

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Adopting a Juvenile Code of the Navajo Tribe

WHEREAS:

1. The young people of the Navajo Tribe are one of the Tribe's most important resources, and their welfare is of paramount importance to the Navajo Tribe, and

2. It is important that the young people of the Navajo Tribe receive, preferably in their own homes, the care and guidance needed to prepare them to take their places as citizens of the Navajo Nation, and

3. The present section of the Navajo Tribal Code dealing with young people does not adequately provide for this needed counseling and guidance, and does not provide for trained people to assist the courts in dealing with young people, and

4. The Navajo Tribe needs a recognized juvenile court system in order that off-reservation courts will be willing to return young people of the Tribe to the reservation for care and guidance, and

5. The proposed Navajo Juvenile Code is adapted from the Standard Juvenile Court Act prepared by the National Council on Crime and Delinquency, and this Standard Act has been adopted and used in several areas and has been found to be very satisfactory, and

6. The Navajo Tribal Council has fully discussed and debated all the provisions of the proposed new Juvenile Code and finds that its adoption is in the best interest of the Navajo People.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Navajo Tribal Council hereby adopts the Juvenile Code of the Navajo Tribe, a true copy of which is attached hereto.

2. The Navajo Tribal Council hereby repeals the following chapters of the Navajo Tribal Code as compiled in the 1962 Permanent Edition: All of Chapter 25 of Title 13 and all prior resolutions and/or sections of the Navajo Tribal Code insofar as they may be inconsistent with this Juvenile Code.

3. The Navajo Tribal Council hereby direct that copies of this Juvenile Code be printed for distribution to courts, attorneys, law enforcement agencies and other interested parties.

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 57 in favor and 0 opposed, this 4th day of June, 1969.

Nelson Damon
Vice Chairman
Navajo Tribal Council

I N D E X

I. GENERAL PROVISIONS	Page
Purpose	1
Definitions	1
Establishment of the Juvenile Court	3
Juvenile Court Judges	3
Jurisdiction, General	4
Transfer of Jurisdiction	4
Jurisdiction over Adults	5
Duties and Powers of Juvenile Judges	5
Cooperation with other Agencies	5
Utilization of Social Services	5
Placement of Children	6
Officers of the Court	
Appointment	6
Probation Officers, Duties and Powers	6
Compensation	6
Referees, Appointment	6
Referee's Function	7
Referee's Duties, Rehearing by Court	7
Court Sessions	7
II. ADULTS, PROCEDURE	
Procedure	7
Penalties	7
III. CHILDREN, PROCEDURE	
Commencement of Actions	
Inquiry, Petition, Informal Adjustment	8
Informal Adjustment	8

Petitions, Content	8
Preparation and Verification of Petitions	8
Examinations	9
Petitions, Dismissal	9
Motor Vehicle Violations	9
Double Jeopardy	9
Service of Process and Search Warrants	
Summons, When Required	9
Summons, Content, Requirements	9
Summons, Other Persons	10
Immediate Custody of Child	10
Emergency Medical Treatment	10
Compulsory Attendance of Witnesses	10
Payment of Travel Expenses	10
Manner of Service	10
Substituted Service, Jurisdiction	11
Service, Time Requirements	11
Search and Seizure Warrants	11
Arrest of Parent, Guardian or Custodian	12
Investigation and Hearings	
Social Investigations, Scope	12
Proceedings, Civil in Nature	12
Conduct of Hearings, Informal	12
Record of Hearings	13
Records, Use of Other Courts	13
Right to Counsel	13
Notification of Right to Appeal	13
Consolidation of Proceedings	14

Amendment of Pleadings, Continuances	14
Presence of Parent, Protection of Child	14
Grounds for Rehearing	14
Arrest and Detention of Children	
Taking a Child into Custody	14
Citizen's Taking a Child into Custody	15
Notification of Parents, Release of Child	15
Detention of Child	15
Detention, Report to Court	15
Restrictions on Detention	15
Detention, Discretion of Judge	16
Disposition of Cases	
Findings of Jurisdictional Facts	16
Disposition of Case	16
Primary Consideration, Welfare of Child	17
Establishment of Conditions by Court	17
Hospitalization of Child	17
Commitment to Training School	18
Termination of Parental Rights	18
Other Disposition of Cases	18
Periodic Review of Cases	18
Judgments and Orders	
Judgments, Inoperative after Majority	18
Orders, Modifications	18
Orders of Termination, Notice	19
Court Adjudication, Not Criminal in Nature	19
IV. CUSTODY OF CHILDREN	
Parent's Preferred Right to Custody	19

Termination of Parental Rights	19
Parental Rights, Grounds for Termination	19
Procedure for Terminating Parental Rights	20
Order of Termination of Parental Rights	20
Action of Court After Termination	20
Right of Nonterminated Parent	20
Voluntary Surrender of Parental Rights	20
Proceedings to Return Custody	20
Custody, Rights and Duties	21
V. SUPPORT OF CHILDREN	
By Parents	21
Jurisdiction, Summons	21
Enforcement of Support Orders	21
Support from Other Sources	22
Payments Directly to Agency, Reports, Visits	22
VI. APPEALS	
Procedure	22
Stay Pending Appeal	22
VII. FEES AND EXPENSES	23
VIII. RECORDS	23
IX. SHORT TITLE	23

JUVENILE CODE

1-1 Purpose

It is the purpose of this Code that each child under the jurisdiction of the Tribal Juvenile Court shall receive, preferably in his own home, the care, guidance, and control that is conducive to his welfare and the best interest of the tribe, the state and the United States; that family ties be preserved and strengthened whenever possible; that any child who is removed from his home shall receive care, guidance, and control as nearly equivalent as that which should have been given by his parents; and that at the same time the peace and security of the community and of its individual citizens be safeguarded. To this end this ordinance shall be liberally construed.

1-2 Definitions

(1) "Court" means a Tribal Juvenile Court of the Navajo Indian Tribe.

(2) "Child" means a person who is an enrolled member of the Navajo Indian Tribe, or any other person subject to the jurisdiction of the Navajo Tribe, who is less than 18 years of age.

(3) "Adult" means a person who is an enrolled member of the Navajo Indian Tribe, or any other person subject to the jurisdiction of the Navajo Tribe, who is 18 years of age or over.

(4) "Detention" means the temporary care of children who require secure custody, in physically restricting facilities pending court disposition or transfer to another jurisdiction.

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

(6) "Shelter" means the temporary care of children in physically unrestricting facilities pending court disposition or transfer to another jurisdiction.

(7) "Legal custody" means a relationship embodying the following rights and duties: the right to physical custody of a child; the right and duty to protect, train and discipline him; the duty to provide him with food, clothing, shelter, education, and ordinary medical care; the right to determine where and with whom he shall live, and the right, in an emergency, to authorize surgery or other extraordinary care. Legal custody is subject to residual parental rights and responsibilities and to the rights and responsibilities of the guardian of the person.

(8) "Guardian" means a guardian of the person and not a guardian of the property.

(9) "Guardianship of the Person" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes, among other things the authority to consent to marriage, to enlistment in the armed forces, and to consent to major medical, surgical, or psychiatric treatment. "Guardianship of the person" also includes legal custody, if legal custody is not vested in another person, agency, or institution.

(10) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship of the person, or both, have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment in the armed forces, and to consent to major medical, surgical or psychiatric treatment.

(11) "Adjudication" means a finding by the Court, on the facts alleged in the petition and incorporated in a decree.

(12) "Child placement agency" means an agency receiving children for placement or adoption, which agency is licensed or approved where such license or approval is required by law.

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

(14) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(15) "Probation" means a legal status created by court order following an adjudication involving a violation of the law by the child whereby the child is permitted to remain in his home under prescribed conditions and under supervision by a probation officer designated by the court, subject to return to the court for further proceedings due to violation of any of the conditions prescribed.

(16) "Protective supervision" means a legal status created by court order in proceedings not involving violations of law by the child, whereby the child is permitted to remain in his home, and supervision and assistance to correct the neglect or dependency is provided by a probation officer or other agency designated by the court.

(17) "Neglected child" is a child found to be in one or more of the following situations:

A child who is abandoned by his parent, guardian, or custodian;

A child whose parent, guardian or custodian has subjected him to mistreatment or abuse;

A child who lacks parental care by reason of the fault or habits of the parent, guardian or custodian;

A child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care or other care necessary for his health, morals or well-being;

A child whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by his mental condition;

A child who is found in a disreputable place or who associates with vagrant, vicious or immoral persons;

A child who is engaged in an occupation or is in a situation or environment dangerous to life or limb or injurious to the health, morals, or welfare of himself or others.

(18) "Dependent child" is a child found to be in one or more of the following situations:

A child who is homeless or destitute or without proper support or care through no fault of his parent or guardian.

A child who lacks proper care by reason of the mental or physical condition of the parent, guardian or custodian.

ESTABLISHMENT OF TRIBAL JUVENILE COURT

2-1 Tribal Juvenile Court Established

There is hereby established in each judicial district of the Navajo Tribe a court to be known as the Navajo Juvenile Court.

2-2 Juvenile Court Judge

A judge shall be appointed in the manner and have the same qualifications as provided for the appointment of judges of the Trial Court who shall serve as the judge of the Juvenile Courts

in all judicial districts. Additional judges may be appointed from time to time by the Advisory Committee of the Tribal Council as necessity requires and the work of the Juvenile Courts shall be apportioned between such judges by the Chief Justice.

JURISDICTION

3-1 Jurisdiction

Except as otherwise provided by Navajo Tribal Council, the Juvenile Courts shall have original jurisdiction of all persons within the territorial jurisdiction of the Tribe:

(1) Concerning any child who is alleged to have violated any federal, tribal, state, or local law or municipal ordinance, regardless of where the violation occurred.

(2) Concerning any child:

(a) who is a neglected or dependent child, as defined in Section 1-2 of this ordinance; or

(b) who is beyond the control of his parent, custodian, or school authorities.

(3) To determine the custody of any child or appoint a guardian of the person of any child who comes within the purview of the court's jurisdiction under other provisions of this Section.

(4) To determine the legal parent-child relationship, including termination of residual parental rights and duties, as to a child who comes within the purview of the court's jurisdiction under other provisions of this Section.

(5) For judicial consent to the marriage, employment or enlistment of a child in the armed forces, and to emergency medical or surgical treatment of a child who comes within the purview of the court's jurisdiction under other provisions of this Section.

(6) For the treatment or commitment of a mentally defective or mentally ill child who comes within the purview of the court's jurisdiction under other provision of this Section.

3-2 Transfer

Exercise of jurisdiction over a child on probation or under protective supervision or of a child who is otherwise under the continuing jurisdiction of the court, may be transferred by the court, if the receiving court consents, to any court with proper jurisdiction.

3-3 Jurisdiction over Adults

The Juvenile Court shall have exclusive original jurisdiction to try all adults subject to the jurisdiction of the Navajo Tribe for offenses committed against children, as follows:

(1) Any adult who induces, aids, or encourages a child to violate any federal, state, or local law or municipal or tribal ordinance, or who aids or contributes to the dependency or neglect of any child;

(2) Any adult having a child in his legal or physical custody, or in his employment, who willfully ill-treats, neglects or abandons such child in any manner likely to cause the child unnecessary suffering or serious injury to his health or morals;

(3) Any adult who forcibly takes away a child from, or induces him to leave, the legal or physical custody of any person, agency or institution in which the child has been legally placed for the purpose of care, support, education or adoption, and any person who detains or harbors such child after demand is made for the return of the child by an officer of the court or by the person, agency, or institution concerned.

(4) Any adult who commits the crime of child beating (17 NTC 415).

DUTIES AND POWERS

4-1 Duties and Powers of Juvenile Judges

In addition to duties and powers specifically enumerated under the Juvenile Code, judges of the Juvenile Courts shall have the same powers and duties as judges of the Trial Courts of the Navajo Tribe.

4-2 Cooperation with other Agencies

The Juvenile Courts are authorized to cooperate fully with any tribal, state, federal, public or nonprofit agency to carry out the purposes of this Code, and are authorized to participate in any training programs or other programs which will improve the Juvenile Court system and carry out the purposes of this Code; subject to approval by the Advisory Committee of any expenditure of funds.

4-3 Utilization of Social Services

The Juvenile Courts in the exercise of their duties and in the exercise of any duties to be performed by other officers under their supervision or control, shall utilize such social services as may be furnished by the federal, tribal, or state

governments to the end that the court may be economically administered without unnecessary duplication or expense.

4-4 Placement of Children

The Juvenile Courts may contract, on behalf of the Tribe, with agencies or departments of the tribal or federal government, or with agencies or departments of bordering states, for the care and placement of children whose status is adjudicated under this ordinance, subject, however, to the approval of the Advisory Committee before expenditure of any tribal funds.

OFFICERS - APPOINTMENT, SALARY AND DUTIES

5-1 Appointment of Officers

The judge of each Juvenile Court, with the approval of the Advisory Committee, shall appoint probation officers, and other persons as may be required to carry out the work of the court.

5-2 Duties and Powers of Probation Officers

The probation officers shall make preliminary inquiries and social studies, and such other investigations as the judge may direct, and shall keep written records of such investigations or studies, and shall make reports to the judge as provided in the ordinance or as directed by the judge. Upon the placing of any person on probation or under protective supervision, the probation officer shall explain to the child, if old enough, and to the parents and other persons concerned, what the meaning and conditions of probation or protective supervision are and shall give them the necessary instructions. The probation officer shall keep informed concerning the conduct and condition of each person on probation or under protective supervision and shall report thereon to the judge as he may direct. Probation officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or condition, and shall perform such other duties in connection with the care, custody, or transportation of children as the judge may require. Probation officers shall have the powers of peace officers for purposes of this ordinance, but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular peace officer is not immediately available.

5-3 Compensation

The compensation of all employees of the Tribal Juvenile Court shall be fixed by the Advisory Committee.

5-4 Referees - Appointment

The judge of each Juvenile Court may appoint a probation officer or other qualified person as referee to serve during

the pleasure of the court, provided that no employee of the Bureau of Indian Affairs, United States Department of Interior, shall be eligible to serve as referee and no probation officer who has had any previous connection with the child involved in any particular case, either by investigation, or protective supervision or probation officer or otherwise shall act as referee in any hearing involving such child.

5-5 Referee's Function

The judge may refer any case to a referee, or he may direct that all cases of a certain case or within a certain geographical area shall be heard in the first instance by a referee, in the same manner as cases are initiated and hearings are held by the court. At the conclusion of the hearing before him, the referee shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing.

5-6 Referee's Duties - Rehearing by Court

At the conclusion of the hearing the referee shall advise the parties present before him of his findings and recommendations and of their right to request a rehearing before the judge. A rehearing before the judge shall be held if a request is filed with the judge by any interested party within ten days after the conclusion of the hearing before the referee. If no rehearing before the judge is requested, the findings and recommendations of the referee, when confirmed by an order of the judge, shall become the decree of the court. The judge may, on his own motion at any time, order a rehearing before him or any case heard before a referee.

COURT

6-1 Sessions

Court sessions shall be held within each jurisdictional district at such places and at such times as the judge shall direct.

PROCEDURE - ADULTS

7-1 Prosecution of Adults - Procedure

In proceedings in adult cases under Section 3-3 of this Code, the practice and procedure of the Tribal Juvenile Court shall conform to the practice and procedure of the Tribal Trial Court.

7-2 Penalties - Adults Tried by Court

Any adult who commits any act described in Section 3-3 of this Code, shall be guilty of a misdemeanor and shall be

punishable by imprisonment in a tribal jail for a period not exceeding six months or by a fine not exceeding \$500.00 or by both.

PROCEDURE - CHILDREN

A. Commencement of Actions

8-1 Inquiry, Petition, Informal Adjustment

Proceedings in children's cases are commenced by petition. Any person may, and any peace officer shall, give the court any information in his possession that a person is or appears to be a child, within the jurisdiction of the court. Whenever such information is received, the court may require a preliminary inquiry to be made under the direction of the court to determine whether the person is a child within the meaning and purposes of this ordinance and is so whether the interest of the public or the interest of the child require further action be taken.

8-2 Informal Adjustment

On the basis of the information received and the preliminary inquiry, if one is made, the Court may direct that the petition be filed; or the court may make such informal adjustment of the case as is practicable, provided that the facts are admitted and establish prima facie jurisdiction, and provided that consent is obtained from the parents or other custodian of the child, and that consent is also obtained from the child if he is of sufficient age and understanding. Efforts to effect an informal adjustment may be continued no longer than three months without review by the judge.

8-3 Petitions - Content

The petition shall set forth with particularity the facts which are alleged to bring the person within the jurisdiction of the court. The petition shall further state: (a) the name, age and residence of the person; (b) the names and residences of his parents; (c) the name and residences of his guardian, if there is one; (d) the name and address of the nearest known relative, if no parent or guardian is known; (e) the name and residence of the person having physical custody of the child; and (f) the identity of known social agencies giving care and services to the person and his family. If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state.

8-4 Preparation and Verification of Petitions

The petition may be prepared and filed by any probation officer or peace officer or other person acquainted with the facts. The petition shall be verified. Statements in the petition may be made upon information and belief.

8-5 Examinations

The court may order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist or psychologist, and may place the child in a hospital or other facility for such examination. However, the child shall not be held in such hospital or facility longer than 24 hours unless necessary for treatment of physical injuries, without a hearing before the court. After due notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a child is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental or emotional condition may be factor in causing the neglect, dependency or delinquency of the child.

8-6 Petitions - Dismissal

The court may dismiss a petition at any stage of the proceedings.

8-7 Motor Vehicle Violations

In the case of violations of motor vehicle laws or ordinances a petition shall not be required and the issuance of a traffic citation or summons shall be sufficient to invoke the jurisdiction of the court.

8-8 Double Jeopardy

When a petition has been filed under this ordinance, a child shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition, except as otherwise provided in this ordinance.

B. SERVICE OF PROCESS AND SEARCH WARRANTS

9-1 Summons - When Required

After a petition is filed and after such further investigation as the court may direct, the court shall promptly issue summons for hearing the case. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of the Court at or prior to the hearing.

9-2 Summons - Content - Requirements

The summons shall contain the name of the court, the title of the proceedings, and (except for a published summons) a brief statement of the substance of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the court and an adjudication will be made. The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the court at a time and

place stated. If the person or persons so summoned are not the parent, parents, or guardian of the child, then summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

9-3 Summons - Other Persons

Summons may be issued to any person within the jurisdiction of the court requiring the appearance of any other person whose presence the court deems necessary.

9-4 Immediate Custody of Child

If it appears to the court that the welfare of the child or of the public requires that the child be taken into custody, the court may, at anytime after a petition is filed, make an order providing for detention or shelter.

9-5 Emergency Medical Treatment

Upon the sworn testimony or signed statement of a physician, the court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed pending the service of summons upon his parents, guardian or custodian.

9-6 Compulsory Attendance of Witnesses

A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child. A guardian ad litem or a probation officer shall be entitled to compulsory process for the attendance of witnesses on behalf of the child.

9-7 Payment of Travel Expenses

The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this ordinance, not to exceed the amount allowed to witnesses for travel in other tribal courts.

9-8 Manner of Service - By Whom Served

Service of summons or process shall be made: by an officer of the tribal police; but upon request of the court such service may be made by any other peace officer, or by another suitable person selected by the court. Service of summons on tribal lands may be made by delivering a copy thereof to the person summoned; provided, however, that parents of a child living together at their usual place of abode may both be served personally by delivery to either parent of copies of the summons, one copy for each parent. If the judge is satisfied that

personal service of the summons is impractical under the circumstances, he may order service by registered mail, with a return receipt requested to be signed by the addressee only, to be addressed to the last known address of the person to be served on tribal lands. Service shall be complete upon return to the court of the signed receipt.

9-9 Substituted Service - Jurisdiction

If the parent, parents, or guardian required to be summoned cannot be found within tribal lands, the fact of their child's presence within tribal lands shall confer jurisdiction on the court in proceedings in children's cases under this ordinance as to any absent parent or guardian, provided that due notice has been given in one of the following manners:

(a) If the address of the parent or guardian is known, by sending him a copy of the summons by registered mail with a return receipt requested to be signed by the addressee only, or by personal service outside the reservation. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) If the address or whereabouts of the parent or guardian outside tribal lands cannot after diligent inquiry be ascertained, by publishing a summons in a newspaper having general circulation on tribal lands. The summons shall be published once a week for three successive weeks. Service shall be complete on the day of the last publication.

9-10 Service - Time Requirements

In the case of service on tribal lands, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside tribal lands, service completed not less than 5 days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

9-11 Search and Seizure Warrants

If it appears to the court upon an affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses if required by the judge, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the court, the court may issue a warrant authorizing a duly authorized peace officer or probation officer to search for the child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the officer making the search may enter the house or premises, if necessary by force, in order to remove the child. The officer must thereupon take the child to the court or to the place of detention or shelter designated by the court in accordance with Chapter 12 hereof.

9-12 Arrest of Parent, Guardian, Custodian or Child

If the summons cannot be served, or if it is made to appear to the court that the person served will not obey the summons, or that serving the summons will be ineffectual, or that the welfare of the child requires that he be brought immediately into the custody of the court, a warrant may be issued for the arrest of the parent, the guardian, the custodian, or the child, and any such warrant may be served anywhere within the jurisdiction of the court.

C. INVESTIGATION AND HEARINGS

10-1 Social Investigation

Whenever practicable the court shall require that a social investigation be made and a report be submitted to the court in writing in all cases under Section 3-1 of this Code in which a petition has been filed.

10-2 Social Investigation - Scope

The investigation shall cover the child's home environment, history and associations, the present conditions of the child and family, and recommendations as to the child's future care. In cases involving the duty of support, the study shall include such matters as earning, assets, financial obligations, and employment.

10-3 Proceedings - Civil in Nature

Proceedings in children's cases shall be regarded as civil proceedings, with the court exercising certain equitable powers. Nevertheless, the fact that the proceedings are of a civil nature shall not be construed to deprive the child of his rights to counsel, to confront accusers and cross-examine witnesses against him, nor to deny him his privilege against self-incrimination and his right to counsel and to a jury. Children's cases under Section 3-1 of this ordinance shall be handled separately from adult cases under Section 3-3.

10-4 Conduct of Hearings - Informal in Manner

Hearings in children's cases shall be before the court without a jury and may be conducted in an informal manner; provided that any child if accused of an offense punishable by detention shall upon request be entitled to a trial by jury. The general public shall be excluded and only such persons admitted as the judge finds have a direct and legitimate interest in the case or in the work of the court. At the discretion of the court, the child may be separately interviewed at any time if represented by his counselor. The hearing may be continued from time to time to a date specified in the order.

10-5 Record of Hearings

The record of the proceedings shall be kept in accordance with the practice in civil cases before the Trial Courts of the Navajo Tribe, unless the court otherwise directs.

10-6 Records - Use in Other Courts

Neither the record in the Tribal Juvenile Court nor any evidence given therein shall be admissible as evidence against the child in any proceedings in any other court. No child shall be charged with crime nor be convicted in any tribal court except as provided in this Code. Upon reaching the age of 18, the child's records shall be destroyed.

10-7 Right to Counsel

Any party, including the Tribe, shall have a right to be represented by a counselor in any proceeding under this Code. Prior to any hearings the court shall inform the parents, guardians, or custodian, and the child when it is appropriate to do so, that they have a right to be represented by a counselor. The counselor shall be any person qualified, under the Judicial Code of the Navajo Tribe, or under such rules as a majority of the Tribal Judges or the Advisory Committee shall make, to practice before Tribal courts.

10-8 Hearings

The hearing shall consist of two portions:

(a) Findings as to allegations in the petition. Findings of fact by the judge or by the jury as to allegations in the petition shall be based on the standard requiring proof of each material allegation beyond a reasonable doubt and shall be made upon the evidence admissible under the rules applicable to the trial of a criminal case in the Trial Courts of the Navajo Tribe.

(b) Disposition. In the disposition portion of the hearing any relevant and material information shall be admissible. The maker of any written report or study shall be subject to direct and cross-examination if he is reasonably available.

10-9 Notification of Right to Appeal

Parties adversely affected by a final disposition shall be informed of their right to appeal pursuant of Section 16-1 of this Code.

10-10 Consolidation of Proceedings

When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one child is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

10-11 Amendment of Pleadings - Continuances

When it appears during the course of any proceeding in a child's case that evidence presented points to material facts not alleged in the petition, the court may proceed to consider the additional matters raised by the evidence. The court, on motion of any interested party or on its own motion, shall direct that the petition be amended to conform to the evidence. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as justice may require. The court may grant such continuances as it deems reasonable.

10-12 Presence of Parent - Protection of Child - Appointment of Guardian

The court shall endeavor, through use of the warrant of arrest if necessary, or by other means, to insure the presence at the hearing of one or both parents or of the guardian of the child. If none of them is present, the court may appoint a guardian ad litem to protect the interest of the child. A guardian ad litem may also be appointed whenever necessary for the welfare of the child, whether or not a parent or guardian is present.

10-13 Grounds for Rehearing

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated under this Code, or any adult affected by a decree in a child's proceeding hereunder, may at any time petition the court for a new hearing on the ground that new evidence which was not known and could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered. If it appears to the court that there is such new evidence which might affect its decree, it shall order a new hearing and enter such decree and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.

D. ARREST AND DETENTION OF CHILDREN

11-1 Taking a Child Into Custody

A child may be taken into custody by any peace officer or probation officer pursuant to an order of the court. A child

may be taken into custody by any peace officer or probation officer without order of the court; (a) when in the presence of the officer the child has violated a state, federal, or local law or a municipal or tribal ordinance; (b) when there are reasonable grounds to believe that he has committed an act which if committed by an adult would be a felony; (c) when he is seriously endangered in his surroundings, and immediate removal appears to be necessary for his protection; (d) when there are reasonable grounds to believe that he has run away or escaped from his parents, guardian or custodian; (e) when there are reasonable grounds to believe that he has committed an act, which if committed by an adult, would be a breach of peace; (f) when he has reason to believe that the child requires immediate care or medical attention.

11-2 Citizen's Taking a Child Into Custody

A private citizen may take a child into custody if he has reason to believe that the child requires immediate care or medical attention. Taking a child into custody under Sections 11-1 or 11-2 shall not be deemed an arrest.

11-3 Notification of Parents

When an officer or other person takes a child into custody, he shall immediately notify the parents, guardian, or custodian.

11-4 Detention of Child

A child shall not be detained by the tribal police or in a police station any longer than is reasonably necessary to obtain his name, age, residence and other identifying information, and to contact and avoid the appearance of his parent, guardian or custodian. Notwithstanding the above if the child is not thereupon released, he must be taken without unnecessary delay to the court probation officer or to the place of detention or shelter designated by the court, but no child shall be held in detention longer than 48 hours unless upon order of the court or until positive identification is made.

11-5 Detention - Report to Court

The officer or other person who takes a child to a detention or shelter facility must notify the court at the earliest opportunity that the child has been taken into custody and where he was taken; he shall also promptly file with the court a brief written report stating the occurrences or facts which bring the child within the jurisdiction of the Tribal Juvenile Court and giving the reason why the child was not released.

11-6 Restrictions on Detention

No child shall be placed or kept in a detention or shelter facility for more than 24 hours, excluding Sundays and

holidays, pending court proceedings unless it is determined by the court at a hearing held for the purpose that it is unsafe for the child or the public to leave him in the custody of his parents, guardian or custodian.

11-7 Detention - Discretion of Judge

After immediate investigation by a duly authorized officer of the court, the judge or other authorized officer with or without a hearing shall, upon written promise to bring the child to the court at a set time or without restriction, order the release of the child to his parents, guardian or custodian if it is found that he can be safely left in their care. If it is found after a hearing for that purpose that it is not safe to release the child, the judge or authorized officer may order that the child be held in the facility or to be placed in another appropriate facility, subject to further order of the court.

E. DISPOSITION OF CASES

12-1 Findings of Jurisdictional Facts - Disposition of Case

When a child is found to come within the provisions of Section 3-1 of this Code, the court shall so adjudicate, and make findings of the facts upon which it bases its jurisdiction over the child. After such adjudication, the court may make the following dispositions by court order:

- (1) Require the child to submit to periodic counseling;
- (2) Place the child on probation or under protective supervision (as these terms are defined herein) in his own home, upon conditions determined by the court;
- (3) Place the child in the legal custody of a relative or other suitable person, with or without probation or protective supervision;
- (4) Commit the child to an authorized industrial school, except that a child found to come within the court's jurisdiction solely on the ground of neglect or dependency under Section 3-1 of this Code may not be committed to an industrial school or any other similar institution.
- (5) Place the child in an approved boarding school, on a ranch, a forestry camp, other camp, or a similar facility, for care, and for work, if possible, provided that the person, agency or association operating the facility has been approved by the court and has otherwise complied with all applicable tribal, state and local laws. A child placed in a forestry camp or similar facility may be required to work on fire prevention, forestation, and reforestation, recreational works,

forest roads and on other works on or off the grounds of such facility, and may be paid wages, all subject to the approval of, and under conditions set by the court.

(6) If the court has assurance that the responsibility to make payments will rest squarely on the child, and not on his parents, guardian, or custodian, it may order that the child be required to make restitution for damage or loss caused by his wrongful acts.

(7) Arrange for employment or work programs, to enable children to fulfill their obligations under paragraph 6 of this Section, and for other purposes when deemed desirable by the court.

(8) In cases of violations of traffic laws or ordinances, the court may, in addition to any other disposition, restrain the child from driving for such periods of time as the court deems necessary, and may take possession of the child's driver's license.

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

(10) Appoint a guardian for the child where it appears necessary to do so in the interest of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested, as such guardian.

12-2 Primary Consideration - Welfare of the Child

In placing a child under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the child, but whenever practicable may take into consideration the religious preferences of the child and of his parents.

12-3 Establishment of Conditions by Court

In support of a decree under Section 3-1 of this Code, the court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his custodian, or any other person who has been made a part to the proceedings, including, but not limited to, restriction on visitations by the parents or one parent, restrictions on the child's associates, occupation and other activities, and requirements to be observed by the parents or custodian.

12-4 Hospitalization of Child

With respect to a child within the jurisdiction of the court under Section 3-1, the court may order hospitalization in an authorized hospital if the court finds, upon due notice to the parents or guardian and a special hearing conducted in accordance

with the applicable laws and regulations, that the child is (1) mentally ill, and (2) because of his illness is likely to injure himself or others if allowed to remain at liberty, or is in need of custody, care of treatment in the mental hospital.

12-5 Commitment to Training School

The court may make an order committing a child within its jurisdiction to an authorized training school if the child has been found mentally deficient in accordance with the provisions of applicable law and regulation.

12-6 Termination of Parental Rights

The court may terminate all parental rights, provided it complies with provisions of Chapter 14 of this Code.

12-7 Other Disposition of Cases

The court may make any other reasonable orders which are for the best interest of the child or are required for the protection of the public, except that no child may be committed to prison or any child under 16 years of age to jail upon adjudication under this ordinance. The court may combine several of the above-listed modes of disposition where they are compatible.

12-8 Periodic Review of Cases

An order under this Section for the placement of a child with an individual or an agency shall include a date certain for a review of the case by the court, with a new date to be set upon each review. The maximum period of time between judgment and the first review and between successive reviews shall be six months.

F. JUDGMENTS AND ORDERS

13-1 Judgments - Inoperative After Majority

No judgment, order or decree of the Tribal Juvenile Court shall operate after the child becomes 18 years of age.

13-2 Orders - Modifications

The court may modify or set aside any order or decree made by it; but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned. Notice and a hearing shall also be required in any other case in which the effect of modifying or setting aside an order may be to deprive a parent of the legal custody of the child, to place the child in an institution or agency, or to transfer the child from one institution or agency to another, except that transfer from one foster home to another may be effected without notice and hearing.

13-3 Orders of Termination - Notice

Notice of an order terminating probation or protective supervision shall be given to the parents, guardian, custodian, and where appropriate, to the child.

13-4 Court Adjudication - Not Criminal in Nature

An adjudication by the Tribal Juvenile Court that a child is within its jurisdiction under Section 3-1 of this Code shall not be deemed a conviction of a crime.

CUSTODY OF CHILDREN

14-1 Parent's Preferred Right to Custody

Before depriving any parent of the custody of his or her child, the court shall give due consideration to the preferred right of parents to the custody of their children, as expressed in Section 1-1 hereof, and shall not transfer custody to another person, agency, or institution, unless the court finds from all the circumstances in the case that the welfare of the child or the public interest requires that the child be taken from his home.

14-2 Termination of Parental Rights

The court may decree a termination of parental rights as defined herein concerning a child within the purview of Section 3-1 hereof, if the provisions of Chapter 14 are complied with. The rights of one parent may be terminated without affecting the rights of the other parent.

14-3 Parental Rights - Grounds for Termination

The rights of the parent or parents may be terminated if the court finds:

(a) That the parent or parents are unfit and incompetent by reason of conduct or condition seriously detrimental to the child; or

(b) That the parent or parents have abandoned the child. It shall be prima facie evidence of abandonment that the parent or parents, although having legal custody of the child, have surrendered physical custody of the child, and for a period of one year following such surrender have not by some affirmative act manifested to the child or to the person having the physical custody of the child an intention to resume physical custody or to make arrangements for the care of the child; or

(c) That after a period of trial, during which the child was kept in his own home under protective supervision or probation, or during which the child was returned to live in his

own home, the parent or parents substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

14-4 Procedure for Terminating Parental Rights

A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents. A verbatim record of the proceedings must be taken and the parties must be advised as to their rights to counsel. No such hearing shall be held earlier than 10 days after service of summons is completed. The summons must contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceeding.

14-5 Parental Rights - Order Terminating - Contents

Every order terminating the rights of one or both parents shall recite the facts upon which the court bases its jurisdiction over the child and shall include the findings upon which the decree is based.

14-6 Action of Court After Termination of Parental Rights

Upon the entry of an order terminating the rights of the parent or parents, the court may (a) place the child for adoption under applicable law and regulations; or (b) make any other disposition of the child authorized under Chapter 12 hereof.

14-7 Parental Rights - Rights of Nonterminated Parent

If the rights of only one parent have been terminated, the right of the other parent to consent to adoption is not affected by an order placing the child for adoption as provided in the preceding Section.

14-8 Parental Rights - Voluntary Surrender

Nothing contained in this Section shall preclude a parent or parents from surrendering permanent legal custody voluntarily by instrument in writing, duly acknowledged, for purposes of adoption, and in accordance with applicable law and regulation.

14-9 Proceedings to Return Custody - Change of Circumstances

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an individual, agency, or institution, may petition the court for restoration of custody or other modification or revocation of the decree, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest

of the child. The court shall make preliminary investigation, and may dismiss the petition if it finds that the alleged change of circumstances, if proved, would not affect the decree. If the court finds that a further examination of the facts should be had, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing upon due notice to all persons concerned, and may thereupon enter an order continuing, modifying, or terminating the decree.

14-10 Custody - Rights and Duties

An agency granted legal custody shall have the right to determine where and with whom the child shall live, provided that placement of the child does not remove him from tribal lands without court approval. An individual granted legal custody shall exercise the rights and responsibilities involved in legal custody personally, unless otherwise authorized by the court.

SUPPORT OF CHILDREN

15-1 By Parents

When legal custody of a child is vested by the court in an individual or agency other than his parents, the court may in the same or any subsequent proceeding inquire into the ability of the parents to support the child and to pay any other expenses of the child, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the court. The court may, after due notice and a hearing on the matter, require the parents to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the court may direct, and unless otherwise ordered, payment is made to the clerk of the Tribal Juvenile Court for transmission to the person or agency having legal custody of the child or to whom compensation is due. The clerk of the court shall have authority to receive periodic payments towards the care and maintenance of the child, such as social security payments made in the name of or for the benefit of the child.

15-2 Jurisdiction - Summons

No court order issued under the preceding Section against a parent shall be entered, unless summons has been served within the territorial jurisdiction of the Tribe or a voluntary appearance is made or a waiver of service given. The summons shall specify that a hearing with respect to the financial support of the child will be held.

15-3 Enforcement of Support Orders

An order entered under Section 15-1 of this ordinance against the parent may be enforced by contempt proceedings, and

shall also have the affect of a judgment at law. In addition to other remedies, the court may issue an order to any employer, trustee, financial agency, or other person within the territorial jurisdiction of the Tribe, indebted to the parent, to withhold and pay over to the clerk of the court, moneys due or to become due.

No property of the parents, or either of them, shall be exempt from execution to enforce collection of the amounts ordered to be paid by the court under this Section.

15-4 Support from other Sources

If the court finds that the parents are unable to pay for full or partial support, examination, treatment, and other expenses of the child and that no other provision for the payment of such support and expenses has been made, or if the parents have failed to make such payment, or if summons could not be served on the reservation upon the parents or other person under Section 15-2 hereof, the court shall request the Tribal Public Welfare Division or any other public agency with funds available for such purposes to pay for such support and other expenses and if such department or agency consents, it shall be so ordered by the court.

15-5 Payments Directly to Agency - Report to Court - Visits

Payment for child support may be made to an agency in whom the court vests legal custody, provided that the agency shall make periodic reports to the court concerning the care and treatment the child is receiving and his response to such treatment. Such reports shall be made at such intervals as the court may direct, and shall be made with respect to each child at least every 6 months. The agency shall also afford an opportunity for a representative of the court to visit the child as frequently as the court deems necessary.

APPEALS

16-1 Procedure

An appeal to the Navajo Court of Appeals may be taken from any order, decree, or judgment of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Trial Court. Provided that the appeal must be made within 30 days from the entry of the order, decree, or judgment appealed from.

16-2 Stay Pending Appeal

Unless the court stays its order, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and

decided at the earliest practicable time. The name of the child shall not appear on the record on appeal.

MISCELLANEOUS PROVISIONS

17-1 Filing Fees - Witness Fees - Travel Expenses, Etc. -
By Whom Payable

There shall be no fee for filing a petition under Section 3-1 (1) & (2) of this Code, nor shall any fees be charged by any tribal officer for the service of process or for attendance in court in any such proceedings. Witness fees shall be payable in accordance with provisions for witnesses in other tribal courts.

17-2 Records to be Kept - Accessibility

The court shall keep such records as may be required by the judge and by this ordinance. Records in children's cases shall not be deemed criminal records and shall not be open to public inspection; but the court may at its discretion by order authorize inspection by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

17-3 Short Title

This Code shall be known and may be cited as the Juvenile Code.

CJN-52-69

Law and Order

Navajo Area Office
Window Rock, Arizona 86515

JUL 11 1969

JUL 11 1969

Commissioner of Indian Affairs

Washington, D. C. 20242

Attention: Chief, Tribal Operations Office

Dear Sir:

There are enclosed herewith three copies of Resolution CJN-52-69 concerning the adoption of the Juvenile Code of the Navajo Tribe. This type of ordinance heretofore has required the approval of the Washington Office.

This code is much needed on the Navajo Nation. Heretofore, the tribe has been unable to cope with juvenile matters and this code will assist greatly in the judicial process within the Navajo Nation.

It is my opinion this is a proper ordinance and should be approved.

Sincerely yours,

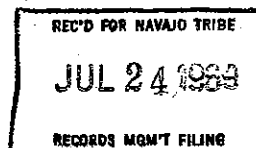
(SGD) Robert M. Cullum

Assistant Area Director

Enclosures

cc:

Chairman, Navajo Tribal Council



BEST AVAILABLE COPY

RECEIVED

JUL 15 1969

OFFICE OF THE CHAIRMAN
THE NAVAJO TRIBE

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER
TO:
LAW AND ORDER

October 8, 1969

Through: Area Director, Navajo

Mr. Raymond Nakai, Chairman
Navajo Tribal Council
Window Rock, Arizona 86515

Dear Mr. Nakai:

On June 4, 1969, the Navajo Tribal Council adopted Resolution CJN-52-69, submitted and signed by Mr. Nelson Damon, Vice Chairman, which provides a new juvenile code and repeals all of Chapter 25, Title 13, and all resolutions and sections of the Navajo Tribal Code that are inconsistent with CJN-52-69. Pursuant to Section 1 of Resolution CJA-1-59, 7 N.T.C., Section 1(e), the resolution is subject to approval by the Secretary of the Interior

In accordance with authority delegated by Secretarial Order No. 2508, as amended (33 F.R. 15952), we have reviewed Resolution CJN-52-69 and find no reason that would prompt us to recommend its disapproval by the Secretary of the Interior. Resolution CJN-52-69 is hereby approved.

In approving the resolution, we note several areas that should be brought to the tribal council's attention for consideration. The questions raised and suggestions made are as follows:

Section 1-2(a) - While the code provides the Court with authority to consent to the marriage of a minor under its jurisdiction, there is no reference to the emancipation of a minor by marriage. We suggest that the definition of a child exclude legally married minors.

Section 3-1 - Jurisdiction - Is it intended that the juvenile court would maintain exclusive jurisdiction throughout a child's minority years? The code makes no provision for waiver of jurisdiction.

Section 4-2 - Definition of "Advisory Committee" is needed.

Section 5-1 - What is the tenure of the Probation Officer? How is he removed? Does he serve at the pleasure of the judge or is he removed only for cause? This should be spelled out.

Section 5-5 - Line 2 should read " . . . all cases of a certain class . . ."

Section 8-1 - Line 8 should read " . . . and if so . . ."

Section 9-4 - Line 3 should read " . . . after a petition is filed . . ."

Section 9-11 - Probation Officers should not be involved in search and seizure, or forcible entry. These are police functions for which probation officers are not trained. We recommend the Probation Officer be deleted from this section.

Section 10-3-- The phrase "right to council" is repeated in this section.

Section 11-1(e) - In view of the U.S. Supreme Court holding in re Gault, this section should be reconsidered. If due process is to be accorded juveniles, a peace officer cannot take a juvenile into custody on the basis of "reasonable ground to believe" he has committed an act that would be a misdemeanor if committed by an adult. "Reasonable grounds to believe" holds for felonies but not be misdemeanors. The Tribal Code covers misdemeanors only.

Section 11-4 - The phrase " . . . and to contact and avoid the appearance of his parents . . ." is not clear as to meaning.

Section 11-5 - In order to avoid misuse of this section, we suggest amending the section at line 2 to read " . . . must notify the court immediately . . ."

Section 11-6 - This section appears to be in conflict with 11-4 as to the time element for detention.

Section 11-7 - The term "officer of the court" as used in this section is confusing. It includes probation officers who, under no circumstances, should have authority to order the detention of a minor. If "court officer" is intended to mean "referee," then we suggest that term "referee" be used instead of court officer to avoid confusion.

Section 12-1 - It is suggested that a minimum age limit of 16 years be placed on boys who are sent to forestry camps. Forestry work is hard and for medical reasons younger children should not be subjected to it.

BEST AVAILABLE COPY

The Council is to be commended for the adoption of the Juvenile Code and its continuing efforts to improve reservation law and order services.

Sincerely yours,

/S/ T. W. Taylor

Acting Commissioner

Enclosure

cc: Navajo Area Director
w/incoming

Transmitted: October 13, 1969

/s/ Graham Holmes, Area Director