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**HANNAHVILLE LEGAL CODE  
TITLE 2, CHAPTER 1  
CHILD PROTECTION CODE**

**Chapter 2.1 Short Title, Purpose and Definition**

**2.101 Short title**

This code shall be entitled “The Children’s Code.”

**2.102 Purpose**

The child protection code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Hannahville Indian Community.
- (2) To preserve unity of the family, preferably by separating the child from his parents only when necessary;
- (3) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interest of the tribe to prevent the abuse, neglect and abandonment of children;
- (4) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis, whenever possible, on prevention, early intervention and community based alternatives;
- (5) To secure the rights of and ensure fairness to the children. Parents, guardians, custodians, and other parties who come before the children’s court under the provisions of this code;
- (6) To provide procedures for intervention in state court procedures regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this tribal court;
- (7) To recognize and acknowledge the tribal customs and traditions of the Hannahville Indian Community regarding child rearing.
- (8) To preserve and strengthen the child’s cultural and ethnic identity whenever possible.

**2.103 Definitions**

As used in this code:

## Child Protection Code

- (1) Adult: A person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- (2) Child: A person who is less than eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction. The unborn child is included in the definition of a child.
- (3) Child Born Out Of Wedlock: A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.
- (4) Child-In-Need-Of-Care: A child:
  - (a) Who has no parent(s), guardian, or custodian available and willing to care for him;
  - (b) Who has suffered or is likely to suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
  - (c) Whose parent(s), guardian, or custodian has not provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his health and well-being;
  - (d) Who has been sexually abused;
  - (e) Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise; or
  - (f) Who has been emotionally abused or emotionally neglected.
  - (g) Who is born addicted to alcohol or exposed to a controlled substance.
  - (h) Whose parent(s) or legal custodian(s), despite good faith attempts to do so, are genuinely unable to provide adequate food, shelter, clothing, medical care, education, supervision, spiritual or mental health care necessary for the child's health and well-being. A petition under this definition must be filed at the request of the parent(s) or legal custodian(s). **Adopted for immediate effect, 8 February 1999**
- (5) Child Protection Team: A team established to involve and coordinate the child protection services of various agencies as set forth in this code.
- (6) Child Welfare Committee: A committee elected by the membership at large to protect the best interests of the children of the tribe and promote the stability and security of the tribe, as set forth in this Code.

## Child Protection Code

- (7) Controlled Substance: Cocaine, heroin, phencyclidine, methamphetamine, amphetamine, substances commonly known as uppers or downers and marijuana or their derivatives.
- (8) Court or Children's Court: The Children's Court of the Hannahville Indian Community.
- (9) Court Appointed Special Advocate (CASA): A person appointed by the court to represent the interests of a child who is before the court.
- (10) Custodian: A person, other than a parent or guardian, to whom legal custody of the child has been given. It is anticipated that the court's jurisdiction will be terminated upon designation of a person or persons as legal guardians or custodians.
- (11) Domicile: A person's permanent home, legal home or main residence. The domicile of child is generally that of the custodial parent, guardian or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers to be his permanent home.
- (12) Extended Family: A person 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, or stepparent. A traditional sponsor may be included within the definition of extended family.
- (13) Father: means:
  - (a) a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock;
  - (b) a man who legally adopts the minor, or
  - (c) a man whose paternity is established in one of the following ways within time limits, when applicable, set by the court pursuant to this subchapter:
    - [1] the man and the mother of the minor acknowledge that he is the minor's father in a writing executed and notarized and filed in the tribal or probate court.
    - [2] the man and the mother file a joint written request for a correction of the certificate of birth pertaining to the minor that results in issuance of a substituted certificate recording the birth.
    - [3] the man acknowledges the minor, without the acknowledgement of the mother, with the approval of the court; or
    - [4] a man who by order of filiations or by judgment of paternity is determined to be the father of the minor.

## Child Protection Code

- (14) Guardian: A person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child as set forth in chapter 2-26 of this code.
- (15) He/His: The use of he/his means he or she, his or her, and singular includes plural.
- (16) Indian: Any member of a federally recognized Indian tribe, band, or community, or person eligible for membership or Alaska Natives, any member of a historic tribe or band recognized by the Michigan State Indian Commission.
- (17) Indian Child: A child who is a member of a tribe or band that is acknowledged to exist as a tribe or band by the United States Secretary of the Interior or a historic tribe or band recognized by the Michigan State Indian Commission, or a child who is eligible for such membership who is the natural child of at least one parent who is a member or eligible for membership in such tribe or band.
- (18) Least Restrictive Alternate: The placement alternative which is the least restrictive method, in terms of restrictions to be placed upon the child and family, of obtaining the objectives of the Court and this code.
- (19) Parent: A person who is legally responsible for the control and care of the minor, including a mother, father, guardian, or custodian, including a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (20) Protective Services Worker: The protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in chapters 2-7 of this code.
- (21) Tribe: The Hannahville Indian Community.
- (22) Tribal Council: The Tribal Council of the Hannahville Indian Community.
- (23) Tribal Court: The Tribal Court of the Hannahville Indian Community.
- (24) Child Abuse: includes but is not limited to:
- (a) any case in which:
    - [1] a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and
    - [2] such condition is not justifiably explained or may not be the product of an accidental occurrence; and

## Child Protection Code

- (b) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.
- (25) Child Neglect: includes but is not limited to:
- (a) negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby;
- (26) Family Violence: means any act, or threatened act, of violence, including any forceful detention of an individual, which:
- (a) results, or threatens to result, in physical or mental injury, and
  - (b) is committed by an individual against another individual:
    - [1] to whom such person is, or was, related by blood or marriage or otherwise legally related, or
    - [2] with whom such person is, or was, residing.
- (27) Temporary Ward of Court: if court has jurisdiction and parental rights have not been terminated, the child shall be said to be a temporary ward of the court.
- (28) Permanent Ward of Court or State Ward: if the court has jurisdiction and parental rights have been terminated and the child is placed for adoption or long term foster care, the child shall be said to be a permanent ward of the court or state ward.

### **Chapter 2.2 Jurisdiction of the Children's Court**

#### **2.201 Creation of Children's Court**

There is hereby established for the Hannahville Indian Community a court to be known as the Hannahville Children's Court. The jurisdiction of the children's court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety and well-being of children who have been declared to be under the jurisdiction of the children's court. The children's court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.

#### **2.202 General Jurisdiction**

The children's court shall have jurisdiction over the following persons:

- (1) An enrolled member of the tribe under the age of eighteen (18) years;
- (2) A person under the age of eighteen (18) years who is eligible for enrollment in the tribe;

## Child Protection Code

- (3) A child of enrolled members of the tribe or other Indians, as defined in chapter 2.1, subsection 2.103(16) of this code, including adopted children;
- (4) A non-Indian child residing within the exterior boundaries of the reservation in home of an enrolled member of either the Hannahville Indian Community or any other Indian tribe;
- (5) Any person causing a child to come within the jurisdiction of this code.
- (6) All persons residing on the reservation who are pregnant and abusing alcohol or controlled substances.

### **2.203 Jurisdiction over Extended Family**

- (1) Where the children's court asserts jurisdiction over a person under section 2.202 above, the court shall also have jurisdiction over the person's extended family residing in the household whenever that court deems it appropriate.
- (2) The children's court shall have jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the jurisdiction of the court. Jurisdiction requires that such person shall be provided notice and opportunity for hearing.

### **2.204 Continuing Jurisdiction**

Once the Court asserts jurisdiction over a person under section 2.202, the Court may retain jurisdiction over that person even if he leaves the physical boundaries of the reservation.

## **Chapter 2.3 Transfer of Jurisdiction**

### **2.301 Application of the Indian Child Welfare Act**

The children's court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, where they do not conflict with the provisions of this code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the children's court except where specifically provided for in this code.

### **2.302 Transfer to State Court or other Tribal Court**

In any proceeding before the children's court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

### **2.303 Transfer from other Courts**

## Child Protection Code

The children's court may accept or decline, under the procedures set forth in this code, transfers of child welfare cases from other federal, state, or tribal court.

### **2.304 Procedures for Transfer from State Court**

- (1) Receipt of Notice: The tribal agent for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the tribal social service department and the Chair of the Child Welfare Committee.
- (2) Intervention: The tribal social services department shall cause a motion to intervene to be filed with the state court within five days of receipt of notice.
- (3) Investigation and Pre-Transfer Report by the Court Counselor: The Tribal Social Services Department shall conduct an investigation and file a written report with the Child Welfare Committee.
- (4) Decision to Transfer: The Child Welfare Committee shall make written recommendations to the tribal attorney or prosecutor on whether or not the tribe should petition for transfer from the state court. The Child Welfare Committee shall consider these factors:
  - (a) The best interests of the child,
  - (b) The best interests of the tribe,
  - (c) Availability of services for the child and his family, and
  - (d) The prospects for permanent placement for the child.
- (5) Petition for Transfer: The tribal petition for transfer shall be filed by the tribal attorney or prosecutor within 5 days of receipt of recommendations from the Child Welfare Committee with a copy sent to the tribal court. If there is no tribal attorney or prosecutor, the Child Welfare Committee shall file the Petition for Transfer.
- (6) Acceptance of Transfer: The children's court has discretion whether to accept or deny transfer and may accept a transfer from state court if:
  - (a) a parent or Indian custodian's petition to state court for transfer is granted; or
  - (b) the tribe's petition to state court for transfer is granted.
- (7) Hearing(s): Upon receipt of transfer jurisdiction from stated court, the tribal court shall hold appropriate hearings in accordance with this code.

### **2.305 Comity; Full Faith and Credit; Conflict of Laws**

## Child Protection Code

- (1) State Court Orders: State child custody orders involving children over whom the children's court could take jurisdiction may be recognized by the children's court only after a full independent review of such state proceedings has determined:
  - (a) the state court had jurisdiction over the child, and;
  - (b) the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed, and;
  - (c) due process was provided to all interested persons participating in the state proceeding, and;
  - (d) the state court proceeding does not violate the public policies, customs, or common law of the tribe.
- (2) Court Orders of Other Tribal Courts: Court orders of other tribal courts involving children over whom the children's court could take jurisdiction shall be recognized by the children's court after the court has determined:
  - (a) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and;
  - (b) due process was accorded to all interested parties participating in the other tribal court proceeding.
- (3) Tribal Interest: Because of the vital interest of the tribe in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and common law of the tribe shall control in any proceeding involving a child who is a member of the tribe or who may be eligible for Tribal membership. Refer to subsections 2.202 (3 & 4).

### **Chapter 2.4      Procedures and Authorizations**

#### **2.401            Rules of Procedure**

The procedures in the children's court shall be governed by the rules of procedures for the tribal court, which are not in conflict with this code.

#### **2.402            Cooperation and Grants**

The children's court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.

#### **2.403            Social Services**

## Child Protection Code

The children's court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

### **2.404 Contracts**

The children's court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the children's court subject to the approval of the Tribal Council before the expenditure of tribal funds.

## **Chapter 2.5 Procedures and Authorizations**

### **2.501 Children's Court Judge**

- (1) Appointment: The children's court judge(s) shall be appointed or elected in the same manner as the tribal court judge(s).
- (2) Qualifications: The general qualifications for children's court judge(s) shall be the same as the qualifications for tribal court judge(s).
- (3) Powers and Duties: In carrying out the duties and powers specifically enumerated under this child/family protection code, judges of the children's court shall have the same duties and powers as judges of the tribal court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.
- (4) Disqualifications or Disability: The rules on disqualification or disability of a children's court judge shall be the same as those rules that govern tribal court judges.

### **2.502 Powers of Magistrate [Open for later amendment.]**

### **2.503 Counsel for Parents**

Parents may be represented at each stage of proceedings under this act by an attorney or lay advocate at their own expense. It is prudent and advisable for the parents to have representation.

### **2.504 Child Advocate**

- (1) At every stage of the proceedings conducted under this code the children's court may appoint an advocate for the child who may be a lawyer or a Court Appointed Special Advocate (CASA). A person may serve as a CASA only if certified by the Child Welfare Committee.

## Child Protection Code

- (2) The duty of the child's advocate, both CASA and child's lawyer, is to represent the interests of the child. A child fourteen years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the child's advocate to represent the child's wishes in such cases. For children less than fourteen years of age, the child's advocate shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.
- (3) The child's advocate shall perform the following duties. When a child's attorney and a CASA are appointed to represent a child together, each shall be jointly and severally responsible for discharging the duties.
  - (a) Appear at all hearings to represent competently the interests of the child in proceedings before the court.
  - (b) Conduct an independent investigation, including interviewing the child, parents, social workers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is a minor in need of care within the jurisdiction of the court.
  - (c) Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child.
  - (d) Provide a written report of findings and recommendations to the court at each hearing held before the court.
  - (e) Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his family.
  - (f) Monitor implementation of case plans and dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and are accomplishing their desired goal.
  - (g) Inform the court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes.
  - (h) Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter.
  - (i) Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services.

## Child Protection Code

(j) Advocate for the interests of the child in mental health, educational, juvenile justice, and other community systems when related to the circumstances causing the child to come within the minor in need of care jurisdiction of the Children's Court.

(k) Attend training programs as prescribed by the Child Welfare Committee.

(4) All records and information acquired or reviewed by a Child Advocate and all reports prepared by the Child Advocate are confidential and shall be disclosed only pursuant to this code and other tribal law.

### **2.505 Guardian Ad Litem**

The Court may appoint a Guardian Ad Litem for a party if the Court finds that the welfare of the party requires it.

## **Chapter 2.6 Child Welfare Committee**

### **2.601 Creation of the Child Welfare Committee**

The Child Welfare Committee is hereby created for the purpose of protecting the best interests of the child and promoting the stability and security of the Tribe and its Indian Families by fully exercising the Tribe's rights and responsibilities under the Indian Child Welfare Act of 1978 and this Code.

### **2.602 Membership**

The Child Welfare Committee shall consist of five (5) adult members and two (2) adult member alternates of the tribe elected by the Tribal Membership at the regularly scheduled Tribal elections. The members of the Committee shall elect one of themselves as Chair who shall preside over all meetings.

### **2.603 Duties**

The Child Welfare Committee enjoys only the authority, which is expressly delegated to it by the tribal government in this code or in other enactment by the tribal government. The Child Welfare Committee shall have the following duties:

- (1) Advise the tribal government on child welfare matters and recommend policies and procedures for implementing federal and tribal child welfare law.
- (2) Monitor child welfare proceedings involving tribal members or those eligible for Tribal membership or those specified in subsections 2.202 (3 & 4) in the state or tribal courts.
- (3) Receive notifications of pending stated court proceedings as provided in the Indian Child Welfare Act and make recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the tribal court.

## Child Protection Code

- (4) Conduct informal adjustment conferences with a child and the child's parent(s), guardian, or custodian, as provided in this code, to discuss alternatives to formal court jurisdiction for resolving concerns about the proper care and supervision of a child.
- (5) Authorize the filing of child in need of care petitions in the tribal court pursuant to this code.
- (6) Make case management recommendations to the tribal social services workers, placement agency workers, and the Tribal Attorney or Tribal Prosecuting Attorney regarding the care, custody and supervision of tribal children under court jurisdiction, including recommendations as to case plan, guardianship, termination of parental rights and guardianship.
- (7) License and supervise group, shelter, foster and adoptive homes and child placing agencies.
- (8) Engage in further activities as to protect and improve the welfare of the children of the Hannahville Indian Community.
- (9) Certify persons to serve as Court Appointed Special Advocates (CASAs).
- (10) Make recommendations to the Tribal Court concerning the best interests of a child(ren) in child custody disputes between parents or between a parent and a legal guardian or custodian of the child(ren). The Tribal Attorney or the Tribal Prosecutor shall appear on behalf of the child(ren) in all child custody proceedings and shall represent the best interests of the child(ren) in accordance with the recommendations of the Child Welfare Committee. **Code amendment adopted November 4, 1996**

### **2.604        Voting**

Actions of the Child Welfare Committee shall be decided by a majority vote, a quorum being present at the meeting. The Chair is entitled to vote on any matter. A simple majority of three members, including alternates, shall constitute a quorum. **Code amendment adopted November 4, 1996**

### **2.605        Committee Members are not Investigators**

Child Welfare Committee Members shall not initiate on their own the gathering of information regarding the matter under review. All members shall have access to the same information. If Child Welfare Committee members are contacted outside of a review by an interested party, he or she shall refer the party to the caseworker, social worker, client advocate, or the Foster Care Program office as appropriate. The Committee may, however, request that further information be provided or that further investigation be conducted by the social worker or other appropriate authority.

### **2.606        Conflicts of Interest**

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- (1) Child Welfare Committee members who are foster parents or child advocates may not participate as committee members in the review of children who are in their own care.
- (2) Child Welfare Committee members shall not participate as committee members in matters involving members of their immediate family or members of their own households. "Immediate family" is defined to include parents, grandparents, children, grandchildren, spouse, brothers and sisters. A "household member" is any individual who is not otherwise an immediate family member but who resides in the same household as the committee member at the time of the review or who resided in the same household as the committee member when the matters which are being reviewed took place.
- (3) A member who is disqualified from participation in the Child Welfare Committee discussion and voting in a particular case under subparagraphs 1 or 2 above shall excuse himself/herself from the meeting room during the discussion and voting in such cases. However, the committee member shall be entitled to participate in the Child Protection Team meeting in which such case is reviewed and discussed. **Code amendment adopted November 4, 1996**

### **2.607 Confidentiality**

- (1) Meetings of the Child Welfare Committee shall not be open to the public, except for persons authorized to attend by the Child Welfare Committee.
- (2) Confidentiality of case information and other Child Welfare Committee records shall be maintained. Child Welfare Committee members are subject to the same standards of confidentiality as other court personnel, Department of social service workers and other professionals working in the foster care system.
- (3) Case materials and all other Child Welfare Committee records shall be kept in a secure area. The Chair shall collect case plan packets at the conclusion of Child Welfare Committee hearings so that no reports leave the meeting and all written reports are maintained in confidence. Written material may be provided to committee members in advance of meetings, however.

### **2.608 Committee Policies and Procedures**

The Child Welfare Committee is authorized and directed to adopt such policies and procedures as it deems necessary and appropriate to carry out its duties as set forth in this code. All policies and procedures must be reduced to writing and must be adopted by the affirmative vote of four (4) regular committee members. Before the policy or procedure so adopted shall become effective, it must be submitted to the Tribal Council for approval. Council approval shall require only a simple majority of those council members present and voting at a legally constituted and conducted Tribal Council meeting. **Code amendment adopted November 4, 1996**

## **Chapter 2.7 Protective Services Workers**

**2.701 Power and Duties:**

- (1) Protective services workers shall be employed by the tribal social services department.
- (2) The department shall cooperate with such state and community agencies as are necessary to achieve the purposes of this code. The department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council or its designate.
- (3) A protective services worker shall:
  - (a) Receive from any source, oral or written, information regarding a child who may be a child-in-need-of-care.
  - (b) Upon receipt of any report or information under subsection 3(a), within 72 hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
  - (c) In conducting its investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that one or more of the following conditions exist:
    - [1] Abuse or neglect is the suspected cause of a child's death.
    - [2] The child is the victim of suspected sexual abuse or sexual exploitation.
    - [3] Abuse or neglect resulting in severe physical injury to the child requires medical treatment of hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health of physical well-being of a child.
    - [4] Law enforcement intervention is necessary for the protection of the child, the protective services worker, or another person involved in the investigation.
    - [5] The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.
  - (d) Take a child into temporary custody if necessary pursuant to Chapter 2.11. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.

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- (e) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent.
  - (f) Substantiate whether there is probable cause to believe that the child is a child-in-need-of-care.
  - (g) Offer to the family of any child found to be a child-in-need-of-care appropriate services which may include, but shall not be restricted to, protective services.
  - (h) Within thirty (30) days after a referral of a potential child-in-need-of-care, submit a written report of his investigation and evaluation, which shall be included in the files, maintained by the tribal social service department and shall include a determination as to whether the report was substantiated or unsubstantiated.
  - (i) Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.
- (4) Law enforcement officials shall cooperate with the protective services worker and the tribal social services department in conducting investigations pursuant to this section.
- (5) If protective services receive a report, which alleges a pregnant woman's abuse of alcohol or a controlled substance, protective services shall arrange an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. Protective services shall seek court-ordered treatment under Chapter 2.10 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

### **2.702            Limitations of Authority; Duty to Inform**

- (1) Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services.
- (2) If the family declines the offered services, the worker may request authorization of the Child Welfare Committee to initiate a child protection petition in children's court alleging that the child is a child-in-need-of-care.
- (3) Nothing in this section limits the authority of the protective services worker to act in emergency situations pursuant to Chapter 2.11 or to obtain a medical evaluation of the child pursuant to Chapter 2.9.

## **Chapter 2.8        Child Protection Team**

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### **2.801 Purpose**

The child protection team is technical and advisory in nature, and is not intended to replace the authority and responsibility of the child welfare committee, individual agencies or the court. It is designed to promote cooperation, communication, and consistency among agencies. The child protection team shall facilitate the decision making process. Confidentiality shall be maintained by all child protection team members.

### **2.802 Duties**

The Child Protection Team shall:

- (1) Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.
- (2) Review and track all child abuse and neglect cases which have been referred.
- (3) If requested by the Child Welfare Committee, a protective services worker or the court, investigate cases to determine whether the best interests of the child are being met.
- (4) If requested by the Child Welfare Committee, review case plans for their adequacy.
- (5) Maintain confidentiality of information.
- (6) Send local child protection team data to child protection teams.

### **2.803 Facilitating Services**

- (1) Identify available community resources, programs and services.
- (2) Provide recommendations to various pertinent agencies.
- (3) Promote cooperation, communication, and consistency among agencies.
- (4) Provide a forum for debating what actions would best promote the well-being of Indian children.
- (5) Respond to inquiries from the community, area child protection teams, and other individuals and groups.

### **2.804 Providing Technical Assistance**

- (1) Develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services.

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- (2) Provide information and technical recommendations to decision-making agencies.
- (3) Educate communities about child abuse and neglect problems and solutions.
- (4) Identify danger signs, which prompt intervention and/or preventive actions.
- (5) Identify danger signs, which prompt intervention of plans to promote the long-term well-being of children and their families.
- (6) Assist in the development and implementation of strategies by communities to create environments, which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

### **Chapter 2.9      Duty to Report Child Abuse and Neglect**

#### **2.901          Duty to Report**

Any person who has a reasonable cause to suspect that a child is a child-in-need-of-care shall immediately make a report to the tribal social services department or the tribal law enforcement department. Those persons reporting, except those specified in section 2.902 below, may remain anonymous.

#### **2.902          Persons Specifically Required to Report**

- (1) Any physician, nurse, dentist, optometrist, or any other medical or mental health professional including a community health representative; volunteers working with families; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel counselor; peace officer or other law enforcement official; member of the child welfare committee, member of the child protection team; who has reasonable cause to suspect that a child may be a child-in-need-of-care shall make immediately, by phone or otherwise, an oral report, or cause an oral report to be made, of the suspected condition to the tribal social services department or tribal law enforcement department.
- (2) A person mandated to report under subsection 2.902(1) shall immediately report to the tribal social services department if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or used a controlled substance for a nonmedical purpose during the pregnancy.
- (3) Within 72 hours after making the oral report, the reporting person mandated to report under this section shall file a written report as required in this code. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available

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to the person in charge. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

### **2.903 Immunity from Liability**

All persons or agencies complying in good faith with the provisions of the Act shall be immune from civil liability and criminal prosecution.

### **2.904 Abrogation of Privilege**

Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act.

### **2.905 Penalty for not Reporting**

Any person mandated to report under section 2.902 who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to ninety (90) days in jail and/or a fine of up to \$5000.

### **2.906 Abuse and Neglect Reports**

- (1) Form of Report: Those persons mandated to report under section 2.902 above shall include the following information in the written report:
  - (a) Names, addresses, and tribal affiliation of the child and his parents, guardians, or custodians.
  - (b) The child's age.
  - (c) The nature and content of the child's abuse or neglect.
  - (d) Previous abuse or neglect of the child or his siblings.
  - (e) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect.
  - (f) The name and address of the person or agency making the report.

### **2.907 Medical Examinations**

- (1) The tribal social services department may request a court order for a medical evaluation of a child pursuant to Chapter 2.11 of this code. The department shall have a medical

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evaluation done without a court order if the child's health is seriously endangered and a court order cannot be obtained.

- (2) When a child suspected of being a child-in-need-of-care is seen by a physician, the physician shall make the necessary examinations, which may include physical examinations, x-rays, photographs, laboratory studies, and other pertinent studies.
- (3) The physician shall be immediately report the results of the evaluation to the department, law enforcement and the court, if requested to do so. The physician's written report to the department shall contain summaries of the evaluation.

### **2.908 Central Registry [Reserved for later amendment.]**

## **Chapter 2.10 Drug Abuse during Pregnancy**

### **2.1001 The Children's Court May Take Jurisdiction**

The children's court may take jurisdiction of a pregnant woman who has engaged in abuse of alcohol or a controlled substance upon a showing by preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substance.

### **2.1002 Upon Assuming Jurisdiction, the Court May Enter Orders**

Upon assuming jurisdiction, the court may enter orders regarding such person requiring her to refrain from drug abuse, submit to reasonable measures to assure her non-use, and comply with community based or in-patient treatment programs. Such court orders may be enforced through the court's civil contempt power.

### **2.1003 Information Made Available**

Information made available pursuant to a Children's Court order regarding a woman's drug use during pregnancy may not be used in criminal prosecution against the woman.

## **Chapter 2.11 Investigative Orders; Orders for Examination**

### **2.1101 Investigative Orders; Orders for Examination**

Upon a showing of probable cause to believe that a child is a child-in-need-of-care, which may be done ex parte, the court may order further investigation and discovery including but not limited to taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian, or custodians, by a physician, dentist, psychologist, or psychiatrist.

### **2.1102 Authority to Remove**

- (1) Upon applications by any person which may be ex parte, if the Court finds probable cause to believe the minor is a child-in-need-of-care and that the conditions in which the

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child is found present a substantial risk of harm to the child's life, physical health, or mental well-being, the Court may order the child be taken into custody. The Court may include in such an order:

- (a) an authorization to enter specified premises to remove the child, and
- (b) a directive to place the child in protective custody pending preliminary hearing.

### **2.1103 Emergency Removal without a Court Order**

- (1) A child may be taken into protective custody without a court order by a law enforcement officer or the tribe's protective services worker if such a person has probable cause to believe the child is a child-in-need-of-care, and
  - (a) Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm, or;
  - (b) The parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and, no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.
- (2) If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective services worker.

## **Chapter 2.12 Notice to the Children's Court**

### **2.1201 Notice to the Children's Court**

After a child is removed from his home, the person who removed the child shall attempt to contact the children's court within six (6) hours. The attempt to contact the court shall be documented. Actual notice to the court shall be made, by the removing person, no later than 12:00 p.m. (noon) the next court working day.

### **2.1202 Notice to the Parent, Guardian or Custodian**

The person removing the child shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

**2.1203 Notice to Child's Tribe if Different from Tribe Whose Court is Exercising Jurisdiction**

If the Tribal Court asserts jurisdiction over a person who is a member of an Indian tribe or historic band other than the Hannahville Indian Community, the Tribal Court shall notify the Tribal Court of the non-tribal member that jurisdiction has been asserted.

**Chapter 2.13 Placement of Children**

**2.1301 Restrictions**

A child alleged to be a child-in-need-of-care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

**2.1302 Placement Priorities**

Unless the child's tribe specifies a different order of placement, and in the absence of good cause to the contrary, in any foster care or pre-adoptive placement of a child, preference must be given, in descending order as listed below, to placement of the child with:

- (1) Members of the child's extended family,
- (2) An Indian family of the same tribe as the child which is licensed as a foster home or an Indian family otherwise authorized by law to provide care for the child,
- (3) A facility operated by a licensed child welfare services agency, or
- (4) Any other suitable placement, which meets the standards for shelter care facilities established by the tribal government.

**2.1303 Good Cause Not to Follow Placement Preference**

If any party asserts that good cause not to follow the placement preferences exists, that party shall present clear and convincing evidence on the record in support of the allegation(s). A determination of good cause to depart from the placement preferences must be based on one or more of the following:

- (1) The request of the child if the child is 14 or more years of age and if the child is able to understand and comprehend the decision that is being made.
- (2) The extraordinary physical or emotional needs of the child such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by the testimony of a qualified expert witness; provided that, extraordinary physical or emotional needs of the child does not include the bonding or attachment that may have occurred as a result of a placement or the fact that the child

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has for an extended amount of time, been in another placement that does not comply with the placement preferences stated in subsections 2.1302 (1-4) of this Code.

- (3) The good cause determination also does not include an independent consideration of the best interest of the child because the preferences reflect the best interests of a child in light of the purposes of this Code as reflected specifically at subsections 2.102(1-8) of this Code.
- (4) The court may consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio economic status of any placement relative to another placement.
- (5) The court shall enquire and assure that the placement preferences are followed at every stage of the proceedings.

**Enacted as amended by Resolution #04152016-A of the Hannahville Indian Community Tribal Council, meeting in special session with a quorum present, for immediate effect and application to all pending cases, on April 15, 2016, by a vote of \_\_\_yes, \_\_\_no, \_\_\_abstaining.**

### **2.1304 Least Restrictive Setting**

If a child cannot be returned to his parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed in reasonable proximity to his home, taking into account any special needs of the child.

## **Chapter 2.14 Child Welfare Committee Informal Adjustment Conference**

### **2.1401 Before and/or After the Filing of a Petition**

The Child Welfare Committee or its designee may hold an informal conference with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:

- (1) an informal adjustment of the matter would be in the best interest of the minor and the tribe; and
- (2) the minor and the minor's parent(s), guardian or custodian consent to an informal adjustment conference after they have received an explanation of their rights.

### **2.1402 Involuntary Action of the Parties**

This Section does not authorize the Child Welfare Committee or its designee to compel any involuntary action of the parties involved.

### **2.1403 Informal Adjustment Conference**

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At the informal adjustment conference, the Child Welfare Committee or its designee, (with the voluntary agreement of the parties,) may:

- (1) refer the child and the child's parent(s), guardian or custodian to a community agency for assistance; or
- (2) define terms of supervision calculated to assist and benefit the child, which regulate the child's activities and are within the ability of the child to perform.

### **2.1404 Conference Findings and the Disposition**

The Child Welfare Committee or its designee shall set forth in writing conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, child parent, guardian or custodian. The child advocate, parent's attorney, and the Court, if a petition has been filed, shall also receive copies of the report.

### **2.1405 Child Welfare Committee May Decline To Authorize Filing a Petition**

If an informal adjustment is agreed to, the Child Welfare Committee may decline to authorize filing a petition, hold its petition in abeyance or withdraw a petition and re-file at a later date without prejudice.

### **2.1406 Conclusion of Informal Adjustment**

Any disposition arranged through the informal adjustment procedure of this section shall be concluded within six (6) months.

### **2.1407 Review the Minor's Progress**

The Child Welfare Committee or its designee shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Committee concludes that positive results are not being achieved, the Committee shall direct the protective service worker to file a petition for a formal adjudicatory hearing.

### **2.1408 Statements Made During the Informal Hearing**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the minor under this Code.

## **Chapter 2.15 Filing Child Protection Petition**

### **2.1501 Authorization to File Petition**

- (1) Upon authorization by the Child Welfare Committee, the Tribal Attorney or prosecutor or child protective services worker shall initiate formal child protection proceedings by

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filing a child protection petition on behalf of the tribe and in the best interests of the child.

- (2) Any person may file a petition with the Children's Court alleging that a child is a child-in-need-of-care.
- (3) Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency action under sections 2.1102 and 2.1103 of this code.

### **2.1502 Time Limitations**

If a child has been removed from the home, then a child protection petition shall be filed with the children's court no later than 12:00 p.m. (noon) of the second court working day following the removal.

### **2.1503 Contents of Petition**

The child protection petition shall set forth the following with specificity:

- (1) The name, birth date, sex, residence and tribal affiliation of the child;
- (2) The basis for the court's jurisdiction;
- (3) The specific allegations which cause the child to be a child-in-need-of-care;
- (4) A plain and concise statement of the facts upon which the allegations of child-in-need-of-care are based, including the date, time and location at which the alleged facts occurred;
- (5) The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- (6) The names, relationship and residences of all known members of the child's extended family and all former care givers, if known, and;
- (7) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

## **Chapter 2.16 Notice and Service of Summons**

### **2.1601 General**

Unless a party must be summoned as provided in section 2.1602, a party shall be given notice of a proceeding on Children's Court in any manner authorized by this Children's Code or the laws of the Tribal Court.

**2.1602 Summons**

- (1) In a Children’s Court proceeding, the summons shall be issued and served on the parent, and the person with whom the child resides, if other than a parent or a court-ordered custodian, directing such person to appear with the child for trial. The court may direct that the child’s appearance in court is unnecessary.
- (2) In a proceeding for termination of parental rights, the summons must be issued and served on the parent and the person with whom the child resides, if other than the parent or a court-ordered custodian, for a hearing on a petition seeking the termination of parental rights. The court may direct that the child’s appearance in court is unnecessary.
- (3) Contents. The summons shall direct the person to whom it is addressed to appear with the child (unless the child’s appearance has been excused) at a time and place specified by the court and must:
  - (a) Identify the nature of hearing;
  - (b) Include a prominent notice that the hearings could result in termination of parental rights; and
  - (c) Have a copy of the petition attached to the summons.
- (4) Manner of Serving Summons
  - (a) Except as provided in subsections 2.1602 (4)(b) and (c), a summons required under this section must be served by delivering the summons to the party personally.
  - (b) If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
  - (c) If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substantial service, including publication.
  - (d) If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served in a manner reasonably calculated to provide notice.
- (5) Time of Service
  - (a) A summons shall be served at least:
    - [1] Seven (7) days before trial,
    - [2] Fourteen (14) days before hearing on a petition to terminate parental rights,

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[3] Three (3) days before any other hearing.

- (b) If the summons is served by registered mail, it must be sent at least seven (7) days earlier than subsection (a) requires for personal service of a summons.
- (c) If service is by publication, the published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice must appear one or more times fourteen (14) days before the hearing. Publication may be by posting in community buildings if the parties live within the Hannahville Indian Community lands or otherwise appear frequently in the community.

### **2.1603 Notice of Hearing**

- (1) **Persons Entitled to Notice.** The court shall insure that the following persons are notified of each hearing:
  - (a) the parent or parents,
  - (b) the attorney for the parent, the child or the advocate for the child
  - (c) the legal guardian or custodian other than the parent, if any,
  - (d) the petitioner,
  - (e) the responsible child placing agency, if different from the petitioner,
  - (f) the guardian ad litem of a party appointed pursuant to this code,
  - (g) any other person the court may direct to be notified.
- (2) **General.** Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least three (3) days prior to the hearing except as provided in subsections 2.1602(5)(a), (b), (c) or as otherwise provided in these rules.
- (3) **Preliminary Hearing.** When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to section 2.1201 as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.
- (4) **Termination Proceedings.** Notice of a hearing on a petition to terminate parental rights must be given in writing, as provided in subsection 2.1602 (5)(a) or on the record at least fourteen (14) days before the hearing.

- (5) When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena or may cause a bench warrant to issue and direct law enforcement to bring the person(s) before the court.

**2.1604 Subpoenas**

- (1) The attorney for a party or the court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired.
- (2) It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

**2.1605 Waiver of Service**

A person may waive notice of hearing or service of process. The waiver shall be in writing. When a party waives service of a summons required by section 2.1602, the party must be advised as set forth in subsection 2.1602(3).

**2.1606 Subsequent Notices**

After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party, or, if the party has an attorney, on the attorney for the party, either personally or by ordinary mail, except that a summons must be served before trial or termination hearing as provided in section 2.1602.

**2.1607 Putative Fathers**

If the court determines that the minor has no father as defined subsection 2.103(13), the court shall take appropriate action as described in this subsection.

- (1) The court shall take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in the manner as provided in this section. The notice shall include the following information:
  - (a) that a petition has been filed with the court;
  - (b) the time and place of hearing at which the natural father is to appear to express his interest, if any, in the minor, and;
  - (c) a statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, and could result in termination of any parental rights.
- (2) After notice to the putative father, the court may conduct a hearing and determine that:

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- (a) The putative father has been personally served or served in some other manner which the court finds to be reasonable calculated to provide notice to the putative father. If so, the court may proceed in the absence of the putative father.
  - (b) A preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed fourteen (14) days to establish his relationship according to subsection 2.103(13); provided that if the court decides the interests of justice so require, it shall not be necessary for the mother of the minor to join in an acknowledgement. The court may extend the time for good cause shown.
  - (c) There is probable cause to believe that another identifiable person is the natural father of the minor. If so, the court shall proceed with respect to the other person in accord with this subsection.
  - (d) After diligent inquiry, the identity of the natural father cannot be determined. If so, the court shall publish notice at least once in a manner calculated to alert a person who may be the father of the child. If no person comes forward, the court shall terminate the parental rights of the unknown father and proceed without further notice or court appointed attorney for the unidentified person.
- (3) The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to legal counsel if:
- (a) the fails to appear after proper notice, or
  - (b) the appears, but fails to establish paternity within the time set by the court.

### **Chapter 2.17 Preliminary Hearing**

#### **2.1701 Court Shall Conduct a Preliminary Hearing**

If the child has been released to his/her parent, guardian or custodian, the Court shall conduct a preliminary hearing within seven (7) days after filing of the petition.

#### **2.1702 If Child Is Placed In Out Of Home Placement**

If the child is placed in out of home placement, the Court shall conduct a preliminary hearing by 12:00 p.m. (noon) of the second court working day following the placement for the purpose of determining:

- (1) whether probable cause exists to believe child is a child-in-need-of-care; and

- (2) whether the home conditions continue to present a substantial risk of harm to the child's life, physical health or mental well-being and whether any alternatives except removal of the child is reasonably available to adequately safeguard the child from such risk.

**2.1703 Child's Parent, Guardian or Custodian Is Not Present at the Preliminary Hearing**

If the child's parent, guardian or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Court shall recess for not more than 24 hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

**2.1704 Allegations in the Petition**

The court shall read the allegations in the petition in open court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation.

**2.1705 Testimony**

The Court shall hear testimony concerning:

- (1) the circumstances that gave rise to the petition; and,
- (2) the need for continued placement.

**2.1706 Probable Cause Not Found**

If probable cause to believe the child is a child-in-need-of-care is not found, the petition shall be dismissed and the child shall be released.

**2.1707 Probable Cause Exists**

If the court finds that probable cause exists to believe the child is a child-in-need-of-care, the court:

- (1) shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the court; and
- (2) may release the child in the custody of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child; or

- (3) may order placement of the child with someone other than a parent, guardian or custodian if the court, after hearing, determines that both of the following conditions exist:
  - (a) Custody of the child with a parent, guardian or custodian presents a substantial risk of harm to the child's life, physical health or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk.
  - (b) Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

**2.1708 Physical, Mental or Psychological Examination**

The court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent or guardian to undergo a physical, mental or psychological examination by a qualified professional.

**Chapter 2.18 Adjudicatory Hearing**

**2.1801 Adjudicatory Hearing before the Tribal Judge**

The Court shall conduct an Adjudicatory Hearing before the Tribal Judge for the purpose of determining whether the child is a child-in-need-of-care. Trial shall be by jury unless waived.

**2.1802 Adjudicatory Hearing shall commence as Soon as Possible**

The Adjudicatory Hearing shall commence as soon as possible but not later than 45 days after the petition is filed with the court.

**2.1803 Continuances of an Adjudicatory Hearing**

Continuances of an Adjudicatory Hearing may be granted by the Court but only:

- (1) Upon stipulation of the parties;
- (2) Where process cannot be completed;
- (3) The Court finds that the testimony of a presently unavailable witness is needed; or
- (4) One time only for up to fourteen (14) days at a parent's request for parents to obtain counsel.
- (5) For good cause shown.

**2.1804 General Public Shall Be Excluded**

The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the child advocates and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

**2.1805 Evidence**

- (1) The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence, which is reliable and trustworthy, may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.
- (2) The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
- (3) The Court may rely upon conferences telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

**2.1806 Schedule a Dispositional Hearing**

If the allegations of the petition are sustained by clear and convincing evidence the Court shall find the child to be a child-in-need-of-care and schedule a Dispositional Hearing. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

**2.1807 Allegations of the Petition Are Not Sustained**

If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the minor.

**Chapter 2.19 Dispositional Hearing**

**2.1901 Determine Measures to Be Taken By the Court**

A Dispositional Hearing is conducted to determine measures to be taken by the Court with respect to the minor properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the minor comes within its jurisdiction.

**2.1902 Dispositional Hearing May Be Held Immediately After the Adjudication**

The Dispositional Hearing may be held immediately after the Adjudication. The interval, if any, between the Adjudicatory Hearing and the Dispositional Hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than 35 days except for good cause. If the Dispositional Hearing is not held immediately after the Adjudication, notice of

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hearing may be given by scheduling it on the record in the presence of the parties or in accordance with Chapter 2.16, Notice and Service of Summons.

### **2.1903 Proposed Case Plan**

- (1) The Indian Child Welfare Committee, or its delegate, shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the child protection team and protective service worker. The report shall contain a specific plan for the care of and assistance to, the minor and/or the minor's parent(s), guardian or custodian designed to resolve the problems presented in the petition.
- (2) The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.
- (3) If the report recommends placement of the child somewhere other than with the child's parent, guardian or custodian, it shall state the specific reasons underlying its placement recommendation.
- (4) The Indian Child Welfare Committee or its delegate shall present the case plan to the Court, the child advocate, and the presenting officer, at least three (3) days before the dispositional hearing.

### **2.1904 Evidence**

- (1) All relevant and material evidence, including oral and written reports may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial. The Court shall consider the case service plan and any report by an agency responsible for the care and supervision of the child concerning effort to prevent removal or to rectify conditions that caused removal, of the minor from the home.
- (2) The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.
- (3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the Dispositional Phase, of materials prepared pursuant to a court ordered examination, interview or course of treatment.

### **2.1905 Disposition Orders**

- (1) The Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on Disposition. The Court shall approve a case service plan and may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal

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from his home or to rectify the conditions that caused the child's removal from his home.

- (2) If a child has been found to be a child-in-need-of-care, the Court may take the following dispositions, which are listed by priority:
  - (a) permit the child to remain with his/her parent(s), guardian or custodian, subject to such conditions as the Court may prescribe;
  - (b) place the child with a relative within the primary service area of the tribe, subject to such conditions as the Court may prescribe;
  - (c) place the child in a licensed foster home within the primary service area of the tribe, subject to such conditions as the Court may prescribe;
  - (d) place the child in a foster home, or home of a relative, outside of the primary service area of the tribe, subject to such conditions as the Court may prescribe; or
  - (e) place the child in group home or residential care facility designated by the Court;
  - (f) direct the presenting officer to file a petition to terminate parental rights under this Code.
- (3) If a child remains under the jurisdiction of the court, an order may be amended or supplemented within the authority granted to the court in this code at any time, as the Court considers necessary and proper and in the best interests of the child.

### **Chapter 2.20    Disposition Review Hearing**

#### **2.2001        Dispositional Order Is To Be Reviewed**

The Dispositional Order is to be reviewed at the discretion of the Court but at least once every six (6) months.

#### **2.2002        Notice of the Review Hearing**

Notice of the Review Hearing shall be provided on the record or by ordinary mail as provided in section 2.1606.

#### **2.2003        Compliance with the Case Service Plan**

At a Review Hearing the Court shall review on the record the compliance with the case service plan prepared pursuant to section 2.1903 and the previous orders of the Court including:

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- (1) Services provided or offered to the child and his or her parent, guardian or custodian and whether the parent, guardian or custodian has complied with and benefited from those services.
- (2) Visitation with the child. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.

### **2.2004      Extent of Progress Made**

After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The Court may modify any part of the case plan including, but not limited to, the following:

- (1) Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child-in-need-of-care.
- (2) Prescribing additional actions to be taken by the parent, guardian or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of-care.

### **2.2005      Determine the Continuing Necessity**

At a Review Hearing, the Court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the Dispositional Order, modify the Dispositional Order, or enter a new Dispositional Order.

### **2.2006      If the Child Remains In Placement**

If the child remains in placement, the Court shall determine at the Dispositional Hearing and at each Review Hearing whether the cause should be reviewed before the next Review Hearing required under this section. In making this determination, the Court shall consider, but not be limited to, both of the following:

- (1) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.
- (2) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required by this section.

### **2.2007      Notice Is Given To All Parties Prior To the Return of a Child to His or Her Home**

Unless waived, if not less than seven (7) day notice is given to all parties prior to the return of a child to his or her home, and no party requires a hearing within the seven (7) days, the Court may issue an order without a hearing permitting the agency to return the child to his home.

**2.2008 An Agency Report Filed With the Court**

An agency report filed with the court shall be accessible to all parties to the action and shall be offered into evidence.

**2.2009 The Court Shall Not Return The Child(Ren)**

The Court shall not return the child(ren) if doing so would represent a substantial risk of harm to the child's life, physical health or mental well-being. The Court shall state its finding(s) on the record and/or in such written opinion(s) as necessary to preserve the record.

**Chapter 2.21 Permanency Planning Hearing**

**2.2101 The Court Shall Conduct a Permanency Planning Hearing**

If a child remains adjudicated in a child-in-need-of-care and parental rights to the child have not been terminated, the Court shall conduct a permanency planning hearing not more than eighteen (18) months after entry of the order of disposition and every eighteen (18) months thereafter, so long as the child remains a child-in-need-of-care. A Permanency Planning Hearing may be combined with a Disposition Review Hearing under Chapter 2.20 of this Code.

**2.2102 Review the Status of the Child**

A Permanency Planning Hearing shall be conducted to review the status of the child and the progress being made toward the child's return to his natural parents or to some other permanent home.

**2.2103 Substantial Risk of Harm to the Child**

If parental rights to the child have not been terminated and the Court determines at a Permanency Planning Hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the Court as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

**2.2104 Alternative Permanent Placement Plans**

If the Court determines at a Permanency Planning Hearing that the child should not be returned to his or her parent, the tribal social service with the recommendation of the Child Welfare Committee shall propose one of the following alternative permanent placement plans:

- (1) The child be placed permanently with a relative within the primary service area of the tribe.

- (2) The child be placed permanently with a relative who is outside the primary service area of the tribe.
- (3) The child shall remain in a long-term foster or residential care.
- (4) A petition for Guardianship under this Code be filed by the current caretaker of the child, the child, or the tribal social services.
- (5) A petition to terminate parental rights under this Code be filed by the tribal social services or child placing agency.

**2.2105 The Court Shall Order Permanent Placement**

If the Court determines that the child should not be returned to his or her parents, the Court shall order permanent placement with a relative, long term foster or residential care under subsections 2.2104 (1), (2), or (3), continue the child in placement for a limited period so that petitions under subsections 2.2104 (4) and (5) may be filed.

**Chapter 2.22 Termination of Parental Rights**

**2.2201 Purpose**

The purpose of this section is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process. This chapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family members when that unit remains united and together, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this chapter.

**2.2202 Grounds for Involuntary Termination**

The Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Court finds, beyond a reasonable doubt, one (1) or more of the following:

- (1) The child has been abandoned under either of the following circumstances:
  - (a) The parent of a child is unidentifiable and has deserted the child for twenty-eight (28) or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
  - (b) The parent of the child has abandoned the child without provision for his support or without communication for a period of at least six (6) months. The failure to provide

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support or to communicate for a period of at least six (6) months shall be presumptive evidence of the parent's intent to abandon the child.

- (2) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
  - (a) A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
  - (b) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
- (3) The parent was a respondent in a proceeding brought under this children's code twelve (12) or more months have elapsed since the issuance of an initial dispositional order, and the Court, beyond a reasonable doubt, finds either of the following:
  - (a) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
  - (b) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
    - [1] Testimony as to the existence of these other conditions must be legally competent evidence.
- (4) A parent is unable to provide proper care and custody for a period in excess of one (1) year because of a mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.
- (5) The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child or if the parent is imprisoned for over two (2) years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

- (6) Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

**2.2203 Termination at Initial Disposition**

If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights under section 2.2202 at the initial Dispositional Hearing after proper notices as required in section 2.1603.

**2.2204 Quality of Evidence**

The same rules of evidence, which apply at adjudication under section 2.1805, shall apply in termination of parental rights proceedings.

**2.2205 Termination of Parental Rights Order**

An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states, its conclusions of law, and includes the statutory basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court may state the findings and conclusions on the record or include them in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within twenty-eight (28) days after the taking of final proofs.

**2.2206 Voluntary Relinquishment of Parental Rights**

Parental rights may be voluntarily terminated by a parent in writing, is signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he does not understand English.

**2.2207 Child's Continued Right to Benefits**

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

**2.2208 Advise of Right to Appeal**

Immediately upon entry of an order terminating parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the children's Court on appeal from an order terminating parental rights.

**2.2209 Post Termination Review Hearings**

If a child remains a ward of the court following the termination of parental rights to the child, the Court shall conduct a review hearing, at least every twelve (12) months to review the progress toward permanent placement of the child. The Court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interests of the child.

**Chapter 2.23 Authorization of Medical Treatment**

**2.2301 The Court May Authorize Medical or Surgical Care**

At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

- (1) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or:
- (2) A physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

**2.2302 Tribal Customs or Traditions or Religions**

In making its order, the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by tribal customs or traditions or religions, if the child or his parent, guardian or custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices the tribal customs, traditions, or religion which is relied upon for such treatment of the child.

**2.2303 Reduce the Circumstances, Finding and Authorization in Writing**

After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital, or both.

**2.2304 Oral Authorization by the Court**

Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subjected to criminal or

civil liability in the court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

### **Chapter 2.24 Emancipation**

A child over the age of sixteen (16) may petition the Court for emancipation. The Court shall grant such status when the child proves to the Court that the child is capable of functioning as an independent and responsible member of the community. Evidence that the child is satisfactorily attending school, is employed and is capable of providing for his/her shelter needs shall be received by the Court.

### **Chapter 2.25 Power of Attorney**

A parent, legal custodian, or full guardian, by a properly executed power of attorney, may delegate to another person for a period not exceeding six (6) months, any of the parent's, legal custodian's, or guardian's powers regarding care, custody, or property of the child, except the power to consent to marriage or adoption of a child and the power to release a child for adoption. The power of attorney may be limited in any way to reserve any of these powers to the person granting the power of attorney.

### **Chapter 2.26 Guardianship**

#### **2.2601 Powers of the Court**

The Court may appoint a guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court. Where temporary guardianship is established by parental consent it shall be revocable by the Court upon parental request. The guardianship may be temporary, that is, limited in time and/or limited in powers and the Court shall state in its orders the scope and nature of the guardianship established.

#### **2.2602 Purpose**

The children's Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the Court's jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall have the custody and care of the education of the child and the care and management of his property until such child arrives at the age of eighteen (18) marries, dies, is emancipated by the Court under Chapter 2.24 of this Code, or until the guardian is legally discharged.

#### **2.2603 Types of Guardianship**

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The types of guardianship shall include guardianship of property and guardianship of the person. Unless the Court appoints a separate individual as guardian of property the guardian of person shall also be the guardian of the child's property.

### **2.2604 Grounds**

The Court may appoint a guardian for a child if any of the following circumstances exist:

- (1) The appointment is necessary for the immediate physical well-being of the minor.
- (2) The Court has temporary jurisdiction and the Court finds that the best interests of the child are served by appointment of a full or temporary guardian.
- (3) The parental rights of both parents or of the surviving parent have been terminated or suspended by prior Court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

### **2.2605 Who May File**

- (1) Any person, including tribal human resources and social services agencies, may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.
- (2) Before appointing a guardian, the Court must give reasonable notice to any person having the care of the child, to the child himself, and to other relatives of the child as the Court may deem proper.

### **2.2606 Contents of Guardianship Petition**

- (1) The petition for guardianship shall include the following, to the best information and belief of the petitioner:
  - (a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
  - (b) The full name, address, tribal affiliation, relationship if any to the minor, and interest in the proceeding of the petitioner;
  - (c) The names and addresses of the minor's parents, if living, and of other persons known to have an interest in the petition for appointment of guardian; the name and date of death of the minor's deceased parent or parents;
  - (d) The basis for the Court's jurisdiction;

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- (e) The name and address of the person or agency having legal or temporary custody of the proposed ward;
  - (f) A statement of the reason or reasons that the appointment of a guardian is sought; whether the petitioner seeks the appointment of a guardian of the person, a guardian of the estate, or both; and with whom the petitioner recommends or seeks to have appointed as such guardian or guardians; and
  - (g) A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and receivables to which the proposed ward entitled.
- (2) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the Court.

### **2.2607 Guardianship Report**

- (1) Upon the filing of a guardianship petition, the Court shall immediately request that the social services department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.
- (2) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports, as it deems necessary.

### **2.2608 Powers and Duties of Guardian of the Person**

- (1) To the extent that it is not inconsistent with the terms of any order of the Court, a guardian of the person has the following powers and duties:
  - (a) The guardian of the person is entitled to custody of the person of his or her ward and shall make provision for his or her ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for his or her training, education, employment, rehabilitation or habilitation. The guardian of the person shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
  - (b) In arranging for a place of abode, the guardian of the person shall give preference to places within the tribal reservation over places not in the reservation, if both in-reservation and out-of-reservation places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, the guardian

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shall give preference to tribal-based treatment facilities, such as group homes, over treatment facilities that are not tribal-based.

- (c) The guardian of the person shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the person. The guardian of the person may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian of the person may petition the Court for concurrence in the consent or approval.
- (2) A guardian of the person entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his or her duties as guardian of the ward's person.
- (3) The Court may order monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Tribal Council. Such payments must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of such payments for any purpose other than that described in this section shall subject the guardian to contempt of Court and any criminal and civil penalties or remedies provided by the Tribal Code.
- (4) A guardian of the person, if he or she has acted within the limits imposed on him or her by this Code or the order of appointment or both, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:
  - (a) Authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counsel, treatment, or service, in a situation where the damages result from the negligence or other acts of a third person; or
  - (b) Authorizing medical treatment or surgery for his or her ward, if the guardian acted in good faith and was not negligent.

### **2.2609 Guardianship of Estate**

- (1) The Court may appoint a guardian of property of a ward under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property or it may be limited to only specific property or a specific legal action as set forth in the written order. A limited guardianship of the person may also include guardianship of the ward's property if set forth in the written order. The guardian of the property has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the child's estate to accomplish the desired result of administering the child's property legally and in the child's best interest, including but not limited to the following specific powers:

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- (a) To take possession, for the child's use, of all the child's estate.
- (b) To receive assets due the child from any source.
- (c) To maintain any appropriate action or proceeding to obtain support to which the child is legally entitled, to recover possession of any of the child's property, to determine the title thereto, or to recover damages for any injury done to any of the child's property; also, to compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle any other claims in favor or against the child.
- (d) To abandon or relinquish all rights in any property when, in the guardian's opinion, acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is of no benefit or value to the child or his or her estate.
- (e) To vote shares of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the child.
- (f) To insure the child's assets against damage or loss, at the expense of the child's estate.
- (g) To pay taxes, assessments, and other expenses incident to the collection, care, administration, and protection of the child's estate.
- (h) To sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.
- (i) To expend estate income on the child's behalf and to petition the Court for prior approval of expenditures from estate principal; provided, neither the existence of the estate or guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the child.
- (j) To pay from the child's estate necessary expenses of administering the child's estate.
- (k) To employ persons, such as attorneys, auditors, investment advisors, appraisers or agents to advise or assist the guardian in the performance of the guardian's duties as a guardian of estate.
- (l) To continue any business operation in which the child was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the child's interest in such business.

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- (m) To acquire, retain and sell every kind of property and every kind of investment, including but not limited to bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.
- (n) Without a Court order to lease any of the child's real estate for a term of not more than three (3) years, or to sell, lease or exchange any of the child's personal property including securities, provided that the aggregate value of all items of the child's tangible personal property sold without Court order over the duration of the estate shall not exceed five thousand dollars (\$5000), a guardian may sell the item only as provided in subdivision.
- (o) A guardian who is required by subsection (n) to do so shall, and any other guardian who so desires may, by motion in the cause, request the Court to issue him or her an order to lease any of the child's real estate or to sell any item or items of the child's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served upon all parties of record and upon such other persons as the clerk may direct, and the Court may issue the order after hearing and upon such conditions as the Court may require; provided that the power granted in this subdivision shall not affect the power of the guardian to petition the Court for prior approval of expenditures from estate principal under subsection (i) of this section.
- (p) To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property as such foreclosure sale, or to acquire the property by deed from the mortgage or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.
- (q) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of a corporate guardian to borrow from its own banking department, for the purpose of paying debts, taxes, and other claims against the child, and to mortgage, pledge, or otherwise encumber such portion of the child's estate as may be required to secure such loan or loans.
- (r) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

### **2.2610      Resignation**

- (1) Any guardian who wishes to resign may apply in writing to the Court, setting forth the circumstances of the case. If a guardian of the estate or a guardian both of the estate and of the person, at the time of making the application, also exhibits his or her final account

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for settlement, and if the Court is satisfied that the guardian has fully accounted, the Court may accept the resignation of the guardian and discharge him or her and appoint a successor guardian, but the guardian so discharged and his or her sureties are still liable in relation to all matters connected with the guardianship before the discharge.

- (2) A guardian of both the estate and of the person who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward may apply for the partial resignation by petition as provided in subsection 2.2606.

### **2.2611 Appointment of Successor Guardian**

- (1) Upon the removal, death, or resignation of a guardian, the Court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

## **Chapter 2.27 Child Protection Records**

### **2.2701 Children's Court Records**

A record of all hearings under this Code shall be made and preserved. All children's court records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child; in the direction of the Court, considering the best interests of the child;
- (2) the child's parent, guardian or custodian;
- (3) the prospective adoptive parent(s);
- (4) the child's counsel or court appointed special advocate;
- (5) the children's court personnel directly involved in the handling of the case;
- (6) any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

### **2.2702 Law Enforcement and Social Services Records**

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child; in the discretion of the Court, considering the best interests of the child;
- (2) the child's parent, guardian or custodian;
- (3) the child's counsel or court appointed special advocate;

- (4) law enforcement and human services personnel, including the Child Welfare Committee and Child Protection Team, directly involved in the handling of the case;
- (5) the children's court personnel directly involved in the handling of the case;
- (6) any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

## **Chapter 2.28 Rehearings**

### **2.2801 Time and Grounds**

A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within thirty (30) days after decision of disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which, if true, would cause the Court to reconsider the case.

### **2.2802 Notice**

All parties must be given notice of the motion in accordance with Chapter 2.16.

### **2.2803 Response by Parties**

Any response by parties must be in writing and filed with the Court and opposing parties within seven (7) days after notice of the motion.

### **2.2804 Procedure**

The judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate for the case.

### **2.2805 Hearings**

The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

### **2.2806 Stay**

The Court may stay any order pending a ruling on the motion.

## **Chapter 2.29 Children's Court Appeals**

**2.2901 Who can Appeal**

Any party to a children's court hearing may appeal a final children's court order to the Tribal Council. An order terminating parental rights is appealable by right.

**2.2902 Time Limit for Appeal**

Any party seeking to appeal a final children's court order shall file a written notice of appeal with the Court within thirty (30) days of the final order. An order is final when stated on the record unless otherwise stated by the Court.

**2.2903 Review Standard**

The clearly erroneous or clear abuse of discretion standard shall be used in reviewing the findings of the children's court on appeal.

**2.2904 Record**

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

**2.2905 Stay of Appeal**

A court order may be stayed upon order of the appellate court.

**2.2906 Conduct of Proceedings**

All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure as long as those provisions are not in conflict with the provisions of this Children's Code.

**Chapter 2.30 Juvenile Court Delinquency and Status Offenses**

**2.3001 Status Offenders - Definition**

A status offender is a child:

- (1) subject to compulsory school attendance who is habitually truant from school without jurisdiction or;
- (2) who has committed an offense committable by children or;
- (3) who is habitually disobedient to the lawful and reasonable discipline of the parent, guardian or custodian; or

- (4) who habitually runs away from home; or
- (5) who the Court determines is in need of rehabilitation. A status offense is a class of crimes which consists not in prescribed action or inaction, but in the accused's having a certain personal condition or being a person of a specified character. Children charged with status offenses are not usually held in detention. Rather, the child and parent are summoned to a hearing after a petition has been filed and the petition has met the probable cause standard of merit. In some cases, the child may be held as a status offender in a detention facility if the child is a habitual status offender and the child is a danger to self or others in the community.

**2.3002 Informal Resolution**

If the juvenile officer decides the best interests of the child would be served by setting up a program to divert the action from going into Court, he/she may do so with the voluntary permission of the parent, guardian or custodian. This diversion program should be in writing and may include chemical treatment, mental health treatment, schooling and other remedial action. The plan should be signed by the child, the child's parent or guardian and by the juvenile officer. The plan should have objectives which can be accomplished and monitored as to success or failure in a reasonable time not to exceed six (6) months.

**2.3003 Petitions**

Please refer to the section on filing child protection petitions, Chapter 2.15 on the filing of petitions. Follow the same procedure as outlined in that section in the filing of a petition declaring a child a status offender.

**2.3004 Dispositions**

The Court may prescribe such counseling or treatment for the custodial parents, as it deems necessary.

- (1) Determining and changing placements. In determining which of several relatives shall have placement of the child, the Court shall consider their ability to provide adequate food, shelter, medical care, love and emotional support, and day-to-day supervision. The Court shall also take into account the desires of the child. In its discretion, after the child is placed, the Court may hold a hearing to consider a change in placement. In deciding whether to hold a hearing or to change placement, the Court shall consider the best interests of the child.
- (2) Delinquents or status offenders. The Court may order one of the following dispositions, listed in suggested order of preference:
  - (a) probation with such conditions as the Court deems necessary;
  - (b) to the custody of an approved facility for delinquents on the Reservation; or

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(c) to an approved facility for delinquents off the Reservation; provided that a status offender shall not be committed to an off-Reservation institution unless he/she has been found by the Court to be a status offender on at least four (4) separate occasions. No order for commitment for any delinquent or status offender in an approved facility shall be for a term longer than six (6) months after the child reaches the age of eighteen (18) years. If, after at least five (5) months of the six (6) month term have elapsed, the child care professional in charge of the delinquent or status offender believes that the child needs further treatment or rehabilitation, he/she shall inform the Court and a hearing shall be held. If the Court finds that the child is in need of further treatment or rehabilitation, the Court shall order a further commitment of up to six (6) months.

(3) Off-Reservation placement. Off-Reservation placement shall be used only as a last resort, where no reasonable on-Reservation placement is available. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

### **2.3005 Confidentiality**

All hearings held in pursuant to the Title shall be (a) conducted in closed and private chambers; (b) the names of children involved shall not be published; and (c) records of all proceedings shall be made and preserved with the Court. All Court records concerning children under this Title, including social, medical and psychological reports shall be kept confidential and shall be open for inspection but only upon Court order and then only to the following persons or agencies: (1) the child; (2) the child's representative; (3) the child's parent, guardian or custodian and their representatives; (4) the juvenile officer; and (5) any other person having a legitimate interest in the case in the performance of their duties, as determined by the Court.

### **2.3006 Expungement of Records**

Records of children involved in proceedings under this Title shall be physically sealed when the child reaches the age of eighteen (18) years. Upon reaching the age of eighteen (18) years, any child involved in proceedings under this Chapter may petition the Court to have such Court records, except those dealing with the termination of a parent-child relationship, to be destroyed ten (10) years after the child reaches the age of eighteen (18) years.

### **2.3007 Periodic Review for Delinquent Children in Approved Facilities**

Every ninety (90) days, the Court shall hold a hearing, following the procedures under section 2.305, to determine if the child should remain in the approved facility to which he/she has been committed. If the Court finds that the child is not likely to commit additional delinquent acts if released, the Court may release the child, subject to such terms or probation as the Court deems necessary.