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TITLE I - INDIAN CHILD WELFARE

ARTICLE 1

GENERAL PROVISIONS

1-1-1. Tribal Juvenile Court. There is hereby created a Tribal Juvenile Court whose powers and duties are set forth in this title. The judges of the court shall be appointed in the same manner as are other tribal judges.

1-1-2. Purpose. (1) The purposes of this title are:

(a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of his tribe and society in general;

(b) To preserve and strengthen family ties whenever possible, including improvement of home and environment;

(c) To protect and preserve the tribal heritage and cultural identity of the child;

(d) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and

(e) To secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his tribe and society in general.

(2) To carry out these purposes, the provisions of this title shall be liberally construed.

1-1-3. Definitions. As used in this title, unless the context otherwise requires:

(1) "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition under section 1-1-4(1)(a) or (1)(b) are supported by evidence beyond a reasonable doubt or the allegations of a petition under section 1-1-4(a)(c) are supported by a preponderance of the evidence.

(2) "Adult" means a person eighteen years of age or over; except that any minor eighteen years of age or over under the continuing jurisdiction of the court, or who is before the court for an alleged delinquent act committed prior to his eighteenth birthday, or concerning whom a petition has been filed for his adoption other than under this title, shall be referred to as a child.

(3) "Child" means a person under eighteen years of age.

(4) "Child care center" means a facility licensed and approved pursuant to law. If such facility is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

(5) "Child in need of supervision" means any child:

(a) who has repeatedly disobeyed reasonable and lawful commands or directives of his parent, or legal guardian or other custodian;

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(b) who is willfully and voluntarily absent from his home without the consent of his parent or guardian or legal custodian for a substantial length of time or without intent to return; or

(c) who being subject to compulsory school attendance, the child is willfully and voluntarily absent from school in violation of law.

(6) "Child placement agency" means an agency licensed or approved pursuant to law. If such agency is located outside the tribal jurisdiction, it shall be licensed or approved as required by law in that jurisdiction.

(7) "Commit" means to transfer legal custody.

(8) (Reserved)

(9) "Delinquent child" means:

(a) a child who has violated any federal, state, or tribal law, excepting a traffic statute or traffic ordinance; or any lawful order of the court made under this act; or

(b) a child who has habitually violated traffic laws or traffic ordinances.

(10) "Deprivation of custody" means transfer of legal custody by the court from a parent or a previous legal custodian to another person, agency or institution.

(11) "Detention" means the temporary care of a child who requires secure custody in physically restricting facilities pending court disposition or an execution of a court order for placement or commitment.

(12) (Reserved)

(13) "Dispositional hearing" means a hearing to determine what order of disposition should be made concerning a child adjudicated as delinquent, in need of supervision, or neglected or dependent. Such hearing may be part of the proceeding which include the adjudicatory hearing or it may be held at a time subsequent to the adjudicatory hearing.

(14) "Family care home" means a facility licensed and approved pursuant to law. If such facility is located outside the tribe's jurisdiction, it shall be licensed or approved as required by the jurisdiction in which the facility is located.

(15) "Group care facilities and homes" means places other than foster family care homes providing care for small groups of children.

(16) "Guardianship of the person" means the duty and authority vested by court action to make major decisions affecting a child including, but not limited to:

(a) The authority to consent to marriage, to enlistment in the armed forces, and to medical and surgical treatment;

(b) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child;

(c) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree; and

(d) The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution.

(17) "Halfway houses" means group care facilities for children who have been placed on probation or parole under the terms of this title.

(18) "Juvenile court" or "court" means the juvenile court of the particular tribe or the CFR Court established for the tribes.

(19) "Legal custody" means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.

(20) "Neglected or dependent child" or "dependent and neglected child" means a child:

(a) Whose parent, guardian, or legal custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;

(b) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;

(c) Whose environment is injurious to his welfare;

(d) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other necessary for his health, guidance or well-being;

(e) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, and through no fault of his parent, guardian or legal custodian.

(21) "Parent" means either a natural parent of a child or a parent by adoption.

(22) "Protective supervision" means a legal status created by court order under which the child is permitted to remain in his home or is placed with a relative or other suitable person, and supervision and assistance is provided by the court, the tribal social services department or other agency designated by the court.

(23) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable visitation unless restricted by the court, and the right to determine the child's religious affiliation.

(24) "Shelter" means the temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order for placement.

(25) "Termination of the parent-child legal relationship" means the permanent elimination by court order of all parental rights and duties, including residual parental rights and responsibilities.

(26) "Transfer proceeding" means any proceeding in the tribal court to accept or decline transfer from any state court of any state court proceeding for the foster care placement of, or termination of parental rights to, any Indian child.

1-1-4. Jurisdiction. (1) Except as otherwise provided by law, the juvenile court shall have exclusive jurisdiction in proceedings:

- (a) Concerning any delinquent child, as defined in section 1-1-3(2) and (9);
- (b) Concerning any child in need of supervision, as defined in section 1-1-3(5);
- (c) Concerning any child who is neglected or dependent, as defined in section 1-1-3(20);
- (d) Concerning any transfer proceeding as defined in section 1-1-3(26);
- (e) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the juvenile court's jurisdiction;
- (f) For the issuance of orders of support of minor children;
- (g) To determine the parentage of a child and to make an order of support in connection therewith;
- (h) For the adoption of a person of any age;
- (i) For judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law;
- (j) For the treatment of commitment of a mentally ill or developmentally disabled child who comes within the court's jurisdiction.

(2) Except as otherwise provided by law, the juvenile court shall have jurisdiction in proceedings concerning any adult:

- (a) Who induces, aids, or encourages a child to violate any federal, tribal or state law; or
- (b) Who abuses, ill-treats, neglects, or abandons a child who comes within the court's jurisdiction.

(3) The court may issue temporary orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of his case.

(4) Nothing in this section shall deprive the tribal court of jurisdiction to appoint a guardian for a child nor of jurisdiction to determine the legal custody of a child upon writ of habeas corpus or when the question of legal custody is incidental to the determination of a cause in the tribal court, except that:

(a) If a petition involving the same child is pending in juvenile court or if continuous jurisdiction has been previously acquired by the juvenile court, the tribal court shall certify the question of legal custody to the juvenile court; and

(b) The tribal court at any time may request the juvenile court to make recommendations pertaining to guardianship or legal custody.

(5) Where a custody award has been made in the tribal court in a dissolution of marriage action or another proceeding and the jurisdiction of the tribal court in the case is continuing, the juvenile court may take jurisdiction in a case involving the same child if he is dependent or neglected or otherwise comes within the jurisdiction set forth herein.

1-1-5. Indian Child Welfare Act Transfers from State Courts. (1) Pursuant to the Indian Child Welfare Act, 25 USC 1911(b), any state court may transfer to the juvenile court herein any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in, any of the tribes within the jurisdiction of the court, if the juvenile court finds that the transfer would not be detrimental to the best interest of the child.

(2) The juvenile court shall determine whether the transfer to the tribe's jurisdiction would be detrimental to the best interest of the child in a transfer proceeding initiated by the tribe after the order of transfer is received by the court clerk.

(3) A court transferring a case to the tribe's jurisdiction under subsection (1) of this section shall transmit all documents and legal and social records, or certified copies thereof, to the receiving court, which court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this court.

1-1-6. Right to counsel - jury trial. (1)(a) At his first appearance before the court, the child and his parents, guardian, or other legal custodian shall be fully advised by the court of their legal rights, including the right to a jury trial as provided in subsection (4) of this section and the right to be represented by counsel, at his own expense, at every stage of the proceedings.

(b) If the child or his parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent such are available at no fee, shall be appointed by the court in proceedings:

(I) Under section 1-1-4(1)(a) or (1)(b); or

(II) Under section 1-1-4(1)(c), when termination of the parent-child legal relationship is stated as a possible remedy in the summons.

(c) The court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or of other parties.

(2) If the child and his parents, guardian, or other legal custodian were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appear.

(3) Upon the request of the court, the tribal prosecutor shall represent the tribe in the interest of the child in any proceedings brought under section 1-1-4(1)(a) and shall represent the tribe in proceedings under section 1-1-4(2). The tribal prosecutor, upon request by the court, shall represent the tribe in the interest of the child in any other proceedings under this title.

(4)(a) A child, his parent or guardian, or any interested party may demand a trial by a jury of not more than six or the court on its own motion may order such a jury to try any case:

(I) In adjudicatory hearings under section 1-1-4(1)(a), (1)(b), or (1)(c), or

(II) In determining the parentage of a child under this title.

(b) Unless a jury is demanded, it shall be deemed to be waived.

1-1-7. Hearings - procedure - record - publicity. (1) The rules of juvenile procedure set forth in this title shall apply in all proceedings under section 1-1-4, except section 1-1-4(2).

(2) Hearings shall be held before the court without a jury, except as provided in section 1-1-6(4), and may be conducted in an informal manner, except in proceedings brought under section 1-1-4(2). The general public shall not be excluded unless the court determines that it is in the best interest of the child to exclude the general public, and in such event, the court shall admit only such persons as have an interest in the case or the work of the court, including persons whom the parents or guardian wish to be present. Hearings may be continued from time to time as ordered by the court.

(3) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by the judge or referee.

(4) When more than one child is named in a petition alleging delinquency, need of supervision, or neglect or dependency, the hearings may be consolidated; except that separate hearings may be held with respect to disposition.

(5) Children's cases shall be heard separately from adults' cases, and the child or his parents, guardian, or other custodian may be heard separately when deemed necessary by the court.

(6) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in proceedings under section 1-1-4 shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted

by order of the court. Any person who violates the provisions of this subsection (6) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or not more than five hundred dollars, or by imprisonment in the tribal jail for not more than thirty days, or by both such fine and imprisonment.

1-1-8. Social study and other reports. (1) Unless waived by the court, the tribal social services department or other agency designated by the court shall make a social study and report in writing in all children's cases, except:

(a) If the allegations of a petition filed under section 1-3-1 and 1-3-2 are denied, the study shall not be made until the court has entered an order of adjudication as provided in section 1-3-6(6); and

(b) The study and investigation in all adoptions shall be made as provided in section 1-4-11.

(2) For the purpose of determining proper disposition of a child, written reports and other material relating to the child's mental, physical, and social history may be received and considered by the court along with other evidence; but the court, if so requested by the child, his parent or guardian, or other interested party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or guardian, or other party to the proceedings so requires.

(3) The court shall inform the child, his parent or legal guardian, or other interested party of the right of cross-examination concerning any written report or other material as specified in subsection (2) of this section.

1-1-9. Effect of proceedings. (1) No adjudication or disposition in proceedings under section 1-1-4 shall impose any civil disability upon a child or disqualify him from any tribal personnel system or military service application or appointment or from holding tribal office.

(2) No adjudication, disposition, or evidence given in proceedings brought under section 1-1-4 shall be admissible against a child in any criminal or other action or proceeding, except in subsequent proceedings under section 1-1-4 concerning the same child.

1-1-10. Referees - qualifications - duties. (1) The juvenile court may appoint one or more referees to hear any case or matter under the court's jurisdiction, except where a jury trial has been requested and in transfer hearings held pursuant to section 1-1-4(4) and (5). Referees shall serve at the pleasure of the court, unless otherwise provided by law.

(2) Referees shall conduct hearings in the manner provided for the hearing of cases by the court. Prior to any hearing, except those at which the child is advised of his rights and either admits or denies the allegations of the petition, the referee shall inform the parties that they have the right to a hearing before the juvenile judge in the first instance and that they may waive that right, but that by waiving that right, they are bound by the findings and recommendations of the referee, except as provided in subsection (4) of this section. If a request is made for a hearing before a juvenile judge in the first instance, the referee shall terminate the hearing and transmit the case to the appointing judge.

(3) At the conclusion of a hearing, the referee shall:

(a) Transmit promptly to the juvenile judge all papers relating to the case together with his findings and recommendations in writing;

(b) Advise the parties before him of his findings and recommendations; and

(c) Advise the parties of their right to review of the findings and recommendations by the juvenile judge.

(4) A request for review shall be filed within five days after the conclusion of the hearing and shall clearly set forth the grounds relied upon. Such review shall be solely upon the record of the hearing before the referee. If review is not requested, the findings and recommendations of the referee shall become the decree of the court when confirmed by order of the juvenile judge. The judge may, on his motion, order a hearing of any case before a referee.

1-1-11. Court records - inspection - expungement. (1)(a) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in adoption and relinquishment shall be confidential and open to inspection only by court order.

(b) With consent of the court, records of court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in relinquishment and adoption proceedings.

(c) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of court.

(2)(a) Any person who has been adjudicated under section 1-1-4(1)(a) or (1)(b), who was handled pursuant to section 1-3-1(2)(c), or who was the subject of a petition dismissed pursuant to section 1-3-6(3)(b) may petition the court for the expungement of his record and shall be so informed at the time of adjudication, or the court, on its own motion may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the court's jurisdiction over the person. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years from the date of termination of the court's jurisdiction or termination of the court's supervision under an informal adjustment.

(b) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the tribal prosecutor and anyone else whom the court has reason to believe may have relevant information related to the expungement of the record.

(c) The court shall order sealed all records in the petitioner's case in the custody of the court and any records in the custody of any other agency or official, if at the hearing the court finds that:

(I) The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this title since the termination of the court's jurisdiction;

(II) No proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under this title is pending or being instituted against him; and

(III) The rehabilitation of the person has been attained to the satisfaction of the court.

(d) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person and the court may properly reply that no record exists with respect to such person upon any inquiry in the matter.

(e) Copies of the order shall be sent to each agency or official named therein.

(f) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records and only to those persons named in such petition.

(3) In any proceeding under section 1-1-4(1)(a) or (1)(b) in which the court orders the petition dismissed, the court may order the records expunged. Such order of expungement may be entered without delay upon petition of the child or any party or upon the court's own motion.

1-1-12. Appeals. (1) An appeal may be taken from any order, decree, or judgment of the court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest practical time.

(2) The Tribe(s) shall have the same right to appeal questions of law in delinquency cases under section 1-1-4(1)(a) as exists in criminal cases.

ARTICLE 2

TEMPORARY CUSTODY, DETENTION, AND SHELTER

1-2-1. Taking children into custody. (1) A child may be taken into temporary custody by a law enforcement officer without order of the court:

(a) When there are reasonable grounds to believe that he has committed an act which would be a major crime, misdemeanor, or tribal ordinance violation if committed by an adult; except that wildlife, parks, outdoor recreation, and traffic violations shall be handled as otherwise provided by law;

(b) When he is abandoned, lost, or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others; or

(c) When there are reasonable grounds to believe that he has run away or escaped from his parents, guardian, or legal custodian.

(2) A juvenile probation counselor may take a child into temporary custody:

(a) Under any of the circumstances stated in subsection (1) of this section; or

(b) If he has violated the conditions of probation and he is under the continuing jurisdiction of the juvenile court.

(3) A child may be detained temporarily by an adult other than a law enforcement officer if the child has committed or is committing an act in the presence of such adult which would be a violation of any federal or tribal law, other than a violation of traffic and game and fish laws or regulations, if committed by an adult. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody of said child.

(4) The taking of a child into temporary custody under this section is not an arrest nor does it constitute a police record.

1-2-2. Duty of officer - notification - release or detention - records. (1) When a child is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian without unnecessary delay and inform him that, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, detention center counselor, or jailor in whose physical custody the child is placed.

(2) The child shall then be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the court, to bring the child to the court at a time set or to be set by the court.

(3)(a) Except as provided in paragraph (b) of this subsection (3), a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parents, guardian, or legal custodian.

(b) If he is not released as provided in subsection (2) of this section, he shall be taken directly to the court or to the place of detention or shelter designated by the court without unnecessary delay.

(c)(I) No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or legal custodian of the child was present at such interrogation and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, the right of the presence of an attorney during such interrogation, and the right to have counsel appointed if so requested at the time of the interrogation; except that, if, to the extent such counsel is available for appointment at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or legal custodian was not present.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (c), statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated from the parent, guardian, or legal custodian or if the child is a runaway from outside the court's jurisdiction and is of sufficient age and understanding.

(4) The officer or other person who takes a child to a detention or shelter facility shall notify the court and any agency or persons so designated by the court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the court and any agency or person so designated by the court stating the facts which led to the child being taken into custody and the reason why the child was not released.

(5) The records of law enforcement officers concerning all children taken into temporary custody or issued a summons under the provisions of this article shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

(a) To the victim in each case when the child is found guilty of a delinquent act;

(b) When the child has escaped from an institution to which he has been committed;

(c) By order of the court;

(d) When the court orders the child to be held for criminal proceedings; or

(e) When there has been a criminal conviction and a presentence investigation is being made on an application for probation.

(6) No fingerprint, photograph, name, address, or other information concerning identify of a child taken into temporary custody or issued a summons under the provisions of this article may be transmitted to the federal bureau of investigation or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the court orders the child to be held for criminal proceedings.

1-2-3. Detention and shelter - hearing - time limits - restriction. (1) A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility designated by the court or the tribal or Bureau of Indian Affairs department of social services and shall not be placed in detention.

(2) When a child is placed in a detention facility or in a shelter facility designated by the court, the law enforcement official taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the tribe's jurisdiction, the person with whom the child has been residing, and inform him of the right to a prompt hearing to determine whether the child is to be detained further. The court shall hold such detention hearing within forty-eight hours, excluding Saturdays, Sundays and court holidays.

(3)(a)(I) No child taken into custody pursuant to section 1-2-1(1)(a) shall be held in a detention or shelter facility longer than forty-eight hours, excluding Saturdays, Sundays, and court holidays, unless a petition has been filed or the court determines that it would be contrary to the welfare of the child or of the community to release the child from detention. The juvenile court in each judicial district shall make provisions so that either the judge or referee is available to set bond seven days a week.

(II) No child taken into custody pursuant to section 1-2-1(1)(c) shall be held in a detention facility or jail longer than forty-eight hours, at which time the child may be released to the custody of his parent, guardian, or legal custodian. If the child cannot be released to his parent, guardian, or legal custodian, he shall be released to a representative of the tribal department of social services or, upon prior written or verbal approval of the court, a responsible adult. If the child is not released to his parent, guardian, or legal custodian, the court shall hold a detention hearing pursuant to subsection (2) of this section.

(III) Notwithstanding the provisions of subparagraph (II) of this paragraph (a), a child who is alleged to be a runaway from another tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, guardian, or legal custodian.

(IV) If it appears that any child being held in detention or shelter may be mentally ill as defined in 1-3-7(1)(a) of this title, or developmentally disabled, as defined in 1-3-7(1)(b) of this title, the court shall place the child in a designated facility approved by the court for a seventy-two-hour treatment and evaluation.

(b) No child taken to a detention or shelter facility pursuant to section 1-2-2 as the result of an allegedly delinquent act which would constitute a major crime if committed by an adult shall be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he be detained. No such child shall thereafter be released from detention except after a hearing, reasonable advanced notice of which has been given to the tribal prosecutor, alleging new circumstances concerning the further detention of the child.

(c) When, following a detention hearing as provided for by paragraph (b) of this subsection (3), the court orders further detention of a child, a petition alleging the child to be delinquent shall be filed with the court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(4) The court may at any time order the release of any child, except children being held pursuant to paragraphs (b) and (c) of subsection (3) of this section, from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the court at a time set or to be set by the court.

(5)(a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a child placed in detention or shelter care.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a child placed in detention or shelter care, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(6)(a) No child under the age of fourteen and, except upon order of the court, no child fourteen years of age or older and under sixteen years of age shall be detained in a jail, lockup, or other place used for the confinement of adult offenders or persons charged with crime. The exception shall be used by the court only if no other suitable place of confinement is available.

(b) A child fourteen years of age or older shall be detained separately from adult offenders or persons charged with crime, including any child ordered by the court to be held for criminal proceedings.

(c) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child who is or appears to be under eighteen years of age is received at the facility, except for a child ordered by the court to be held for criminal proceedings.

(7) Nothing in this section shall be construed as denying a child the right to bail.

1-2-4. Temporary shelter - child's home. The court may find that it is not necessary to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the tribal or Bureau of Indian Affairs department of social services, which

has emergency caretaker services available, to remain in the child's home with the child until a parent, legal guardian, or relative of the child enters the home and expresses willingness and has the apparent ability, as determined by the tribal or Bureau of Indian Affairs department of social services, to resume charge of the child, but in no event shall such period of time exceed seventy-two hours. In the case of a relative, the relative is to assume charge of the child until a parent or legal guardian enters the home and expresses willingness and has the apparent ability, as determined by the tribal or Bureau of Indian Affairs department of social services, to resume charge of the child. The director of the tribal or Bureau of Indian Affairs department of social services shall designate in writing the representatives of these departments authorized to perform such duties.

1-2-5. Search warrants for the protection of children. (1) A search warrant may be issued by the juvenile court to search any place for the recovery of any child within the jurisdiction of the court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.

(2) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(a) Be in writing and supported by affidavit sworn to or affirmed before the court;

(b) Name or describe with particularity the child sought;

(c) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;

(d) State the address or legal description of the place to be searched;

(e) State the reasons why it is necessary to proceed pursuant to this section instead of proceeding pursuant to sections 1-3-1 and 1-3-3(5).

(3) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(4) The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.

(5) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.

(6) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the court may so direct.

(7) A copy of the warrant, the application therefor, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(8) If the child is found, the child may be taken into custody in conformance with the provisions of section 1-2-1.

(9) The warrant shall be returned to the issuing court.

ARTICLE 3

PETITION, ADJUDICATION, DISPOSITION

1-3-1. Petition initiation - preliminary investigation - informal adjustment.

(1)(a) Whenever it appears to a law enforcement officer or any other person that a child is or appears to be within the court's jurisdiction, as provided in section 1-1-4(1)(a), the law enforcement officer or other person may refer the matter conferring or appearing to confer jurisdiction to the tribal prosecutor who shall determine whether the interests of the child or of the community require that further action be taken.

(b) If the tribal prosecutor determines that the interests of the child or of the community require that further action be taken, he may file a petition in delinquency on the form specified in section 1-3-2, which shall be accepted by the court.

(c) If the tribal prosecutor is unable to determine whether the interests of the child or of the tribe require that further action be taken from information available to him, he may refer the matter to the tribal or Bureau of Indian Affairs department of social services, or other agency designated by the court for a preliminary investigation and recommendations as to filing a petition under section 1-1-4(1)(a) or as to initiating an informal adjustment under subsections (2)(c) and (3) of this section.

(d) After the filing of a petition alleging that the child is within the court's jurisdiction, as provided in section 1-1-4(1)(a), the court may conduct a preliminary hearing to determine if there is probable cause to believe that the facts alleged in the petition bring the child within the court's jurisdiction.

(2) Whenever it appears to a law enforcement officer or other person that a child is or appears to be within the court's jurisdiction, as provided in section 1-1-4(1)(b) or (1)(c), the law enforcement officer or other person may refer the matter to the court, which shall have a preliminary investigation made to determine whether the interests of the child or of the community require that further action be taken, which investigation shall be made by the tribal or Bureau of Indian Affairs department of social services, or any other agency designated by the court. On the basis of the preliminary investigation, the court may:

(a) Decide that no further action is required, either in the interests of the tribe or of the child;

(b) Authorize a petition to be filed; or

(c) Make whatever informal adjustment is practicable without a petition if:

(I) The child and his parents, guardian, or other legal custodian were informed of their rights extended under the Indian Civil Rights Act, 25 USC § 1301 et. seq., and other legal rights including being represented by counsel, at their own expense, at every stage of the proceedings;

(II) The facts are admitted and establish prima facie jurisdiction; except that such admission shall not be used in evidence if a petition is filed; and

(III) Written consent is obtained from the parents, guardian, or other legal custodian and also from the child, if of sufficient age and understanding.

(3)(a) Efforts to effect informal adjustment may extend no longer than six months.

(b) In any informal adjustment, the court or its designated agency shall, during the period of informal adjustment, periodically counsel and guide the child and his parents, guardian, or legal custodian in a constructive manner designed to promote rehabilitation as well as requiring any one or more conditions of probation.

(c) No child shall be handled by informal adjustment where the child referred to the court by any person has had any sustained petition for delinquency in the preceding twelve months or has been handled by informal adjustment for a delinquent act in the preceding twelve months.

(4)(a) Upon receipt of a report filed by a law enforcement agency, by an employee of a public or private school, or by a medical doctor, or any other person required to report pursuant to section 1-4-4(2) indicating that a child has suffered abuse as defined in section 1-4-3 and that the best interests of the child require that he be protected from risk of further such abuse, the court shall then authorize and may order the filing of a petition.

(b) Upon receipt of a report, as described in paragraph (a) of this subsection (4), from any person other than those specified in said paragraph (a), the court, after such investigation as may be reasonable under the circumstances, may authorize and may order the filing of a petition.

1-3-2. Petition form and content. (1) The petition and all subsequent court documents in any proceedings brought under section 1-1-4(1)(a), (1)(b), (1)(c), or (1)(d), shall be entitled "The Tribe(s) in the Interest of, a child (or children) and Concerning, Respondent." The petition shall be verified, and the statements in the petition may be made upon information and belief.

(2) The petition shall set forth plainly the facts which bring the child within the court's jurisdiction. If the petition alleges that the child is delinquent, it shall cite the law which the child is alleged to have violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

(3) All petitions filed alleging the dependency or neglect of a child shall include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the child who is the subject of this petition would be eligible for adoption."

1-3-3. Summons - issuance - contents - service. (1) After a petition has been filed, the court shall promptly issue a summons reciting briefly the substance of the petition. The summons shall also contain a statement, when appropriate, that the termination of the parent-child legal relationship is a possible remedy under the proceedings and shall set forth the rights extended under the Indian Civil Rights Act, 25 USC §§ 1301 et. seq., and other legal rights of the child, his parents or guardian, or any other respondent, including the right, at his own expense, to have an attorney present at the hearing on the petition.

(2) No summons shall issue to any respondent who appears voluntarily, or who waives service, or who has promised in writing to appear at the hearing as provided in sections 1-2-2 or 1-2-3, but any such person shall be provided with a copy of the petition and summons upon appearance of request.

(3) The summons shall require the person or persons having the physical custody of the child to appear and to bring the child before the court at a time and place stated. If the person or persons so summoned are not the parents or guardian of the child, then summons shall also be issued to the parents or guardian, or both, notifying them of the pendency of the case and of the time and place set for hearing.

(4) The court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person. Any party to the action may request the issuance of compulsory process by the court requiring the attendance of witnesses on his own behalf or on behalf of the child.

(5) If it appears that the welfare of the child or of the tribe requires that the child be taken into custody, the court may, by endorsement upon the summons, direct that the person serving the summons take the child into custody at once.

(6) The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear, which payments shall not exceed the amount allowed to witnesses for travel by the tribal court.

(7) Summons shall be served personally, pursuant to the tribal rules of civil procedure. If personal service is used, it shall be sufficient to confer jurisdiction if service is effected not less than two days before the time fixed in the summons for the appearance of the person served; except that personal service shall be effected not less than five days prior to the time set for a hearing concerning a dependent or neglected child.

(8) If the parents, guardian, or other legal custodian of the child required to be summoned under subsection (3) of this section cannot be found within the tribal jurisdiction, the fact of the child's presence within the tribe's jurisdiction shall confer jurisdiction on the court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(a) When the residence of the person to be served outside the tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete within five days after return of the requested receipt.

(b) When the person to be served has no residence within the tribe's jurisdiction and his place of residence is not known or when he cannot be found within the tribe's jurisdiction after due diligence, service may be by publication.

1-3-4. Contempt - warrant. (1) Any person summoned or required to appear as provided in section 1-3-3 who has acknowledged service and fails to appear without reasonable cause may be proceeded against for contempt of court.

(2) If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child.

(3) When a parent or other person who signed a written promise to appear and bring the child to court under sections 1-2-2 or 1-2-3 or who has waived or acknowledged service fails to appear with the child on the date set by the court, a bench warrant may be issued for the parent or other person, the child, or both.

1-3-5. Appointment of guardian ad litem. (1) The court may appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to section 1-1-4(1)(a), (1)(b), or (1)(c) when:

(a) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case; or

(b) The court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or

(c) The court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

(2) The court may appoint a guardian ad litem for any parent in proceedings under section 1-1-4(1)(c) or (1)(e) who has been determined to be mentally ill by a court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(3) At the time any child first appears in court, if it is determined that he has no guardian of his person, the court shall appoint a guardian of the person of the child before proceeding with the matter.

(4) In all proceedings brought for the protection of a child suffering from abuse or nonaccidental injury, in accordance with the provisions of section 1-4-13, a guardian ad litem shall be appointed for said child. Said guardian shall have the powers and duties specified in section 1-4-13.

1-3-6. Adjudicatory hearing - findings - adjudication. (1) At the adjudicatory hearing, which shall be conducted as provided in section 1-1-7, the court shall consider whether the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children; except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(2)(a) When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

(b) In such event, the court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

(c) If the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on the motion of any interested party, or the court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

(d) If it appears from the evidence that the child may be mentally ill or developmentally disabled, paragraphs (a) to (c) of this subsection (2) shall not apply, and the court shall proceed under section 1-3-7.

(3) After making a finding as provided by subsection (6)(a) of this section but before making an adjudication, the court may continue the hearing from time to time, allowing the child to remain in his own home or in the temporary custody of another person or agency subject to such conditions of conduct and of visitation or supervision by the tribal or Bureau of Indian Affairs social services department as the court may prescribe, if:

(a) Consent is given by the child and his parent, guardian, or other legal custodian after being fully informed by the court of their rights in the proceeding, including their right to have an adjudication made either dismissing or sustaining the petition;

(b) Such continuation shall extend no longer than six months without review by the court. Upon review the court may continue the case for an additional period not to exceed six months, after which the petition shall either be dismissed or sustained.

(4) When the petition alleges a child fourteen years of age or older to be a delinquent child as defined by section 1-1-3(9), by virtue of having committed an act which would constitute a felony if committed by an adult, the court shall proceed as otherwise provided in this section.

(5) When the court finds that the allegations of the petition are not supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents, guardian, or other legal custodian shall also be discharged from any restriction or other previous temporary order.

(6)(a) When the court finds that the allegations of the petition are supported by evidence beyond a reasonable doubt in cases concerning delinquent children or children in need of supervision or by a preponderance of the evidence in cases concerning neglected or dependent children, except when the case is continued as provided in the introductory paragraph of subsection (3) of this section, the court shall sustain the petition and shall make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent. In cases concerning neglected or dependent children, evidence that child abuse or nonaccidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication under this section.

(b) The court shall then hold the dispositional hearing, but such hearing may be continued on the motion of any interested party or on the motion of the court.

1-3-7. Mentally ill or developmentally disabled child - definitions - procedure.
(1)(a) "Mentally ill person" means a person who is of such mental condition that he is in need of medical supervision, treatment, care, or restraint.

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

(c) "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

(2)(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in subsection (1)(a) and (b) of this section, the court shall order that the child be examined by a physician, psychiatrist, or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and official holidays.

(b) A suitable facility for the purpose of examination shall be a facility designated by the court for seventy-two-hour treatment and evaluation, but neither a county jail nor a detention facility as provided for in article 2 of this title shall be considered a suitable facility under any circumstances.

(3) If the report of the examination made pursuant to subsection (1) of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the court shall proceed as in any other tribal mental health commitment proceeding.

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

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

(a) The report of the examination made pursuant to subsection (1) of this section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

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

(c) The report of the examination made pursuant to subsection (1) of this section states that the child is developmentally disabled but not mentally ill.

1-3-8. Dispositional hearing. (1) After making an order of adjudication, the court shall hear evidence on the question of the proper disposition best serving the interests of the child and the tribe. Such evidence shall include, but not necessarily be limited to, the social study and other reports as provided in section 1-1-8.

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

(3)(a) The court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) If the hearing is continued, the court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the court may impose during the continuance.

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

1-3-9. Order of protection. (1) The court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this article. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian, or any other person who is party to a proceeding brought under section 1-1-4(1)(a), (1)(b), or (1)(c).

(2) The order of protection may require any such person:

- (a) To stay away from a child or his residence;
- (b) To permit a parent to visit a child at stated periods;
- (c) To abstain from offensive conduct against a child, his parent or parents, guardian, or any other person to whom legal custody of a child has been given;
- (d) To give proper attention to the care of the home;
- (e) To cooperate in good faith with an agency:

- (I) Which has been given legal custody of a child;
- (II) Which is providing protective supervision of a child by court order; or
- (III) To which the child has been referred by the court;

(f) To refrain from acts of commission or omission that tend to make a home an improper place for a child; or

(g) To perform any legal obligation of support.

(3) When such an order of protection is made applicable to a parent or guardian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (5) of this section.

(4) After notice and opportunity for a hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the court finds that the best interests of the child and the tribe will be served thereby.

(5) A person failing to comply with an order of protection without good cause may be found in contempt of court.

1-3-10. Neglected or dependent child - disposition. (1) When a child has been adjudicated to be neglected or dependent, the court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship, it shall include one or more of the following provisions which the court finds appropriate:

(a) The court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the court may impose, as provided in section 1-3-9.

(b) The court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the court may impose, as provided in section 1-3-9.

(c) The court may place legal custody in the tribal department of social services or a child placement agency for placement in a family care home, or other child care facility.

(d) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(2)(a) The court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to article 4 of this title.

(b) Upon the entry of a decree terminating the parent-child legal relationship of both parents, of the sole surviving parent, or of the mother of a child born out of wedlock, the court may:

(I) Vest the tribal department of social services or a child placement agency with the legal custody and guardianship of the person of a child for the purposes of placing the child for adoption; or

(II) Make any other disposition provided in paragraph (b), (c), or (d) of subsection (1) of this section that the court finds appropriate.

(c) Upon the entry of a decree terminating the parent-child legal relationship of one parent, the court may:

(I) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(II) Make any other disposition provided in subsection (1) of this section that the court finds appropriate.

(3) When a child has been adjudicated neglected because he has been abandoned by his parent or parents, the court may enter a decree terminating the parent-child legal relationship if it finds:

(a) That the parent or parents having legal custody have willfully surrendered physical custody for a period of six months and during this period have not manifested to the child or the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(b) That the identify of the parent or parents of the child is unknown and has been unknown for a period of ninety days and that reasonable efforts to identify and locate the parents in accordance with section 1-4-4 have failed.

(4) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

(5) The court may grant a new hearing as provided in section 1-3-16.

1-3-11. Child in need of supervision - disposition. (1) When a child has been adjudicated as being in need of supervision, the court shall enter a decree of disposition containing one or more of the following provisions which the court finds appropriate:

(a) The court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under such conditions as the court may impose.

(b) The court may place the child in the legal custody of a relative or other suitable person under such conditions as the court may impose, which may include placing the child on probation or under protective supervision.

(c) The court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a child care facility which shall provide a supervised work program, if:

(I) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(II) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel;

(III) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

(d) The court may place legal custody in the tribal department of social services or a child placement agency for placement in a family care home or child care facility, or it may place the child in a child care center.

(e) The court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and may place the child in a hospital or other suitable facility for such purposes.

(f) The court may require the child to pay for any damage done to persons or property, upon such conditions as the court may deem best, when such payment can be enforced without serious hardship or injustice to the child.

(g) The court may commit the child to any institution or group care facility designated by the court.

(2) The court may grant a new hearing as provided in section 1-3-16.

1-3-12. Delinquent child - disposition. (1) If a child has been adjudicated as being delinquent, the court shall enter a decree of disposition containing one or more of the following provisions which the court finds appropriate:

(a) The court may make any disposition, or combination of dispositions when appropriate, provided under section 1-3-11(1).

(2) The court may grant a new hearing as provided in section 1-3-16.

1-3-13. Commitment to designated institutions. (1)(a) When a child is committed to an designated by the court institution, the court shall transmit, with the commitment order, a copy of the petition, the order of adjudication, copies of the social study, any clinical or educational reports, and other information pertinent to the care and treatment of the child.

(b) The designated institution shall provide the court with any information concerning a child committed to its care which the court at any time may require.

(3)(a) A commitment of a child to a designated institution under section 1-3-11 shall be for an indeterminate period not to exceed two years.

(b) Subject to the provisions of section 1-1-4, a commitment of a child to the department of institutions under section 1-3-12 shall be for an indeterminate period; but institutional placement shall not exceed a total of two years.

(c) The tribal department may petition the committing court to extend the commitment for an additional period not to exceed two years. The petition shall set forth the reasons why it would be in the best interest of the child or the public to extend the commitment. Upon filing the petition, the court shall set a hearing to determine whether the petition should be granted or denied and shall notify all interested parties.

(d) Each commitment to a designated institution shall be reviewed no later than six months after it is entered and each six months thereafter.

1-3-14. Legal custody - guardianship. (1)(a) Any individual, agency, or institution vested by the court with legal custody of a child shall have the rights and duties defined in section 1-1-3(19).

(b) Any individual, agency, or institution vested by the court with the guardianship of the person of a child shall have the rights and duties defined in section 1-1-3(16); except that no guardian of the person may consent to the adoption of a child unless that authority is expressly given him by the court.

(2)(a) If legal custody or guardianship of the person is vested in an agency or institution, the court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(b) An individual, agency, or institution having legal custody of guardianship of the person of a child shall give the court any information concerning the child which the court at any time may require.

(3)(a) Any agency other than the department of institutions vested by the court with legal custody of a child shall have the right, subject to the approval of the court, to determine where and with whom the child shall live.

(b) No individual vested by the court with legal custody of a child shall remove the child from the state for more than thirty days without court approval.

(4)(a) A decree vesting legal custody of a child in an individual, institution, or agency other than the department of institutions shall be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the court no later than six months after it is entered.

(b) The individual, institution, or agency vested with the legal custody of a child may petition the court for renewal of the decree. The court, after notice and hearing, may renew the decree for such additional period as the court may determine, if it finds such renewal to be in the best interest of the child. The findings of the court and the reasons therefor shall be entered with the order renewing or denying renewal of the decree.

(5) No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court if he so requests.

1-3-15. Probation - terms - release - revocation. (1) The terms and conditions of probation shall be specified by rules or orders of the court. The court, as a condition of probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the dispositional hearing, has the power to impose a commitment, placement, or detention. The aggregate length of any such commitment, placement, or detention, whether continuous or at designated intervals, shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(2)(a) The court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(b) The court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the court shall be terminated.

(3)(a) When it is alleged that a child has violated the terms and conditions of his probation, the court shall set a hearing on the alleged violation and shall give notice to the child and his parents, guardian or other legal custodian, and any other parties to the proceeding as provided in section 1-3-3.

(b) The child, his parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses, as provided in section 1-3-3(4).

(c) When the child has been taken into custody because of the alleged violation, the provisions of sections 1-2-2 and 1-2-3 shall apply.

(d)(1) The hearing on the alleged violation shall be conducted as provided in section 1-1-7.

(II) If the court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this article which is in the best interest of the child and the tribe.

(III) If the court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously prescribed.

(e) If the court revokes the probation of a person over eighteen years of age, in addition to other action permitted by this article, the court may sentence him to the tribal jail for a period not to exceed one hundred eighty days during which he may be released during the day for school attendance, job training, or employment, as ordered by the court.

1-3-16. New hearing authorized. (1) A parent, guardian, custodian, or next friend of any child adjudicated under this article, or any person affected by a decree in a proceeding under this article, may petition the court for a new hearing on the following grounds:

(a) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(b) That irregularities in the proceedings prevented a fair hearing.

(2) If it appears to the court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

1-3-17. Continuing jurisdiction. Except as otherwise provided in this article, the jurisdiction of the court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until he becomes twenty-one years of age unless terminated by court order.

1-3-18. Adult cases - proceedings - penalty - suspension. (1) Proceedings concerning any adult who is alleged to have induced, aided, or encouraged a child to violate any law, the penalty for which may be a jail sentence, or court order shall be conducted according to the tribal rules of criminal procedure; except that proceedings may be commenced by complaint.

(2) When a complaint or information is filed with the court charging an adult with inducing, aiding, or encouraging a child to violate any law, or court order, the court may make a preliminary investigation and make such nonjudicial adjustment without prosecution as may be practicable if the person charged consents after having been fully informed of his right to be represented by counsel, at his own expense, and to have a trial by jury should a trial be held on the complaint or information.

(3) Any adult who induces, aids, or encourages a child to violate any law, or court order is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the tribal jail for a period of not more than six months, or by both such fine and imprisonment.

(4)(a) Any order, judgment or sentence entered or imposed in any case under this section may be suspended or execution therein stayed by the court and such person placed on probation under such terms and conditions as the court may impose in the interest of justice and for the protection of the child.

(b) If the terms and conditions of probation are complied with to the satisfaction of the court, the execution of such order, judgment, or sentence may continue to be suspended, and probation shall remain in full force and effect for a period not to exceed two years unless sooner terminated by order of the court.

(5)(a) If, at any time, it appears to the court that the terms and conditions of probation have been violated, the court shall hold a hearing thereon after giving due notice to all interested parties.

(b) If the court finds at the hearing that such terms and conditions have been violated, the court shall have the authority to revoke probation and to enter an order enforcing the original judgment or sentence, the terms of which shall commence from the date of such order.

(6) If the court finds that the terms and conditions of probation have been complied with satisfactorily, the court shall terminate any suspended sentence or orders of execution thereof and release the adult from probation after the expiration of the two-year period or at such time prior thereto that the court deems proper.

ARTICLE 4

CHILD ABUSE

1-4-1. Legislative Purpose. The Tribe(s) hereby declare(s) that the complete reporting of child abuse is a matter of tribal concern and that in enacting this article it is the intent of the Tribe(s) to protect the children of the Tribe(s) and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe(s) that the various federal, state and tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this article.

1-4-2. Definitions. As used in this article, unless the context otherwise requires:

(1) (a) "Abuse" or "child abuse or neglect" means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(I) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(II) Any case in which a child is subjected to sexual assault or molestation;

(III) Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.

(b) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in this subsection (1) shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(2) "Child-protection team" means a multidisciplinary team consisting, where possible, of a physician, a representative of the juvenile court, a representative of the tribal law enforcement agency, a representative of a non-tribal law enforcement agency, a mental health agency representative, a representative of the United States Indian Health Service, a representative of the Bureau of Indian Affairs social services department, a representative of the State social services department, a representative of the tribal social services department, an attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the partners at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three persons. The role of the child protection team shall be advisory only.

(3) "Tribal department" means the tribal or, where appropriate, the Bureau of Indian Affairs department of social services.

(4) "Law enforcement agency" means a tribal or Bureau of Indian Affairs police department, a police department in incorporated municipalities or the office of the county sheriff.

(5) "Neglect" means acts which can reasonably be construed to fall under the definition of "child abuse or neglect" as defined in subsection (1) of this section.

(6) "Receiving agency" means the department or law enforcement agency first receiving a report of alleged child abuse.

(7) "Responsible person" means a child's parent, legal guardian, or custodian or any other person responsible for the child's health and welfare.

(8) "Unfounded report" means any report made pursuant to this article which is not supported by some credible evidence.

1-4-3. Persons required to report child abuse or neglect. (1) Any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the tribal department or tribal law enforcement agency.

(2) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

- (a) Physician or surgeon, including a physician in training;
- (b) Child health associate;
- (c) Medical examiner or coroner;
- (d) Dentist;
- (e) Osteopath;
- (f) Optometrist;
- (g) Chiropractor;
- (h) Chiropodist or podiatrist;
- (i) Registered nurse or licensed practical nurse;
- (j) Hospital personnel engaged in the admission, care, or treatment of patients;
- (k) School official or employee;
- (l) Social worker or worker in a family care home or child care center;
- (m) Mental health professional.

(3) In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency or the tribal department.

(4) Any person who willfully violates the provisions of subsection (1) of this section:

- (a) Shall be subject to a civil penalty not to exceed five hundred dollars;
- (b) Shall be liable for damages proximately caused thereby.

1-4-4. Required report of postmortem investigation. (1) Any person who is required by section 1-4-3 to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the tribal law enforcement agency, the tribal prosecutor, and the tribal department.

(2) The tribal department shall forward a copy of such report to the central registry as provided for in section 1-4-7.

1-4-5. Evidence of abuse - color photographs and X rays. (1) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X rays of the child.

(2) Any color photographs or X rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

1-4-6. Temporary protective custody. The Chief Judge of the tribal court shall be responsible for making available a person appointed by the Chief Judge, who may be the juvenile judge, a referee, or any other officer of the court, to be available by telephone at all times to act with the authorization and authority of the juvenile court to issue written or verbal temporary protective custody orders. These orders may be requested by the tribal department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before him a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The tribal department shall be notified of such action immediately by the court-appointed official in order that child protective proceedings may be initiated. In any case, such temporary custody shall not exceed seventy-two hours notwithstanding any provision of section 1-2-3(3)(a) to the contrary.

1-4-7. Reporting procedures. (1) Reports of known or suspected child abuse or neglect made pursuant to this article shall be made immediately to the tribal department or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the tribal department.

(2) Such reports, when possible, shall include the following information:

- (a) The name, address, age, sex and race of the child;
- (b) The name and address of the responsible person;
- (c) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;

- (d) The names and addresses of the persons responsible for the suspected abuse or neglect, if known;
- (e) The family composition;
- (f) The source of the report and the name, address, and occupation of the person making the report;
- (g) Any action taken by the reporting source;
- (h) Any other information that the person making the report believes may be helpful in furthering the purposes of this article.

(3) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the tribal prosecutor's office and to the tribal law enforcement agency.

(4) A written report from persons or officials required by this article to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding relating to child abuse, subject to the limitations of section 1-4-1.

1-4-8. Action upon receipt of report. (1) The receiving agency shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

(2) The investigation, to the extent that it is reasonably possible, shall include:

- (a) The nature, extent, and cause of the abuse or neglect;
- (b) The identity of the person responsible for such abuse or neglect;
- (c) The names and conditions of any other children living in the same place;
- (d) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
- (e) All other data deemed pertinent.

(3) The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the juvenile court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(4)(a) The tribal department, except as provided in subsection (5) of this section, shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The tribal department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The tribal department may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The tribal department shall provide for persons to be continuously available to respond to such reports. Tribes and state and federal agencies may cooperate to fulfill the requirements of this subsection (4). As used in this subsection (4), "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the tribal department or to have such arrangements made through agreements with local law enforcement agencies.

(b) Upon receipt of a report, if the tribal department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his family and may file a petition in the juvenile court on behalf of such child. If, before the investigation is completed, the opinion of the investigators is that assistance of the tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the tribal law enforcement agency shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with sections 1-2-1(1)(b) and 1-4-6.

(5) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the tribal department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the tribal department, it shall make a complete investigation and may institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the tribal department.

(6)(a) It is the intent of this legislation to encourage the creation of one or more child protection teams. The Chief Judge of the Court shall have responsibility for inaugurating the child protection team.

(b) The child protection team shall review the files and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family in connection with the reported abuse.

(c) At each meeting, each member of the child protection team shall be provided with all available records and reports on each case to be considered.

(d) The public, in a nonparticipatory role, shall be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies' responses to each report of child abuse and neglect being considered by the team, as well as the team's recommendations related to public-agency responses. In all its public discussions, the team shall not publicly disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.

(e) At the beginning of the public discussion of each case, a designated team member shall publicly state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect or no abuse or neglect; whether the child is an infant, a toddler, a preschool or a school-aged child, or a teenager and the sex of the child; the date of the initial report and the specific agency to which the report was made; and the dates of subsequent reports to specific social service agencies, law enforcement agencies, or other agencies. In no case shall the informant's name or other identifying information about the informant be publicly revealed. The team shall also state publicly whether the child was hospitalized and whether the child's medical records were checked.

(f) At this public session, and immediately after any executive session at which a child abuse or neglect case is discussed, the child protection team shall publicly review the responses of public and private agencies to each report of child abuse or neglect, shall publicly state whether such responses were timely, adequate, and in compliance with provisions of this article, and shall publicly report nonidentifying information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(g) After this mandatory public discussion of agency responses, the child protection team shall go into executive session upon the vote of a majority of the team members to consider identifying details of the case being discussed, to discuss confidential reports, including but not limited to the reports of physicians and psychiatrists, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs. The team shall state publicly, before going into executive session, its reasons for doing so. Any recommendation based on information presented in the executive session shall be discussed and formulated at the immediately succeeding public session of the team, without publicly revealing identifying details of the case.

(h) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall publicly report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

(i) The team shall make a report of its recommendations to the tribal department with suggestions for further action or stating that the team has no recommendations or suggestions. Tribes and state and federal agencies may cooperate in meeting the requirements of this subsection (6).

(7) Each member of the team shall be appointed by the agency he represents, and each team member shall serve at the pleasure of the appointing agency; except that the director of the tribal department shall appoint the representatives of the law community, and shall actively recruit all interested individuals and consider their applications for appointment as law-community representatives on the team.

(8) The director of the tribal department or his designee shall be deemed to be the coordinator of the child protection team.

(9) The coordinator shall forward a copy of all reports of child abuse to the child protection team. The coordinator shall forward a copy of the investigatory report and all relevant materials to the child protection team as soon as they become available. The child protection team shall meet no later than one week after receipt of a report to evaluate such report of child abuse. The coordinator shall make and complete, within ninety days of receipt of a report initiating an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the central registry on forms supplied by the tribal department for that purpose.

(10) In the event that the child protection team initiates a petition in the juvenile court on behalf of the child who is the subject of a report, the coordinator shall notify, in writing, the guardian ad litem appointed by the court under section 1-4-12 to represent the child's interest. Such notice shall include:

- (a) The reason for initiating the petition;
- (b) Suggestions as to the optimum disposition of this particular case; and
- (c) Suggested therapeutic treatment and social services available within the community for the subject child and the responsible person.

1-4-9. Immunity from liability - persons reporting. Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this title, the taking of color photographs or X rays, or the placing in temporary custody of a child pursuant to this article or otherwise performing

his duties or acting pursuant to this article shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X rays, and any person who has legal authority to place a child in protective custody shall be presumed.

1-4-10. Child abuse and child neglect diversion program. (1) The tribal prosecutor, upon recommendation of the tribal department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance, upon conditions set forth by the tribal department and the tribal prosecutor. If a person is so diverted from the criminal justice system, the tribal prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the tribal department and the tribal prosecutor in the diversion program offered.

(2) The initial diversion shall be for a period not to exceed two years. This diversion period may be extended for one additional one-year period by the tribal prosecutor if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the tribal prosecutor and the tribal department.

(3) If the person diverted successfully completes the diversion program to the satisfaction of the tribal department and the tribal prosecutor, he shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made against him.

(4) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

1-4-11. Evidence not privileged. The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this article.

1-4-12. Court proceedings - guardian ad litem. (1) The tribal department or law enforcement agency receiving a report under section 1-4-4 or 1-4-5, in addition to taking such immediate steps pursuant to sections 1-2-1(1)(b) and 1-4-7 as may be required to protect a child, shall inform, within seventy-two hours, the appropriate juvenile court that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall make an immediate investigation to determine whether protection of the child from further abuse is required and upon such determination may authorize the filing of a petition, as provided for in section 1-3-1(2).

(2) In any proceeding initiated pursuant to this section, the court shall name as respondents all persons alleged by the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents in accordance with section 1-3-3.

(3) The court in every case filed under this section shall appoint, at no fee, a guardian ad litem at the first appearance of the case in court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this article and section 1-3-1(4)

and with reports of any examination of the responsible person made pursuant to this section. The court or the social services worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end he shall make such further investigations as he deems necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine his own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(4) If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the court against the respondent.

1-4-13. Central registry. (1) There shall be established a central registry of child protection in the tribal department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this article.

(2) The central registry shall contain but shall not be limited to:

- (a) All information in any written report received under this article;
- (b) Record of the final disposition of the report, including services offered and services accepted;
- (c) The plan for rehabilitative treatment;
- (d) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;
- (e) Any other information which might be helpful in furthering the purposes of this article.

(3) The tribe shall appoint a director of the central registry who shall have charge of said registry. Subject to available appropriations, the director shall equip his office so that data in the central registry may be made available during nonbusiness hours through the use of computer technology.

(4) After a child who is the subject of a report reaches the age of eighteen years, access to his record under this section shall be permitted only if a sibling or offspring of such child is before any person mentioned in section 1-4-4(2) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a tribal prosecutor or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

(5) Unless an investigation of a report conducted pursuant to this article determines there is some credible evidence of alleged abuse, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the tribal department or the tribal law enforcement agency.

(6) In all other cases, the record of the reports to the central registry shall be sealed no later than ten years after the child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the tribe and upon notice to the subject of the report, gives his personal approval for an appropriate reason. In any case and at any time, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(7) At any time the subject of a report may receive, upon request, a report of all information pertinent to the subject's case contained in the central registry, but the director of the central registry is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interest of such person.

(8) Any any time subsequent to the completion of the investigation, a subject of the report may request the director to amend, seal, or expunge the record of the report. If the director refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this article. The tribal department shall be given notice of the hearing. The burden in such a hearing shall be on the tribal department. In such hearings the fact that there was such a finding of child abuse or neglect shall be presumptive evidence that the report was substantiated.

(9) Written notice of any amendment, sealing, or expungement made pursuant to the provisions of this article shall be given to the subject of such report and to the tribal department. The latter, upon receipt of such notice, shall take similar action regarding such information in its files.

(10) Any person who willfully permits or who encourages the release of data or information contained in the central registry to persons not permitted access to such information by this article shall be subject to a civil penalty not in excess of \$500.

(11) The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other tribes, states and the national center on child abuse and neglect.

1-4-14. Confidentiality of records. (1)(a) Except as provided in this section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a court for good cause. Such disclosure shall not be prohibited

when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, and the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this subsection (1) shall be subject to a civil penalty of not more than five hundred dollars.

(2) Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

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

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

(c) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;

(d) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;

(e) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

(f) A court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

(g) The central registry of child protection;

(h) All members of a child protection team;

(i) Such other persons as a court may determine, for good cause.

(3) After a child who is the subject of a report to the central registry reaches the age of eighteen years, access to that report shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (2) of this section and is a suspected victim of child abuse or neglect. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the director of the central registry. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the director of the central registry and the information released states whether or not the report is founded or unfounded. A person giving access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action or unless he is the subject of a report.

ARTICLE 5

TERMINATION OF PARENT-CHILD LEGAL RELATIONSHIP

1-5-1. Definitions. As used in this article, unless the context otherwise requires:

"Guardian ad litem" means a person who has been appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

1-5-2. Motion for termination - separate hearing - right to counsel - no jury trial. (1) Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing.

(2) After a motion for termination of a parent-child legal relationship is filed pursuant to this article, the parent or parents shall be advised of the right to counsel, as set forth in the Indian Civil Rights Act, 25 USC §§ 1301, et. seq., and counsel shall be appointed in accordance with said Indian Civil Rights Act and with the provisions of section 1-1-6 of this title.

(3) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

(4) There shall be no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

1-5-3. Notice - abandonment. Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed not later than ten days prior to the hearing.

1-5-4. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon the finding of either of the following:

- (a) That the child has been abandoned by his parent or parents;
- (b) That the child is adjudicated dependent or neglected and all of the following exist:
 - (1) That an appropriate treatment plan approved by the court has not been reasonably complied with by the parent or parents or has not been successful;

(II) That the parent is unfit;

(III) That the conduct or condition of the parent or parents is unlikely to change within a reasonable time.

(2) In determining unfitness, conduct, or condition, the court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the court shall consider, but not be limited to, the following:

(a) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;

(b) Conduct towards the child of a physically or sexually abusive nature;

(c) History of violent behavior;

(d) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

(e) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;

(f) Neglect of the child;

(g) Long-term confinement of the parent;

(h) Injury or death of a sibling due to proven parental abuse or neglect;

(i) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.

(3) In considering any of the factors in subsection (2) of this section in terminating the parent-child legal relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions.

1-5-5. Review of child's disposition following termination of the parent-child legal relationship. (1) The court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the court, based upon an independent investigation, for the best disposition of the child.

(2) If no adoption has taken place within a reasonable time and the court determines that adoption is not immediately feasible or appropriate, the court may order that provision be made immediately for long-term foster placement of the child.

1-5-6. Expert testimony. (1) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of his own choosing whose reasonable fees and expenses, subject to the court's prior review and approval, shall be paid from the court funds.

(2) All ordered evaluations shall be made available to counsel at least fifteen days prior to the hearing.

1-5-7. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent. Such child's right of inheritance shall be terminated only by a final decree of adoption.

(2) No order or decree entered pursuant to this article shall disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian tribe, any agency, any state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

1-5-8. Appeals. (1) Appeals of court decrees made under this article shall be given precedence on the calendar of the appellate court over all other matters unless otherwise provided by law.

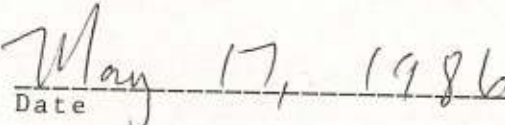
(2) Whenever an appeal is made under this article, an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal at the expense of the tribe to be paid from the court fund.

Tribal Council Vote:
VOTING FOR: 5
VOTING AGAINST: 0
ABSTAINING: 0
ABSENT 1

General Council Vote:
VOTING FOR: 27
VOTING AGAINST: 0
ABSTAINING: 0


Chairperson, Tribal Council


Secretary, Tribal Council


Date