

# Álchíní Bi Beehaz'áannii Act Rules of Procedure

Cite to A.B.B.A.R.P. Rev. 2/6/2014

The Álchíní Bi Beehaz'áannii Act of 2011 (A.B.B.A.) was enacted by Navajo Nation Council Resolution No. CO-38-11, October 31, 2011, *eff.* January 2, 2012 and codified at 9 N.N.C. §§ 1001-1504. A.B.B.A. repealed the former Navajo Nation Children's Code at 9 N.N.C. §§ 1001-1307. These A.B.B.A. Rules of Procedure replace the former Children's Code Rules of Procedure.

I.	General Provisions.....	1
II.	Delinquency.....	9
III.	CHINS .....	13
IV.	Dependency .....	17
V.	Termination of Parental Rights.....	25
VI.	ICWA.....	28

## I. GENERAL PROVISIONS

### **RULE 1      Scope.**

1(a)    **Cite.** These Rules shall be cited as "A.B.B.A.R.P."

1(b)    **Application.** These Rules apply solely in court proceedings arising under the Navajo Nation Álchíní Bi Beehaz'áannii Act unless stated otherwise. Matters not covered by these Rules shall proceed according to Navajo Rules of Civil Procedure.

1(c)    ~~Rules of Civil Procedure. These Rules supplement the Navajo Rules of Civil Procedure.~~ **Restatement of A.B.B.A.** These Rules gather and organize procedures and substantive criteria set forth in the A.B.B.A. in order to maximize simplicity in application. In any conflict between these rules and the A.B.B.A., the A.B.B.A. shall prevail.

### **RULE 2      General Definitions**

2(a)    **A.B.B.A.** Álchíní Bi Beehaz'áannii Act.

2(b)    **Adjudication.** The decision of the court, which determines the status of a child.

2(c)    **Business Days.** Working days, normally Mondays to Fridays, not counting weekends and court holidays and closures by administrative order of the Chief Justice.

2(d)    **Calendar Days.** Every day, including weekends and court holidays and closures.

- 2(e) **Complaint.** Information and/or allegations regarding a child prior to the filing of a petition.
- 2(f) **Customary Parenting.** A traditional Diné practice of kinship upbringing in which a child is raised by a circle of kin with a primary responsible adult other than the birth parents who are unable to take on that role. This method relies on a stable family circle and allows a child to gain parents without losing the ones he or she already has, while shifting primary parental responsibility to another kin.
- ~~2(g)~~2(h) ~~**Emancipation.** This term is used with reference to the emancipation of a minor child from its parents, which involves an entire surrender of the right to the care, custody and earnings of such child as well as a renunciation of parental duties and obligations.~~**ICWA Application.** An Application filed under the Indian Child Welfare Act requesting a Navajo Nation court to accept jurisdiction and transfer of a child's removal or termination of parental rights proceeding from a foreign (state or tribal) court.
- 2(i)2(j) ~~**Immediate Relative.** For purposes of service in dependency actions, any relative self-identified and known to the child and/or extended family as part of the family unit pursuant to k'é.~~**Kinship** (*k'é dóó nidineshigii*). As used in ~~these rules~~kinship placement and guardianship, kinship is broadly construed and includes, but is not limited to, immediate, extended, and k'é ts'ósé family.
- 2(k) ~~**Parental.** "Parental" as used in these rules pertains to duties of a parent(s), guardian(s), or custodian(s) toward a child.~~
- 2(l) ~~**Parent(s), Guardian(s), Custodians.** Parents and individuals serving as caretakers or acting in place of a parent, including a father whose paternity has not been judicially or administratively acknowledged.~~
- 2(m) ~~**Petition.** A written request to the Court asking for a legal case to be decided on its merits and for relief to be granted.~~
- 2(n) ~~**Preliminary Inquiry.** "Preliminary inquiry" begins on the date a verbal report is given to the Prosecutor by the Division or Law Enforcement in a dependency case, otherwise when a written information, complaint, arrest or police report is referred to the Prosecutor.~~
- 2(o) **Traditional Services.** All services provided by the Peacemaking Program, including Hózhóji Naat'aah (Diné Traditional Peacemaking), Áłchíní BáNdazh-nít'á (Diné Family Group Conferencing) and Nábináhaazláago Áłch'i' yáti' (Individual or Group Life Value Engagements).
- 2(p) **Ward of the Court.** A child under the continuing jurisdiction of the court. The court obtains wardship over a child when that child comes under the jurisdiction of the court following an ICWA Application or petition being filed or with a voluntary agreement attached. Such wardship continues until jurisdiction terminates pursuant to the A.B.B.A.

**RULE 3      Commencement of Action.**

- 3(a)    **Filing.** An action under the A.B.B.A. is commenced by the filing of a petition with the court in the name of the child, or perfection of a foreign court transfer following the filing of an ICWA Application with the court.
- 3(b)    **Separate Petitions.** Separate petitions shall be required for each violation in delinquency and CHINS actions.
- 3(c)    **Petition Content.** Content and form of petitions shall be as provided in the A.B.B.A.
- 3(d)    **Navajo Nation Petitions.** Petitions filed by the Navajo Nation shall be signed by the Prosecutor. In addition to the requirements of the A.B.B.A. the petition shall set forth the date and time the complaint or referral was received by the Prosecutor.
- 3(e)    **Private Petitions.** Privately filed dependency petitions or ICWA Applications shall be signed by a member of the Navajo Nation Bar Association or by a party pro se.

**RULE 4      Parties.** In addition to the petitioner, the following are persons whose presence in the action is required in the interests of justice:

- 4(a)    **Child.** The child who is the subject of the action is the named party in all pleadings under the A.B.B.A.
- 4(b)    **Parent(s), Guardian(s) or Custodian(s).** The parent(s), guardian(s) and/or custodian(s) are necessary parties in action to adjudicate a child delinquent, in need of supervision or dependent, to terminate parental rights, and all other matters arising under the A.B.B.A.
- 4(c)    **Others.** The court on its own motion or upon a petition may designate as a necessary party and other person whose presence is required in the interests of justice.
- 4(d)    **Participation of a Necessary Party.** A necessary party is any person who is required under the A.B.B.A. or under these rules to receive notice of the filing of a petition or ICWA Application.
- 4(e)    **Designation of Necessary Parties.** The purpose of designating necessary parties is to permit the court to make a full and complete adjudication of the matters before it, to advise the necessary parties of the pending matters, and to enable the court to enforce and carry out its orders.

**RULE 5      Service.**

- 5(a) **Special Appointee.** Personal service whether within or outside the Navajo Nation may be made by special appointee of the presiding judge of the court in which the action is filed. The special appointee shall be a person eighteen years of age or older who is not a party or legal counsel in the action. The motion for a special appointee shall be submitted with the petition. Any order granting the appointment shall be issued with the summons.
- 5(b) **Ultimate Responsibility.** The Prosecutor shall have the ultimate responsibility to effectuate or facilitate diligent efforts for service, unless otherwise stated.
- 5(c) **Affidavit.** An affidavit of “diligent efforts” shall be filed by the Prosecutor if service is unable to be performed, including in the following situations: when a necessary party's identity or location is unknown and there is no permanent mailing address on file with the court, or their location outside the boundaries of the Navajo Nation including incarceration in another jurisdiction frustrates reasonable, proper and timely service, or they otherwise cannot be found for service to be performed.
- 5(d) **Diligent Efforts.** If the Court determines that persons required to be served are unable to be timely served despite diligent efforts, the Court may proceed with the hearing, continue the hearing, and/or appoint a guardian ad litem.
- 5(e) **Electronic Service.** In addition to methods of service set forth in 5(a) above, service under the A.B.B.A. may be electronically transmitted via email or fax that the party being served has provided for the specific purpose of service in the pending matter. Verification of successful transmission, including an automated message of receipt, shall be filed with the court. The criteria for the ordering of alternative service at Nav. R. Civ. P. 4(e)(2) shall not apply.
- 5(f) **Parental Waiver.** A parent may waive service in a voluntary proceeding, which would have entitled them to receive a copy of the petition, an opportunity to respond, receive hearing notices, and participate in the proceedings. A waiver shall be in a notarized writing, or a writing attested to by two credible witnesses eighteen (18) years of age or older, or may be verbally waived in open court, and may be withdrawn at any time.

## **RULE 6      Hearings.**

- ~~6(a)~~6(a) **Notices.** ~~Notices of hearings scheduled on the same day may be combined into a single notice of hearing, provided the separateness and sequence of the hearings are set forth clearly in the Notice.~~ **Consolidation.** The Court may not consolidate hearings on the petition with other proceedings. Hearings on matters that are not on the merits may be consolidated.

6(b) **Sequence.** Separate hearings may be held one after the other on the same day. In delinquency actions, the detention hearing shall proceed before, and may not be consolidated with, the preliminary hearing, although both may be held on the same day.

6(c) **Closed Hearings.** All hearings other than Delinquency proceedings held pursuant to provisions of the A.B.B.A. shall be closed to the public. The Court may admit persons the Court finds to have a proper interest in the case on the condition that they respect the confidentiality of the proceedings. Delinquency hearings shall be open to the general public except upon a finding of exceptional circumstances.

6(d) **Electronic Appearance.** Appearances by counsel, parties and witnesses may be via [digitally recordable electronic video/audio, telephone and other media-at all hearings upon written motion stating good cause.](#)

## **RULE 7 Evidence.**

7(a) **Detention and Custody.** The Court shall hear evidence relevant and material to detention, protective custody, or temporary custody, even if otherwise inadmissible in a hearing on the petition.

7(b) **On the Merits.** In all proceedings on the petition, the Court shall receive relevant and material evidence in substantial conformity to the Rules of Evidence. An extra-judicial statement that would be inadmissible in a criminal matter, and evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition over objection.

7(c) **Disposition.** In delinquency and CHINS cases, the Court may consider all relevant and material evidence helpful in determining disposition of the child following adjudication, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.

**RULE 8 Admissions.** The Court may accept admissions only if corroborated by other evidence, or if stipulated by a victim or eye-witness.

**RULE 9 Specific Findings.** Specific findings are required for all orders and judgments, including determination of validity of admissions. The Court may make findings as circumstances require in order to obtain Title IV-E funds for the support of a child or family.

**RULE 10 Guardian Ad Litem (GAL).** A GAL shall have access to and be provided, [without cost](#), reports, records and other documents filed or made available to the court in the matter appointed; shall inform the court on matters regarding the background, environment and needs and wishes of the child; shall appear at all proceedings to represent the child's interests; shall be subject to the privacy provisions of the A.B.B.A.

and other laws; and shall not disclose any information obtained pursuant to the duties of GAL except pursuant to the orders and directives of the court. The GAL may be discharged only by order of the court or by the completion of the proceedings. In cases which remain under the continuing jurisdiction of the court, the GAL shall continue active participation in the proceedings and attend all hearings. Upon discharge the guardian ad litem shall return to the court all records pertaining to the case.

**RULE 11      Pre-Disposition Reports.** Pre-disposition reports shall be ordered from Probation Services or the Division and shall be submitted to counsel, parties, and/or the GAL at least five (5) business days prior to any hearing in which they will be entered in evidence.

**RULE 12      Sealing of Records.** Records sealed shall be the entire record of the case. When sealed records are electronically stored, they shall be stored on devices specifically set aside for sealed records.

**RULE 13      Filing Fees.** [District Court filing fees for petitions filed by the Navajo Nation shall be waived.](#)

**RULE 14      CONDUCT OF HEARINGS.** All A.B.B.A. Hearings shall be conducted as follows:

REQUIRED AT EACH SEPARATE APPEARANCE		
1.	Determine proper parties are present	The Court shall ensure parties are present, including ensure they are the proper parties.
2.	Review Service	The Court shall determine if service has been properly performed, or waived, or otherwise settle all issues concerning service.
3.	Explain Proceedings	The Court shall ensure that all parties have received copies of the petition or pleading and understand their contents; advise the parties of the nature of the proceedings and the possible outcomes.
4.	Advisement of Basic Rights	The Court shall advise the parties of their <a href="#"><u>basic rights, including</u></a> the right to legal counsel at all proceedings on the petition, the right to the opportunity to introduce evidence and to be heard, to confront and cross-examine witnesses, to obtain discovery, and to admit or deny the allegations in the petition. In delinquency and CHINS cases, the child has a right <a href="#"><u>against self-incrimination,</u></a> not be questioned without the presence of a parent, guardian, custodian or legal counsel. <a href="#"><u>Parties are to be informed that they have no right to a jury trial under ABBA.</u></a>
5.	Requests for Counsel	If counsel is requested at hearings other than detention/protective custody hearings in delinquency and CHINS actions, suspend the proceedings and grant a continuance within any prescribed time limits for purposes of

		securing counsel. If indigency is found pursuant to 9 N.N.C. § 1310(A), the Court shall appoint a public defender or a member of the Navajo Nation Bar Association, where appropriate.
6.	Guardian ad Litem	At the earliest opportunity, the Court shall determine if a guardian ad litem is needed by making a preliminary finding whether the child's interests are adequately represented. Thereafter, at any time during the proceedings, the Court may appoint a guardian ad litem if the child has no parent, guardian or custodian appearing on behalf of the child or if his/her interests conflicts with those of his/her parent, guardian or custodian, or if the Court determines that the parent, guardian or custodian of the child is in no position to exercise effective guardianship, or if otherwise in the child's best interest.
		<i>a. Appointment of NNBA Members as GALs.</i> Pursuant to the Navajo Pro Bono Rules, Rule 4 and 5, Courts may appoint NNBA members as guardians ad litem only upon a specific finding that a legally trained guardian ad litem is required. No pro bono appointment shall be made if the person for whom the appointment is sought has resources that, if used, would enable the person to hire his or her own counsel.
7.	Psychological Exam of Child	Where there is an indication that the child may be mentally ill or mentally disabled, the Court or any party may move for an order that the child be examined by a psychiatrist or psychologist prior to a hearing on the merits and/or as part of the predisposition study and report.
SETTLEMENT		
8.	Settlement	At any time prior to adjudication, the Court may encourage the parties to pursue settlement in lieu of adjudication, including having the parties develop a plan among themselves, or nályééh through traditional services. Upon the signing of a plan or agreement, proceedings may be suspended by motion and the plan put in place.
9.	Referral to Traditional Services	The Court may refer parties to traditional services at any time for any purpose, including to educate the parties in order to facilitate a plan or prepare them for settlement. <a href="#">Attendance at life value engagements may be mandated without consent in order to teach traditional Diné principles, while active participation is up to the individuals.</a>
10.	Concurrence for Immediate Disposition	With the concurrence of the parties, the Court may proceed immediately to disposition upon settlement or admission. If there is no concurrence, a pre-disposition report shall be ordered and a disposition hearing shall be scheduled.
MERITS		
11.	Review Responsive	If there is no settlement, the Court shall proceed to the merits, beginning

	Pleadings, if any	with reviewing any responsive pleading with the parties.
12.	Narrow the Issues	As circumstances requires, the Court shall narrow the issues prior to settlement or any hearing on the merits.
13.	Opportunity to Admit/Deny or Change Plea <a href="#">or Position</a>	At both preliminary and adjudicative hearings, if it appears that the child and/or parties understands the proceedings and wishes to proceed, or if requested counsel has been secured, the Court may inquire whether the child and/or parties admits or denies the alleged violations or charges, or wish to change an entered plea or position before proceeding on the merits.
14.	Receive Evidence and Testimony	The Court shall receive testimony and/or evidence as required by the type of proceeding in compliance with evidentiary standards set forth in these rules.
15.	Findings	The determinations of the Court upon receiving evidence shall be based on standards of proof and criteria set forth for the particular proceeding in these rules. The Court may make verbal findings immediately after receiving evidence.
16.	Concurrence for Immediate Disposition	With the concurrence of the parties, the Court may proceed immediately to disposition upon admission or adjudication. If there is no concurrence, a pre-disposition report shall be ordered and a disposition hearing shall be scheduled.
17.	Thirty-Day Psychological Placement	In delinquencies and CHINS, the Court may order that the child be transferred to an appropriate facility for no more than thirty (30) calendar days for purposes of diagnosis, and further order that a written report containing the recommended disposition be filed with the Court.
18.	Pre-Disposition Reports and Other Evidence Relevant to Disposition	If a disposition hearing is necessary, pre-disposition reports and other evidence relevant to disposition are ordered.
19.	Disposition	
REVIEW		



## II. DELINQUENCY PROCEEDINGS

### **RULE 15 Caseflow and Deadlines.**

	<i>Event/Filing/Order</i>	<i>Deadlines</i>	<i>If deadline is missed:</i>
1.	Diversion	Optional. Agreed to between the child and the Prosecutor for self-responsibility in lieu of petition filing. Shall be monitored by Probation Services.	
2.	Petition Filing	(a) Shall be filed within thirty (30) calendar days of preliminary inquiry. The Court may authorize the Prosecutor to re-file within twenty (20) calendar days of a dismissal upon a showing of due diligence.	Dismissal with prejudice
		(b) <u>Child in Detention</u> : If the child is arrested and detained and further detention is sought, the A.B.B.A. provides that the petition shall be filed within <del>three-two</del> (32) business days of detention.	Child shall be released
3.	Responsive Pleadings	Shall be filed pursuant to Section III, Nav. R. Civ. P.	
4.	Detention Hearing	Shall be held within one (1) business day of the filing of the petition.	Child shall be released
5.	Issuance of Temporary Detention Order	<u>Shall be issued within three (3) business days of when the child was detained.</u>	
6.	Hearing to Transfer Child to Adult Court	Optional. Shall be scheduled when the Prosecutor moves to transfer a child aged sixteen (16) or older to adult court prior to a hearing on the merits.	
7.	Preliminary Hearing	(a) If the child is not detained, shall be held within twenty (20) calendar days of the filing of the petition. Continuance may not exceed twenty (20) calendar days. Opportunity for plea and settlement. Disposition may immediately follow.	Dismissal with prejudice
		(b) <u>Child in Detention</u> : If the child is in detention, shall be held within ten (10) calendar days of the filing of the petition. Continuance may not exceed ten (10) calendar days. Opportunity for plea and settlement. Disposition may immediately follow.	Dismissal with prejudice
8.	Consent Decree	May be agreed to at any time prior to adjudication. Prior to or as part of the agreement, the child may be referred to traditional	

		services for self-responsibility education.	
9.	Adjudicatory Hearing	Should be held within thirty (30) calendar days of the preliminary hearing. Opportunity for change of plea and settlement prior to receiving evidence. Disposition may immediately follow.	
10.	Nályééh/Sentencing	The Court may refer nályééh and sentencing to traditional services, with the victim's concurrence and participation.	
11.	Disposition Hearing	Should be held without unreasonable delay.	
12.	Petition for Revocation of Probation	Is filed as an original proceeding by the Prosecutor upon violation of a probation condition; service requirements apply.	
	(a) Revocation Hearing	As a new A.B.B.A. proceeding, Section III, Nav. R. Civ. P. responsive pleading and ABBARP Rule 14 hearing procedures apply.	

## **RULE 16 Standards and Criteria of Proof.**

### **16(a) Detention Hearing -- Probable Cause**

To hold a child pending adjudication, the Court shall determine if probable cause exists to believe that:

1. If not in custody, the child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or
2. The child has no parent(s), guardian(s) or custodian(s) able to provide adequate supervision and care for the child; or
3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

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### **16(b) Hearing to Transfer Child to Adult Court -- Clear and Convincing Evidence**

To justify transferring a child aged sixteen (16) or older to be tried as an adult, the Court shall determine, based on clear and convincing evidence, that there are reasonable grounds to believe that all of the following criteria exist:

1. A delinquent act was committed by the child, and
2. The child is not amenable to treatment or rehabilitation as a child through available resources, and
3. The child has a history of delinquent offenses or history of probation violations or a record of felony offenses, and
4. The child is not committable to an institution for the mentally disabled or mentally ill; and

5. The child is a danger to the public or him/herself and transfer to the adult Court would be in the child's best interest.

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16(c) **Preliminary Hearing** -- Probable Cause

If the child denies or admits to only a portion of the allegations, the Court may proceed to hear evidence relevant and material to the charge in order to determine whether probable cause exists that the delinquent act occurred.

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16(d) **Adjudicatory Hearing** -- Proof Beyond a Reasonable Doubt

If the child maintains denial, the Court shall hear evidence relevant and material to the charge in order to determine whether the child committed the delinquent act beyond reasonable doubt.

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16(e) **Disposition, Care and Rehabilitation Determination** -- Rebuttable Presumption; Preponderance of the Evidence

- (i) Rebuttable Presumption. If the delinquent act admitted would constitute a federal felony, there is a rebuttable presumption that the child is in need of care or rehabilitation. The child shall be given an opportunity to rebut.
- (ii) Considering all relevant and material evidence helpful in making a care and rehabilitation determination for the child, including oral and written reports, and relying on such evidence to the extent of its probative value even though not otherwise competent, the Court may make the following dispositions with a finding, by preponderance of the evidence, that the selected disposition will best serve rehabilitative ends and is appropriate to the needs of the child and the protection of the community:
  - 1. Any fine or sentence that does not exceed the fine and/or sentence that could have been imposed for an adult on the same charge;
  - 2. Transfer legal custody to an appropriate agency, in which case the Court shall transmit all information pertinent to care and treatment of the child with the disposition order. The agency shall be subject to monitoring by Probation and Parole Services;
  - 3. Place the child on probation for up to one (1) year under supervision of Probation Services.
  - 4. Upon a specific finding of necessity, order a child over the age of eight years old to detention for up to one (1) year.

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16(f) **Probation Revocation Hearing** -- Proof Beyond a Reasonable Doubt

The Court shall determine whether a condition of probation has been violated beyond a reasonable doubt.

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**RULE 17    Specific Provisions.**

- 17(a)    **Consent Decree.** A consent decree may remain in force for up to six (6) months, extendable up to three (3) months. The child has thirty (30) calendar days after entry of the consent decree to object; otherwise the child shall be held to its conditions.
- 17(b)    **Release Order Pending Adjudication.** If no probable cause exists for temporary detention, the Court may order conditional, restricted, supervised, or unrestricted release as the circumstances warrant and shall provide an explanation in specific findings.
- 17(c)    **Release Orders, Generally.** Release orders shall issue immediately following the Court's relevant findings.
- 17(d)    **Hearing to Transfer Child to Adult Court.** If the Prosecutor files a motion to transfer a child aged sixteen (16) or older to adult court, notice shall be sent at least three (3) days prior to the hearing, and a pre-dispositional report specific to the transfer-justification criteria shall be ordered.
- 17(e)    **Case Management.** A probation officer shall be assigned to case manage and monitor the well-being of any child ordered into detention.
- 17(f)    **Disposition Hearing** is necessary if there is no concurrence to dispose of the child immediately following admission or adjudication, and the Court lacks adequate information upon which to enter an informed disposition order.
  - (i)    **Pre-Disposition Report.** The Court shall order a pre-disposition report or any other reports or studies prior to the disposition hearing.
  - (ii)    **Continuance to Receive Reports.** By motion of a party or the Court, the hearing may be continued 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 predisposition study and report if that document has not been prepared and received. During any continuance under this Section, the Court shall make an appropriate order for detention or legal custody.
- 17(g)    **Probation Revocation Hearing**
  - (i)    **Petition.** A "Petition to Revoke Probation" shall be filed as an original proceeding with reference to the initial proceeding.
  - (ii)    **Sentencing Limits.** If the Court finds at a hearing, beyond reasonable doubt, that the extension is necessary to protect the community or to safeguard the welfare of the child, probation may be extended for up to one (1) year. Otherwise, probation may be extended for three (3) months upon a

finding of violation, or the Court may make any other judgment or disposition consistent with that of the original disposition of the case. Detention may only be ordered if it could have been imposed on an adult on the same original charge.

### III. CHILD IN NEED OF SUPERVISION PROCEEDINGS

#### **RULE 18 Caseflow and Deadlines.**

	<i>Event/Filing/Order</i>		<i>Deadlines</i>	<i>If deadline is missed:</i>
1.	Diversion		Optional. Agreed to between the child and the Prosecutor for self-responsibility in lieu of petition filing. Shall be monitored by Probation Services.	
2.	Notice of Initial Hold		Shall be provided to the Court and the child's parent(s), guardian(s), or custodian(s) within three (3) business days of the child being taken into protective custody.	Child shall be released
3.	Petition	(a)	Shall be filed within thirty (30) calendar days of preliminary inquiry. The Court may authorize the Prosecutor to re-file within twenty (20) calendar days of a dismissal upon a showing of due diligence.	Dismissal with prejudice
		(b)	<u>Child in Custody</u> : Shall be filed within two (2) business days of the child being taken into protective custody.	Child shall be released
4.	Responsive Pleadings		Shall be filed pursuant to Section III, Nav. R. Civ. P.	
5.	Protective Custody Hearing		Shall be held within one (1) business day of the filing of the petition.	Child shall be released
6.	Temporary Custody Order		Shall be issued within three (3) business days of when the child was taken into protective custody.	Child shall be released
7.	Preliminary Hearing	(a)	If the child is not in protective custody, shall be held within twenty (20) calendar days of the filing of the petition. Continuance may not exceed twenty (20) calendar days. Opportunity for plea and settlement. Disposition may immediately follow	Dismissal with prejudice
		(b)	<u>Child in Custody</u> : If the child is in protective custody, shall be held within ten (10) calendar days of the filing of the petition. Continuance may not exceed ten (10) calendar days. Opportunity for plea and settlement. Disposition may immediately follow.	Dismissal with prejudice
8.	Consent Decree		May be agreed to at any time prior to adjudication. Prior to or as part of the agreement, the child may be referred to	

			traditional services for self-responsibility education.	
9.	Adjudicatory Hearing		Should be held within thirty (30) calendar days of the preliminary hearing. Opportunity for change of plea and settlement prior to receiving evidence. Disposition may immediately follow.	
10.	Nályééh/ Sentencing		The Court may refer nályééh and sentencing to traditional services, with the victim's concurrence and participation.	
11.	Disposition Hearing		Should be held without unreasonable delay.	
12.	Show Cause Hearing		Is held to consider the issuance of a civil contempt order if a child violates a valid court order	

## **RULE 19 Standards and Criteria of Proof.**

### **19(a) Protective Custody Hearing -- Probable Cause**

To hold a child pending adjudication, the Court shall determine if probable cause exists to believe that:

1. If not in custody, the child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or
2. The child has no parent(s), guardian(s) or custodian(s) able to provide adequate supervision and care for the child; or
3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

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### **19(b) Preliminary Hearing -- Probable Cause**

If the child denies or admits to only a portion of the allegations, the Court may proceed to hear evidence relevant and material to the charge in order to determine whether probable cause exists that the child:

1. Being subject to compulsory school attendance, is consistently absent or tardy from school; or
2. Consistently disobeys the reasonable and lawful parental demands or demands of school personnel and is beyond control; or
3. Has committed a civil traffic infraction under Title 14; or
4. Has committed other non-criminal offenses under Navajo Law.

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### **19(c) Adjudicatory Hearing -- Clear and Convincing Evidence**

If the child maintains denial, the Court shall hear evidence relevant and material to the charge in order to determine, by clear and convincing evidence, whether the child is in need of supervision.

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19(d) **Disposition, Care and Rehabilitation Determination** -- Preponderance of the Evidence

Considering all relevant and material evidence helpful in making a care and rehabilitation determination for the child, including oral and written reports, and relying on such evidence to the extent of its probative value even though not otherwise competent, the Court may make the following dispositions with a finding, by preponderance of the evidence, that the selected disposition will best serve rehabilitative ends and is appropriate to the needs of the child and the protection of the community:

1. Any disposition that is authorized for a dependent child;
  2. Transfer legal custody to an appropriate agency, in which case the Court shall transmit all information pertinent to care and treatment of the child with the disposition order. The agency shall be subject to monitoring by Probation and Parole Services;
  3. Place the child under Court supervision.
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19(e) **Show Cause Hearing** -- Clear and Convincing Evidence

The Court shall determine whether a court order has been violated by clear and convincing evidence.

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**RULE 20      Specific Provisions.**

- 20(a)    **Consent Decree.** A consent decree may remain in force for up to six (6) months, extendable up to three (3) months. The child has thirty (30) calendar days after entry of the consent decree to object; otherwise the child shall be held to its conditions.
- 20(b)    **Hearing Officer.** The protective custody hearing may be presided by a Hearing Officer appointed by the Court.
- 20(c)    **Temporary Custody Order.** Any temporary custody order shall be issued within three (3) business days of when the child was taken into protective custody. The Court may order protective custody to a foster home, kinship placement, a facility, or any other suitable place other than a facility designated for delinquent children.
- 20(d)    **Release Order Pending Adjudication.** If no probable cause exists to hold the child pending adjudication, the Court may order the child released with a requirement that the child be placed in kinship custody, agency supervision, or



impose conditions such as restriction on travel, place of residence, and association as the circumstances warrant so long as an explanation is provided.

- 20(e) **Release Orders, Generally.** Release orders shall issue immediately following the Court's relevant findings.
- 20(f) **Case Management.** A probation officer shall be assigned to case manage and monitor the well-being of any child ordered into protective custody.
- 20(g) **Disposition Hearing** is necessary if there is no concurrence to dispose of the child immediately following admission or adjudication, and the Court lacks adequate information upon which to immediately enter an informed disposition order.
  - (i) **Pre-Disposition Report.** The Court shall order a pre-disposition report or any other reports or studies prior to the disposition hearing.
  - (ii) **Continuance to Receive Reports.** By motion of a party or the Court, the hearing may be continued 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 predisposition study and report if that document has not been prepared and received. During any continuance under this Section, the Court shall make an appropriate order for detention or legal custody.
- 20(h) **Notification of Change of Placement.** The agency responsible for placement (either Probation Services or the Division) shall contact the Prosecutor in writing to file a Notice of Change of Placement or to Request Hearing if a child is to be removed from initial placement.
- 20(i) **Show Cause Hearing.**
  - (i) **Violations of Court Orders.** The Court may hold an order to show cause hearing and issue a civil contempt order if a child violates a valid court order.
  - (ii) **Detention Prohibited.** Options to address the child's compliance shall not include detention.
  - (iii) **Escalation to Delinquency.** When expressly permitted by the Court, the Prosecutor may file a delinquency proceeding for a child's continued violations of court orders after all possible options have been considered.

## IV. DEPENDENCY PROCEEDINGS

### **RULE 21 Caseflow and Deadlines.**

	<i>Event/Filing/Orders</i>	<i>Deadline</i>	<i>If deadline is missed:</i>
1.	(a) <a href="#">Application for Recognition of</a> Voluntary Placement Agreement	<a href="#">An Application for Recognition of Voluntary Placement Agreement shall be filed by the Prosecutor within ten (10) calendar days of the signing of the agreement.</a>	
	(b) <a href="#">Issuance of Recognition Order</a>	<a href="#">The Court may summarily issue an order recognizing the voluntary placement agreement.</a>	
	(c) Status Hearing on the Voluntary Placement	Shall be scheduled no more than <a href="#">one hundred and fifty (150) days</a> from the date the agreement was <a href="#">recognized by the Court.</a>	
	(d) Best Interests/Reasonable Efforts Determination on the Voluntary Placement	Shall be issued by the Court before the 179th day of voluntary placement. If family is not reunified, matter shall be referred to Prosecutor for dependency filing.	<a href="#">Child's placement may not be funded past one hundred and eighty (180) days</a>
2.	Referral by Division to Prosecutor	Shall be within three (3) calendar days of removal of the child, for petition filing	Child shall be returned home
3.	Petition	Shall be filed by the Prosecutor within one (1) business day of the Division's referral.	Child shall be returned home
4.	Responsive Pleadings	Shall be filed pursuant to Section III, Nav. R. Civ. P.	
5.	Shelter Care Hearing	Shall be scheduled within one (1) business day of the filing of a Motion for Temporary Custody by the Prosecutor when a child has been removed. The motion <del>may shall</del> be filed <a href="#">within four (4) business days of removal or</a> concurrently with the petition. Continuances for service or for parties to obtain counsel may be for no more than <del>forty five (45)</del> <a href="#">fifteen (15)</a> calendar days.	Child shall be returned home

6.	Temporary Custody Order	Shall be <u>issued</u> within five (5) business days of the child's removal; shall include a best interests/reasonable efforts determination regarding prevention of removal.	Child shall be returned home
7.	Best Interests/Reasonable Efforts Determination	(a) An initial reasonable efforts determination shall in no event be issued beyond sixty (60) calendar days of the child's removal.	Child shall be returned home
		(b) Shall be included in every order determining the child's custody, including temporary orders.	
		(c) <u>Conclusive Finding that Reasonable Efforts Unnecessary</u> . If the Court finds by clear and convincing evidence that reasonable efforts to reunite the family are unnecessary due to futility or aggravated circumstances, a permanency review hearing shall be held within thirty (30) calendar days of the determination. A conclusive finding of futility to reunite the family should not be made in an initial custody order.	
8.	Provisional Hearing	Shall be held when a parent, guardian, custodian or immediate relative cannot be found and fails to appear after service by publication has been effectuated. The Court shall enter an interlocutory dispositional order, effective for up to six (6) months, making findings on the allegations of dependency, determining legal custody and services for the child, and continuing efforts for parental notification. If failure to appear persists within the six (6) month period, the order shall become final following a dispositional hearing. If parent(s), guardian(s) or custodian(s) appears within the six (6) month period, the Court shall hold an adjudicatory and dispositional hearing.	
9.	Education/Settlement/Informal Adjustment	At any time prior to adjudication, the parties may settle. The Court may refer the case to traditional services to facilitate self-responsibility, settlement and informal adjustment.	
10.	Preliminary Hearing	Shall be scheduled within fifteen (15) calendar days of the shelter care hearing. If there is no	Dismissal without

		settlement, the Court shall schedule an adjudicatory hearing.	prejudice
11.	Adjudicatory Hearing	Shall be scheduled within thirty (30) calendar days of the preliminary hearing if there is no settlement.	Dismissal without prejudice
12.	Disposition Hearing	Shall commence no later than thirty (30) calendar days from the adjudicatory hearing. The hearing may be continued no more than ten (10) calendar days to receive reports and other evidence. During any continuance, the Court shall issue an appropriate order for temporary legal custody.	
13.	Permanency Review Hearings	<p><u>Initial Review Hearing.</u> Shall be held within six (6) months from the date of the child's removal and every six (6) months thereafter until entry of judgment.</p> <p><u>Subsequent Review Hearings.</u> Shall be held:</p> <ul style="list-style-type: none"> <li>• six (6) months after a judicial finding of abuse or neglect and every six (6) months thereafter;</li> <li>• within thirty (30) calendar days of a judicial finding that reasonable efforts to reunite or preserve the family are futile;</li> <li>• within twelve (12) months of the child entering placement.</li> </ul>	

## **RULE 22 Standards and Criteria of Proof.**

22(a) **Shelter Care Hearing** -- Probable Cause; Clear and Convincing Evidence for Best Interests/Reasonable Efforts Determination

- (i) Probable Cause. The Court shall determine if probable cause exists to believe that:
1. If not in custody, the child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or
  2. The child has no parent(s), guardian(s) or custodian(s) able to provide adequate supervision and care for the child; or
  3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers; or
  4. The health and safety of the child cannot be assured if the child is not kept in custody.

(ii) Clear and Convincing Evidence, Best Interests. The Court shall determine by clear and convincing evidence:

1. That out of home placement would be in the best interest of the child; or
2. That remaining in the current residence is contrary to the welfare of the child.

(iii) Clear and Convincing Evidence, Reasonable Efforts to Prevent Removal or Reunite. See Rule 22(c).

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22(b) **Preliminary Hearing** -- Settlement

The primary purpose of the preliminary hearing is to pursue non-adjudicatory resolutions including admissions or settlement or, failing that, ensure the parties understand the proceedings and are prepared for trial. The Court shall engage the parties in considering alternative processes, i.e. informal adjustments, dismissal, or traditional services.

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22(c) **Reasonable Efforts Determination** -- Conclusive Finding, Clear and Convincing Evidence.

(i) At any custody determination, the Court shall determine by clear and convincing evidence, whether:

1. Reasonable efforts to preserve or reunite the family have been offered to the family; or
2. Reasonable efforts to preserve or reunite the family are futile, including due to parental subjection of the child to aggravated circumstances as specifically set forth in the determination.

(ii) Clear and Convincing Evidence, Aggravated Circumstances. Aggravated circumstances under section (i) above shall be shown to exist by clear and convincing evidence. "Aggravated Circumstances" means any factor involved in the commission of an act of abuse or neglect that increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. Aggravated circumstances shall include, but not be limited to, that the parent has:

1. Committed murder of another child of the parent; or
2. Committed voluntary manslaughter of another child of the parent; or
3. Aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or
4. Committed a felony assault that results in serious bodily injury to

- the child or another child of the parent; or
5. Had his/her parental rights terminated involuntarily to a sibling of the subject child.

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22(d) **Adjudicatory Hearing** -- Clear and Convincing Evidence

After giving the parties a further opportunity to admit or deny, the Court shall determine whether, by clear and convincing evidence, the child is dependent because the child's parent(s), guardian(s) or custodian(s):

1. Has abandoned the child; or
2. Has failed to provide adequate or proper parental care and control due to faults, habits, neglect or refusal to provide for the child's subsistence, education or medical care necessary for the child's well-being; or
3. Are unable to discharge his/her parental responsibilities because of incarceration, hospitalization or other physical or mental incapacity; or
4. Has placed the child for care or adoption in violation of Navajo or federal law; or
5. Has physically, emotionally, psychologically or sexually abused the child, or another person has abused the child due to inadequate parental control; or
6. Has sexually exploited the child, or another person has sexually exploited the child due to inadequate parental control; or
7. Has knowingly, intentionally or negligently:
  - a. Placed the child in a situation that may endanger his/her life or health; or
  - b. Tortured, cruelly confined or cruelly punished him or her.

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22(e) **Disposition** -- Best Interest of the Child; Clear and Convincing Evidence for Out of Home Placement; Compelling Reasons Not to Consider Kinship Placement

- (i) Best Interest Determination. The Court may make the following dispositions with a specific finding that it is in the best interest of the child:
  1. Permit the child to remain with his/her parent(s), guardian(s) or custodian(s) subject to conditions and limitations prescribed by the Court, including protective supervision by the Division;
  2. Transfer and maintain legal custody of the child to the Division for appropriate kinship or foster placement pursuant to a case plan that may include a likely date the child may be returned and safely maintained at home or, otherwise, a permanency or alternate permanency plan;

3. Any other disposition as may be necessary to serve the best interests of the child.
- (ii) Clear and Convincing Evidence. If out of home placement is ordered, the Court shall make the following detailed and supported findings on the basis of clear and convincing evidence:
    1. That return of the child would be contrary to the welfare of the child; and
    2. Reasonable efforts have been made to prevent continued removal of the child; or
    3. Reasonable efforts are unnecessary because of futility or the child has been subjected by parent(s), guardian(s), or custodian(s) to aggravated circumstances as specifically set forth in the determination.
  - (iii) Compelling Reasons Not To Reunify Or Consider Kinship Placement. If the Division's case plan does not include either reunification, adoption, customary [parenting](#), guardianship or placement with a fit and willing relative, the Court shall determine whether compelling reasons exist to find that these placements are not in the best interest of the child.
  - (iv) Reasonable Rights of Visitation. If continued custody is ordered, the Court's order shall provide that the parent(s), guardian(s), custodian(s) or other family members shall have reasonable rights of visitation unless the Court finds that the best interests of the child preclude any such visitation.
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## **RULE 23    Specific Provisions.**

### **23(a)    Voluntary Placement Agreement.**

- (i) **[Recognition.](#)** [An Application for Recognition of Voluntary Placement Agreement shall be filed by the Prosecutor within ten \(10\) calendar days of the signing of the agreement. The agreement shall be attached to the application and may include voluntary placement in customary parenting.](#)
- (ii) **[Issuance of Recognition Order.](#)** [The Court may summarily issue an order recognizing the voluntary placement agreement.](#)
- (iii) **Notice of Status Hearing.** The clerk of the court shall schedule a status hearing [no later than one hundred and fifty \(150\) days from the date the agreement was recognized by the Court.](#) The notice of hearing shall be

given to the Prosecutor, which shall ensure service of the notice.

- (iv) **Motion to Vacate.** The Prosecutor may move to vacate the status hearing if the child has been returned home.
- (v) **Status Hearing.** The Court shall receive evidence in order to make a best interests/reasonable efforts determination, which shall be issued within one hundred and seventy-nine (179) days of voluntary placement. Upon the Court's determination that the continued out of home placement is in the child's best interest and that reasonable efforts to prevent removal were made or are not required, the Division shall refer the case to the Prosecutor for filing of a dependency petition.

23(b) **Service.**

- (i) **Immediate Relative.** Service may also be performed on immediate family if parent(s), guardian(s), or custodian(s) are unable to be found.
- (ii) **Publication Service.** If parents, guardians, custodians, or an immediate relative cannot be served by personal service, mail, or electronic service, an order for publication service is mandatory.
- (iii) **Service of Shelter Care Notice.** So long as the notice of shelter care hearing is served, the motion for shelter care hearing / temporary custody need not be served.

23(c) **Hearing Officer.** The Court may appoint a hearing officer solely to recommend findings on custody.

23(d) **Informal Adjustment.** "Informal adjustment" is a settlement plan that may remain in force for up to six (6) months, extendable up to three (3) months. The signed plan may be implemented by motion of the Prosecutor with Division concurrence when suspension is in the best interest of the child, and the child's health and safety is protected.

23(e) **Protective Supervision.** If the Court orders the child returned home, the Court may order protective supervision.

23(f) **Contents of Pre-Disposition Report.** In addition to criteria set forth at 9 N.N.C. § 1112(B), the pre-disposition report shall include a culturally specific assessment obtained in consultation with the Peacemaking Program in the case plan as a permanency placement option in the event reunification is not in the child's best interest.

23(g) **Regional Children's Review Board.**

- (i) **Referral.** After conducting the first review and permanency hearings,



the Court may refer subsequent review hearings to a Regional Children's Review Board. In long-term placements, the Court shall contact the Division for case assignment to an appropriate Regional Children's Review Board for review of long-term out-of-home placements.

- (ii) **Objections.** Parties objecting to the Board's periodic case review(s) may request a court hearing.

- 23(h) **Notification of Change of Placement.** If, after the Court's initial placement order it becomes necessary for placement to change, the Prosecutor shall provide written notification of any modification in placement to the Court.

## **RULE 24 Customary Parenting.**

- 24(a) **Circle; Primary Responsible Adult.** The circle of customary parents shall be identified, and there shall be one primary responsible adult chosen by the circle to be the custodian of the child and who shall be the designated recipient of federal, tribal and state benefits on behalf of the child.
- 24(b) **Best Interest of the Family.** Decisions made regarding the child shall, as far as possible, be made unanimously by the circle, with the recognition that the birth parents are unable to perform as parents for any number of reasons and require the compassion and assistance of the circle. In practice, decisionmaking is made by the family itself, looking to the best interest of the family as a whole in order to further the family's future survival and holistic health, which is a basic right of all Diné children. The final decisionmaker shall be the primary responsible adult.
- 24(c) **Reasonable Efforts Determination.** All reasonable efforts at reunification pursuant to 9 N.N.C. § 1113(F) shall include consultation with the Peacemaking Program as to whether customary parenting can be supported by the existing family structure, or be nurtured into such a structure through provision of traditional services.
- 24(c) **Culturally Specific Assessment.** All pre-disposition plans and case plans developed by the Division shall include a culturally specific assessment pursuant to 9 N.N.C. §1112(B)(2) developed in consultation with the Peacemaking Program.
- 24(d) **Preferred Option.** Customary parenting is the preferred option to suspension of parental rights through a formal guardianship, or termination of parental rights (TPR).
- 24(d) **Alternative Permanency Plan.** Kinship placement and customary parenting may be included as alternative permanency plans to family reunification throughout a dependency, termination of parental rights, or ICWA case.

- 24(h) **Application in Private Actions.** This section applies to all customary [parenting](#) actions, including those not arising under the A.B.B.A. In private stipulated customary [arrangements and voluntary placement agreements](#), [the family may enter into agreements directly through the Peacemaking Program and file the agreement for recognition with the Court.](#)

## **V. TERMINATION OF PARENT-CHILD RELATIONSHIP (TPR)**

### **RULE 25 Caseflow and Deadlines.**

	<i>Event/Filing/Orders</i>	<i>Deadline</i>	<i>If deadline is missed:</i>
1.	Petition	<p>The Prosecutor shall file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate parental rights within the following deadlines:</p> <p><u>If Child in Foster Care.</u> If a child has been in foster care for fifteen (15) of the most recent twenty-two (22) months. The petition must be filed by the end of the child's fifteenth (15th) month in foster care.</p> <p><u>If Child is an Infant.</u> Within sixty (60) calendar days of a judicial determination that the child is an abandoned infant; or</p> <p><u>Upon Finding of Futility.</u> Within sixty (60) calendar days of a judicial determination that reasonable efforts to reunify the child and parent are futile.</p>	Dismissal without Prejudice
2.	Initial Hearing / Temporary Custody Hearing	<ul style="list-style-type: none"> <li>• May be combined.</li> <li>• The initial hearing shall be conducted within ten (10) calendar days of service of the petition.</li> <li>• The temporary custody hearing shall be scheduled not less than fifteen (15) calendar days from the date of filing, unless the hearing has been waived by a valid consent for temporary placement that has been filed with the motion for temporary custody. The motion for temporary custody shall be filed with the petition. Upon valid waiver, the Court may issue a temporary custody order without a hearing.</li> </ul>	Dismissal without Prejudice
3.	Final Hearing	The final hearing shall be scheduled within six (6) months from the date of petition filing upon completion of service.	Dismissal without Prejudice
4.	Issuance of Termination of Parental Rights Decree		
5.	Review Hearings	Shall be held every six (6) months after issuance of the Termination of Parental Rights Decree until an adoption decree is issued.	

6.	Issuance of Adoption Decree	Should be issued within six (6) months of the Termination of Parental Rights Decree.	
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## **RULE 26 Standards and Criteria of Proof.**

### **26(a) Petition Requirements**

(i) A petition for a court order to terminate the parent-child relationship shall allege the following: That the parent:

1. Has abandoned the child for more than six (6) months, or
2. Has been judicially determined to have abandoned an infant, or
3. Has seriously neglected or willfully abused the child, or
4. Has been determined to have a mental condition 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, resulting in inability to discharge parental responsibilities, or
5. Has been incarcerated due to the conviction of a felony, and the offense is of such nature as to show parental unfitness; or
6. Has been incarcerated due to the conviction of a felony and the sentence is of such length as to deprive the child of a normal home for a period of years; or
7. The parent(s) has voluntarily relinquished rights to the child or consented to adoption at least ten (10) calendar days following the child's birth.

(ii) **Last Resort.** The petition, voluntary or involuntary, shall additionally contain a statement that severance of the parent-child relationship is necessary, and that all other options have been pursued, including customary [parenting](#).

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### **26(b) Initial and Final Hearing -- Clear and Convincing Evidence**

(i) Clear and Convincing Evidence Justifying Termination of Parental Rights. At the initial hearing, the Court shall determine, on the basis of clear and convincing evidence, whether:

1. There has been a judicial determination that reasonable efforts were made to reunify or preserve the family, or reasonable efforts were futile; and
2. All other options have been pursued before severance of the parent-child relationship was sought as a last resort; and
3. Termination is necessary in the best interest of the child and for the child's health and safety; and
4. Where reasonable efforts to reunify the family are required, the

Division has provided to the family, consistent with the time period in the case plan, services that the Division deems necessary for the safe return of the child to the home.

(ii) **Clear and Convincing Evidence, Necessity In Child's Best Interest.** In order to determine the status of the child and determine, on the basis of clear and convincing evidence, whether termination of parental rights is necessary in the child's best interest, the Court:

1. Shall order an investigative report or any additional studies from the Division, an agency or other person selected by the Court prior to a final hearing, unless waived by the consent of the parties or by the Court upon a finding that waiver is in the child's best interest.
2. Receive testimony and evidence on the issues, unless waived by the consent of the parties.

(iii) **Last Resort.** The Court shall make a specific finding why customary [parenting](#) is not preferred to termination of parental rights in this individual case.

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## **RULE 27    Specific Provisions.**

- 27(a)    **Election Not to File.** The Navajo Nation may elect not to file or join a TPR petition if the child is being cared for by relatives pursuant to a court order, if the Division's case plan contained compelling reasons why a TPR is not in the child's best interest, or services deemed necessary for the safe return of the child to the home have not been timely provided.
- 27(b)    **Parental Waivers.** Parents' appearance in the proceedings may be waived by valid waiver and consent for placement.
- 27(c)    **Notices.** All notices shall be sent to the Petitioner, the child's parent(s), the Division, the agency, the legal custodian(s), and the caretaker of the child.
- 27(d)    **Temporary Custody Order.** Upon specific findings, any temporary custody order shall vest temporary custody of the child with an appropriate agency or custodian as identified in the motion or as determined at the hearing.
- 27(e)    **Parents' Failure to Appear.** If the parents fail to appear, the final hearing may proceed upon sufficient showing that there is a waiver, or that reasonable efforts as to notice were made. Notice of the final hearing by certified mail shall be sufficient verification to deem notice complete.
- 27(f)    **Customary [Parenting](#).** The Court shall make a specific finding why

customary [parenting](#) is not preferred to termination of parental rights in this individual case.

- 27(g) **Termination of Parental Rights Decree** shall terminate the parent-child relationship. If the parent-child relationship is terminated the court shall transfer legal custody to the potential adoptive parent(s), or to an agency or person who shall identify an adoptive parent, and fix responsibility for the child's financial support pending issuance of an adoption decree.
- 27(h) **Termination of One Parent's Rights.** The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.
- 27(i) **Dismissal.** Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, unless the Court finds that in the best interests of the child it is necessary to issue an order for the petitioner to file the appropriate pleadings to address other permanency options for the child.

## **VI. INDIAN CHILD WELFARE ACT**

### **RULE 28 Caseflow and Deadlines.**

	<i>In Navajo Nation Court</i>	<i>In the Foreign Court</i>	<i>Details/Deadlines</i>
1.	Application to Accept Jurisdiction of Foreign Court Transfer		A Navajo parent or custodian or the Navajo Nation may file.
2.	ICWA Hearing		Within <a href="#">forty-five (45)</a> business days, Navajo Nation Court shall hold a <a href="#">ICWA</a> hearing regarding acceptance of jurisdiction of foreign court transfer. 25 U.S.C.A. § 1911 is applicable.
3.	Order on Acceptance of Jurisdiction of Foreign Court Transfer		Within two (2) business days of the court's closing of evidence, the Court shall issue its decision regarding acceptance of jurisdiction of foreign court transfer.

4.		Petition to Transfer	The Navajo Nation Court's order granting acceptance of jurisdiction over the transfer is filed in the foreign court together with a request to transfer.
5.	Notice of Transfer and Case Records Received by Navajo Nation Court		
6.	Status Conference		Shall be scheduled within five (5) business days of receipt of the notice of transfer and case records from the foreign court.

**RULE 29 Definitions.** The following definitions apply only to this section.

- 29(a) **Child's Tribe** means (a) the tribe(s) in which the child is a member or is eligible for membership; (b) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the tribe with which the Indian child has more significant contacts as determined by the court; or (c) the tribe which recognizes the child as a tribal member.
- 29(b) **Navajo Child** means an unmarried person under eighteen (18) who is either an enrolled member of, or eligible for membership in, the Navajo Nation.
- 29(c) **Navajo Custodian** means a Navajo person who has legal custody of a Navajo child under tribal law or custom, or a Navajo person to whom temporary physical care, custody and control has been transferred by the parent of such child.
- 29(d) **Navajo Parent** means birth parent(s) of a Navajo child, or any Navajo person who has legally adopted a child, including customary [parents](#), but does not include a father whose paternity is not acknowledged or established.

**RULE 30 Assumption of Future Legal Responsibility Over Foreign ICWA Proceeding.** Under the Indian Child Welfare Act (ICWA), in any voluntary or involuntary foreign (state or tribal court) action concerning placement of a Navajo child outside his/her home or termination of parental rights over a Navajo child, a Navajo Nation court may accept jurisdiction of the foreign court case in order to assume [future](#) legal responsibility and authority over the disposition of the Navajo child, and the foreign court may agree to transfer the entire case to the Navajo Nation court.

- 30(a) **Transfer.** A case involving a Navajo child which originates in a foreign court may be transferred to a Navajo Nation court upon an order from the Navajo court accepting jurisdiction and the transfer of the case. Upon transfer by the foreign court, the foreign court case records shall become part of the Navajo Nation case record following status review. Transfer is commenced by the

filing of an Application to Accept Jurisdiction of a Foreign Court Transfer (ICWA Application). A petition ordinarily required to commence an original A.B.B.A. proceeding shall not be required.

- 30(b) **Recognition.** Following transfer, orders issued by the foreign court that are in compliance with Navajo law may be recognized by the Navajo Nation court.

**RULE 31 Expedited Transfer Procedure.**

- 31(a) **Commencement.** Transfer shall be initiated by the filing of an Application to Accept Jurisdiction of a Foreign Court Transfer in Navajo Nation court. The application should be filed prior to the filing of any request to transfer in the foreign jurisdiction.

- 31(b) **Who May File.** The Navajo Nation, or the Navajo parent or custodian of the child, may file.

- ~~31(c) **Fee Waiver.** The filing fee shall be waived for both the Navajo Nation and private parties.~~

- ~~31(d) **Docketing.** The filed request shall be docketed in sequence as a new A.B.B.A. proceeding.~~

- 31(c) **Notice of ICWA Hearing.** Upon filing, the court clerk shall issue a notice for an ICWA hearing to be scheduled within ~~ten (10)~~forty-five (45) business days of the filing. The notice shall instruct the parties to inform the court whether and how they will attend, provide timelines for responsive pleadings, and contain sufficient information for the parties to appear telephonically or electronically.

- 31(d) **ICWA Hearing.** 25 U.S.C.A. § 1911 relating to the exclusive jurisdiction of a child's tribe and appropriateness of transfer of proceedings is applicable at the ICWA hearing and any ensuing jurisdictional and transfer order. All other proceedings in this section shall be pursuant to Navajo law.

- 31(e) **Service.** The filing party shall be responsible for serving the Application, Notice and all subsequent pleadings in the transferred proceedings to necessary parties, which include Petitioner, parents or custodians, and when necessary, Navajo Children and Family Services and Navajo Division of Social Services. Service on and off-reservation may be by email and fax. A summons is not required.

- 31(f) **Issuance of Order.** The Jurisdiction and Transfer Order shall issue within two (2) business days of the court's closing of receipt of evidence on the jurisdiction and transfer issues. The order shall then be included with any request to transfer to be filed in the foreign court.

- 31(g) **Dismissal.** If the Navajo Nation or foreign court declines to transfer, the proceeding in the Navajo Nation court shall remain open pending any appeal; otherwise, the case shall be closed.

**RULE 32 Transfer Standards and Criteria.**

32(a) **Contents of Application to Accept Jurisdiction of Foreign Court Transfer**

An Application to Accept Jurisdiction of Foreign Court Transfer ~~shall~~ should be filed prior to any petition being filed in the foreign court and shall contain the following:

1. The name, birth date, census number if any, of the child;
2. Name and address of the court in which the other jurisdiction action is pending, and docket number of that action;
3. Names, addresses, roles, and census numbers if any, of all necessary parties;
4. Present location of the child, including the name, address and relationship to the child of the person, agency or department having possession of the child;
5. A concise statement of the jurisdiction of the Navajo Nation courts;
6. A brief history of the foreign proceeding, including when it commenced, and what stage the proceedings are at present;
7. Reason why transfer is being sought.
8. Availability, if any, of extended family members on the reservation.
9. Whether the child should be immediately made a ward of the court; if so, on what basis.
10. If filed by a Navajo parent or custodian, a statement that the Navajo Department of Family Services has been contacted, is able to provide services for the child, and has no objection to the transfer.

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32(b) **Jurisdiction** -- All relevant evidence may be accepted in order to establish jurisdiction of the Navajo Nation over the child by a Preponderance of the Evidence.

- (i) The Navajo Nation has exclusive jurisdiction in these circumstances:
  1. A Navajo child resides in or is domiciled on the Navajo Nation;
  2. A Navajo child is a ward of the Navajo Nation Court, whether or not the child's residence or domicile is on the reservation.
- (ii) The Navajo Nation has concurrent jurisdiction when the child neither resides nor is domiciled on the reservation but is a member of, or eligible for membership in the Navajo Nation. Navajo Nation courts have jurisdiction over Navajo children wherever they may reside, based on their status as tribal members alone.

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32(c) **Wardship** -- Circumstances in which a child becomes a ward of the court



include the following.

1. The court obtains wardship over a child when that child comes under the jurisdiction of the court upon the filing of a petition under the A.B.B.A. or perfection of a foreign court transfer. Such wardship continues until jurisdiction terminates pursuant to the A.B.B.A.
2. Additionally, any Navajo child who is domiciled or resides in Navajo Indian country shall be made a ward of the court upon voluntarily or involuntary placement outside Navajo Indian country.

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32(d) **Residence or Domicile** -- All relevant evidence may be accepted in order to establish residence or domicile of the child by a Preponderance of the Evidence

For purposes of inter-jurisdictional transfer, residence or domicile of the child is as follows:

1. Residence and domicile may be where the child is physically living; or
2. The residence of the child may be the residence of the parent with whom the child is physically living or customarily resides, if the child is physically residing off the reservation with relatives on a temporary basis, attending school, or other temporary reasons.
3. The legal domicile of the child who is living off the reservation may be considered to be on the reservation if his or her parents' or guardian's permanent residence is on the reservation.

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32(e) **Contents of Order Accepting Jurisdiction and Transfer**

The Order shall contain the following:

(i) Findings:

1. Basis for jurisdiction over the child;
2. [Appropriateness of the transfer, including the future role needed to be played by the Navajo Nation courts in the welfare of the subject child;](#)
32. Availability of Navajo Nation family services for the child's particular circumstances;
43. Whether the child has been made a ward of the court, and the reason for the wardship.

(ii) Statement of Commencement of Proceedings:

"It is ordered that, upon receipt of a Notice of Transfer and transmission of the records of the case from [the transferring court], a [type of] proceeding shall be considered as commenced in this Court

without further need for the filing of any petition."

(iii) Statement of Temporary Custody:

"It is ordered that, upon issuance of the Notice of Transfer from [the transferring court], the subject child(ren) shall immediately be committed to the legal custody and protective supervision of the Department of Family Services (DFS) or Navajo Children and Family Services (NCFS), Division of Social Services. Once vested with temporary legal custody of the child(ren), DFS or NCFS shall be authorized to consent to all medical treatment, dental procedures, psychological or psychiatric evaluations, therapy and all social and educational activities for the child(ren) until further order of this Court."

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**RULE 33 Status Conference.** The foreign case record must be formally accepted in order to become part of the Navajo Nation A.B.B.A. proceeding. Any foreign order must be recognized in order to be enforceable. Therefore, a status conference shall be scheduled within five (5) business days of receipt of the notice of transfer and case records from the foreign court and shall address the following:

1. Stipulation or objections as to the completeness of the case records received from the transferring court.
2. Update on the transferred proceedings to be given by the relevant parties.
3. Discussion as to any disputed matters in the transferred case.
4. Stipulation and/or review of foreign court orders for purposes of recognition pursuant to comity criteria at 9 N.N.C. § 1502 with specific findings noting compliance with Navajo law.
5. Issuance of orders regarding acceptance of the record, recognition of foreign orders, issuance of new orders replacing foreign orders if necessary, and other orders as required under Navajo Nation law.
6. Discussion as to any modification needed to the Order of Acceptance of Jurisdiction and Transfer regarding temporary custody and wardship.
7. Ordering of pleadings, home studies or reports and scheduling of further hearings pursuant to the applicable A.B.B.A.R.P. for the proceeding.