

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Rescinding Title 9, Chapter II of the Navajo
Tribal Code, and in Lieu Thereof, Adopting
the Navajo Nation Children's Code

WHEREAS:

1. The children of the Navajo Nation are its most important resource, and the continued existence of the Navajo Nation requires the full protection of its children; and

2. There are special, unique and traditional relationships within the Navajo nuclear family, the Navajo extended family and the Navajo clan system which provide strength to the Navajo child, and such relationships must be protected and reinforced; and

3. The Navajo Nation has the inherent right and duty to protect Navajo family relationships and Navajo children; and

4. There are certain problems within the Navajo Nation which must be addressed, including foster care and adoptive placements, child protection, the prevention of unwarranted removal of children by persons and entities outside the Navajo Nation, the protection of Navajo family relationships and culture, and it is necessary that the Navajo Nation enact legislation to effectively address such matters; and

5. The existing Juvenile Code (Title 9, Chapter 11), has not been amended since it was adopted in 1969 and does not include reference to the numerous changes in Juvenile Law since 1969, or recent legislation on the subject of Indian children, such as the Indian Child Welfare Act. It is, therefore, necessary to replace the outdated Juvenile Code with legislation that reflects the most recent developments in the field of Juvenile law; and

6. The Health and Human Services Committee and the Judiciary Committee of the Navajo Tribal Council have recommended that the Navajo Tribal Council adopt the proposed Navajo Nation Children's Code, attached hereto as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

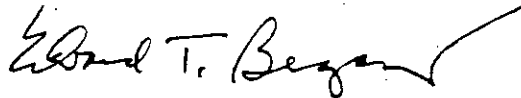
1. The Navajo Tribal Council hereby rescinds Title 9, Chapter 11, of the Navajo Tribal Code in its entirety, and in lieu thereof, hereby adopts the Navajo Nation Children's Code, attached hereto as Exhibit "A".

2. The provision of the Navajo Nation Children's Code shall become effective thirty days after the passage of this resolution.

3. The Budget and Finance Committee of the Navajo Tribal Council is hereby directed to allocate sufficient funds to fully implement the the Navajo Nation Children's Code.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 67 in favor and 0 opposed, this 8th day of February, 1985.



Vice Chairman
Navajo Tribal Council

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NAVAJO NATION CHILDREN'S CODE

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NAVAJO NATION CHILDREN'S CODE

SUBCHAPTER 1. GENERAL PROVISIONS

§ 1001. Purpose

The Children's Code shall be liberally construed and interpreted to effectuate the following expressed legislative purposes:

1. To preserve and restore the unity of the family whenever possible to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code;
2. Consistent with the protection of the Navajo community, to remove from children committing delinquent acts the legal consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation;
3. To achieve the purposes of the Children's Code in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or in the interest of public safety;
4. To separate clearly in the judicial and other processes affecting children under the Children's Code the dependent child, the child in need of supervision and the delinquent child, and to provide appropriate and distinct disposition options for treatment and rehabilitation of these children;
5. To provide a judicial division separate from the District Court of the Navajo Nation and procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced; and
6. To provide a forum to which Navajo children charged to be delinquent or in need of supervision in other jurisdictions may be referred for adjudication and disposition or for disposition alone.

1002. Definitions

The laws under this subchapter shall be referred to as the Navajo Nation Children's Code and unless the context otherwise requires:

1. "Abandoned" means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including the provision of adequate supervision. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with

extended family members or voluntary consent to placement does not constitute abandonment.

2. "Abuse" means the infliction of physical, emotional or mental injury or the causing of deterioration of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, morals, or emotional well-being is endangered.
3. "Adjudicatory Hearing" means a proceeding in the Children's Court to determine whether a child has committed a specific delinquent act as set forth in a petition.
4. "Adult" means a person eighteen (18) years of age or older, or is otherwise emancipated by order of a court of competent jurisdiction.
5. "Agency" means an organization licensed by the division for adoption or for the provision of foster care.
6. "Child" means an enrolled member of the Navajo Tribe or eligible for enrollment with the Navajo Tribe, or any other person who is subject to the jurisdiction of the Navajo Tribe and is under the age of eighteen (18) years.
7. "Child in Need of Supervision" means a child who:
 - (A) Being subject to compulsory school attendance, is habitually truant from school; or
 - (B) Habitually disobeys the reasonable and lawful demands of his parents, guardian or custodian and is ungovernable and beyond control; or
 - (C) Has committed an offense not classified as criminal or one applicable only to children; and
 - (D) In any of the foregoing situations is in need of care or rehabilitation.
8. "Children's Court" means the division of the District Court of the Navajo Nation exercising jurisdiction under this Code.
9. "Children's Court Judge" means any duly appointed judge of the Children's Court division of the Navajo Nation District Court exercising jurisdiction under this Code.
10. "Counsel" means a person who is a member of the Navajo Nation Bar Association.
11. "Court" when used without further qualification, means the Children's Court division of the Navajo Nation District Court.
12. "Custodian" means a person other than a parent or legal guardian

to whom legal custody of a child has been given by order of the Children's Court, but does not include a person who has only physical custody.

13. "Delinquent Act" means an act committed by a child which would be designated as a crime pursuant to Title 17 of the Navajo Tribal Code and the following offenses within Title 14 of the Navajo Tribal Code:
 - (A) Driving while under the influence of intoxicating liquors or drugs;
 - (B) Failure to stop in the event of an accident causing death, personal injuries or damage to property; and
 - (C) Reckless driving.
14. "Delinquent Child" means a child who is adjudicated to have committed a delinquent act.
15. "Dependent Child" means a child:
 - (A) Who has been abandoned by his parents, guardian or custodian; or
 - (B) Who is without proper parental care and control, or whose subsistence, education, medical or other care or control necessary for his well-being is inadequate because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; or
 - (C) Whose parents, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or
 - (D) Who has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act, or other federal law.
 - (E) Who has been physically, emotionally, psychologically or sexually abused by his parent, guardian or custodian; or
 - (F) Who has been sexually exploited by his parents, guardian or custodian; or
 - (G) Whose parents, guardian or custodian has knowingly, intentionally or negligently:
 - (1) Placed the child in a situation that may endanger his life or health; or
 - (2) Tortured, cruelly confined or cruelly punished him.

16. "Detention" means the temporary placement of a child alleged to have committed a delinquent act who requires custody in physically restricting facilities for the protection of the child or the Navajo Nation pending court disposition.
17. "Detention Facility" means a place where a child alleged to have committed a delinquent act may be detained under the Children's Code pending court hearing.
18. "Division" means the Navajo Division of Social Welfare.
19. "Domicile" includes a child who physically resides within "Navajo Indian Country" in the custody of his parents or custodians. The domicile of a child is that of the custodial parent. The domicile of a child born out of wedlock is that of the natural mother unless otherwise established in the father. Domicile includes the intent to establish a permanent home or where the parents or custodian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
20. "Judge" when used without further qualification, means the Judge of the Children's Court.
21. "Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child. A person shall not be a guardian except pursuant to an order of a court.
22. "Law Enforcement Officer" means a peace officer, sheriff, deputy sheriff, municipal police officer, or constable.
23. "Legal Custody" means a legal status created by the order of a court or tribunal of competent jurisdiction that vests in a person the right to have physical custody of the child the right to determine where and with whom he shall live, the right and duty to protect, train, and discipline the child and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities; an individual granted legal custody of a child shall exercise his rights and responsibilities as custodian personally unless otherwise authorized by the court or tribunal entering the order.
24. "Parent" includes a natural or adoptive parent but does not include any person whose parental rights have been terminated.
25. "Protective Services" means a program of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life, and to preserve the family unit by focusing in families where unresolved problems have produced visible signs of dependency or abuse and the home

situation present actual and potential hazards to the physical or emotional well-being of children.

26. "Protective Services Worker" means a person who has been selected by and trained pursuant to the requirements established by the division and assists in carrying out the provisions of this subchapter.
27. "Protective Supervision" means a legal status created by court order under which the child is permitted to remain in his/her own home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health and social services agency or some other agency designated by the court.
28. "Shelter Care" means the care of a child placed in a foster home or institution maintained by individuals or organizations to receive and care for children pending court disposition or transfer to another jurisdiction.

SUBCHAPTER 3. ESTABLISHMENT OF CHILDREN'S COURT AND PROBATION OFFICE

§ 1051. The Children's Court

- (1) There is established for each Judicial District of the Navajo Nation a division to be known as the Children's Court.
- (2) The procedures in a Children's Court shall be governed by the rules of procedure for the district court which are not in conflict with the Children's Code.
- (3) The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this code.
- (4) The Children's Court in the exercise of its duties and in exercise of any duties to be performed by other offices under its supervision or control, shall utilize such social services as may be available through the tribal, federal, or state government.
- (5) The Children's Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Tribe that, absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Children's Court.

§ 1052. Court Personnel: Appointment, Certification, Qualifications, Duties

(1) Children's Court Judge

A Children's Court judge shall be appointed in each judicial district in the manner and with the same qualifications as

provided for in appointment of judges of the district courts. A judge of the district court may be appointed by the Chief Justice of the Navajo Nation to serve as a Children's Court judge as the need requires. A judge so appointed shall serve as the Children's Court judge during good behavior. The Navajo Tribal Council shall have the power to remove a judge for cause and may appoint additional judges if necessity requires.

No Children's Court judge shall hear a case which he or she has previously participated in as an advocate or in which he has a personal interest. The Code of Judicial Conduct of the American Bar Association shall control conflict of interest situation. No person shall serve as children's court judge within six (6) months from the time they have been responsible for juvenile legal matters while employed with the Navajo tribal government.

(2) Presenting Officer

- (A) The office of the Children's Court presenting officer is established in each judicial district. The district prosecutor of the Navajo Tribe is ex-officio presenting officer for the judicial district.
- (B) The Chief Prosecutor of the Navajo Nation, after consulting with and upon recommendation of the Children's Court judges shall certify to the Judiciary Committee annually the number of qualified presenting officers needed to carry out the purposes of this code. The Chief Prosecutor of the Navajo Nation shall be the appointing authority for all presenting officers.
- (C) The presenting officer shall represent the people of the Navajo Nation in all proceedings under this code.
- (D) The presenting officers' qualifications shall be the same as the qualifications of the district prosecutors of the Navajo Nation.

(3) Probation Officer

- (A) The Probation Office of the Children's Court is hereby established. The number of probation officers shall be determined according to section (B).
- (B) The probation officers of the Children's Court shall carry out the duties and responsibilities set forth in this title. The Chief Justice of the Navajo Nation, after consultation with and upon recommendation of the Children's Court Judges, shall certify annually to the Judiciary Committee of the Navajo Tribal Council the number of qualified probation officers for the Children's Court needed to carry out the objectives of this title.

§ 1053. Probation Office; Establishment; Reporting

- (1) The Chief Justice of the Navajo Nation may establish juvenile probation offices at each of the agencies comprising the Navajo Nation. The Chief Justice of the Navajo Nation shall be the appointing authority for all probation office personnel. If probation officers are established by the Chief Justice of the Navajo Nation, he shall also establish a classification and compensation plan for all positions in the service in accordance with the personnel rules of the Courts of the Navajo Nation.
- (2) The Probation Offices shall provide the Chief Justice of the Navajo Nation and the Judiciary Committee of the Navajo Tribal Council such information as is requested about children coming into contact with the probation offices or the court under the provisions of the Children's Code.

§ 1054. Powers and Duties of Probation Officers.

- (1) To carry out the objectives and provisions of the Children's Code, but subject to its limitations, probation officers shall have the power and duty to:
 - (A) Make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable.
 - (B) Make predisposition studies and submit reports and recommendations to the court.
 - (C) Supervise and assist a child placed on probation or under his supervision by court order;
 - (D) Perform any other functions designated by the court.
- (2) A probation officer does not have the powers of a law enforcement officer. A probation officer may take into custody and place in detention a child who is under his supervision as a delinquent child when the probation officer has reasonable cause to believe that the child has violated the conditions of his probation or that the child may leave the jurisdiction of the court. A probation officer taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Children's Code relating to custody and detention procedures and criteria.
- (3) Probation officers shall not act as prosecutors or presenting officers in presenting juvenile matters to the Children's Court.

§ 1055. Jurisdiction of the Children's Court.

- (1) The Children's Court shall have exclusive original jurisdiction of all proceedings under the Children's Court in which a child is alleged to be a child in need of supervision, dependent child, or a delinquent child.

- (2) The Children's Court shall have exclusive original jurisdiction of the following proceedings:
 - (A) For the termination of parental rights;
 - (B) For the adoption of a child;
 - (C) To determine custody of, or to appoint a custodian or guardian for a child;
 - (D) For the commitment of a mentally retarded or mentally ill child;
 - (E) To authorize the marriage of a minor who does not have a parent or guardian, or when a parent or guardian refuses to consent, when the law requires consent to the marriage by a parent or guardian.
- (3) Jurisdiction obtained by a Children's Court over a child is retained until terminated by any of the following situations:
 - (A) The child becomes an adult, except where a child becomes an adult during the pendency of proceedings in the Children's Court.
 - (B) The case is transferred by the court to the district court pursuant to section 1114 of this code.
 - (C) When the Children's Court enters an order terminating jurisdiction.
- (4) Territorial Jurisdiction. The Children's Court may hear child custody matters involving Navajo children wherever they may arise. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority. The Children's Court shall have jurisdiction over non-Navajo child custody matters arising within the boundaries of Navajo Indian country when the parties submit themselves to the jurisdiction of the Court or the best interests of the child require. The Children's Court shall have exclusive jurisdiction over any Navajo child who resides or is domiciled within the borders of Navajo Indian country, or who is a ward of the Children's Court.

§ 1056. Shelter Care and Detention Facilities-Standards-Reports.

- (1) The Office of the Chief Justice of the Navajo Nation in conjunction with the division, shall develop a reservation-wide plan for the establishment of district or agency detention and shelter care facilities, or alternatives thereto, for children alleged to be delinquent and detained under the provisions of the Children's Code. The plan shall be completed within one (1) year after the effective date of the Children's Code. The plan shall include provisions for transportation services. The plan

shall take into consideration existing detention and shelter care facilities and shall be developed in a manner that makes the best use of these facilities and shall be developed in a manner that makes the best use of these facilities. It shall also provide accurate projection of costs, alternatives for implementation and a cost effectiveness analysis. The plan shall be reviewed and updated every three (3) years.

- (2) The Navajo Division of Public Safety, in conjunction with the division, shall seek funds from the state, federal, tribal and other available sources, to construct and operate detention facilities and shelter care and may contract for detention and shelter care facilities, and services to be provided to the Children's Court by other persons.
- (3) The division shall promulgate rules within two (2) years after the effective date of the Children's Code for all detention and shelter facilities which shall include: standards for the sites, design, construction, equipment, care, program, personnel and clinical services. The division shall certify and approve all detention and shelter care facilities within the Navajo Nation meeting the standards promulgated. The division may establish by rule appropriate procedures for provisional certification and the waiving of any standards for facilities in existence at the time of adoption of the standards, except it shall not allow waiver of standards pertaining to adequate health and safety protection of the resident and staff of the facility. No child shall be detained in a detention or shelter care facility unless it is certified as approved by the division. Certification shall be renewed upon full review every two (2) years.
- (4) The division shall inspect all detention and shelter care facilities within the Navajo Nation at least every six (6) months and shall require those reports it deems necessary from detention and shelter care facilities. If, as a result of an inspection, a licensed detention or shelter care facility is determined as failing the required standards, its license shall be subject to revocation after a hearing by the division but only if alternative detention or shelter care facilities are available within the Navajo Nation. If no other facilities are available a schedule of compliance shall be drafted. Failure to comply with the schedule shall result in revocation of the facility's certification.
- (5) The division shall promulgate rules establishing procedures that provide for prior notice and public hearings on the adoption or amendment of detention and shelter care facilities standards. The division shall promulgate rules establishing procedures for facility licensing, renewal of license, refusal to renew license and revocation of license, including the right to a hearing. The procedures adopted on these matters must provide for

adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision.

- (6) Any person aggrieved by an administrative decision of the division rendered under the provisions of this section may petition for the review of the administrative decision by filing a petition requesting judicial review in the district court for the district in which the detention or shelter care facility is located.

The district court's review shall be of the written transcript of the administrative hearing and the decision of the division. The district court shall uphold the decision of the division unless it finds that decision to be:

- (A) Illegal or in violation of the Indian Civil Rights Act or the Navajo Nation Bill of Rights.
- (B) The result of arbitrary or capricious action by the division.
- (C) Not supported by substantial evidence; in which case it shall reverse the decision of the division and remand the manner for appropriate action or further review by the division.

SUBCHAPTER 5. PROCEDURE IN THE CHILDREN'S COURT

§ 1101. Commencement of Proceedings by Petition.

- (1) Proceedings in the Children's Court shall be initiated by the filing of a petition signed by the presenting officer or other member of the Navajo Nation Bar Association.
- (2) Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a law enforcement official upon information and belief, may cause a petition to be initiated by the presenting officer.

§ 1102. Venue.

- (1) The venue of proceedings in Children's Code shall be determined by the residence or domicile of the child, or the judicial district where the alleged delinquency, dependency or neglect is committed. Venue exists concurrently in the Window Rock District for Navajo children who reside outside Navajo Indian country.
- (2) Where the residence of the child and the situs of the alleged delinquent, dependent, or neglect are in different judicial districts, initiating proceedings in one (1) judicial district shall bar the institution of proceedings in the other judicial districts.

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§ 1103. Preliminary Inquiry and Referral.

- (1) Allegations that a child is a child offender or a child in need of supervision shall be referred to the presenting officer, who shall conduct a preliminary investigation to determine the best interest of the child and the Navajo Nation with regard to any action to be taken. Petitions alleging neglect or abuse may be referred to a probation officer who shall refer them to the appropriate agency for preliminary inquiry to determine the best interest of the child with regard to any action to be taken.
- (2) During the preliminary inquiry on the petition, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of affecting adjustments that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights under Subsection (1) - (5) of Section 1103 and no person may be compelled to appear at any conferences, to produce any papers, or to visit any place. Voluntary agreements for the disposition of a child custody matter may be arranged with the agreement of the parties. A copy of such agreement shall be filed with the Children's Court.
- (3) After completion of the preliminary inquiry on a petition, the presenting officer shall either authorize the filing of a petition or refuse to authorize the filing of a petition.
- (4) When a child is in detention or custody, and the filing of a petition is not authorized by the presenting officer, the petition shall be dismissed and the child shall be released immediately.
- (5) On motion by or on behalf of a child, a petition alleging delinquency or need of supervision shall be dismissed with prejudice if it was not filed within thirty (30) days from the date the petition is referred to the presenting officer.

§ 1104. Petition - Form and Content

A petition initiating any proceeding under the Children's Code shall be captioned "In the Children's Court of the Navajo District Court", _____ (judicial district), and entitled, "In the Matter of _____, a child, census number: _____, DOB: _____, and shall set forth with specificity:

- (1) The facts necessary to invoke the jurisdiction of the Children's Court.
- (2) A statement that the child is in need of supervision care or rehabilitation.

- (3) If the child is alleged to be a child offender, a citation to the appropriate section of the Criminal Code or Motor Vehicle Code which the child is alleged to have violated.
- (4) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred.
- (5) The name, birth date, residence and address of the child.
- (6) The names and residence addresses of parents; guardians, custodians and spouse, if any, of the child; and if none of the parents, guardians, custodians or spouse, if any, resides or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if there be one, the known adult relative living nearest to the court.
- (7) The name of the presenting officer presenting the petition and the date and time presented.
- (8) Whether the child is in custody, and, if so, the place of detention and the time he was taken into custody.
- (9) If any matters required to be set forth by this section are not known, a statement they are not known should be made.

§ 1105. Filing and Dismissal of Petition.

- (1) The petition shall be filed with the clerk of the Children's Court.
- (2) A petition alleging that a child is in need of supervision or is a child offender shall be dismissed with prejudice if a preliminary hearing is not held within:
 - (A) Ten (10) days from the date of the petition is filed when a child is in custody.
 - (B) Twenty (20) days from the date of the petition is filed when a child is not in custody or is released.

UNLESS:

The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of the unavailable witnesses. A continuance not to exceed ten (10) days, if a child is in custody, or twenty (20) days, if child is not in custody, will be granted only upon a showing by the presenting officer that he has exercised due

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diligence in his attempts to secure the evidence and/or attendance of witnesses. If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

- (3) The petition shall not be dismissed for violation of this section if the child is participating in a court ordered diversion.

§ 1106. Summons; Service

- (1) After a petition is filed, the court shall set a time for a hearing and direct the issuance of summons by the court clerk.
- (2) A summons shall be issued to a child alleged to be a delinquent child or a child in need of supervision if the child is fourteen (14) years of age or older and to the child's parents or guardian and to such other persons as the court considers proper or necessary parties.
- (3) The form of service shall conform to the requirements of the Rules of Civil Procedure of the Navajo Nation.

§ 1107. Basic Rights.

- (1) A child alleged to be a delinquent child or a child in need of supervision shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time of detention in a detention facility shall not be questioned except to determine identity and to determine the name of the child's parents or legal custodian.
- (2) In a proceeding on a petition alleging delinquency or in need of supervision:
 - (A) An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.
 - (B) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.
 - (C) An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.
- (3) A child in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the court. If an order of the court is given, the fingerprints or photographs shall be used only as specified by the court. Any person who willfully violates the provisions of this subsection is guilty of a misdemeanor.

- (4) In all proceedings on a petition alleging delinquency or need of supervision and in those instances specified under other provisions of the Children's Code, the Court shall make a preliminary finding on the issue of whether the child's interests are represented by the parties to the proceeding. If the Court determines that the child's interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the interests of the child.
- (5) In proceedings on a petition alleging dependency or abuse, the parents, guardian and custodian of the child shall be informed that they have the rights to be represented by counsel and of available legal services.
- (6) The court, at any stage of a proceedings on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if his interests conflict with those of his parent, guardian or custodian. A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.
- (7) The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.
- (8) Criminal proceedings, actions and other proceedings in the district court based upon an offense alleged in a petition under the Children's Code, or an offense based upon the conduct alleged in the petition, are barred if the Children's Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A proceeding may be subsequently initiated in District Court if the Children's Court does not dispose of all relevant issues.
- (9) In a proceeding on a petition, a party is entitled to the opportunity to introduce evidence and be heard and to confront and cross-examine witnesses testifying against him, and to admit or deny the allegations in a petition. Provided, in cases transferred to tribal court pursuant to the federal Indian Child Welfare Act where the Children's Court petition would be subject to dismissal due to the unavailability of witnesses or the unwillingness of state personnel to testify in tribal court, the Children's Court may accept as evidence reports and other public records generated beyond Navajo Indian country where the best interests of the child require.

- (10) Where appointment of counsel for the child is made, the court shall appoint counsel from the members of the Navajo Bar Association and those appointed shall serve the child without compensation, unless compensation is authorized by the Court.

§ 1108. Taking into Temporary Custody.

- (1) A child may be taken into temporary custody:
- (A) Pursuant to an order of the court issued because a parent, guardian or custodian failed when requested to bring the child before the court after having promised to do so at the time the child was released from custody.
 - (B) By a law enforcement officer or protective services worker when he has reasonable grounds to believe that the child has run away from his parents, guardian or custodian.
 - (C) By law enforcement officer or protective services worker if there exist reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.
 - (D) Pursuant to the laws of arrest, without a warrant, when there exist probable cause to believe that he committed a delinquent act.
- (2) Any law enforcement officer or protective services worker having a child in temporary custody for reasons other than the commission of a delinquent act may place the child in a shelter facility.

§ 1109. Release or Delivery from Temporary Custody.

- (1) A person taking a child into temporary custody shall, with all reasonable speed:
- (A) Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
 - (B) In the case of an alleged delinquent or child in need of supervision, release the child to the child's parent, guardian or custodian upon a written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court; or

- (C) In the case of the alleged delinquent or child in need of supervision, deliver the child to the probation office or to a place of detention designated by the court.
 - (D) In the case of an alleged neglected or abused child, deliver the child to the division or to an appropriate shelter-care facility; or for an alleged delinquent, child in need of supervision or neglected or abused child, to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.
- (2) When an alleged delinquent or child in need of supervision is delivered to the probation office or to a place of detention designated by the court, a probation officer, prior to the placing of the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code or has been ordered by the court. If detention appears inappropriate the probation officer shall request the presenting officer to petition the court for a review of its decision.
 - (3) When an alleged neglected or abused child is delivered to the division, a division caseworker, prior to the placing of the child in custody, shall review the need for placing the child in custody and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the court.

When a child is delivered to an appropriate shelter-care facility, a division caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the court.

- (4) If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two hours, to the child's parent, guardian or custodian and to the court together with a statement of the reason for taking the child into custody.
- (5) In all cases when a child is taken into custody, he shall be released to his parent, guardian or custodian in accordance with the conditions and time limits set forth in the Rules of Procedure for the Children's Court.

§ 1110. Criteria for Detention of Children.

- (1) Unless ordered by the court pursuant to the Children's Code, a child taken into custody shall not be placed in detention prior to the court's disposition unless:

- (A) Probable cause exists to believe that if not detained the child will commit injury to persons or property of others, or cause injury to himself or be subject to injury by others; or
 - (B) Probable cause exists to believe that the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child; or
 - (C) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.
- (2) This subchapter shall govern the decision of all persons responsible for determining whether detention is appropriate prior to the court's disposition.

§ 1111. Place of Detention or Shelter Care.

- (1) A child alleged to be a delinquent child may be detained pending court hearing in any of the following places:
 - (A) A licensed foster home, or a home otherwise authorized under the law and certified, to provide foster or group care; or
 - (B) A facility operated by a licensed child welfare services agency; or
 - (C) A detention facility approved by the Children's Court for children alleged to be delinquent children; or
 - (D) In any other suitable place designated by the Children's Court and certified under section 1102, and which meets the standards for detention facilities under the Children's Code.
- (2) A child alleged to be a child in need of supervision or a dependent child shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but shall be detained in the following shelter care facilities:
 - (A) A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or
 - (B) A facility operated by licensed child welfare services agency; or
 - (C) Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Children's Court and certified by the appropriate authority.

- (3) The official in charge of a jail or other facility for the incarceration of adult offenders or persons charged with crimes and the arresting law enforcement officer shall inform the probation officers within four (4) working hours and the court within four (4) working hours or forty-eight (48) consecutive hours if on a weekend, whichever is the shorter time, when an individual, who is or appears to be under the age of eighteen (18) years, is received at the facility, and upon request shall deliver him to the court or the probation officer or transfer him to a facility designated by the court.

§ 1112. Place of Temporary Custody.

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be detained in the following community-based sheltercare facilities:

- (A) A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence; or
- (B) A facility operated by a licensed child welfare services agency; or
- (C) With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court; or
- (D) Any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined and which meets the standards for shelter-care facilities established by the division.

§ 1113. Detention Hearing Required for Detained Child, Court Determination and Disposition.

- (1) Where a child who has been taken into custody is not released, but is detained:
 - (A) A petition shall be filed by the presenting officer with the court within forty-eight (48) hours excluding Saturdays, Sundays and legal holidays, and, if not filed within the stated time, the child shall be released.
 - (B) A detention hearing shall be held within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays of the filing of a petition to determine whether continued detention is required pursuant to criteria established by the Children's Code.

- (2) The judge may appoint one or more persons to serve as referees on a full or part-time basis for the purpose of holding detention hearings. The Chief Justice of the Navajo Nation shall approve all contracts with the referees and shall fix their hourly compensation pursuant to the Personnel Policies and Procedures of the Navajo Tribe.
- (3) Written notice of the detention hearing stating the time, place and purposes of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child if the petition alleges that the child is a delinquent child or a child in need of supervision.
- (4) At the commencement of the detention hearing, the judge or referee shall advise the parties of their basic rights provided in the Children's Code, and shall appoint counsel, guardians and custodians, if appropriate.
- (5) If the judge or referee finds the child's detention is appropriate under the criteria established by the Children's Code, he shall order the detention in an appropriate facility in accordance with the Children's Code.
- (6) If the judge or referee finds that detention of the child is not appropriate under the criteria established by the Children's Code, he shall order the release of the child, but, in so doing, may order one or more of the following conditions:
 - (A) Place the child in the custody of a parent, guardian or custodian, or relative, or under the supervision of an agency agreeing to supervise the child.
 - (B) Place restrictions on the child's travel, association with other persons or place of abode during the time of release.
 - (C) Impose any other condition deemed reasonably necessary and consistent with the Children's Code, including a condition requiring that the child return to custody if required.
- (7) An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.
- (8) At the detention hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or referee even though it would be otherwise inadmissible in a hearing on the petition.

- (9) If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or referee shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and an affidavit stating the relevant facts.

§ 1114. Transfer to District Court - Hearing.

- (1) After a petition has been filed alleging a delinquent act, the court may, before a hearing on the merits, transfer the matter for prosecution in the district court, if:
 - (A) The child was sixteen (16) years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act would be a crime if committed by an adult; and
 - (B) A hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging a delinquent act, except the hearing will be to the court without a jury; and
 - (C) Written notice of the time, place and purpose of the hearing is given to the child, parents, guardian or custodian at least three (3) days before the hearing; and
 - (D) The court at the hearing finds there are reasonable grounds to believe that:
 - (1) The child committed the delinquent act alleged; and
 - (2) The child is not amenable to treatment or rehabilitation as a child through available facilities; and
 - (3) The child is not committable to an institution for the mentally retarded or mentally ill; and
 - (4) The interests of the Navajo Nation require that the child be placed under legal restraint or detention.
- (2) Prior to the hearing, the juvenile representative shall prepare for the court and make available copies to the child, his counsel, or his parents, guardian or custodian, a predispositional report relevant to the issues described in subparagraphs (2), (3), and (4) of paragraph (D) of this section and the court shall hear evidence on paragraph (1) and make specific findings in regards thereto.
- (3) A written transfer order containing specific findings and reasons for the order terminates the jurisdiction of the Children's Court over the child with respect to the delinquent acts alleged in the petition. No child shall be prosecuted in the

district court for a criminal offense originally subject to the jurisdiction of the Children's Court unless the case has been transferred as provided in this subparagraph.

§ 1115. Adjudicatory Hearings; Findings; Dismissal; Dispositional

- (1) Hearing on petitions shall be conducted by the court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether or not the child committed the alleged delinquent acts. If no jury is demanded, the hearing will be by the court without a jury. All hearings on petitions other than those alleging delinquency will be without a jury. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. The court shall advise persons before the court of their basic rights under the Children's Code and other laws at each separate appearance.
- (2) All hearings on petitions alleging delinquency of a child shall be open to the general public except where the court in its discretion after a finding of exceptional circumstances deems it appropriate to conduct a closed delinquency hearing. All dependency and child in need of supervision hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the court may be present at a closed hearing.

Persons the court finds to have a proper interest in the case or in the work of the court, including members of the bar, may be admitted by the court to closed hearings on the condition that they respect the confidentiality of the proceeding. Accredited representatives of the news media may be allowed to attend closed hearings at the discretion of the Children's Court judge subject to the conditions that they refrain from divulging information that would identify any child involved in the proceedings or the parent or guardian of that child, and subject to such regulations as the court deems necessary for the maintenance of order, decorum and for the furtherance of the purposes of the Children's Code. If the court finds that it is in the best interest of the child, the child may be temporarily excluded from a neglect or abuse hearing and during the taking of evidence on the issues of need for treatment and rehabilitation in delinquency and need of supervision hearings. A child may be temporarily excluded by the court during a hearing on dispositional issues under the same method.

- (3) Those persons or parties who intentionally divulge information

in violation of subsection (2) of this section shall be guilty of an offense. Persons found guilty of violating the provisions of this section shall be subject to imprisonment for a term not to exceed ninety (90) days and be ordered to pay a fine not to exceed two hundred-fifty dollars (\$250.00).

- (4) The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of dependency, delinquency or need of supervision shall make and record its findings on whether or not the child is a dependent child or whether or not the acts subscribed to the child were committed by the child. If the court finds that the allegations on the petition have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings, unless the best interests of the child require otherwise.
- (5) If the court finds, on the basis of a valid admission to the allegations of the petition, or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence, that the child committed the acts by reasons of which he is alleged to be delinquent or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation and file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the court finds that a child alleged to be delinquent or in need of supervision is not in need of care or rehabilitation, it shall dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings, or make such other order as it deems proper.
- (6) If the court finds on the basis of a valid admissions of the allegations of the petition, or on the basis of clear and convincing evidence that the child is dependent or is in need of care or rehabilitation as a delinquent child or child in need of supervision, the court may proceed immediately or at a continued hearing to make disposition of the case.
- (7) In the dispositional hearing, the Children's Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.
- (8) By motion of a party or by its own authority, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The court shall continue the hearing pending the receipt of the predis-

position study and report if that document has not been prepared and received. During any continuance under this subsection, the court shall make an appropriate order for detention or legal custody.

- (9) Evaluations, assessments, dispositional reports and other material to be considered by the court in a juvenile hearing shall be submitted to the court no later than five (5) days before the scheduled hearing date. An affidavit including reasons why a report has not been completed shall be filed with the court no later than five (5) days before the scheduled hearing date, if the report will not be submitted before the deadline. The court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been timely submitted.

§ 1116. Predisposition Studies; Reports and Examination.

- (1) After a petition has been filed and the allegations of the petition have been established by admission or after a hearing, the court shall direct that a predisposition study and report be made in writing by the division caseworker or other appropriate officer designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case.
- (2) Where there is indication that the child may be mentally ill or mentally retarded, the court, on motion by the presenting officer or that of other counsel may order the child to be examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an out-patient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.
- (3) The court, after hearing, may order examination by a physician, psychiatrist or psychologist, of a parent whose ability to care for or supervise a child is an issue before the court. The parent or custodian may refuse to be examined, but such refusal can be considered by the judge or jury.
- (4) The court may order that a child adjudicated as a delinquent child or a child in need of supervision be transferred to an appropriate facility for a period of not more than thirty (30) days for purposes of diagnosis with direction that the court be given a written report at the end of that period indicating the disposition which appears most suitable.

§ 1117. Dependency Predisposition Studies, Reports and Examinations.

- (1) Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be made in writing to the court by the division.

- (2) The predisposition study required under subsection one (1) of this section shall contain the following information:
 - (A) A statement of the specific harm or harms to the child that intervention is designed to alleviate;
 - (B) If removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents;
 - (C) A treatment plan consisting of:
 - (1) A description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, a specific case plan setting out the steps to be taken by the parents and caseworker and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the division's overall plan for insuring that the services will be delivered;
 - (2) If removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs which have been considered and rejected;
 - (3) A description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent occurs or continues; and
 - (4) A description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary.
- (3) A copy of the predisposition report shall be provided by the division to counsel for all parties at least five (5) days before the dispositional hearing.

§ 1118. Social and Legal Records - Inspection.

- (1) Social, medical, psychiatric and psychological records of the court concerning a child and produced or recorded by requirement or authority contained of the Children's Code, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:
 - (A) The judge, division caseworkers, probation officers and court personnel;
 - (B) Representatives of any agency providing supervision and having legal custody of the child;

- (C) Representatives of the division;
 - (D) Any other person, by order of the court, having a legitimate interest in the particular case or the work of the court.
- (2) All or any part of records or information secured from records listed in subsection (1), when presented to the court in a proceeding under the Children's Code, shall be made available to the parties to the proceedings and their counsel. The court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.
 - (3) Except as permitted by this section, whoever discloses, makes use or knowingly permits the use of information concerning a child before the court, directly or indirectly derived from the records listed in subsection (1), or acquired in the course of official duties, shall be subject to ninety (90) days in jail or a two hundred fifty dollar (\$250.00) fine, or both.

§ 1119. Sealing of Records.

- (1) On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code or on the court's own motion, the court may vacate its finding, orders and judgments on the petition and order the legal and social files and records of the court, probation services and of any other agency in the case sealed. If requested in the motion, the court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the court finds that:
 - (A) Two (2) years have lapsed since the final release of the individual from legal custody and supervision, or two (2) years have lapsed since the entry of any other judgment not involving legal custody or supervision;
 - (B) The individual has not, within the two (2) years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a court, and no proceeding is pending seeking such a conviction or finding.
- (2) Reasonable notice of the motion shall be given to:
 - (A) The Children's Court presenting officer;
 - (B) The authority granting the release, if the final release was from a parole or probation agency;
 - (C) The law enforcement officer, department and central records dispository having custody of the law enforcement files and records if such records are included in the motion;

- (D) Any other agency having custody of records of files subject to the sealing order.
- (3) Upon the entry of the sealing order, the proceedings in the case shall be expunged and all index references shall be deleted; the court, law enforcement officers and departments and agencies shall reply, and the individual may reply to an inquiry, that records with respect to such person have been expunged. Copies of the sealing order shall be sent to each agency or official named herein.
- (4) Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:
- (A) Upon motion by the individual who is the subject of the records and only to those persons named in the motion;
- (B) In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment, or to persons engaged in fact finding or research in work related to the child's welfare.
- (5) Any finding or allegation of delinquency or need or supervision subsequent to the sealing order may by court order be used as a basis to set aside the sealing order.
- (6) A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed by the court at the end of the dispositional stage.

§ 1120. Damages to or Destruction of Property by Child; Parents Liable; Costs and Attorney's Fees; Provisions for Damages and Restitution.

- (1) Any person may recover damages, not to exceed Five Thousand Dollars (\$5,000.00), in a civil action in a court or tribunal of competent jurisdiction, from the parent, guardian or custodian of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action and that the parent, guardian or custodian failed to provide adequate supervision of the child.
- (2) Recovery of damages under this section is limited to actual damages proved in the action, taxable court costs, and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.
- (3) Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Children's Code.

§ 1121. Motor Vehicle Code Violations.

- (1) The District Court of the Navajo Nation shall have original exclusive jurisdiction of the following Motor Vehicle Code violations involving a juvenile when the person alleged to have committed the violation is a child who has reached his fifteenth (15) birthdate:
 - (A) Driving while under the influence of intoxicating liquor or drugs;
 - (B) Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;
 - (C) Reckless driving;
- (2) If a child is charged with any of the violations specified in subsection (1) of this section, the child may be transferred to the Children's Court at the discretion of the district judge. Upon transfer, the child shall be proceeded against in the same manner as a child alleged to be a delinquent child.
- (3) Any motor vehicle code violation by a child, including those specified in subsection (1) of this section, shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of the Children's Code.
- (4) No court may incarcerate a child who has been found guilty of any motor vehicle code violation without first securing the approval of the Children's Court.

§ 1122. Court Costs and Expenses.

- (1) The following expenses shall be a charge upon the funds of the court upon their certification by the court.
 - (A) The expenses of service of summons, notices, subpoenas and other like expenses incurred in any proceeding under the Children's Code;
 - (B) Reasonable compensation of a guardian ad litem appointed by the court.
- (2) If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court finds that they are financially able to pay all or part of the costs and expenses in subsection (1) of this section, the court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the court, to the court.

- (3) Whenever legal custody of a dependent child or a child in need of supervision is vested in someone other than the child's parents, the court, after notice to the parents or other persons legally obligated to support the child and after a hearing and a finding that they are financially able to pay all or part of the costs and expenses of the support and treatment, may order such parents or other legally obligated person to pay to the court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.

If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the court may proceed with contempt charges. An order for payment may be filed, and, if filed, shall have the effect of a civil judgment.

§ 1123. Duty to Report Child Abuse; Penalty for Failure to Report.

- (1) Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement official, registered nurse, visiting nurse, school teacher or social worker acting in his or her official capacity, or any other person having reason to believe that serious injury or injuries have been inflicted upon the child as a result of abuse, neglect or starvation, shall report the matter immediately to:
 - (A) The appropriate tribal, state or federal health and social service department in the agency where the child resides; or
 - (B) The presenting officer of the judicial district where the child resides.
- (2) An oral report shall be made promptly by the recipient of the report under paragraph (A) or (B) of subsection (1) of this section to the presenting officer by telephone or in person and a written report shall be submitted to the presenting officer as soon thereafter as possible. The written report shall contain the name and addresses of the child and his or her parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and other information that might be helpful in establishing the cause of injuries and the identity of the person or persons responsible for the injuries, and where the child has been referred or can be found.
- (3) Any person failing, neglecting or refusing to report a suspected case of child abuse, neglect or starvation shall be guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

§ 1124. Admissibility of Report in Evidence: Immunity of Person Reporting.

- (1) In any proceeding alleging child abuse or neglect under the Children's Code resulting from a report submitted under section 1123 or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege or rule against disclosure.
- (2) Any person reporting an instance of suspected child abuse, neglect or starvation, or participating in a judicial proceeding brought as a result of a report submitted under section 1123 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability that might otherwise be incurred or imposed by law, unless a finding is made that the person acted in bad faith or with malicious purpose.

SUBCHAPTER 7. DISPOSITION.

§ 1151. Disposition of a Dependent Child.

- (1) In the disposition phase of every case under this code, the court shall give priority to placement of the child with the closest relative who is found qualified to receive and care for the child by the court after investigation by the court counselor or an agency designated by the court.
- (2) If a child is found to be dependent, the court may in its judgment make any of the following dispositions in the best interests of the child:
 - (A) Permit the child to remain with his parents, guardian or custodian subject to conditions and limitations prescribed by the court;
 - (B) Place the child under protective supervision of the division;
 - (C) Transfer legal custody of the child to any of the following:
 - (1) An agency responsible for the care of dependent children;
 - (2) A child-placing agency able to assume responsibility for the education, care and maintenance of the child and which is licensed or otherwise authorized by law to receive the child for placement into foster care, including a child care institution or a family home; or

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- (3) A relative or other individual who, after study by the Children's Court counselor or agency designated by the court, is found by the court to be qualified to receive and care for the child.
- (D) Make such other disposition as may be necessary to serve the best interests of the child.
- (3) Any parent, guardian or custodian of a child who is placed in the legal custody of the division or other person shall have reasonable rights of visitation with the child as determined by the court unless the court finds that the best interests of the child preclude any such visitation.

§1152. Disposition of Adjudicated Delinquent Child or a Child in Need of Supervision.

- (1) If a child is found to be delinquent, the court may impose a fine not to exceed the fine which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child.
 - (A) Any disposition that is authorized for the disposition of a dependent;
 - (B) Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;
 - (C) Place the child on probation under such conditions and limitations as the court may prescribe.
- (2) If a child is found to be in need of supervision, the court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:
 - (A) Any disposition that is authorized for the disposition of a dependent child;
 - (B) Transfer legal custody to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children; or
 - (C) Place the child on probation under those conditions and limitations the court may prescribe.
- (3) Unless a child found to be dependent or in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children. No child found to be delinquent or in need of supervision shall be committed or transferred to a facility used for execution of sentences of persons convicted of crimes.

- (4) Whenever the court vests legal custody in an agency, institution or department it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

§ 1153. Disposition of a Mentally Ill or Mentally Retarded Child.

- (1) If, at any stage of a proceeding under the Children's Code, the evidence indicates that the child is mentally retarded or mentally ill, the court shall transfer legal custody of the child for a period not exceeding thirty (30) days to an appropriate agency for further study evaluation and a report on the child's condition. The court may thereafter issue an appropriate decree.

§ 1154. Continuance under Supervision without Judgment - Consent Decree - Disposition.

- (1) At any time after the filing of a delinquency or in need of supervision petition, and before the entry of a judgment, the court may, on motion of the presenting officer or counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court order continuing the child under supervision pursuant to this section shall be known as a "consent decree".
- (2) If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the presenting officer after consultation with probation services, the court shall consider the objections and the reasons therefore, and may in its discretion enter the consent decree.
- (3) A consent decree shall remain in force for a period not to exceed six (6) months unless the decree is discharged sooner by probation services. Prior to the expiration of the six (6) months period, and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his counsel and he shall have thirty (30) days from the date of service to object to the application. If the child objects to the extension the court shall hold a hearing on the issue of extension.
- (4) If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree, the presenting officer may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

- (A) Extend the period of the consent decree; or
 - (B) Make any other disposition which would have been appropriate in the original proceeding.
- (5) A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency or need of supervision judgment shall not be in jeopardy again in any court for the same offenses alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child and his parents for damages arising from his conduct.
- (6) A judge who, pursuant to this section, elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency or need of supervision petition if:
- (A) A consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or
 - (B) A consent decree is granted but the delinquent or in need of supervision petition is subsequently reinstated.

§ 1155. Interlocutory Disposition Order in Cases where Service is Made by Publication; Effect.

- (1) If the service of a summons upon any party is made by publication the court may conduct a provisional hearing upon the allegations of the petition, make findings and enter an interlocutory order of disposition if:
- (A) The petition alleges that the child is dependent, in need of supervision or delinquent; and
 - (B) The summons served upon parties other than those served by publication, in addition to other requirements:
 - (1) States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;
 - (2) Requires the party served to appear and, if appropriate, to answer the allegations of the petition at both the provisional and final hearing; and
 - (3) States that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

- (C) The child is personally before the court at the court at the provisional hearing on petitions alleging delinquency and in need of supervision, but the court may waive the presence of the child in dependency cases.
- (2) All relevant provisions of the Children's Code shall apply to preliminary hearings, but the court's findings and order of disposition shall have only an interlocutory effect pending the final hearing on the petition.
- (3) The interlocutory order shall have the following effect on the rights and duties of the party served by publication:
 - (A) If the party served by publication fails to appear at the final hearing on the petition, the findings and interlocutory orders shall become final without further evidence, shall be entered as a judgment and shall have the same effect as if made at the final hearing; or
 - (B) If the party served by publication appears at the final hearing, the interlocutory findings and orders shall be vacated and disregarded, and the hearing shall proceed upon the allegations of the petition as otherwise provided by the Children's Code without regard to this section.

§ 1156. Limitations on Dispositional Judgments: Modification, Termination or Extension of Court Orders.

- (1) A judgment vesting legal custody of a child in an agency shall remain in force for an undetermined period not exceeding two (2) years from the date entered, except that no child shall be ordered for more than one (1) year to an institution for the housing of delinquent children without further order of the court. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the custody and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody and:
 - (A) The agency to which legal custody is transferred has the exclusive power to parole or release the child;
 - (B) The supervision of a child after release under paragraph (A) of this subsection may be conducted by the agency in conjunction with the probation office of the Navajo Nation, or any other suitable agency or under any contractual arrangements deemed appropriate.
 - (C) A child or his guardian may petition the children's court for review of agency decision denying parole or termination.
- (2) A judgment vesting legal custody of a child in an individual shall remain in force for two (2) years from the date entered and automatically terminated at the end of the two (2) years unless terminated or extended by order of the court.

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- (3) A judgment of probation or protective supervision shall remain in force for an undetermined period not exceeding two (2) years from the date entered.
- (4) A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the two-year period. A release and the reasons therefore, shall be reported promptly to the court in writing by the releasing authority.
- (5) At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:
 - (A) A child, whose legal custody has been transferred to a person, and who requests the court for a modification or termination of the judgment alleging that the transfer of legal custody is no longer necessary and that the person has denied application for release of the child or has failed to act upon the application within a reasonable time; or
 - (B) A person vested with legal custody, or responsibility for protective supervision, who requests the court for an extension of the judgment on the grounds that the requested action is necessary to safeguard the welfare of the child or the public interest.
- (6) At any time prior to the expiration of a judgment transferring legal custody, the court may extend the judgment for an additional period of one (1) year if it finds that the extension is necessary to safeguard the welfare of the child or the interest of the Navajo Nation.
- (7) Prior to the expiration of a judgment of probation or protective supervision, the court may extend the judgment for an additional period of one (1) year if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.
- (8) When a child reaches eighteen (18) years of age all judgments affecting the child then in force automatically terminate.

§ 1157. Judgment; Noncriminal Nature; Nonadmissibility.

The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any tribal program, or obtaining tribal employment. The disposition of a child and

any evidence given in a hearing in court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching majority.

§ 1158. Appeals.

- (1) Any party may appeal from a final judgment of the Children's Court to the Court of Appeals of the Navajo Nation in the manner provided by the rules of the court. The appeal shall be heard by the Court of Appeals based on the files, records and transcript of the Children's Court proceeding. The name of the child shall not appear in the record on appeal. The case number from the Children's Court shall be used on all documents filed with and issued by the Court of Appeals.
- (2) The appeal to the Court of Appeals shall not stay the judgment appealed from, but the Court of Appeals may order a stay upon an application consistent with the provisions of the Children's Code, if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withhold it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practical time.
- (3) The Court of Appeals shall affirm the Children Court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the Children's Court for disposition consistent with the appellate court's decision.
- (4) A child who has filed a notice of appeal shall be furnished a electronically recorded transcript of the proceedings, or as much of its as is requested without cost, upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child, is not able to pay for the cost thereof.

§ 1159. Procedural Matters under the Children's Code.

- (1) The court may allow, on its own motion or the motion of the presenting officer or counsel for the child, amendment of a petition or motion to add additional issues, findings or remedies raised during the proceeding.
- (2) Upon application of a party or on its own motion, the court shall issue subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects.
- (3) The court may cite a person for contempt of court for disobeying the court's order or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.
- (4) In any proceeding under the Children's Code, either on motion of a party or on the court's own motion, the court may make an

order restraining the conduct of any party over whom the court has obtained jurisdiction.

§ 1160. Purchase of Care from Private Agency by Public Agency.

When the legal custody of a child is vested in the division under the provisions of the Children's Code the division may transfer physical custody of the child to an appropriate private agency and may purchase and treatment from the private agency if the private agency submits periodic reports to the division covering the care and treatment the child is receiving. Frequency of reports will be determined by the division. The division may see the child with reasonable notice to the private agency.

§ 1161. Probation Revocation; Disposition.

A child on probation incident to an adjudication as a delinquent child or a child in need of supervision who violates a term of the probation may be proceeded against in a probation revocation proceeding. Revocation of probation shall be part of the initial proceeding and is begun by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to revoke probation shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt. The hearing shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a finding of probation violation is made, the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

SUBCHAPTER 9. PROTECTIVE SERVICES

§ 1251. Protective Services Worker; Power and Duties.

- (1) Protective services workers shall be employed by the division.
- (2) The division may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. The division may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Navajo Tribal Council or its designate.
- (3) A protective services worker shall:
 - (A) Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis.
 - (B) Receive from any source, oral or written, information regarding a child who may be in need of protective services.

- (C) Upon receipt of any report or information pursuant to paragraph (1) or (2) of this subsection immediately:
- (1) Notify the appropriate law enforcement agency:
 - (2) Make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
- (D) Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officers shall cooperate with the division to remove a child from the custody of his parents, guardian, or custodian when necessary.
- (E) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. He shall determine whether any of such children is a child in need of protective services.
- (F) Offer to the family of any child found to be a child in need of protective services appropriate services, which services may include, but shall not be restricted to, protective services.
- (G) Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the presenting officer and to a central registry maintained by the division.
- (H) No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed.

§ 1252. Limitations of Authority; Duty to Inform.

- (1) Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a dependency petition in the Children's Court.
- (2) If the family declines the offered services, the worker may initiate a dependency petition in Children's Court alleging a child in need of protective services if he believes it to be in the child's best interest.

§ 1253. Central Registry.

- (1) The division shall maintain a central registry of reports, investigations and evaluations made under the Children's Code. The registry shall contain the information furnished by tribal personnel throughout the Navajo Nation, including protective service workers, probation officers, division caseworkers and Indian Child Welfare program employees.
- (2) Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years.
- (3) Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the division to the Children's Court, social service agencies, public health and law enforcement agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Navajo Nation. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

§ 1254. Immunity of Participants; Nonprivileged Communications.

Any person making a complaint, providing information or otherwise participating in the child protective services program shall be immune from civil or criminal liability for such action, unless such person acted with malice or unless such person has been charged with or is suspected of abusing, abandoning or neglecting the child in question.

SUBCHAPTER 11. TERMINATION OF PARENT-CHILD RELATIONSHIP.

§ 1301. Petition; Who May File; Grounds.

- (1) Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, foster parent, the division, or a privately licensed child welfare agency, may file a petition for the termination of the parent child relationship alleging grounds contained in subsection (2). Any person may provide information showing that the parent-child relationship should be terminated to the presenting officer, and the presenting officer may initiate a petition based on such information.
- (2) Evidence sufficient to justify the termination of the parent-child relationship shall include any of the following grounds. The court may also consider the best interests of the child:
 - (A) That the parent has abandoned the child or that the parent has made no effort to maintain a parental relationship with the child.
 - (B) That the parent has seriously neglected or willfully abused the child.

- (C) That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
- (D) That the parent is deprived of his or her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.
- (E) That the parents have voluntarily relinquished their rights to a child to an agency or have consented to the adoption.

§ 1302. Contents of Petition.

- (1) A petition for the termination of the parent-child relationship filed pursuant to this chapter shall include, to the best information or belief of the petitioner:
 - (A) The name and address of the petitioner;
 - (B) The name, sex, date and place of birth, census number and residence of the child;
 - (C) The basis for the court's jurisdiction;
 - (D) The relationship of the petitioner to the child or the fact that no relationship exists;
 - (E) The names, addresses, and dates of birth, and census numbers of the parents, if known;
 - (F) The names and addresses of the person having legal custody or guardianship of the person or acting in loco parentis to the child, or the organization or authorized agency having legal custody or providing care for the child;
 - (G) The grounds on which termination of the parent-child relationship is sought;
 - (H) The names and addresses of persons, or authorized agencies or officers thereof to whom or to which legal custody or guardianship of the person of the child might be transferred.
- (2) A copy of any relinquishment or consent, if any, previously executed by the parent shall be attached to the petition. Where placement outside Navajo Indian country is contemplated, a consent or relinquishment shall conform with the provisions of the Indian Child Welfare Act 25 USC § 1913.

§ 1303. Notice; Waiver; Guardian Ad Litem.

- (1) After a petition for termination of parental rights has been filed, the clerk of the Children's Court shall set a time and place for hearing. Notice thereof shall be given to the parents of the child, the person having physical custody of the child, the person having legal custody of the child, any individual standing in loco parentis to the child and the guardian ad litem, if any, as provided in the rules for service of process in civil actions.
- (2) The hearing shall take place no sooner than ten (10) days after the completion of service of notice.
- (3) Notice and appearance may be waived by a parent before the court or in writing and attested to by two (2) or more credible witnesses who are eighteen (18) or more years of age subscribing their names thereto in the presence of the person executing the waiver. The waiver shall contain language explaining the meaning and consequences of the waiver and the effect of termination of parental rights. The parent who has executed such a waiver shall not be required to appear, unless the child may be placed outside Navajo Indian county, in which case the requirements of the Indian Child Welfare Act, 25 USC § 1913, must be complied with.
- (4) When termination of the parent-child relationship is sought under section 1303, subsection (2) paragraph (C), the court shall appoint a guardian ad litem for the alleged incompetent parent. The court may otherwise appoint a guardian ad litem as deemed necessary for any party.
- (5) The presenting officer upon the request of the court, the division, or on his own motion, may intervene in any proceeding under this subchapter to represent the interest of the child.

§ 1304. Social Study prior to Disposition; Contents.

- (1) Upon the filing of a petition the court shall order the division, an agency or other person selected by the court to conduct a complete social study. A written report shall be submitted to the court prior to hearing, except that when an agency is the petitioner, either in its own right or on behalf of a parent, a report in writing of the social study made by such agency shall accompany the petition. The court may order any additional studies it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. The report submitted shall include a specific recommendation on the termination of the parent-child relationship and the reasons therefor.

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- (2) The court may waive the requirement of the social study when the court finds that it is in the best interest of the child.

§ 1305. Hearing.

- (1) Cases filed under this subchapter shall be heard by the court in a closed hearing. Only such persons whose presence the judge finds to have a direct interest in the case or in the work of the court shall be admitted provided that such persons shall not disclose any information obtained at the hearing. The court may require the presence of any parties and witnesses it deems necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to Section 1304, or has relinquished his rights to the child shall not be required to appear at the hearing unless placement outside Navajo Indian Country is contemplated.

§ 1306. Court Order; Form Contents.

- (1) Every order of the court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.
- (2) If the court finds grounds for the termination of the parent-child relationship it shall terminate such relationship and take one of the following courses of action:
 - (A) Appoint an individual as guardian of the child's person;
 - (B) Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency.
 - (C) Place the child for adoption or order that an adoptive placement for the child be found.
- (3) The court shall also make an order fixing responsibility for the child's support. The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.
- (4) Where the court does not order termination of the parent-child relationship, it shall dismiss the petition, provided that where the court finds that the best interests of the child require substitution or supplementation of parental care and supervision, the court shall make such orders as are necessary.

§ 1307. Effect of Court Order.

An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations

with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall be terminated by a final order of adoption.

SUBCHAPTER 11. INDIAN CHILD WELFARE ACT PROVISIONS

§ 1401. Application of the Indian Child Welfare Act in Children's Court.

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 USC § 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not apply in the Children's Court unless specifically provided for in this chapter.

§ 1402. Full Faith and Credit; Conflict of Laws.

- (A) State child custody orders involving Navajo children may be recognized by the Children's Court only after a full independent review of such state proceeding has determined:
 - (1) The state court had jurisdiction over the Navajo child; and
 - (2) The provisions of the Indian Child Welfare Act, 25 USC §§ 1901-1963, were properly followed; and
 - (3) Due process was provided to all interested persons participating in the state proceeding; and
 - (4) The state court proceeding does not violate the public policies, customs, or common law of the Navajo Nation.
- (B) Tribal child custody orders involving Navajo children shall be recognized by the Children's Court after the court has determined:
 - (1) That the tribal court exercised proper subject matter and personal jurisdiction over the Navajo parties; and
 - (2) Due process was accorded to all interested parties participating in the tribal court proceeding.
- (C) Because of the vital interest of the Navajo Nation in its children and those children who may become members of the Navajo Nation, the statutes, regulations, public policies, customs and common law of the Navajo Tribe shall control in any proceeding involving a Navajo child.

§ 1404. Voluntary Placement.

The Children's Court shall have exclusive jurisdiction over voluntary placements, both temporary and permanent, of Navajo children who are domiciled or reside within Navajo Indian country. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be approved by and filed with the Children's Court. The Children's Court may require that

the voluntary placement provisions of the Indian Child Welfare Act, 25 USC § 1913, be followed where the child is to be placed outside of Navajo Indian Country and the best interests of the child require.

§ 1405. Children's Court Wardship.

Any Navajo child who is domiciled or resides within Navajo Indian country and is voluntarily placed outside of Navajo Indian country shall be made a ward of the Children's Court. A copy of any consent executed by the parents of such Navajo child and the location of the placement shall be filed with the Children's Court. A report on the location of the child shall be filed annually with the Children's Court. Wardship attaches to the child when he or she physically leaves Navajo Indian country. Any placement of a Navajo child in violation of this section may be invalidated upon petition to the Children's Court and the court shall make such orders at that time as will protect the court's wardship over the child and the child's best interests.

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