. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody.
- (C) A licensed practitioner of medicine may temporarily detain without Court order, a child brought for treatment whom he reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, an Indian Child Welfare caseworker and/or law enforcement officer who shall assume custody of the child. The law enforcement officer or case worker shall have authority to consent to the admission of the child

to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed long enough to contact a Judge for an emergency medical treatment order shall create a presumption that the Indian Child Welfare caseworker and/or law enforcement officer properly gave his consent to treatment of the child.

- (D) In all other cases, a child may be taken into custody only upon Court order.
- (E) The taking of a child into temporary custody is not an arrest and does not constitute a police record.

### **Section 17-2-102 Notification of Parents**

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

### **Section 17-2-103 Notification of Court Officers**

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

### **Section 17-2-104 through 17-2-109 Reserved**

### **Section 17-2-110 Release of Detained Child**

- (A) A child shall not be detained any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parents, guardian, or legal custodian.
- (B) The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that

he be detained. The parent or other person to whom the child is released may be required to sign a written promise, to bring the child to court.

- (C) If he is not released, he shall be taken directly to the Court or to the place of detention or shelter without unnecessary delay unless admitted to a facility for medical treatment.
- (D) No child shall be detained for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.
- (E) Notwithstanding the provisions of subsection (D), a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, legal custodian or Tribe.

### **Section 17-2-111 Special Release Rule for Major Offenses**

(A) No child shall be taken to a detention or shelter facility without a court order, verbal or written, as the result of an allegedly delinquent act which would constitute a major crime. Once such child has been detained he shall not be released from detention except after a hearing, presided over by Tribal Court with the District Attorney present. The hearing to take place within 72 hours of detention.

(B) When, the Court orders further detention, a petition alleging the child to be delinquent shall be filed with the Court without unnecessary delay, and the child shall be held in detention pending a hearing on the petition.

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

### **Section 17-2-112 Court Ordered Release**

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

### **Section 17-2-113 Extension of Detention Period**

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

## **Section 17-2-114 through 17-2-119 Reserved**

### **Section 17-2-120 Detention and Shelter**

- (A) A child who must be taken from his home but does not require physical restriction shall be given temporary care in an approved shelter facility and shall not be placed in detention.
- (B) A child twelve years or older shall be detained separately from adult offenders.
- (C) The official in charge of a jail or other facility for the detention of adults shall inform the Court and Tribal district attorney immediately when a child who is or appears to be under eighteen is received at the facility.

## **Section 17-2-121 through 17-2-129 Reserved**

### **Section 17-2-130 Court Ordered Medical Treatment**

- (A) At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:
  - (1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available to give their consent or show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical and/or legal custody of the child.
  - (2) After making a reasonable effort to obtain consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.
- (B) After a child has been taken into custody by the Tribe, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

### **Section 17-2-131 Court Ordered Commitment for Observation**

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended. Review of placement for treatment shall occur monthly until release.

## **CHAPTER THREE DIVERSION**

### **Section 17-3-101 Diversion**

- (A) Diversion shall be made by contract with the child's parents, guardian, or other custodian whereby they agree to specified treatment, including an agreement to do or refrain from doing certain acts. The Indian Child Welfare officer or district attorney on behalf of the Tribe agrees not to file a petition so long as the parent, guardian, or other custodian comply. The contract may contain:
- (1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.
  - (2) The specific treatment programs with duration the parents, guardian, or custodian agree to successfully complete.
  - (3) The specific Acts the parents, guardians, or custodian agree to do or not do.
  - (4) The specific treatment or other social services to be offered by the Tribe.
  - (5) A fixed, limited time for the contract to run.
  - (6) That each party has received a copy of the contract.
- (B) No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge.

### **Section 17-3-102 Diversion Contract Inadmissible**

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence. Except, the parents, guardian, or custodian may show their compliance with the terms as a defense to a petition filed.

### **Section 17-3-103 Diversion by Consent Decree**

- (A) After filing a petition, the district attorney with consent of the case manager, may divert any children's case, if:
- (1) The Court has informed the child and his parents, guardian, or legal custodian of their rights to:

- (a) Deny the allegations of the petition and require the Tribe to prove each allegation.
  - (b) Confront and cross-examine the witness against them and to call witnesses on their own behalf.
  - (c) Refuse to testify against themselves or each other in delinquency cases.
  - (d) Be represented by counsel at their own expense at each stage of the proceedings.
- (2) Written consent is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication.
- (3) The Indian Child Welfare Program has prepared a treatment plan to be incorporated into the Consent Decree which states:
- (a) The specific treatment programs and duration the parents, guardian, or custodian, or child agree to successfully complete.
  - (b) The specific treatment or other social services to be offered by the Tribe or other agencies.
  - (c) The specific acts which the parents, guardian, or custodian or child agree to do or not do.
  - (d) The person or agency vested with custody of the child if the child cannot remain in its own home, the specific provisions of (i), (ii), and (iii) above which must be completed or accomplished for a specific duration before the child is returned, and the period of supervision of the child in its home.
- (B) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees, shall order all parties to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided, if the family fails to comply with the treatment plan, the Court, on motion of the district attorney shall proceed with the adjudication.
- (C) A Consent Decree shall not exceed one year, provided, upon notice of hearing the Court may extend the decree for an additional one year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if requirements of the Decree is completed.

### **Section 17-3-104 Limitation on Diversions**

No child shall be handled by diversion where the child has had any sustained petition for delinquency in the preceding twelve months or has been handled by diversion for a delinquent act in the preceding twelve months, except for good cause shown.

**Section 17-3-105 through 17-3-109 Reserved**

**CHAPTER FOUR  
ADJUDICATION**

**Section 17-4-101 Court Intake**

- (A) Whenever it appears to a law enforcement officer or other mandated reporter that a child is a delinquent, in need of supervision, neglected, or deprived, they may refer the matter to the Child Protection Officer or the Indian Child Welfare, who shall determine whether the interests of the child or of the community require further action.
- (B) If an officer determines court action is required, they shall request the Tribal district attorney to file a petition and deliver a copy of the case file.
- (C) If the officer is unable to determine whether court action is required from information available, they may refer the matter to the Tribal law enforcement agency or other agency for a preliminary investigation and recommendations.
- (D) If the officer determines court action is not required, they may make such referrals to other agencies.

**Section 17-4-102 District Attorney Intake**

Upon a request to file a petition and the accompanying reports and files the district attorney shall review the case file, reports, and any witness statements to determine if there is sufficient evidence to establish the jurisdiction of the Tribal Juvenile Court.

**Section 17-4-103 Petition Form**

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

**IN THE TRIBAL DISTRICT COURT  
JUVENILE DIVISION  
CITIZEN POTAWATOMI NATION**

The Citizen Potawatomi Nation            )

In The Interest Of: )  
 )  
 \_\_\_\_\_ )  
 )  
 An Alleged \_\_\_\_\_ Child, )  
 )  
 )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Respondent(s)

Case No. JFJ-

**Section 17-4-104 Petition Contents**

- (A) The petition shall set forth plainly the facts which bring the child within the Court’s jurisdiction. If petition alleges a delinquent petition, it shall cite the law alleged to have been violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian, if known, or of his nearest known relative.
- (B) All petitions filed alleging the dependency or neglect of a child may include the following statement: “Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained.”

**Section 17-4-105 through 17-4-119 Reserved**

**Section 17-4-120 Summons**

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

**IN THE TRIBAL DISTRICT COURT  
 JUVENILE DIVISION  
 CITIZEN POTAWATOMI NATION**

The Citizen Potawatomi Nation )  
 In The Interest Of: )  
 )  
 \_\_\_\_\_ )  
 )  
 An Alleged \_\_\_\_\_ Child, )  
 )  
 )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Respondent(s)

Case No. JFJ-

SUMMONS

The Citizen Potawatomi Nation to:  
Respondents

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging the above named \_\_\_\_\_ is a (delinquent) (deprived or neglected) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Tribal District Court, [Address of Court], on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_.m. and remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

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

You may appear with an attorney on any matter relating to this action at your own expense.

\_\_\_\_\_  
Court Clerk

[Seal]

(Return as in other civil cases)

**Section 17-4-121 When Summons Unnecessary**

A summons is unnecessary when a respondent appears voluntarily, or who waives service. Also when they have promised to appear in writing, but any such person shall be entitled to a copy of the petition and summons upon request.

**Section 17-4-122 Additional Parties to be Summoned**

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

**Section 17-4-123 Service of Summons**

- (A) Summons shall be served personally, or by certified mail, or by publication or pursuant to any other means authorized by the rules of civil procedure.
- (B) If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to

any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

- (1) When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of receipt.
- (2) When the person to be served has no residence within the Tribe's jurisdiction and his place of residence is not known or when he cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication.

#### **Section 17-4-124 Failure to Appear**

- (A) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.
- (B) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.
- (C) When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child, a bench warrant may be issued for the parent or other person, the child, or both.

#### **Section 17-4-125 through 17-4-129 Reserved**

#### **Section 17-4-130 Appointment of Guardian Ad Litem**

- (A) The Court may appoint a guardian ad litem to protect the interest of a child in proceedings when:
  - (1) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing; or
  - (2) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
  - (3) The Court finds that it is in the child's interest and necessary for thier welfare, whether or not a parent, guardian, or other legal custodian is present.

- (B) The Court may appoint a guardian ad litem for any parent who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.
- (C) All guardian ad litem may, whenever practical, personally visit the place of residence of the child.

### **Section 17-4-131 through 17-4-139 Reserved**

### **Section 17-4-140 Adjudicatory Hearing**

- (A) The adjudicatory hearing shall be conducted by the rules of civil procedure. Criminal procedure shall apply in delinquency cases. The Court shall consider whether the allegations of the petition are supported by evidence clear and convincing on cases concerning delinquent children, or by a preponderance of the evidence in cases concerning children in need of supervision, neglected or dependent children. Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.
- (B) When evidence presented discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent. The Court, on the motion of any interested party or on its own, shall order the petition to be amended to conform to the evidence.
- (C) If the amendment results in a substantial departure from the original allegations the Court shall continue the hearing on the motion of any interested party, or may grant a continuance if it finds it to be in the best interests of the child or any other party.

### **Section 17-4-141 Mentally Ill and Developmentally Disabled Children**

- (A) If the evidence presented indicates mental illness or developmental disability, the Court shall order the child be examined by a physician, psychiatrist, or psychologist and may place the child in a suitable facility for examination.
- (B) A suitable facility shall be designated by the Court for treatment and evaluation. A Tribal, city or county jail or a detention facility shall not be considered a suitable facility for examination. However, the child may be housed in such facility until an examination bed is available.
- (C) If the report of the examination states the child is mentally ill requiring hospitalization, institutional confinement and treatment, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(D) The court may dismiss the original petition when a child ordered to receive treatment is no longer receiving treatment.

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

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

(2) The examination states the child is developmentally disabled but not mentally ill.

(F) “Mentally ill person”: a person who is considered a threat to him/herself or others.

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

(H) “Mentally retarded person”: a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to an extent lack sufficient control, judgment, and discretion to manage their property or affairs or who, by reason of this deficiency for their own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

### **Section 17-4-142 Consent Decree**

At any time during the adjudicatory process, prior to the entry of an order sustaining the petition, a consent decree may be entered.

### **Section 17-4-143 Dismissal of Petition**

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

### **Section 17-4-144 Sustaining Petition**

When the Court finds that the allegations of the petition are supported by evidence clear and convincing in cases concerning delinquent children or by a preponderance of the evidence in cases concerning neglected or dependent children, and children in need of supervision, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is

delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication.

### **Section 17-4-145 Temporary Orders**

Upon sustaining a petition the Court shall make such dispositional orders necessary to protect the child prior to the dispositional hearing which shall be held within thirty days of adjudication.

## **CHAPTER FIVE DISPOSITION**

### **Section 17-5-101 Dispositional Hearing**

After making an order of adjudication, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe.

### **Section 17-5-102 Home Studies and Reports**

- (A) The Court may order any agency within its jurisdiction or request any other agency to prepare and submit prior to disposition a home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition.
- (B) The Court may order or request any agency to submit preadjudicatory social studies or reports helpful in determining proper treatment and disposition.
- (C) Such reports shall be filed and a copy delivered to the parties or their attorney three days prior to the dispositional hearing.

### **Section 17-5-103 Treatment Plan**

- (A) In every case the Court shall direct the Indian Child Welfare Program to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.
- (B) The treatment plan shall contain at a minimum:
  - (1) A notice to the parents, guardian, legal custodian that failure to successfully complete the treatment plan may result in the involuntary termination of parental rights.

- (2) The specific treatment programs the family are required to complete, their duration, and what is expected to be accomplished.
  - (3) The specific actions the parents, guardian, legal custodian or child is ordered to do or not do.
  - (4) Other social services offered by the Tribe which the family is required to accept.
  - (5) A detailed plan describing how and when the child will be returned to its home under supervision.
  - (6) A statement of the visitation schedule and it's progression if any.
- (C) The treatment plan shall be filed and a copy delivered to the parties or their attorney at least three days prior to the dispositional hearing.

#### **Section 17-5-104 Medical Examination**

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

#### **Section 17-5-105 Hearing Purpose**

The purpose of the dispositional hearing is to determine the treatment which should be ordered to correct the problems and to provide for the health, welfare, and safety of the child.

#### **Section 17-5-106 Hearing Informal**

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

#### **Section 17-5-107 Continuance**

- (A) The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party.
- (B) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose.

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

### **Section 17-5-108 Order of Protection**

- (A) The Court may make an order of protection for any decree of disposition. The order of protection may set forth reasonable conditions of behavior.
- (B) When such an order of protection is made applicable to a parent or guardian, it may specifically require active participation in the rehabilitation process and may impose specific requirements, subject to the penalty of contempt for failure to comply.
- (C) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served.
- (D) A person failing to comply with an order of protection may be found in contempt of court.

### **Section 17-5-109 Reserved**

### **Section 17-5-110 Placement Preferences for Citizen Potawatomi Nation tribal children**

- (A) In making a placement of or committing legal custody of a child to some person in the foster care process, the Court shall place each Citizen Potawatomi Indian child, accepted for foster care placement in the least restrictive, most family-like setting appropriate to the child's unique needs.  
A preference for foster care placement shall be given in the following order:
  - (1) The natural parents, adoptive parents, or step-parents as the case may be
  - (2) A member of the Citizen Potawatomi Nation over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.
  - (3) A member of another Indian Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.
  - (4) Any other person over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

- (5) A foster home licensed by the Citizen Potawatomi Nation.
  - (6) The home of a Citizen Potawatomi Nation member licensed as a foster home by any other licensing authority within the State or licensed by another Indian Nation.
  - (7) An Indian foster home licensed by any other licensing authority within the State or an Indian foster home licensed by another Indian Nation.
  - (8) An institution for children licensed or approved by the Nation's Department of Social Services with a program suitable to meet the needs of the child; (A child attending a BIA boarding school will not be eligible for reimbursement; however, weekend care in a foster home is reimbursable.);
  - (9) Non-Indian placement licensed by any other licensing authority within the State.
- (B) Where appropriate the Court, may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences.
- (C) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.
- (C) The Court may place the child with the Tribal Indian Child Welfare Program or a child placement agency approved by the Court.

*Amended by Ordinance #15-01, enacted by the Citizen Potawatomi Legislature on September 16, 2014.*

### **Section 17-5-111 Extended Family Defined**

For purposes of state court proceedings pursuant to the Indian Child Welfare Act. A child's extended family is defined to mean the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent or step sibling over eighteen years of age and their spouse as those terms of relation are defined in this Act.

### **Section 17-5-112 through 17-5-119 Reserved**

### **Section 17-5-120 Neglected or Dependent Child – Disposition**

- (A) When a child has been adjudicated to be neglected or dependent, the Court shall enter a decree of disposition. It shall include one or more of the following provisions:
- (1) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision.
  - (2) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision.
  - (3) The Court may place legal custody in the Tribal Indian Child Welfare Program or a child placement agency for placement in a family care home, or other child care facility.
  - (4) The Court may order that the child be examined or treated by a physician, or psychologist and or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.
- (B) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

### **Section 17-5-121 Child in Need of Supervision - Disposition**

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

- (A) The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under conditions.
- (B) The Court may place the child in the legal custody of a relative or other suitable person under conditions as the Court may impose.
- (C) The Court may require the child report for assignment to a supervised work program, if:
  - (1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;
  - (2) The supervised work program assignment is made for a period of time not to exceed one hundred eighty days.
- (D) The Court may place legal custody in the Indian Child Welfare Program or a child placement agency for placement.

- (E) The Court may order the child examined or treated by medical personnel or psychologist.
- (G) The Court may commit the child to any institution or group care facility.

**Section 17-5-122 Delinquent Child - Disposition**

- (A) If a child has been adjudicated delinquent, the Court shall transmit, with the commitment order, a copy of: the petition; the order of adjudication; the social study; clinical or educational reports, and other pertinent information.
- (B) The institution shall provide any information which the Court may require.
- (C) Commitment of a child shall be for an indeterminate period not exceeding the child's 18<sup>th</sup> birthday.
- (D) Each commitment shall be reviewed every six months.

**Section 17-5-123 Reserved**

**Section 17-5-124 Legal Custody - Guardianship**

- (A) Any individual, agency, or institution vested by the Court with legal custody of a child shall have the following rights and duties:
  - (1) the rights and responsibilities of physical and legal care, custody and control of a child;
  - (2) the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for the child.
- (B) Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined above; except no guardian may consent to adoption without express authority.
- (C) If legal custody or guardianship is vested in an agency or institution, the Court shall transmit: the court order; copies of the social study; clinical reports, and information concerning the child.
- (D) An individual, agency, or institution having legal custody or guardianship shall give the court information which the Court may require.
- (E) Any agency other than the Indian Child Welfare Program vested with legal custody shall have the rights, subject to the approval of the Court, to determine where and with whom the child shall live.

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

(G) A decree vesting legal custody of a child in an individual, institution, or agency other than the Indian Child Welfare Program shall not exceed two years. Such decree shall be reviewed and extended as necessary.

(H) The individual, institution, or agency vested with the legal custody of a child may petition for renewal. The Court, after notice and hearing, may renew the decree if it finds such renewal to be in the best interest of the child.

(I) No legal custodian or guardian may be removed without notice and a hearing.

### **Section 17-5-125 through 17-5-129 Reserved**

### **Section 17-5-130 Probation for Delinquents and Children in Need of Supervision**

(A) The terms and conditions of probation shall be specified by orders of the Court. The Court, for a child who is fourteen but less than eighteen, may impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty-five days. Each child shall be given a written statement of the terms and conditions of probation and shall have such terms and conditions fully explained.

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

(C) The Court may release or modify the terms and conditions of probation. Any child who has complied with terms and conditions of probation shall be released from probation.

(D) Violation of Probation

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

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

(3) The hearing shall be promptly conducted.

- (E) If the Court finds the child violated probation, it may modify or revoke probation, or take action which is in the best interest of the child and the Tribe.
- (F) If a person reaches majority, and has not complied with probation, he is guilty of contempt and the Court may sentence him to jail not to exceed one hundred eighty days.

**Section 17-5-131 through 17-5-139 Reserved**

**Section 17-5-140 New Hearing Authorized**

- (A) A parent, guardian, or custodian, of any child adjudicated may petition the court for a new hearing on the following grounds:
  - (1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;
  - (2) That irregularities in the proceedings prevented a fair hearing.
- (B) If the motion is granted. The Court shall order a new hearing.

**Section 17-5-141 Continuing Jurisdiction**

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

**Section 17-5-142 through 17-5-149 Reserved**

**CHAPTER SIX  
TERMINATION OF PARENTAL RIGHTS**

**Section 17-6-101 Petition for Termination of Parental Rights**

- (A) Termination of a parent-child legal relationship shall be considered only after the filing of a written Petition alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing. There shall be no jury trial available.
- (B) In cases of severe neglect, chronic substance abuse, involuntary termination of a previous child, determination of sexual abuse, or for other good cause shown, the Tribal District Attorney may file a petition for instant termination.

## **Section 17-6-102 Right of Counsel**

- (A) After a motion for termination of a parent-child legal relationship is filed, the parent or parents shall be advised of the right of counsel, at their own expense.
- (B) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

## **Section 17-6-103 Reserved**

## **Section 17-6-104 Criteria for Termination**

- (A) The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:
  - (1) That the child has been abandoned by his parent or parents;
  - (2) That the child is adjudicated dependent or neglected and all of the following exist:
    - (a) That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or has not been successful;
    - (b) Efforts to reunite the family unit have been unsuccessful;
    - (c) Termination is in the best interest of the child.
- (B) In determining whether termination is in the best interest of the child, the Court shall consider, but not be limited to, the following:
  - (1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
  - (2) Conduct towards the child of a physically or sexually abusive nature;
  - (3) History of violent behavior;
  - (4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

- (5) Use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (6) Neglect of the child;
- (7) Long-term confinement of the parent;
- (8) Injury or death of a sibling due to proven parental abuse or neglect;
- (9) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.

### **Section 17-6-105 Criteria for Instanter Termination**

- (A) The Court may order an instanter termination of the parent child legal relationship upon the findings of either of the following:
  - (1) Severe neglect
  - (2) Chronic substance abuse
  - (3) Involuntary termination of a previous child
  - (4) Determination of sexual abuse
  - (5) Or for other good cause shown to be defined or any criteria for termination listed in Section 104, above, where such is aggravated or malicious.
- (B) If the Court denies the instanter termination, the Tribal District attorney is not barred from using the same evidence in a later proceeding.

### **Section 17-6-106 Burden of Proof**

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

### **Section 17-6-107 Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship**

- (A) When a termination petition is granted, the Court, shall order a review hearing within ninety days. At such hearing, the agency or individual vested with custody of the child shall report what disposition has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation.

- (B) If no adoption has taken place within a reasonable time and the Court determines adoption is not immediately feasible or appropriate, the Court may order long-term foster placement.

**Section 17-6-108 Expert Testimony**

- (A) All ordered evaluations shall be made available to counsel at least ten days prior to the hearing.

**Section 17-6-109 Effect of Decree**

- (A) A termination order of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right to inherit from the parent.
- (B) No order or decree shall dis-entitle a child to any benefit from any third person, including, but not limited to any Indian Tribe, agency, state, or the United States.
- (C) After termination, the former parent is not entitled to any notice of adoption proceedings, any right to object or to participate.

**Section 17-6-110 Appeals**

- (A) Appeals of termination decrees shall be given precedence on the calendar of the appellate court over all other matters.
- (B) Whenever a termination appeal is made an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceedings for the appeal at the expense of the Tribe to be paid from the court fund.

**Section 17-6-111 Traditional Custodian's and Grandparents Rights**

- (A) No dispositional order or decree including termination and adoption shall divest the child's traditional custodians or grandparent of their right to reasonable visitation and their duty to provide instruction and training regarding Tribal customs and traditions or their duty to provide the necessities of life should the parents be unable, unless those rights and duties have been extinguished in which the individual was a party provided, adoptive traditional custodians shall also succeed to these rights and duties.
- (B) The rights and duties of the traditional custodians and grandparents may be enforced by court order, provided all interested parties shall be given notice and hearing.

**Section 17-6-112 Orders for Support**

- (A) Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person may be ordered to contribute a reasonable amount, or to do labor for the Tribe, or take other reasonable action to provide support for the child.
- (B) Of necessity, the Court may order a traditional custodian to assist in providing the necessities of life after a hearing, whether the child has been placed in his own home or elsewhere.
- (C) When the Tribe or other agency is paying for foster care, the contribution of the parent shall be paid to the agency or Tribe. In all cases of placement with a particular family, the contribution shall be paid to that family subject to the oversight of the Court to prevent waste or misuse.

## **CHAPTER SEVEN CHILD ABUSE**

### **Section 17-7-101 Legislative Purpose**

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

### **Section 17-7-102 Definitions**

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

- (A) “Abuse” or “child abuse or neglect”: an act or omission in one of the following categories which seriously threatens the health or welfare of a child;
  - (1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, at variance with the degree or type of such condition, or circumstances indicate that such condition may not be an accidental occurrence;
  - (2) Any case in which a child is subject to sexual assault or molestation;
  - (3) Any case in which the child’s parents, legal guardians, or custodians fail to take the same actions to provide for and protect the child that a prudent parent would take.

- (4) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture. Nothing shall refer to acts which could be construed to be a reasonable exercise of parental discipline.
- (B) “Child-protection team”: a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the Tribal law enforcement, a representative of a non-Tribal law enforcement agency, a mental health agency representative, a representative of the State social services, an attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three (3) persons. The child protection team shall be advisory only.
- (C) “Tribal department”: Firelodge Children and Family Services.
- (D) “Law enforcement agency”: a Tribal police department, a police department of incorporated municipalities or the office of the county sheriff.
- (E) “Neglect”: acts which can reasonably be construed to fall under the definition of “child or neglect” as defined in subsection (A) of this section.
- (F) “Receiving agency”: the department or law enforcement agency first receiving a report of alleged child abuse.
- (G) “Responsible person”: a child’s parent, legal guardian, or custodian or any other person responsible for the child’s health and welfare.
- (H) “Unfounded report” means any report made pursuant to this article which is not supported by credible evidence.

### **Section 17-7-103 Persons Required to Report Child Abuse or Neglect**

- (A) Any person (specified in subsection (B) below who has reasonable cause to know or suspect a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or Tribal law enforcement agency.
- (B) Persons required to report such abuse or neglect or circumstances or conditions shall include any:
- (1) Physician or surgeon, including a physician in training;

- (2) Child health associate or community health representative (CHR);
  - (3) Medical examiner or coroner;
  - (4) Dentist
  - (5) Osteopath
  - (6) Optometrist
  - (7) Chiropractor;
  - (8) Chiropodist or podiatrist;
  - (9) Registered nurse or licensed practical nurse;
  - (10) Hospital personnel engaged in the admission, care, or treatment of patients;
  - (11) School official or employee;
  - (12) Social worker or worker in a family care home or child care center;
  - (13) Mental health professional;
  - (14) Any law enforcement personnel;
  - (15) The Tribal Attorney, District Attorney, or his assistants.
- (C) In addition to those persons specifically required to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or the Tribal department.
- (D) Any person who willfully violates of this Section shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

#### **Section 17-7-104 Required Report of Postmortem Investigation**

- (A) Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for

investigation and shall report their findings to the Tribal law enforcement agency, the Tribal District Attorney, and the Tribal department.

- (B) The Tribal department shall forward a copy of such report to the state or tribe.

### **Section 17-7-105 Evidence of Abuse**

- (A) Any person required to report abuse who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.
- (B) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

### **Section 17-7-106 Temporary Protective Custody**

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

### **Section 17-7-107 Reporting Procedures**

- (A) Reports of known or suspected child abuse or neglect shall be made immediately to the Tribal Indian Child Welfare Program or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the state or tribal on forms supplied by the Tribal Indian Child Welfare Program.
- (B) Such reports, when possible, shall include the following information:
  - (1) The name, address, age, sex, and race of the child;
  - (2) The name and address of the responsible person;

- (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
  - (4) The names and addresses of the persons responsible for the suspected abuse or neglect; if known;
  - (5) The family composition;
  - (6) The source of the report and the name, address, and occupation of the person making the report;
  - (7) Any action taken by the reporting source;
  - (8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.
- (C) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal district attorney's office and to the Tribal law enforcement agency.
- (D) A written report from persons or officials required to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

### **Section 17-7-108 Action Upon Receipt of Report**

- (A) The receiving agency shall make a thorough investigation immediately upon receipt of any report. The immediate concern shall be the protection of the child.
- (B) The investigation, to the extent that it is reasonably possible, shall include:
- (1) The nature, extent, and cause of the abuse or neglect;
  - (2) The identity of the person responsible;
  - (3) The names and conditions of any other children living in the same place;
  - (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
  - (5) All other data deemed pertinent.
- (C) The investigation shall, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or

observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court shall order the responsible person to allow the interview, examination and investigation. The interview shall be conducted by a certified child abuse forensic interviewer.

- (D) The Indian Child Welfare Program shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Program shall arrange for such investigations to be conducted by persons trained to conduct investigations. The Program may conduct the investigation independently or in conjunction with another appropriate agency . The Indian Child Welfare Program shall provide for persons to be continuously available to respond.
- (E) Upon receipt of a report, if the Program reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the Tribal law enforcement agency and the Tribal district attorney shall be notified. If immediate removal is necessary to protect the child or other children from further abuse, the child or children may be placed in protective custody.
- (F) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Indian Child Welfare Child Protection Office to refer the case. If the local law enforcement agency is unable to contact the Program, it shall make a complete investigation and may request the Tribal district attorney to institute appropriate legal proceedings. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation shall immediately forward a summary of the investigatory data plus all relevant documents to the Indian Child Welfare Program.

### **Section 17-7-109 Child Protection Teams**

It is the intent of this legislation to encourage the creation of one or more child protection teams. The Director, Firelodge Family & Children Services shall have responsibility for inaugurating the child protection team.

- (A) The child protection team shall review the file and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family.
- (B) All discussions of cases shall be private.
- (C) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

- (D) The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions.
- (E) The director of the Tribal department shall appoint the representatives of the child protection team and shall actively recruit all interested individuals and consider their applications for appointment.
- (F) The director of the Tribal department or their designee shall be deemed to be coordinator of the child protection team.
- (G) The coordinator shall provide a copy of the investigatory report and all relevant materials to the child protection team as soon as available. The child protection team shall meet as soon as practical after receipt of a report. The coordinator shall make and complete, within ninety (90) days of an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the state or tribal on forms supplied by the Tribal department.

### **Section 17-7-110 Immunity from Liability**

Any person participating in good faith in the making of a report or in a judicial proceeding the taking of color photographs or X-rays, or the placing in temporary custody of a child or acting pursuant to this Act shall be immune from any liability, civil or criminal. For the purpose of any proceedings, civil or criminal, the good faith of any person acting or reporting pursuant to this Act shall be presumed.

### **Section 17-7-111 Evidence Not Privileged**

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

### **Section 17-7-112 Court Proceedings – Guardian Ad Litem**

- (A) The Court shall name as respondents all persons alleged by the petition to be legal, actual physical custodians or guardians of the child. In every case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.
- (B) The Court may appoint, at no fee, a guardian ad litem. The guardian ad litem shall be provided with all reports relevant to the case. The Court or the Indian Child Welfare caseworkers shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end they shall make such further investigations as necessary to ascertain the facts, talk

with or observe the child, interview witnesses and the foster parents, examine and cross-examine witnesses in all hearings and may introduce and examine their own witnesses, make recommendations to the Court and participate further to the degree necessary to adequately represent the child.

- (C) If of the petition is granted, the costs including guardian as litem and expert witness fess, may be charged against respondent.

### **Section 17-7-113 Central Registry**

(A) There shall be established a central registry of child protection in the Firelodge Children and Family Services for the purposes of maintaining a registry of information concerning each case of child abuse reported.

(B) The central registry shall be maintained in accordance with Federal law and the Policy and Procedures established by the Firelodge Children and Family Services, Director.

### **Section 17-7-114 Confidentiality of Records**

(A) Reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

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

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

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

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

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

(3) An agency having the legal responsibility or authorization to care for , treat, or supervise a child who is the subject of a report or record or a parent,

guardian, legal custodian, or other person who is responsible for the child's health or welfare;

- (4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;
- (5) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
- (6) A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue;
- (7) The central registry of child protection;
- (8) The district attorney and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary.
- (9) Other persons as a Court may determine, for good cause.

## **CHAPTER EIGHT DEVELOPING FOSTER CARE HOMES**

### **Section 17-8-101 Responsibility**

It shall be the responsibility of the Firelodge Children and Family Services (hereinafter the Agency) to recruit, screen, and license foster homes for children in accordance with this Title.

### **Section 17-8-102 Licensing Foster Homes**

The Firelodge Children and Family Services with this shall develop rules and have the authority to license foster care homes.

### **Section 17-8-103 Basic Standard For Foster Families**

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

### **Section 17-8-104 Basic Requirements of Foster Families**

Foster families shall meet the following personal criteria:

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

### **Section 17-8-105 Income of Foster Families**

- (A) When the foster family does not qualify for assistance. The Agency shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.
- (B) Foster homes shall meet required safety and dwelling standards.
- (C) Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family.
- (D) Comfort and privacy:
  - (1) It is preferable for no more than two children to share sleeping rooms.
  - (2) The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities attitudes, and behavior.
  - (3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
  - (4) Individual space shall be provided for the child's personal possessions.
  - (5) In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socio-economic circumstances created a situation in which such exception will not be to the detriment of the child.

- (E) Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.
- (F) If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

### **Section 17-8-106 Family Composition**

- (A) Two parents shall be selected in most cases; however, single parents shall be selected when they can effectively fulfill the needs of a particular child.
- (B) The presence of other children or other adults shall be taken into consideration in terms of how foster placement may affect the family unit.
- (C) The number and ages of children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster parent(s) ability to meet the needs of all children present, physical accommodations, and the effect which an additional child would have on the family as a unit. It is preferable that:
  - (1) Foster parent(s) shall care for not more than two infants (under two); including the foster parent(s) own children.
  - (2) Foster families should not have more than a total of six children, including foster children and foster parent(s) own children, in the foster home. Exceptions should be made to keep siblings together.
  - (3) The age range of the children in a foster home shall be similar to that in a “normal” family.

### **Section 17-8-107 Personal Characteristics**

Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character characterized by:

- (A) Role identification and acceptance;
- (B) Education, employment and patterns of interpersonal relationships.

## **CHAPTER NINE ADOPTIONS**

### **Section 17-9-101 Jurisdiction Over Adoptions**

- (A) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction, is unmarried, less than eighteen, and either:
- (1) A member of an Indian Tribe, or
  - (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
  - (3) Whose case has been transferred to the Juvenile Division from the courts of a state, or Tribe,
  - (4) The adoption of any adult Indian.
- (B) The Juvenile Division shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:
- (1) A bonafide resident of or domiciled within the jurisdiction of the Court, or
  - (2) Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile, or
  - (3) A member of the Tribe.

### **Section 17-9-102 Purpose of Adoptions**

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

### **Section 17-9-103 Types of Adoptions**

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

- (A) Statutory adoptions entered into pursuant to Title 17, Section Two.
- (B) Adoptions under the laws of some other Tribe, State, or Nation.
- (C) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Tribal Common Law until the proper procedures for such adoptions are written down at which time traditional adoptions shall be governed by such procedure. Unless specifically provided by Tribal statute, traditional adoptions create a

particular stated family relationship for all purposes other than enrollment and probate.

### **Section 17-9-104 In Camera Determination of Enrollment Eligibility**

Whenever a parent, biological or adoptive, has a desire for the name of the parent, the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment. The Court is authorized to receive information necessary for a determination of eligibility for enrollment, to review information in camera and to enter its order whether or not the child is eligible for enrollment, blood quantum and other necessary non-identifying enrollment eligibility criteria. The Court shall be provided with a Tribal roll, and shall seal all records received to maintain their confidentiality. If the Court determines the child is eligible for enrollment, enrollment officers shall accept such order as conclusive proof of the eligibility of the child for enrollment and enroll the child accordingly. If the Court determines the child is not eligible for enrollment, the Tribal enrollment officers shall accept such order as proof of the ineligibility and refuse to enroll the child unless other or further qualifications for enrollment are shown.

## **SECTION TWO STATUTORY ADOPTIONS**

### **Section 17-9-201 Eligibility for Statutory Adoption**

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

### **Section 17-9-202 Eligibility to Adopt by Statutory Process**

The following people are eligible to adopt a child, and subject to the placement preferences of Section 410 of this Act:

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

### **Section 17-9-203 Consent to Statutory Adoption**

- (A) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:
- (1) Both parents, if living, or the surviving parent, unless their parental rights have been terminated.
  - (2) A parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem.
  - (3) If both parents be deceased, or if their parental rights have been terminated, then the traditional custodian having physical custody of said child for the preceding six (6) month period, or a person or the executive head of an agency having legal custody with specific court authority to consent to the adoption.
- (B) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.
- (C) Any consent given prior to or within forty-five (45) days after the birth of a child shall not be valid.

### **Section 17-9-204 Voluntary Relinquishment**

- (A) Any parent, legal custodian, traditional custodian, or other guardian may relinquish, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Court with notice to the Indian Child Welfare Program, District Attorney, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specifically to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.
- (B) Any valid consent given for the adoption of, or termination of parental rights to a child may be withdrawn prior to the entry of a final decree of adoption or termination upon the filing of a Petition to withdraw voluntary relinquishment.

### **Section 17-9-205 Petition to Withdraw Relinquishment**

- (A) A person who previously voluntarily relinquished parental rights may petition the court to withdraw their relinquishment.

- (B) The petition must be filed within 90 days of their voluntary relinquishment.
- (C) An evidentiary hearing will be held with notice to Indian Child Welfare program, District Attorney and petitioners for adoption.
- (D) The Court must find by clear and convincing evidence the petition should be granted.
- (E) The Court must find:
  - (1) The petition is in the best interest of the child; and
  - (2) Petitioner was under duress, or
  - (3) Petitioner was mentally incapacitated

### **Section 17-9-206 When Consent of Parents Unnecessary**

Adoption of a child may be decreed without consent only if the parents, or the traditional custodians having custody if the parents be deceased, have:

- (A) Had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction, or
- (B) Been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority, or
- (C) For a period of twelve months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:
  - (1) In compliance with any decree ordering support to be contributed, or
  - (2) If no court ordered support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.
- (D) Been adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period that the parent will be unable to provide the necessary care and control for a significant period of time prior to the child reaching majority.

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

### **Section 17-9-207 Notice and Hearing for Adoptions Without Consent**

Before the Court hears a petition for adoption without consent the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing. The application shall contain the name of the child, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption, unless good cause to the contrary is shown.

### **Section 17-9-208 Consent of Child**

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

### **Section 17-9-209 Petition**

A petition for adoption shall be filed, verified by the petitioners, and shall state:

- (A) The full names, ages, and places of residence of the Petitioners, and, if married, the place and date of their marriage.
- (B) Their relationships with the child, and their Tribal membership.
- (C) When and from whom the petitioners acquired or intend to acquire physical custody.
- (D) The names of the child's biological parents and their tribal membership, including tribal roll number, if known.
- (E) The date and place of birth of the child including the jurisdiction issuing the birth certificate, the child's sex, race, and tribal membership, including tribal roll number, if known.
- (F) The name used for the child in the proceeding, and, if a name change is desired, the new name.

- (G) The desire of the petitioners the relationship of parent and child be established between them and the child.
- (H) A full description and statement of the value of all property owned or possessed by the child.
- (I) The fact, which excuses the consent of the parents or either of them to the adoption.
- (J) Any required consents to the adoption may be attached to the petition.
- (K) The facts which bring the child within the jurisdiction of the Court.

### **Section 17-9-210 Investigation**

- (A) Upon the filing of a petition, the Court shall order an investigation to be made:
  - (1) By the agency having custody or legal guardianship of the child, or
  - (2) In other cases by the Indian Child Welfare program, State, or
  - (3) By a person qualified, designated by the Court, and shall order a report shall be filed and in no event more than sixty (60) days, unless time is extended.
- (B) The investigation shall include why the child is eligible for adoption; whether the proposed home is a suitable one; and any other circumstances and conditions which may have bearing on the adoption.
- (C) The Court may order agencies to make separate investigations on separate parts of the inquiry.
- (D) Where the adopting parent is the spouse of a parent, or a report, has been made within six months, the Court, may waive the investigation and the filing of a report.

### **Section 17-9-211 Adoption Hearing**

After the investigation report has been filed, the Court, upon motion, request, or upon its own motion, shall set the adoption for hearing. The adoptive parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary and who have not filed their written consents shall be duly notified and may appear or be represented by counsel. The Judge shall examine all persons appearing separately concerning the financial ability and moral and physical fitness and responsibility of the adoptive parents, and the best interest of the child may enter a final decree of adoption. Or, may place the child in the legal custody of the petitioners for not more than six months prior to entering a final decree of adoption. If the petition is denied, the Court may direct the Tribal Indian Child Welfare program, or other agencies to provide services to assist in the placement and the care of the child, or, in case of need, refer the

matter to the Indian Child Welfare program and District Attorney for the purpose of determining whether a juvenile petition should be filed.

### **Section 17-9-212 Report and Final Decree of Adoption**

If the Court does not enter a final decree of adoption, and places the child in the legal custody of the petitioners. Within six months, the Court shall request a supplementary report as to the welfare of the child, the current situation and conditions of the adoptive home. If the Court is satisfied the interests of the child are best served, a final Decree of Adoption may be entered. Where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed or the Court may direct tribal Indian Child Welfare program or other agencies to provide services to assist in the placement and the care of the child.

### **Section 17-9-213 Contents of Adoption Order**

The final order of adoption shall include facts necessary to establish the child is within the jurisdiction of the Court, eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child.

### **Section 17-9-214 Effect of Final Decree of Statutory Adoption**

- (A) After a final decree of adoption entered, the relationship of parent and child, and all the rights, duties and other legal consequences of the natural relation of a child and parent shall thereafter exist between adopted child, the adopting parents, and the kindred of the adopting parents.
- (B) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided that the child shall remain eligible to inherit from said natural parents, and retain all rights to tribal membership.
- (C) Unless the traditional custodians and grandparents of a child have given their consent to adoption, or have had their custodial rights terminated, the Court, after the final decree of adoption or refusal of the adoptive parents to allow visitation, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights. Notice of such application shall be served upon the adoptive parents.

### **Section 17-9-215 Records and Hearings Confidential**

Unless the Court shall otherwise order:

- (A) All hearings shall be confidential and held in closed court. The Court will determine who may be present.
- (B) All adoption papers, records, and files shall be kept as a permanent record and withheld from inspection. No person shall have access except:
  - (1) Upon order of the Court for good cause shown.
  - (2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity. In which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted.
  - (3) For the purposes of obtaining enrollment with another Indian Tribe, the Court may upon request of an enrollment officer of that Tribe, certify pertinent facts to enable that officer to determine the eligibility of the child for membership subject to the written guarantee, if deemed necessary, such facts will remain confidential and divulged only to those persons who must know to obtain enrollment. The Court may certify a copy of the record to a Judge of the Court of the other Tribe for an in camera review for the purpose of certifying to his Tribe the child is eligible for membership.

### **Section 17-9-216 Certificates of Adoption**

- (A) For each adoption or annulment of adoption, the Court will prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.
- (B) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.
- (C) One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judges certificate showing:
  - (1) The original and adoptive name and tribal affiliation of the child,
  - (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents,
  - (3) The names and addresses of the adoptive parents,

- (4) The identity of any agency having files or information relating to the adoptive placement,
- (5) Any affidavit of the biological parent requesting that their identity remain confidential.

### **Section 17-9-217 Foreign Decree**

When the relationship of parent and child has been created by a decree of adoption of any Court of competent jurisdiction of any other nation, or its political subdivisions the rights and obligations of the parties shall be determined by section 17-9-214.

### **Section 17-9-218 Adoption of Adults**

- (A) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent. The consent of the adopted adult's parents shall not be necessary unless the adult has been adjudicated incompetent. No investigation shall be made. Such adoption shall follow the procedure set forth. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing. Unless otherwise requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.
- (B) Proceedings and records relating to the adoption of an adult shall be open to the public as are civil case records.

### **Section 17-9-219 Appeals**

An appeal to the Supreme Court may be taken from any final order, judgment, or decree by any person aggrieved as in civil appeals.