

**CHILDREN'S CODE
OF THE
TOHONO O'ODHAM NATION**

TITLE 3 - CHILDREN

CHAPTER 1 - CHILDREN'S CIVIL

ARTICLE 1 – ADMINISTRATIVE PROVISIONS

Section 1101 Purpose.

- (A) Title 3, Chapters 1-3 of the Tohono O'odham Code shall henceforth be known as the "Children's Code of the Tohono O'odham Nation."
- (B) This chapter of the Children's Code shall be interpreted and construed to carry out the following purposes:
 - (1) To ensure the health and welfare of all children and families within the jurisdiction of the Tohono O'odham Nation;
 - (2) To preserve the unity of the family through the provision of services to children and families that emphasize, to the extent possible, removal prevention, early intervention, and other solutions based on the honored customs and traditions of the Tohono O'odham;
 - (3) To provide for the care, protection, and mental and physical development of children who come within the provisions of the Children's Code;
 - (4) To give full and just consideration to the religious and traditional preferences and practices of parties appearing before the Children's Court;
 - (5) To ensure that a program of supervision, care, and rehabilitation is available to those children who come within the provisions of the Children's Code;
 - (6) To provide judicial and other procedures through which the provisions of this code are executed and enforced and by which the parties are assured a fair hearing and the recognition and enforcement of their legal rights.
- (C) The foregoing purposes shall be achieved in the family environment whenever possible. Reunification of the child with his or her family shall be a primary objective. Nothing in this Chapter shall be interpreted to disrupt the family unnecessarily or intrude inappropriately into

family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting.

Section 1102 Use of Tohono O’odham Customs and Traditions.

The Children’s Code shall be liberally interpreted in accordance with the customs and traditions of the Tohono O’odham. Evidence may be offered by any party regarding customs and traditions of the Tohono O’odham in any proceeding conducted pursuant to this Chapter. Evidence regarding Tohono O’odham customs and traditions may be admitted by the Court, and such customs and traditions may be used as governing law for purposes of proceedings conducted pursuant to this Chapter.

Section 1103 Immunity of Officers, Employees, and Participants.

- (A) Officers and employees of the Tohono O’odham Nation shall be immune from suit for liability arising from the performance of their official duties in administering and enforcing this Code.
- (B) Any person making a complaint or report alleging abuse, neglect, abandonment, or other grounds for action pursuant to this Code shall be immune from any civil or criminal liability by reason of such complaint or report unless:
 - (1) Such person made the allegation or report while knowing it was false and for the purpose of harming another person; or
 - (2) Such person has been charged with or is suspected of allowing or causing a child to be considered a Child in Need of Care as defined by Section 1202(H).

Section 1104 Computation of Time.

In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period of time begins to run, as well as any intermediate Saturdays, Sundays, and tribal holidays, shall not be included unless otherwise stated. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or tribal Holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or tribal holiday. Where specified as “calendar days,” the time period shall include Saturdays, Sundays, and tribal holidays.

Section 1105 Continuances.

- (A) Upon written motion of the parent, guardian, custodian, child, or petitioner, or upon its own motion, the Court may continue any hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held.

- (B) If no other party objects, the Court may, upon a determination that good cause exists, grant the motion to continue. The Court's Order shall reflect its reasons for granting the continuance.
- (C) If there is objection from any party to the motion to continue, the Court shall deny the motion to continue.
- (D) Notwithstanding any other provision of law, if a child has been removed from the custody of a parent, guardian, or custodian, no continuance shall be granted that would result in the Disposition Hearing conducted pursuant to Section 1515 of this Chapter being held more than 60 days after the hearing at which the child was ordered removed unless the Court finds that there are exceptional circumstances requiring such a continuance. The Court's Order shall reflect its reasons for granting the continuance.

ARTICLE 2 – DEFINITIONS

Section 1201 Interpretation.

Terms defined or used in this Chapter are to be interpreted broadly to promote and secure the jurisdiction of the Nation and the Children's Court and to facilitate the authority of the Nation and Children's Court to protect the interests of children and families.

Section 1202 Definitions.

As used in this Chapter:

“Abandon” means the failure of a parent, guardian, or custodian to provide reasonable support or to maintain regular contact with a child in his or her care for an excessive period of time and without any indication of willingness to assume parental or custodial responsibility. Such term shall not be construed to include situations where a parent, guardian, or custodian has arranged for the provision of necessary custodial care for the child and such care has been satisfactorily provided and maintained by a suitable caretaker.

“Abuse” means the infliction or allowing of physical, emotional, or mental injury on a child. Abuse shall include the infliction or allowing of Sexual Assault, Sexual Abuse, Incest, Child Molestation, Causing or Taking a Child for Purposes of Prostitution, or Furnishing Obscene Materials to Minors, as those terms are defined in Chapter 9 of the Tohono O'odham Criminal Code; and shall also include the failure to maintain reasonable care and provision of treatment or the exploitation or overworking of a child to an extent that the child's health or emotional well-being is endangered. Nothing in this Chapter shall be interpreted to mean that a child has been abused for the sole reason that the parent, guardian, or custodian relies on traditional healing practices or other recognized religious method, obtained in accordance with the parent, guardian, or custodian's beliefs, in addition to or in lieu of other medical

treatment for the child.

“Advocate” means a person who is not an attorney, who is licensed pursuant to the rules governing admission to practice in the Court and recognized by the Children’s Court as authorized to represent parties in proceedings before the Court.

“Attorney” means a person who has graduated from an accredited law school, is a member in good standing with an approved state bar association, and is licensed pursuant to the rules governing admission to practice in the Court.

“Child” means any unmarried person who is under the age of 18 years and is subject to the jurisdiction of the Children’s Court.

“Children’s Court” or “Court” means the Tohono O’odham Children’s Court, a division of the Tohono O’odham Judicial Court.

“Child Custody Proceeding” means a Child in Need of Care, Guardianship, Voluntary Relinquishment, or Adoption proceeding commenced pursuant to this Chapter, or other proceeding as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(1). Child custody matters arising from divorce, dissolution of marriage, or legal separation and not involving the aforementioned proceedings are not Child Custody Proceedings for the purposes of this Chapter.

“Child in Need of Care” means a child:

- (1) Who has no parent, guardian, or custodian willing and able to provide control of, and care for, the child; or
- (2) Who is without adequate food, shelter, clothing, medical care, or education necessary for his or her health and well-being; or
- (3) Whose parent, guardian, or custodian has subjected the child to abuse or neglect.

“Child Welfare Worker” means a person employed by the Tohono O’odham Nation Department of Health and Human Services, with the responsibility for investigation Child in Need of Care referrals and providing services to families of a child alleged or adjudicated to be a Child in Need of Care.

“Council” or “Legislative Council” means the Legislative Council of the Tohono O’odham Nation.

“Division” means the Tohono O’odham Department of Health and Human Services, Child Welfare Services Division.

“Extended Family” means any person who is 18 years of age or older and is related to the child by

blood or adoption including, but not limited to, the child’s grandparent, aunt, uncle, sister, brother, sister-in-law, brother-in-law, niece, nephew, first cousin, second cousin, step-parent, godparent, or any other person defined by the customs and traditions of the Tohono O’odham.

“Foster Home” means a home licensed, for the temporary placement of children taken into custody, pursuant to the Foster Home Licensing Standards of the Tohono O’odham Nation Department of Health and Human Services, Child Welfare Services Division, or other home approved in accordance with the laws of the Nation.

“Guardian” means a person or entity, other than a parent or legal custodian, who has been appointed by the Court to care for the child through a guardianship granted in accordance with Article 6 of this Chapter. The Child Welfare Division shall not be made or considered to be the guardian of a minor in the ordinary course of a Child in Need of Care proceeding, regardless of whether the Court awards care, custody, and control of the minor to the Division.

“Guardian ad Litem” means a person appointed by the Court to represent the interests of a child in a Child in Need of Care proceeding before the Court.

“Guardianship” or “legal guardianship” is the legal status created by the court which vests in a person the rights and responsibilities set forth in Section 1602 of this Chapter.

“Judge” means a judge of the Children’s Court appointed pursuant to the Constitution of the Tohono O’odham Nation.

“Legal Custodian” means a person or entity, other than a parent or legal guardian, to whom legal custody of a child has been awarded by an order of the Court.

“Legal Custody” means the legal status created by the Court which vests in a person the following rights and responsibilities:

- (1) Physical custody of the child;
- (2) A duty to provide the child with food, shelter, education, and ordinary medical care; and
- (3) A duty to protect and discipline the child.

“Neglect” means the failure of the parent, guardian, or custodian to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child’s health and well-being. Neglect shall include abandonment of a child as defined herein at Section 1202(A). Nothing in this Chapter shall be interpreted to mean that a child has been neglected for the sole reason that the parent, guardian, or custodian relies on traditional healing practices or other recognized religious method, obtained in accordance with the parent, guardian, or

custodian's beliefs, in addition to or in lieu of contemporary medical treatment for the child.

"Parent" means the natural or adoptive parent of a child whose parental rights have not been terminated. "Parent" does not include a putative father whose paternity has not been legally acknowledged or established.

"Police Officer" means a law enforcement officer vested by Tohono O'odham law with a duty to maintain public order.

"Police Department" means the Tohono O'odham Nation Police Department.

"Social History" means information compiled by a Child Welfare Worker about factors affecting a family's past and present level of functioning for use in making a decision concerning the adoption of a child, including, but not limited to, past involvement of the child or family with the Division or other child protection agencies.

"Territorial jurisdiction of the Tohono O'odham Nation" is that jurisdiction defined by Article I, Section I, of the Constitution of the Tohono O'odham Nation.

"Traditional custodian" means a person or entity with whom physical custody has been vested by the parent or legal guardian in accordance with the customs and traditions of the Tohono O'odham Nation.

ARTICLE 3 – CHILDREN'S COURT

Section 1301 Jurisdiction.

The Children's Court shall have exclusive jurisdiction over any Child Custody Proceeding involving a child who resides or is domiciled within the Reservation of the Tohono O'odham Nation; or a child who is a ward of the Children's Court, notwithstanding the residence or domicile of the child. The Children's Court shall also have concurrent jurisdiction with any other court of competent jurisdiction over a Child Custody Proceeding concerning a Tohono O'odham child who is neither domiciled within the Reservation of the Tohono O'odham Nation nor is a ward of the Children's Court. Where the Children's Court asserts jurisdiction over a child pursuant to this Chapter, the Court shall also have jurisdiction over the child's guardian(s) and any adult residing in the child's home to the extent necessary to issue any orders protecting the best interests of the child. For the purposes of entering an order of adoption pursuant to Article 11 of this Chapter, the Court may retain jurisdiction over an adult who was the subject of a petition for adoption filed prior to that person having reached the age of 18.

Section 1302 Orders.

The Children's Court shall have the authority to issue all orders necessary to ensure the safety of

children within the jurisdiction of the Nation, including the issuance of subpoenas, orders of restriction, warrants for protective custody, and such other orders as may be appropriate. All actions brought under this Chapter shall be decided by the Court in accordance with the Nation's laws, customs, and traditions.

Section 1303 Transfer of Jurisdiction; Other Tribal Courts.

The Children's Court may, upon the petition of either parent, the guardian or custodian of the child, or the Nation, accept a transfer of jurisdiction from any tribal court of competent jurisdiction involving a Child Custody Proceeding of an O'odham child not domiciled or residing in the Nation's territorial jurisdiction; provided, however, that the Children's Court may decline to accept jurisdiction over a Child Custody Proceeding when there is good cause to decline such jurisdiction. The Children's Court may transfer a Child Custody Proceeding to an appropriate tribal court of competent jurisdiction when the transfer is in the best interests of the child, subject to the acceptance of jurisdiction by that tribal court.

Section 1304 Court-Appointed Advocates, Attorneys, and Guardians ad Litem.

In any proceeding held pursuant to this Chapter, the Children's Court may, in its discretion, appoint an Advocate or Attorney to represent the child, or a Guardian ad Litem to represent the interests of the child, subject to the availability of such persons to undertake representation.

Section 1305 Comity.

Notwithstanding any other provision of law, the Children's Court shall give comity to the public acts, records, and judicial decrees applicable to Child Custody Proceedings of any court of competent jurisdiction to the same extent that such court gives full faith and credit to the public acts, records, and judicial decrees of the Children's Court.

Section 1306 Closed Proceedings.

The Children's Court shall be closed to the general public; however, a member of the public may be present at any proceeding conducted pursuant to the Children's Code absent objection by any party and subject to the approval of the Court. Such person shall be subject to the restrictions of Article 12 of this Chapter.

ARTICLE 4 – INVESTIGATION OF CHILD ABUSE REPORTS; TEMPORARY CUSTODY

Section 1401 Purpose.

Notwithstanding any other provision of law, the purpose of this Article is to provide maximum safety and protection for a child who is currently being abused, neglected, or abandoned; and to ensure the

safety, protection, and physical and emotional well-being of a child who is at risk of such harm. Court-ordered social and health services may be necessary in order to protect the child's safety and physical and emotional well-being and to prevent additional abuse of the child.

Section 1402 Notification of the Receipt of Child Abuse Reports.

- (A) Whenever the Police Department or Child Welfare Services Division receives from any person an initial report or referral containing information indicating that a child may be a Child in Need of Care, the receiving agency shall:
 - (1) Notify, within eight hours, the appropriate officials of the other agency of such report and information, and
 - (2) Submit, within 24 hours, a copy of a written preliminary report to such agency and office.

- (B) Upon receipt of a report or referral containing information that a child may be a Child in Need of Care, the Division shall:
 - (1) Investigate the allegations contained in the report or referral;
 - (2) Take immediate and appropriate steps to secure the safety and well-being of the child involved, including, if necessary, taking the child into temporary custody pursuant to Section 1404 of this Chapter;
 - (3) Offer and, if accepted, provide appropriate services to the family.

- (C) If the investigation produces evidence that a child has been neglected or abused by a person other than the parent or guardian/custodian, the Police Department or Child Welfare Services Division shall immediately notify the child's parent or other person responsible for the child's care, and any other appropriate law enforcement authority having jurisdiction over the suspected neglect or abuse.

Section 1403 Interviews and Examinations.

In any case where the Police Department or Division reasonably believes that the child has been subjected to neglect or abuse, officials of those agencies shall be permitted, without first obtaining the consent of the parent or guardian/custodian, to take photographs and/or other documentation and refer, transport, or otherwise arrange for appropriate licensed medical practitioners to conduct medical and psychological examinations of the child as may be indicated, including examinations of the sex organs, and interview the child. All examinations and interviews of a child who may have been subjected to neglect or abuse shall be conducted in a manner that minimizes additional trauma to the child.

Section 1404 Temporary Custody.

- (A) A Child Welfare Worker may, without a court order, take a child into temporary custody if the Child Welfare Worker has a reasonable belief that the child is a Child in Need of Care.
- (B) Before taking a child into temporary custody, the Child Welfare Worker shall attempt to maintain the child in the home of the parent, guardian, or legal custodian unless one or more of the following conditions exist:
 - (1) The child has no parent, guardian, or legal custodian willing and able to provide care, custody, and control for the child.
 - (2) Continued custody of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home. Factors to be considered in determining whether there are reasonable means by which the child can be protected in his or her home include, but are not be limited to, the following:
 - (a) Whether there are any services reasonably available to the Division, including referral to public assistance, which, if provided to the child and/or the child's parent, guardian, or legal custodian, would eliminate the need to remove the child from the custody of the parent, guardian, or legal custodian;
 - (b) Whether a parent, guardian, or legal custodian can and will provide for and protect the child from abuse and neglect; and
 - (c) Whether the alleged perpetrator of abuse voluntarily agrees to withdraw from the home, does withdraw from the home, and is likely to remain withdrawn from the home.
 - (3) There is substantial evidence that a parent, guardian, or legal custodian of the child is likely to flee the jurisdiction of the Court, or remove the child from the Court's jurisdiction.
- (C) The Child Welfare Worker shall offer to the family services designed to correct unresolved problems that are believed to contribute to the need to take the child into temporary custody. The Child Welfare Worker shall make clear that he or she has no legal authority to compel the family to receive such services but may inform the family of his or her authority to file a Child in Need of Care petition.
- (D) No child taken into temporary custody pursuant to this Section, who has not otherwise been arrested, charged, or adjudicated as a juvenile offender, shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No such child shall be transported or detained in a secure facility in association with delinquent, criminal, or vicious persons or those

accused of being such.

- (E) A child shall not remain in temporary custody for more than 72 hours, excluding intermediate Saturdays, Sundays, and tribal holidays, unless a petition has been filed pursuant to Article 5 of this Chapter.

Section 1405 Notification of Temporary Custody.

- (A) In all situations where the Division takes a child into temporary custody, the Division shall make reasonable efforts to locate and notify the parent, guardian, or legal custodian, and shall provide written notice to the parent, guardian, or custodian of the child within eight hours of taking or assuming temporary custody, excluding intervening Saturdays, Sundays, and tribal holidays, unless:
 - (1) The parent, guardian, or legal custodian is present when the child is taken into custody; in such circumstances written notice shall be provided immediately.
 - (2) The residence of the parent, guardian, or legal custodian is outside the territorial jurisdiction of the Nation and notice cannot be provided within eight hours; in such circumstances, written notice shall be provided within 24 hours, excluding intervening Saturdays, Sundays, and tribal holidays. Notice shall be provided in person, where reasonable, and by mail.
 - (3) The identity and/or residence of the parent, guardian, or legal custodian is not ascertainable.
- (B) The written notice shall contain the name of the person and agency taking the child into custody, the location from which the child was taken, and the following information:
 - (1) The date and time custody was taken;
 - (2) The name and telephone number of the agency taking custody of the child;
 - (3) A statement of the reasons temporary custody was believed to be necessary;
 - (4) A statement that the child shall not remain in temporary custody for more than 72 hours, excluding intervening Saturdays, Sundays, and tribal holidays, unless a Child in Need of Care petition is filed;
 - (5) A statement of the right of parent(s)/guardian(s)/custodian(s) to counsel at their own expense;
 - (6) A statement that a preliminary hearing for review of the temporary custody of the child will be set pursuant to Section 1502 of this Code; and

- (7) The name and address of the court having jurisdiction over this matter.
- (C) If a good-faith attempt was made at notification, the failure on the part of the Child Welfare Worker to notify the parent, guardian, or custodian shall be considered to be due to circumstances beyond the control of the Child Welfare Worker and shall not be available to the parent or guardian/custodian as a defense to any judicial proceeding, nor shall it interfere with any rights, procedures, or investigation accorded under any other applicable law.

Section 1406 Preferential Placement of Child with Extended Family.

Children who are taken into temporary custody and who come before the Children’s Court shall be placed with the child’s extended family whenever possible, subject to the ability and willingness, as defined herein, of such family member to serve as a temporary placement of the child pending the temporary custody hearing. The child welfare worker shall make reasonable efforts to identify possible family placements and, once a possible such placement is identified, shall initiate an immediate assessment of the extended family member’s suitability to care for the child, which assessment shall be reduced to writing.

Section 1407 Development of Protocol.

The Division, in conjunction with the Police Department, shall develop protocols for the reporting, screening, investigation, and documentation of the above reports and referrals, including specific procedures for responding to cases believed to involve child neglect and abuse, and to clarify roles and responsibilities of the tribal departments and agencies involved in child welfare matters.

ARTICLE 5 –CHILD IN NEED OF CARE PROCEEDINGS

Section 1501 Commencement of Proceedings; Petition.

- (A) A proceeding in the Children’s Court to declare a child to be a Child in Need of Care is commenced by the filing of a petition in conformity with the requirements of this Section.
- (B) A petition to commence proceedings in the Children’s Court to declare the child a Child in Need of Care shall be verified and shall contain all the following:
 - (1) The basis for the Court’s jurisdiction;
 - (2) Citation to the subsections of Section 1202(G) of this Code under which the proceeding is initiated;
 - (3) The name, birth date, sex, and residence of the child upon whose behalf the petition is brought;

- (4) The names and residence and mailing addresses or last known addresses, if known to the petitioner, of both parents and any guardian or custodian of the child;
 - (5) A plain and concise statement of facts upon which the allegations are based;
 - (6) The facts necessitating out-of-home placement;
 - (7) The date and time of the placement, and where and with whom the child was placed if disclosure of such information will not jeopardize the safety of the child; and
 - (8) A certificate of service stating the date and method of service of the petition to all parties.
- (C) At each hearing, if the parent(s), guardian(s), or legal custodian(s) are present, they shall acknowledge having notice of the time and date of the next hearing and that the hearing can proceed without them if they do not appear. If any parent, guardian, or legal custodian is absent, a summons shall issue for the next hearing.

Section 1502 Notice of Hearing and Temporary Orders.

- (A) Upon receipt of a verified petition from the Division which sets forth allegations to invoke the Court's jurisdiction, the Court shall issue temporary orders awarding care, custody, and control of the child to the Division. Under no circumstances shall the Division be ordered to take care, custody, or control of a child under this Section, or to provide services to such child or to the child's family without the consent of the Division.
- (B) Upon the filing of the petition, the clerk of the Children's Court shall:
- (1) Set the matter for a preliminary hearing for review of the temporary custody of the child no sooner than three, but no later than seven, days, excepting weekends and tribal holidays.
 - (2) Immediately issue a notice of hearing, to which shall be attached a copy of the petition, and cause the same to be served upon the Division and each of the persons described in Section 1501(B)(4) of this Chapter whose addresses are set forth in the petition, and thereafter upon all such persons whose addresses become known to the clerk prior to the hearing on the matter.
 - (3) Issue a notice of hearing and a copy of the petition to the attorney/advocate for the child's parent, guardian, or custodian if the Court has been notified that representation has been obtained and has been provided with the attorney/advocate's contact information.

- (C) The notice shall contain all of the following:
- (1) The name and address of the person to whom the notice is directed;
 - (2) The name of the child upon whose behalf the petition has been brought;
 - (3) The date, time, and place of the Preliminary Hearing on the petition;
 - (4) A citation to the section and subsections under which the proceeding has been instituted;
 - (5) A statement that parent, guardian, or custodian to whom notice is required to be given are entitled to have an attorney present at the hearing on the petition at their own expense;
 - (6) A statement that parent, guardian, or custodian may be liable for the costs of the child's support while the child is in custody; and
 - (7) A statement that the potential consequences of the failure of the parent, guardian, or custodian to appear at the initial or adjudicatory hearings without good cause shown may result in a finding by the Children's Court that the parent, guardian, or custodian has waived legal rights and is deemed to have admitted to the petition; and that such hearings may go forward in the absence of the parent, guardian, or custodian.

Section 1503 Personal Service; Service by Mail.

- (A) The clerk of the Children's Court shall cause the notice and copy of the petition to be served on all persons required to receive such notice and copy of the petition either personally or by Certified First Class mail at least five days prior to the time set for the Preliminary Hearing, and at least ten days prior to the time set for the Initial Hearing.
- (B) Any person may waive service of notice by a voluntary appearance entered in the minutes of the Court or by a written waiver of service filed with the clerk of the Children's Court at or prior to the hearing.

Section 1504 Notice by Publication.

- (A) If a party to be served notice cannot be identified or found, or an address cannot be determined after a diligent effort to search for the party, the Court may order service of notice by publication. An affidavit of due diligence search shall be on file with the Court. Service of notice by publication is not sufficient if the address or the whereabouts of a party required to receive notice is known or brought to the attention of the Court. Publishing the summons and a statement on how to obtain a copy of the pleading shall constitute service of notice by publication.

- (B) The notice shall be published at least once a month for two successive months in a newspaper published on the Tohono O’odham Nation; and at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to whom the notice is directed.
- (C) Service is complete 60 days after the first publication.
- (D) In addition to service of notice as provided in (A) and (B) of this Section, the clerk of the Children’s Court shall:
 - (1) Cause the Notice to be posted once in the following locations:
 - (a) The post office, community store, law enforcement office, district office for the person sought, or other commonly used public place in the community, or in the community where the person to whom notice is required to be given resides or is last known to have resided; and
 - (b) In any other place ordered by the Court where such posting is reasonably likely to give notice to the person to whom notice is required to be given. Such posting shall be posted not less than five days prior to the day of hearing on the petition.
- (E) The name of the child shall not appear in any notice of hearing served by publication or by posting.

Section 1505 Citation of Summons.

Separate from the notice required by this Section, the Court may issue a citation directing any parent, guardian, or custodian of the child at issue to appear at the time and place set for any hearing for financial evaluation under the provisions of this Article. The Court may also issue citations directing any person having custody or control of the child upon whose behalf the petition has been filed to bring such child with him or her. The clerk of the Children’s Court shall cause such citation to be personally served upon such person at least 24 hours before the time stated therein for such appearance.

Section 1506 Subpoenas.

Upon request of the Child Welfare Worker; the child; the child’s parent, guardian, or custodian; or on the Court’s own motion, the Court or the clerk of the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing. Nothing herein shall preclude a party from requesting that the clerk of the Court issue a subpoena for service by that party.

Section 1507 Separate Proceedings, Posture.

- (A) All proceedings under this Article shall be heard at a special or separate session of the Court, and no other matter shall be heard at such session.
- (B) Except where there is a contested issue of fact or law, the proceedings pursuant to this Article shall be conducted in an informal, non-adversarial atmosphere with a view to obtaining the maximum benefit for the child upon whose behalf the petition is brought.

Section 1508 Admissibility of Evidence.

- (A) Except as provided by this Code, the admissibility of evidence shall be governed by the Tohono O’odham rules of court, and in all circumstances shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and the promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly decided.
- (B) Prior to any hearing in a Child in Need of Care proceeding, the Court may review a report prepared by a Child Welfare Worker and shall admit the report into evidence if the worker who prepared the report is available for cross-examination and the report was disclosed to the parties no later than:
 - (1) The day of the Preliminary Hearing
 - (2) Three calendar days prior to the Initial Hearing
 - (3) Five calendar days prior to any other hearing
- (C) Evidence of the out-of-court statements or non-verbal conduct of a child regarding acts of abuse or neglect perpetrated on the child is admissible for all purposes in any hearing subject to this Chapter if the time, content, and circumstances of such statement or conduct provide sufficient indicia of reliability.

Section 1509 Preliminary Hearing

- (A) At the Preliminary Hearing the Court shall advise the parent, guardian, or custodian of their rights as defined in this Article.
- (B) Upon request of any parent, guardian, or custodian, the Court shall explain any term of allegation contained in the petition and the nature of the hearing, its procedures, and possible consequences. The Court shall ascertain whether the parent, guardian, or custodian has been informed of his or her right to be represented by counsel, and if not, the judge shall advise those persons, if present, of the right to counsel; and that counsel may be able to discover defenses or mitigating circumstances not apparent to them. The Court shall also inform such

persons that engagement of counsel would be at their own expense.

- (C) The Court shall provide an opportunity for the child's parent, guardian, or custodian, if present, to provide relevant testimony. The Court may limit testimony and evidence that is beyond the scope of the removal of the child or the child's need for continued protection, placement, visitation, and/or services to be provided to the child and family.
- (D) The Court may take into consideration the availability of reasonable services to the parent, guardian, or custodian to prevent or eliminate the need for the child's continued removal, and the effort of the parent, guardian, or custodian to obtain and participate in these services.
- (E) The petitioner has the burden of presenting evidence to show that probable cause exists to believe that continued temporary custody is necessary to prevent abuse or neglect pending the hearing on the petition.
- (F) If the Court determines that continued custody of the child is necessary, the Court shall state the facts on which the decision is based and shall specify why the initial removal was necessary.
- (G) The Court may set a date for the Initial Hearing on the Child in Need of Care petition or, if the petitioner and respondent are both present and consent, proceed directly to the Initial Hearing.

Section 1510 Initial Hearing.

- (A) At the Initial Hearing, the Court shall ascertain whether the parent, guardian, or custodian and, where applicable, the child, have been informed of the right to be represented by counsel. If not, the Court shall:
 - (1) Advise those persons, if present, of the right to counsel and that counsel may be able to discover defenses or mitigating circumstances not apparent to them;
 - (2) Inform such persons that engagement of counsel, if any, shall be at their own expense.
 - (3) If requested, continue the hearing as reasonably necessary to provide reasonable opportunity for the parent, guardian, or custodian to engage counsel and for counsel to prepare for the hearing. An initial hearing shall not be continued for more than 20 days.
- (B) At the initial hearing the parent, guardian, or custodian against whom the allegations are made will be asked to enter a response to the Child in Need of Care petition. A response can be an admission, a denial, or an admission to the jurisdiction of the Court without contesting or admitting the allegations ("no contest"). Before accepting an admission or a statement of no contest to a petition, the Court shall:

- (1) Make inquiry to determine that the admission or statement is informed and voluntary; and
 - (2) Establish whether any promises or threats were made to obtain the admission or statement; and
 - (3) Determine that the respondents understand their rights and that the respondents knowingly, intelligently, and voluntarily waive these rights; and
 - (4) Advise the parent, guardian, or custodian of the potential consequences of an admission or statement; and
 - (5) Obtain from the parent, guardian, or custodian a factual basis for the admission or statement, which the Court shall reduce to writing.
- (C) If the respondent admits or pleads no contest to the allegations, the Court shall set a Dispositional Hearing within 15 days pursuant to this Article or, if the petitioner and respondent consent, the Court may proceed directly to the Dispositional Hearing.
- (D) If the respondent denies the allegations, the Court shall set a separate fact-finding Adjudicatory Hearing on the petition within 30 days. The Court shall advise the parent, guardian, or custodian that the potential consequences of the failure of the parent, guardian, or custodian to appear at the adjudicatory hearing, without good cause shown, may result in a finding by the Children's Court that the parent, guardian, or custodian has waived legal rights and is deemed to have admitted to the petition, and that such hearing may go forward in the absence of the parent, guardian or custodian. If the petitioner and respondent consent, the Court may proceed directly to the Adjudicatory Hearing.

Section 1511 Presumed, Alleged, and Unwed Fathers.

- (A) At the Initial Hearing the Court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. The presence at the hearing of a man claiming to be the father shall not relieve the Court of its duty of inquiry. The inquiry may include all of the following:
- (1) Whether a judgment of paternity already exists.
 - (2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.
 - (3) Whether a man is identified as the father of the child on the child's birth certificate.
 - (4) Whether the mother was cohabiting with a man at the time of conception or birth of

the child.

- (5) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, and from whom.
 - (6) Whether any male has formally or informally acknowledged or declared his possible paternity of the child.
 - (7) Whether paternity tests have been administered and the results thereof, if any.
- (B) If, after Court inquiry, one or more men are identified as presumed or alleged father, each such man shall be provided notice pursuant to Section 1503 of this Article. The notice shall state that the child is the subject of proceedings under this Article and that the proceedings may affect the parental rights of the alleged father.

Section 1512 Unwed fathers.

Unwed fathers who have legally established paternity of their children shall have the same rights as the natural mother to parent the children. The Nation recognizes that it is in the child's best interest to ensure that fathers are provided an opportunity to play an integral role in their children's upbringing and that a child born out of wedlock is not thereby deprived of his or her father.

Section 1513 Adjudicatory Hearing; Findings and Orders.

- (A) The Adjudicatory Hearing shall commence no later than 30 days from the Initial Hearing, or the Preliminary Hearing if the Initial Hearing is combined with the Preliminary Hearing.
- (B) At the Adjudicatory Hearing, the Court shall consider the allegations in the petition.
- (C) The petitioner must prove the allegations in the petition by clear and convincing evidence.
- (D) After hearing the evidence, the Court shall make a finding, based upon the allegations in the petition, that the child is or is not a Child in Need of Care. If the Court finds that the child is not a Child in Need of Care, it shall order that the petition be dismissed and the child be released to the parents, guardian, or custodian from whose custody the child was removed.
- (E) If the Court adjudicates a child to be a Child in Need of Care, the Court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including but not limited to:
 - (1) Orders for appropriate medical treatment;
 - (2) When the Court finds the parent or other person legally obligated and financially able to pay all or part of the costs and expenses for the support and treatment of the child,

an order to pay such costs and expenses. The Court may:

- (a) Order the manner of payment, and
- (b) Proceed against the parent or other legally obligated person for failure to obey an Order of the Court if such person willfully fails or refuses to pay such sum. Such order may also be sued upon to obtain a civil judgment.

Section 1514 Judgment in the Absence of a Parent, Guardian, or Custodian.

- (A) If the parent, guardian, or custodian fails to appear at an initial or adjudicatory hearing under this Article, the Court may deem the absence of the parent, guardian, or custodian to be an admission to the petition, and make appropriate findings pursuant to Section 1513(B)-(D) Chapter. The court must be satisfied that service of notice upon the parent, guardian, or custodian is complete.
- (B) If judgment is made in the absence of the parent, guardian, or custodian, the Court shall specify the facts, grounds, and sections of this Article upon which it relied to make the decision.

Section 1515 Disposition Hearing

- (A) After adjudicating a child as a Child in Need of Care, the court shall schedule within 15 days a disposition hearing to hear evidence on the question of the proper disposition to be made for the child and his or her parent(s), guardian(s), or custodian(s).
- (B) Before determining the appropriate disposition, the Court shall receive in evidence the disposition report prepared by the petitioner. The disposition report shall include the child's individual case plan as well as individual case plans for the parent/s, guardian/s, or custodian/s as to whom the child has been adjudicated a Child in Need of Care. The disposition report shall present feasible options to the Court for reunification of the family. The disposition plan shall identify specific actions required of the parties to eliminate the condition(s) causing the need for placement and establish timelines for completion.
- (C) As the Court deems necessary and proper, it may direct any and all reasonable orders to the parents, guardians, or legal custodians of the child who is the subject of any proceeding under this Section to facilitate the reunification of the family, including but not limited to requirements to:
 - (1) Participate in a counseling, treatment, or education program designed to eliminate those conditions that led to the Court's finding that the child is a Child in Need of Care.
 - (2) Participate in developing and completing the disposition plan;

- (3) Maintain contact with the Child Welfare Worker; and
- (4) Provide documentation of program completion to the Child Welfare Worker.
- (D) The Court shall also make a finding that the disposition plan accepted by the Court is reasonable and is within each parent's, guardian's, and/or custodian's ability to complete.
- (E) At the disposition hearing and every subsequent Status Review Hearing the petitioner must show that the Division has made continuing reasonable efforts have been made to reunify the child with the parents, guardian, or custodian and that these efforts have proven to be unsuccessful.

Section 1516 Status Review Hearings

- (A) After the Disposition Hearing, the Court shall hold periodic Status Review Hearings not less than once every six months.
- (B) At least five, but not more than ten days prior to the hearing, the Division shall file with the Court, and disclose to all parties, a review report describing:
 - (1) The services provided or offered to the parents, guardians, or custodians to enable them to regain custody, and the progress made;
 - (2) The prognosis for return of the child to the physical custody of his or her parent, guardian, or custodian;
 - (3) The quantity and quality of contacts made among the worker, the child, and the parents, guardians, or legal custodians;
 - (4) The Division's recommendations for disposition. If the Division recommends against returning the child to a parent, guardian, or legal custodian, the report shall specify why the return of the child would be detrimental to the child; and
- (C) The Division's review report shall include a verification signed by the Child Welfare Worker that the information contained in the report is true and current to the best of his or her knowledge at the time of filing.
- (D) At the Status Review Hearing, the Court shall order the return of the child to the physical custody of his or her parent, guardian, or custodian; dismiss the petition; and close the case unless the Court finds, by clear and convincing evidence, that the return of the child to the parent, guardian, or custodian would create a substantial risk or detriment to the safety, protection, or physical or emotional well-being of the child. The petitioner shall have the burden of establishing that risk or detriment. In making its determination, the Court shall

review and consider the petitioner's report and recommendations as well as the efforts or progress demonstrated by the parents, guardians, or custodians and the extent to which they availed themselves of services provided.

- (E) Whether or not the child is returned to a parent, guardian, or custodian, the Court shall:
 - (1) Specify the factual basis for its conclusion that the return would or would not create a substantial risk or detriment to the safety, protection, or physical or emotional well-being of the child; and
 - (2) Where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent, guardian, or custodian; and
 - (3) Inform the parent, guardian, or custodian that if the child cannot be returned home, a proceeding to determine a long-term plan for the child may be initiated.
- (F) If the child is not returned to his or her parent, guardian, or custodian, the Court shall:
 - (1) Determine whether the Division has shown that it has made continuing reasonable efforts to reunify the child with the parents, guardian, or custodian and that these efforts have proven to be unsuccessful.
 - (2) Make a finding that the disposition accepted by the Court continues to be an appropriate plan for reunification and that the parents, guardian, or custodian understand their responsibilities under the plan.

Section 1517 Long-Term Plan Determination

- (A) After at least two Status Review hearings wherein the Court receives evidence that the parent, guardian, or custodian has not made substantial progress toward reunification, a party may motion the Court to set a hearing to determine a long-term plan for the child. The Court shall not hold a hearing to determine a long-term plan for the child less than six months from the adjudication of the child as a Child in Need of Care.
- (B) The Court shall, by Order, set a long-term plan hearing no less than 30 days from the motion and notify the Division of the date and time of the hearing.
- (C) At least five days prior to the hearing, the Division shall file with the Court, and disclose to all parties, a report describing:
 - (1) The services provided or offered to the family to achieve reunification;
 - (2) The participation and progress of the family in services;

- (3) Barriers that exist to prevent reunification of the family; and
 - (4) Definite recommendations for the long-term care of the child if efforts to reunify fail.
- (D) The Court shall review and consider the report and the efforts or progress, or both, demonstrated by the parent, guardian, or custodian, and the extent to which the parent availed himself or herself of services provided.
- (E) Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:
- (1) The child has been placed with a foster family that is eligible to adopt a child, or the child has been placed in a pre-adoptive home.
 - (2) The case plan includes services to achieve a long-term plan for the child if efforts to reunify fail.
 - (3) Services to achieve a long-term plan for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.
- (F) After reviewing the evidence presented, the Court may:
- (1) Continue the child in out-of-home care for a specific period of time; or
 - (2) Continue the child in out-of-home care on long-term basis; or
 - (3) Return the child to the parent.
- (G) The Court shall specify the factual basis for its decision to return or not return the custody of the child to his or her parent, guardian, or custodian. If the child is not returned, the Court shall specify the factual basis for its conclusion that return of the child would be detrimental.

ARTICLE 6 – GUARDIANSHIP

Section 1601 Appointment.

The Court may appoint guardians of the person and/or property of children under the Court's jurisdiction. Such appointment shall only be made on the petition of a relative or other natural person on behalf of the child. If the child is over the age of 14, the child may nominate his or her own guardian subject to the review and approval of the Court.

Section 1602 Commencement of Proceedings; Petition.

- (A) A proceeding in the Children’s Court for guardianship of a minor child is commenced by the filing of a petition, in conformity with the requirements of this Section. A guardian shall not be appointed unless a petition for guardianship has been filed and a hearing is held on the petition.
- (B) Upon petition by the proposed guardian requesting guardianship of a child within the jurisdiction of the Children's Court, the Court may appoint a guardian for a child who is without either parent or whose parents are unavailable or otherwise unable to care for the child. The Court may impose any restriction or limitation on the powers of a guardian or condition its appointment on the guardian's performance of specified duties, not inconsistent with this Article, that the Court finds will help protect the best interests of the child.
- (C) A petition for guardianship shall be verified and shall contain all of the following:
 - (1) The basis for the Court’s jurisdiction.
 - (2) The name, physical address, mailing address if different, and location of the petitioner.
 - (3) The relationship of the petitioner to the child.
 - (4) The names, sex, date, and place of birth of the child.
 - (5) The location of the child.
 - (6) The name, address, and location of the person having legal custody of the child.
 - (7) The grounds upon which guardianship is sought.
 - (8) Any other information that will aid the Court in its decision.
- (B) The Court may request any additional relevant information if it finds the welfare of the child will be served.

Section 1603 Notice of Hearing.

The Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child and to such other relatives of the child as the Court may deem proper.

Section 1604 Powers and Duties of Guardian.

Until further order of the Court, a guardian shall have the custody, control, and care of the child, including but not limited to authorization to consent to the education of the child and to consent to the medical care and treatment of the child; and shall have the responsibility of the care and management of the property of the child. When granting a guardianship petition or appointing a

guardian, the Court shall inform the potential guardian of these responsibilities and establish to its satisfaction that the potential guardian understands and consents.

Section 1605 Parental Challenge to Existing Guardianship.

- (A) In the event that a parent whose rights have not been relinquished or severed wishes to challenge a guardianship already in existence, the parent may petition the Court for a hearing.
- (B) A petition filed by a parent to terminate a legal guardianship shall be verified and shall contain all of the following:
 - (1) The basis for the Court’s jurisdiction.
 - (2) The name, physical address, mailing address if different, and location of the petitioner.
 - (3) The relationship of the petitioner to the child.
 - (4) The name, sex, birth date, and place of birth of the child.
 - (5) The location of the child.
 - (6) The name, address, and location of the person having guardianship of the child.
 - (7) The grounds upon which the petitioner seeks to have the guardianship terminated and the child returned to his or her custody.
 - (8) Any other information that will aid the Court in making its decision.
- (C) The Court may request any additional relevant information if it finds that the welfare of the child will be served thereby.
- (D) The Court shall set a date and time for the hearing, and shall cause notice to be given to the petitioner, the respondent legal guardian, and to any other such persons as the Court may deem proper, at least 30 days prior to the hearing.
- (E) Factors which the Court may consider in deciding whether to terminate the guardianship and return full custody of the minor child to the parent include:
 - (1) The parent’s involvement in the child’s life, the length of time for which the parent has been actively involved in the child’s life, and the strength of bonding between parent and child;
 - (2) The parent’s contributions to the expenses of the minor’s upbringing;
 - (3) The parent’s contribution to the day-to-day care of the child;
 - (4) The parent’s ability to provide a safe home for the child and meet his or her basic needs; and
 - (5) If the child is over 12 years of age, the wishes of the child.

ARTICLE 7 – EMANCIPATION

Section 1701 Commencement of Proceedings; Petition.

- (A) A proceeding in the Children’s Court to emancipate a minor child is commenced by the filing of a petition in conformity with the requirements of this Article.

- (B) A child 16 years or older, but less than 18 years of age, may petition the Court to be considered an emancipated minor. The petition shall be verified and shall state the facts which will support the declaration of emancipation.

Section 1702 Notice of Petition.

- (A) Before the Court may grant Emancipation to any child, the Court shall provide notice of the proceeding to the minor's parents, guardian, or custodian in a manner that the Court deems proper. If the child is a Ward of this Court, the Court shall provide notice to the Division.
- (B) Any parent, guardian, or custodian, or where applicable the Division, may request a hearing on the Petition, and notice of the proceeding shall so state.

Section 1703 Emancipation Determination.

- (A) The Children's Court shall determine whether to grant emancipation status to a minor based upon the petition and any other evidence the Court may require.
- (B) Such a determination shall be made by clear and convincing evidence, and may include, but is not limited to the following:
 - (1) The real or apparent assent of the parent(s) or minor;
 - (2) Proof of independence from the parent(s) in matters of economic self-sufficiency, as by earnings or in-kind compensation through employment or other legal means sufficient to provide for their own food, shelter, and other cost-of-living expenses;
 - (3) Proof of independence from the parents in matters of health and personal care, transportation, school and/or job attendance, and similar responsibilities of adult life;
 - (4) Proof of marriage;
 - (5) Proof of membership in the military; or
 - (6) Any other evidence the Court finds relevant to make an emancipation determination.

Section 1704 Effect of Emancipation.

- (A) An order emancipating a minor issued pursuant to this Article recognizes the minor as an adult for the following purposes:
 - (1) The right to enter into a binding contract.
 - (2) The ability to sue and be sued.

- (3) The right to buy and sell real property.
 - (4) The right to establish a legal residence.
 - (5) The obligation to pay child support.
 - (6) The right to incur debts.
 - (7) The right to access medical treatment and records.
 - (8) The right to consent to medical, dental, and psychiatric care without parental consent, knowledge, or liability.
 - (10) The right to consent to medical, dental, and psychiatric care for the emancipated minor's child.
 - (11) Eligibility for social services.
 - (12) The right to obtain a license to operate equipment or perform a service.
 - (13) The right to apply for enrollment in any school or college.
 - (14) The ability to apply for loans.
- (B) An emancipation order issued pursuant to this article terminates all the legal rights, privileges, duties, obligations, and other legal consequences of the relationship of child and parent or legal guardian, except as otherwise explicitly provided by this Code.
- (C) No order of emancipation shall affect a child's enrollment status as a member of the Nation or a child's right of inheritance from the parent.
- (D) Any order emancipating a minor pursuant to this Article shall contain a notice of the foregoing rights and responsibilities.

ARTICLE 8 – DUTY TO REPORT NON-ACCIDENTAL INJURIES TO CHILDREN

Section 1801 Reporting Requirement.

- (A) Any person having responsibility for the care of children; or any physician, hospital intern, resident, surgeon, dentist, or osteopath; school personnel; social worker or Child Welfare Worker; or peace officer whose observations or examination of any child discloses evidence of injury, sexual abuses, death, abuse, or physical neglect which appears to have been

inflicted upon such child by any means other than accidental or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to the Tohono O’odham Police Department. Upon receipt, the Tohono O’odham Police Department shall notify the Division pursuant to Section 1402 of this Chapter. Such reports shall be made by telephone or in person, and shall be followed by a written report within 24 hours.

- (B) Any person required by Section 1801(A) of this Chapter to receive reports shall be permitted, without first obtaining the consent of the parent, guardian, or legal custodian, to take photographs and/or other documentation and refer, transport, or otherwise arrange for appropriate licensed medical practitioners to conduct medical and psychological examinations of the child as may be indicated, including examinations of the sex organs, and interview the child. All examinations and interviews of a child who may have been subjected to neglect or abuse shall be conducted in a manner that minimizes additional trauma to the child.

Section 1802 Privileges.

With the exception of the attorney-client privilege, no privilege shall be available in any Child in Need of Care proceeding nor in any judicial proceeding resulting from a report submitted pursuant to this Chapter. This includes the physician-patient privilege and husband-wife privilege, as well as those provided for by professions covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications.

Section 1803 Immunity.

Anyone participating in the making of reports required under the provisions of this Chapter, or participating in a judicial proceeding resulting from such reports, shall be immune from any civil or criminal liability by reason of such action unless such person is determined to have acted with malice or unless such person has been charged with or is suspected of abusing or neglecting the child in question.

ARTICLE 9 – INDIAN CHILD WELFARE ACT

Section 1901 Jurisdiction.

The Tohono O’odham Children’s Court shall have original jurisdiction over any matter transferred to the Nation by a state court pursuant to the Indian Child Welfare Act 20 U.S.C. Sec. 1901., et seq.

Section 1902 Tribal Agent for Service.

The tribal agent for service of notice of state court Child Custody Proceedings under the Indian Child Welfare Act is the Attorney General for the Tohono O’odham Nation as identified in Tohono O’odham Legislative Council Resolution No. 96-020 or other succeeding resolution of the

Legislative Council.

Section 1903 Petition for Acceptance of Jurisdiction; Who May File.

- (A) The Child Welfare Division, in consultation with the Office of Attorney General, shall determine whether the Nation shall petition the Children’s Court for an acceptance of jurisdiction. This does not preclude the parent or any other party with standing from petitioning for acceptance of jurisdiction.
- (B) To initiate an action under this Article, the party requesting transfer shall file with the Tohono O’odham Children’s Court a Petition to Accept Jurisdiction upon transfer from state court setting forth the jurisdiction of the Court.
- (C) A Petition to Accept Jurisdiction filed pursuant to this Section shall include:
 - (1) The basis for the Court’s jurisdiction.
 - (2) Copies of any petitions or requests made in the state court to declare the child a ward of that court.
 - (3) Copies of any state court orders adjudicating the child dependent as to the parents(s), guardian(s), or legal custodian(s).
 - (4) A statement that the child is enrolled with the Tohono O’odham Nation or is eligible for enrollment with the Tohono O’odham Nation.
- (D) If a party petitions a state court for transfer of jurisdiction to the Children’s Court, such transfer shall not be effective until accepted by the Children’s Court. It shall be the duty of the party petitioning the state court for transfer to file a Petition to Accept Jurisdiction with the Children’s Court as provided herein.
- (E) Upon receipt of such petition the Children’s Court shall automatically grant standing to the Child Welfare Division of the Department of Health and Human Services. The Petitioner shall provide notice of the proceedings to the Department, and to all parties in the state court proceeding.

Section 1904 Responses; Acceptance or Declination of Jurisdiction.

- (A) Any responses to the petition shall be filed within five days of receipt of the Petition to Accept Jurisdiction.
 - (1) If a response is filed within the time period, the Court may in its discretion set a time period for replies and or set the matter for hearing. A hearing on the petition shall be held within 15 days of receipt of the petition by the Children’s Court.

- (2) If there are no responses within the time period, the Court shall make its decision whether to accept jurisdiction from state court within 15 days and no hearing shall be necessary.
- (B) Upon request of the Division, the Court may issue temporary custody orders to the Division, which orders shall be served upon the Division immediately.
- (C) The Court may decline jurisdiction of the case if it finds good cause to deny such transfer. Such a finding must be based on clear and convincing evidence that such transfer would not be in the best interest of the child, the child's family, or the Nation.
- (D) If jurisdiction is declined, the Court shall promptly issue to the parties a written order setting forth the reasons jurisdiction is declined. The petitioner shall provide notice to the state court of the Children's Court action.
- (E) If the Court accepts jurisdiction of the case, the Court shall set a status hearing within 30 days of acceptance of transfer of jurisdiction.

Section 1905 Status Hearing.

The purpose of the Status Hearing is to confirm that the child has been taken into custody and placed by the Division, verify that the case has been closed in the state court, and set appropriate date(s) and time(s) for the next hearing regarding the minor's status as a Child in Need of Care. The Division may move the Court at the status hearing to grant Full Faith and Credit, pursuant to Section 1305 of this Chapter, to state court decisions regarding the minor's dependency status.

ARTICLE 10 – VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS

Section 11001 Procedure; Who may relinquish.

- (A) Any parent, guardian, or custodian, or other guardian of a child may relinquish any rights they may have to the care, custody, and control of a child subject to the terms of this Article. The person wishing to relinquish shall file a petition in the Children's Court with notice to the Division; guardians and/or custodians, if any; and any non-petitioning parent.
- (B) Parental rights shall be relinquished voluntarily by a parent in writing, signed by the parent in the presence and acknowledgment of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten days after the birth of the child. The Court shall ensure that the parent or parents understand the consequences of the voluntary relinquishment, as enumerated in Section 11002 of this Chapter, prior to its approval.
- (C) The relinquishment hearing shall be conducted in the preferred language of the parent

wishing to relinquish parental rights. The Court shall determine the preferred language of the parent and certify that the relinquishment was explained in the preferred language of the parent(s).

- (D) The petition may request relinquishment generally, in which case the Court shall assume jurisdiction over the child, or specifically, to a particular person for adoption consistent with Article 11 of this Chapter. Relinquishment may be made to the Child Welfare Division or any person only with the written acknowledgment of the Court.

Section 11002 Effect of Voluntary Relinquishment.

- (A) Upon acknowledgment by the Court of a voluntary relinquishment, the relationship of parent and child and all the legal rights, privileges, duties, obligations, and other legal consequences of the natural relationship of child and parent shall thereafter cease to exist between the child and the natural parent, except as otherwise provided explicitly by this Code.
- (B) Upon entry of an order terminating the rights and responsibilities of a parent or parents, the Court may:
 - (1) Place the child with extended family; or
 - (2) Pursuant to a Child in Need of Care petition, proceed under Article 5 of this Chapter; or
 - (3) Pursuant to an adoption petition, proceed under Article 11 of this Chapter.
- (C) The voluntary relinquishment of parental rights of one parent, guardian, or custodian shall not affect the parental rights of any other parent, guardian, custodian, or extended family.
- (D) No voluntary relinquishment of parental rights shall affect a child's enrollment status or eligibility for enrollment as a member of the Nation or a child's right of inheritance through the natural parent. A parent who relinquishes voluntarily shall lose all rights of inheritance from and through the relinquished child.

ARTICLE 11 – ADOPTION

Section 11101 Purpose.

- (A) It shall be the policy of the Tohono O'odham Nation that O'odham children be adopted only as a matter of last resort or after voluntary parental relinquishment, and alternative long-term placements shall first be considered which maintain the connection between the child and the natural parent or parents and family. Prior to considering granting an adoption, the Court shall find that alternative long-term placements have been implemented and proved

unsuccessful. A decree of adoption shall not terminate the legal relationship between the child and the child's extended family, except by order of this Court.

Section 11102 Who may be adopted.

- (A) A child within the jurisdiction of the Children's Court and for whom jurisdiction has been invoked may be adopted. A child over the age of 12 years of age may not be adopted without his or her consent.
- (B) If a petition for adoption is filed prior to a child reaching 18 years of age, jurisdiction of the Children's Court continues for purposes of entering an order of adoption of such child even if the child reaches 18 years of age prior to the final adoption hearing.

Section 11103 Who may adopt.

- (A) In every adoption proceeding, adoptive placement shall be made in the following order of preference, absent good cause to the contrary:
 - (1) A member of the child's extended family;
 - (2) A member of the Tohono O'odham Nation;
 - (3) Other Indian families.
- (B) A married person not lawfully separated from his or her spouse shall not adopt a child without the consent of such spouse, if such spouse is legally capable of giving such consent.

Section 11104 Commencement of Proceedings; Petition.

- (A) A proceeding in the Children's Court for adoption of a minor child is commenced by the filing of a petition in conformity with the requirements of this Section. An adoption of a child under the jurisdiction of the Court may not be ordered unless a petition for adoption has been filed.
- (B) A person wishing to adopt a child subject to the jurisdiction of the Court shall file a petition with the Court, which shall be verified under oath by the petitioning adoptive parent or parents and shall contain the following information:
 - (1) The jurisdiction of the Court in these proceedings.
 - (2) The full names, addresses, and ages of the petitioners, plus the names and ages of all children living in their household;

- (3) The full name, residence, sex, and birth date of the child to be adopted, and documentary proof of the child's date and place of birth, if known;
- (4) A statement by the petitioners that, to their knowledge and belief, the child is eligible for adoption;
- (5) A statement by the petitioners that it is their desire to adopt the child and to establish a parent-child relationship with the child; and
- (6) A brief and concise statement of facts which may aid the Court in its decision.

Section 11105 Investigative Report

- (A) Within 30 days of the filing of the petition for adoption, the Court shall order an investigation report on the suitability of the petitioners to adopt a child.
 - (1) The report shall be prepared by the Division, and the Court shall notify, by court order, the Division of the request for investigation report.
 - (2) The Department shall investigate the suitability of the petitioners to adopt a child and submit to the Court a full report of the facts discovered by its inquiry. The report shall be prepared and filed with the Court within 120 days of the filing of the petition to adopt.
 - (3) The report shall include, but not be limited to, the following information:
 - (a) A complete social history of the child to be adopted.
 - (b) A thorough description of the financial, moral, and physical and mental health; religious affiliation, if any; enrollment status and tribal affiliation, if any; community involvement; and general background and suitability of the prospective adoptive parents and the family with whom they reside.
 - (c) A full description and statement of value of all property owned, possessed, or held in trust by and for the child to be adopted;
 - (d) A definite recommendation on whether the petitioners should be determined suitable to adopt.
- (B) Prior to issuing a final order granting an adoption, the Court may require additional information if it finds the welfare of the child will be better served thereby.

- (C) The Court, upon receiving an investigation report, shall within 30 days set a hearing pursuant to Section 11106 of this Chapter to determine whether the petitioners are acceptable or not acceptable to adopt.

Section 11106 Adoption Hearings.

- (A) Hearings under this Article shall be as informal as the requirements of due process, confidentiality, and fairness permit. The Court shall exclude all persons except the officers of the Court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties as determined by this Code. No other persons shall be admitted to the hearing unless the Court determines they have a direct interest in the case. Any such person at the hearing shall not disclose any information obtained at the hearing.
- (B) The petitioner(s) shall appear personally at the hearing. The Court shall examine all petitioner(s) appearing as to their willingness to adopt. The Court shall also consider the voluntariness and understanding of the adoption.
- (C) The Court may also consider other evidence or testimony at the hearing to aid in its decision. Based on the evidence presented, the Court shall make findings based on clear and convincing evidence regarding the suitability of the petitioner(s) to adopt a child.
- (D) Any petitioner who has been found not acceptable to adopt may petition the Court to reconsider its findings. Notice shall be given to all interested parties and the Court shall schedule a hearing to review the matter. The Court may affirm or reverse its determination. If, upon reconsideration, a petitioner is found not acceptable to adopt, he or she may not reapply for adoption of any minor under the Court's jurisdiction for at least 1 year.

Section 11107 Order of Adoption.

- (A) Prior to entering any final order of adoption, the Court shall find that parental rights have been voluntarily relinquished or otherwise terminated by all parents to the child.
- (B) The final order of adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption and that the adoptive home and parents are capable of providing for the proper care of the child as shown by the investigation reports and the findings of the Court upon the evidence presented at the hearings.
- (C) The Court may deny the petition for adoption if it finds that the adoption will not be in the best interest of the child. The Court may request that the Division provide services to assist in the placement and care of the child.
- (D) Children adopted by order of the Court shall:
 - (1) Assume the surname of the adoptive parents, unless the Court orders otherwise.

- (2) Be entitled to the same rights as natural children of the adoptive parents.
 - (3) Be entitled to inherit real and personal property from and through the adoptive parents. However, if an adopted child is not a member of, nor eligible for enrollment with, the Tohono O'odham Nation, then said non-member child shall not be eligible to inherit any interest which the deceased tribal member's estate may have to any tribal privilege, right, land, or property of any kind.
- (E) Parents adopting by order of the Court shall be entitled to inherit real and personal property from and through the adopted child. However, if an adoptive parent is not a member of, nor eligible for enrollment with, the Tohono O'odham Nation, then said non-member parent shall not be eligible to inherit any interest which the deceased tribal member's estate may have to any tribal privilege, right, land, or property of any kind.
- (F) An Order of Adoption shall not:
- (1) Confer tribal membership status on adopted children who would not otherwise be eligible.
 - (2) Deprive adopted children of tribal membership status for which they would otherwise be eligible.
 - (3) Terminate the rights of the natural extended family of the child except by specific order of the Court.
- (G) This Section shall not be construed to preclude appeal to the Tohono O'odham Court of Appeals of any final order, judgment, or decree of the Children's Court.

ARTICLE 12 - CONFIDENTIALITY OF RECORDS, REPORTS, AND PROCEEDINGS

Section 11201 Purpose.

The provisions of this Chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

Section 11202 Records; Method of Preservation; Contents.

- (A) A record of all hearings under this Chapter shall be made and preserved by stenographic, mechanical, or electronic recording.

- (B) The official Children's Court Record of the proceedings under this Code shall include complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, court orders, and other reports and papers filed with the Children's Court.
- (C) Official Children's Court Records shall not be destroyed until a 99 year period has passed from the creation of the record.

Section 11203 Confidentiality of Records.

- (A) Except as provided in this Chapter, reports taken pursuant to Article 4 of this Code, and the name and address of any child, family, or informant or any other identifying information contained in such reports, shall be confidential and shall not be public information.
- (B) Upon request to the Court the official Children's Court Record shall be open to inspection and copying by the child; the child's parent, guardian, or custodian or their counsel; the Division or its counsel; authorized personnel of the Children's Court, or such other person as the Court may, for good cause, permit.
- (C) A court, upon its finding that access to records may be necessary for determination of an issue before such court, may order such access, but such access shall be limited to *in camera* inspection unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue pending before it.

Section 11204 Reports of Abuse and Neglect.

- (A) Disclosure of the name and address of the child and family and other identifying information involved in reports of abuse and neglect shall be permitted only when authorized by the Court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect, the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.
- (B) When reports are disclosed pursuant to Section 11204(A) of this Article, only the following persons or agencies shall be given access to child abuse or neglect records and reports:
 - (1) The Nation's Police Department or the Department of Health and Human Services.
 - (2) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record of a parent, guardian, custodian, or other person who is responsible for the child's health or welfare;
 - (3) Any person named in the report or record that was alleged to be abused or neglected or, if a minor or other incompetent, at the time of the request, is named in the report, the child's advocate, attorney, or guardian ad litem, if appointed;

- (4) A parent, guardian, custodian, or other person responsible for the health and welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
 - (5) Members of the child protection team;
 - (6) The tribal prosecutor and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary,
 - (7) Such other person as a Court of the Tohono O’odham Nation may determine, for good cause.
- (C) A person given access to a report shall not divulge or make public any identifying information.

Section 11205 Confidentiality of Proceedings.

It shall not be permitted for any person to knowingly disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any information involved in any proceeding under this Article directly or indirectly derived from the files, records, reports or other papers compiled pursuant to this Article, or acquired in the course of the performance of official duties.

Section 11206 Official Use of Reports and Records.

The provisions of this Article shall not be construed to prohibit persons employed by, or representing, the Court, the Division, the Tohono O’odham Police Department, or the Tohono O’odham Prosecutor’s Office, from conducting the investigations or performing other duties pursuant to this article and done within the normal course of their employment.

Section 11207 Adoption Records.

- (A) All adoption records, reports, proceedings, and orders of the Court pursuant to this Chapter are confidential records of the court. They shall be sealed and shall not be available for release or inspection by the public except by order of the Court.
- (B) Upon petition by an adopted person after reaching legal age, or upon order of the Court upon a showing of good and sufficient cause by persons other than the adopted person, information contained in such record shall be released to the requesting party if:
 - (1) During the original proceedings, the natural parent or parents gave consent to release the records; or

- (2) The natural parent or parents have been given actual and confidential notice by the Court of the petition for release of information, or where the whereabouts of the natural parent or parents are unknown, notice of intent to release such information has been published without revealing the name of the natural parent or parents, and:
 - (a) The natural parent or parents consent in writing before the court to release information, or
 - (b) The court determines the need for information is greater than the natural parent's right to privacy, or
 - (c) Both natural parents are deceased.
- (C) The court may refuse to divulge the natural parent's name but release other information so long as the information will not lead to the discovery of the parents' name.
- (4) Notwithstanding (A)-(C) of this Section, records of parental relinquishment, adoption, or other such records necessary to trace a relinquished or adopted person's biological ancestry for the sole purpose of establishing that person's eligibility for enrollment in the Tohono O'odham Nation pursuant to Article II of the Constitution of the Tohono O'odham Nation adopted on January 18, 1986, and the Enrollment Ordinance of the Tohono O'odham Nation, Ordinance No. 05-81 as may be amended, shall be made available to the Enrollment Office upon petition of the person seeking enrollment.

Section 11208 Reports and Records of a Child Reaching the Age of Majority.

After a child has reached 18 years of age or has been ordered emancipated pursuant to this Chapter, the Court shall not permit access to any report or record prepared pursuant to this Code and concerning such child unless the person seeking access is a sibling or offspring of that child and appears before the Court.

TITLE 3 - CHILDREN

CHAPTER 2 - JUVENILE JUSTICE

ARTICLE 1 - SHORT TITLE, PURPOSE AND DEFINITIONS

Section 2101 Purpose.

This chapter of the Children's Code shall be liberally interpreted and construed to fulfill the following purposes:

- (A) To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and positive mental and physical development of children coming within the provisions of this code;
- (B) To establish, for children committing juvenile offenses, a program of supervision, care, and rehabilitation consistent with the protection of the Tohono O'odham Nation;
- (C) To achieve the purposes of this code in a family environment whenever possible, separating the child from the child's parents, guardian or custodian in the interests of public safety;
- (D) To give full and just consideration to the religious and traditional preferences and practices of parties appearing before the Children's Court;
- (E) To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and the recognition and enforcement of their legal rights.
- (F) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community-based alternatives.

Section 2102 Use of Tohono O'odham Customs and Traditions.

This Chapter shall be liberally interpreted in accordance with the customs and traditions of the Tohono O'odham. Evidence may be offered by any party regarding customs and traditions of the Tohono O'odham in any proceeding conducted pursuant to this Chapter. Evidence regarding Tohono O'odham customs and traditions may be admitted by the Court, and such customs and traditions may be used as governing law for purposes of proceedings conducted pursuant to this Chapter.

Section 2103 Immunity of Officers and Employees.

Officers and employees of the Tohono O’odham Nation shall be immune from suit for liability arising from the performance of their official duties in administering and enforcing this Code.

ARTICLE 2 - DEFINITIONS

As used in this Chapter:

- (A) “Adjudicatory Hearing” means a proceeding in the juvenile court to determine whether a child has committed a specific juvenile offense.
- (B) “Adult” means an individual who is 18 years of age or older.
- (C) “Adult Court” means the divisions of the Tohono O’odham Judicial Court which hears traffic and adult criminal cases.
- (D) “Advocate” means a person who is not an attorney, who is licensed pursuant to the Tohono O’odham Rules of Court and recognized by the Children’s Court as authorized to represent parties in proceedings before the Children’s Court.
- (E) “Alcohol or Substance Abuse Emergency Shelter or Halfway House” means a supervised emergency shelter or halfway house, appropriately licensed or approved by the Tohono O’odham Nation, for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
- (F) “Attorney” means a person who has graduated from an accredited law school, is a member in good standing with an approved state bar association, and is licensed pursuant to the Tohono O’odham Rules of Court.
- (G) “Child” means any unmarried person who is under the age of 18 years and is subject to the jurisdiction of the Children’s Court.
- (H) “Consent Decree”: A court order which suspends a “juvenile offender” proceeding prior to adjudication and imposes upon the minor and/or the family terms and conditions negotiated with and supervised by the juvenile probation officer and agreed to by all parties.
- (I) “Counsel”: An advocate or attorney authorized to practice in the Tohono O’odham Court.
- (J) “Court” or “Children’s Court”: The Children’s Court of the Tohono O’odham Nation.
- (K) “Curriculum Change”: Can include, but is not necessarily limited to,: (a) a change in a child’s instructor, if available; (b) a change in the scheduling of a child’s classes, if available; (c) reassignment of a child into another class section, if available; (d) a change in the content

of a child's course of instruction, if available; and (e) a change in the child's school, if available. (See the definition of "family in need of services.")

- (L) "Detention": Exercising authority over a child by physically placing him in any juvenile facility designated by the court and restricting the child's movement in or from that facility.
- (M) "Dispositional Hearing": A proceeding in the juvenile court to determine how to resolve a case after it has been admitted to by the child at arraignment or determined at the adjudicatory hearing that the child has committed one or more specific juvenile offenses.
- (N) "Diversion Program": Program(s) provided for the child pursuant to this Chapter under direction and approval of and Children's Court which, if successfully completed by the child, will cause the Child Offender Petition to be dismissed.
- (O) "Domicile": A person's true, fixed, and permanent home and the place to which a person intends to return even though residing elsewhere, and shall also mean a person's actual place of residence. The domicile of a child is presumed to be that of the custodial parent or legal guardian, unless the child has been emancipated pursuant to Chapter 1, Article 7 of this Code. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
- (P) "Guardian" means a person or entity, other than a parent or legal custodian, who has been appointed by the Court to care for the child through guardianship in accordance with Chapter 1, Article 6 of this Code.
- (Q) "Guardianship" or "legal guardianship" means the legal status created by the court which vests in a person the rights and responsibilities set forth in Chapter 1, Section 1604 of this Code.
- (R) "Juvenile Probation Officer" means the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in Section 2701 of this Chapter.
- (S) "Juvenile Facility" means any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities and alcohol or substance abuse emergency shelter or halfway houses.
- (T) "Juvenile Offender" or "Child Offender" means a child who on or after his or her 10th birthday and prior to his or her 18th birthday commits a "juvenile offense."
- (U) "Juvenile Offense" means a violation of the Law and Order Code of the Tohono O'odham Nation which is committed by a person who is under the age of 18 but is at least ten years of age at the time the offense was committed.

- (V) “Juvenile Prosecutor” means the designated juvenile prosecutor or any other person assigned by the chief prosecutor who performs the duties and responsibilities set forth in Section 1702 of this Chapter.
- (W) “Legal Custodian” means a person or entity, other than a parent or legal guardian, to whom legal custody of a child has been awarded by an order of the Court.
- (X) “Legal Custody” means the legal status created by the Court which vests in a person the following rights and responsibilities:
- (1) Physical custody of the child;
 - (2) A duty to provide the child with food, shelter, education, and ordinary medical care; and
 - (3) A duty to protect and discipline the child.
- (Y) “Nation” means the Tohono O’odham Nation.
- (Z) “Parent” means the natural or adoptive parent of a child whose parental rights have not been terminated. “Parent” does not include a putative father whose paternity has not been legally acknowledged or established.
- (AA) “Per Capita Disbursement” means money from tribal gaming revenues which is disbursed periodically to eligible tribal members by the Tohono O’odham Nation.
- (BB) “Probation” means a legal status created by court order whereby a juvenile offender is permitted to remain in his home under prescribed conditions and under the supervision of a person(s) designated by the court. A “juvenile offender” on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.
- (CC) “Protective Supervision” means a legal status created by court order under which a juvenile offender is permitted to remain in his home or is placed with a relative or other suitable individual, and supervision and assistance is provided by the court, a health or social services agency, or some other agency designated by the court.
- (DD) “Restitution” means financial or other reimbursement by the child to the victim, and is limited to actual damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.

- (EE) “Secure Juvenile Detention Facility” means a facility which
- (1) contains locked cells or rooms which are separated by sight and sound from any adult inmates, and
 - (2) restricts the movement of those placed in the locked cells or rooms, and
 - (3) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.
- (FF) “Traditional Custodian” means a person or entity with whom physical custody of a child has been vested by the parent or legal guardian in accordance with the customs and traditions of the Tohono O’odham.
- (GG) “Transfer to Adult Court” means transferring a child from the jurisdiction of the juvenile court to the jurisdiction of the Adult Tribal Court in conformance with Article 4 of this Chapter, resulting in the termination of the jurisdiction of the Children’s Court over that offense.
- (HH) “Tribal Court” or “Adult Court” means the adult criminal and traffic divisions of the Tohono O’odham Judicial Court.

ARTICLE 3 – JURISDICTION OF THE JUVENILE COURT

There is hereby established for the Tohono O’odham Nation a court to be known as the Tohono O’odham Children’s Court all pursuant to Article VIII of the Tohono O’odham Constitution. Where not preempted by federal law, the Children’s Court shall have exclusive original jurisdiction over all proceedings established in this Chapter in which an Indian child residing in or domiciled on the reservation has been alleged to have committed or adjudicated as having committed a juvenile offense, unless the Children’s Court transfers jurisdiction to the adult tribal court in accordance with Article 4 of this Chapter.

ARTICLE 4 – TRANSFER TO ADULT TRIBAL COURT

Section 2401 Transfer Petition.

The Office of the Prosecutor, by and through the Chief Prosecutor or the Juvenile Prosecutor, may file a petition requesting that the juvenile court transfer jurisdiction over the child to the adult tribal court if:

- (A) the child is 15 years of age or older, and

- (B) is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

Section 2402 Transfer Hearing.

The Children’s Court shall conduct a hearing to determine whether jurisdiction should be transferred to Adult Court. The transfer hearing shall be held within 20 days of the Court’s receipt of the petition. Written notice of time, place, and purpose of the hearing shall be given to the child and the child’s parent, guardian, custodian, or legal representative at least three days before the hearing. At the commencement of the hearing, the court shall notify the child and the child’s parent, guardian, or legal custodian of their rights as set forth in Article 8 of this Chapter.

Section 2403 Deciding Factors in Transfer Hearing.

The following factors shall be considered when determining whether to transfer jurisdiction of the child to Adult Court:

- (A) the nature and seriousness of the offense with which the child is charged;
- (B) the nature and condition of the child, as evidenced by his age, mental and physical condition;
- (C) the child’s past record of offenses; and
- (D) the preventive and rehabilitative services which have been provided to the child by the Nation or any other governmental agency or by private service providers.

Section 2404 Standard of Proof in Transfer Hearing.

- (A) The Children’s Court may transfer jurisdiction of the child to Adult Court only if the court finds clear and convincing evidence that both of the following circumstances exist:
 - (1) there are no reasonable prospects for rehabilitating the child through resources available to the Children’s Court; and
 - (2) the offense(s) allegedly committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.
- (B) Evidence of a pattern of conduct need not be proven if the child is 15 years of age or older and the offense is cognizable either under Chapter 7, § 7.2, Chapter 9, § 9.1, 9.2, and 9.6 of the Tohono O’odham Criminal Code or under United States Code, Title 18 § 1153.

Section 2405 Pre-Hearing Report in Transfer Proceedings.

At least three days prior to the transfer hearing, the juvenile probation department shall prepare and file with the Children's Court a pre-hearing report for the Children's Court and make copies of that report available to the juvenile prosecutor, the child and the child's parent, guardian, custodian, or legal representative. The pre-hearing report shall address the issues described in Section 2403 of this Article. No pre-hearing report shall be needed if the transfer is under the provisions of Section 2407 of this Article.

Section 2406 Written Transfer Order.

A child may be transferred to adult tribal court only if the Children's Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with this Article. Upon filing, this written order terminates the jurisdiction of the Children's Court over the child with respect to the juvenile offense(s) alleged in the petition and any future alleged offenses. No child shall be prosecuted in the adult tribal court for a criminal offense unless the case has been transferred to adult tribal court as provided in this chapter unless the criminal offense is subsequent to the initial transfer order. No written transfer order shall be needed if the transfer is under the provisions of Section 2407 of this Article.

Section 2407 Automatic Transfer.

Notwithstanding the provisions of Sections 2402 through 2406 of this Article and upon application of the juvenile prosecutor, the transfer of a child to the jurisdiction of the adult tribal court shall be automatic and no hearing shall be held on the matter under the following conditions:

- (A) The child has reached his/her fifteenth birthday at the time the petition for transfer is filed, and
- (B) The child has committed acts which are cognizable either under Chapter 7, § 7.2, Chapter 9, § 9.1, 9.2, and 9.6 of the Tohono O'odham Criminal Code or under provisions of both the United States Code, Title 18 § 1153 and the Tohono O'odham Criminal Code.

If a child has previously been transferred to adult tribal court, criminal complaints may be filed against him in adult tribal court as if he were an adult without any further proceedings in Children's Court.

ARTICLE 5 – JUVENILE COURT PROCEDURE

Section 2501 Non-Criminal Status of Proceedings.

No adjudication upon the status of any child in the jurisdiction of the Children's Court shall be deemed criminal or be deemed a conviction of a crime unless the Children's Court transfers jurisdiction to the adult tribal court in conformance with Article 4 this Chapter or the child is convicted of a criminal offense subsequent to the filing of the initial transfer order.

Section 2502 Use in Other Proceedings.

The adjudication, disposition, and evidence presented before the Children’s Court shall be inadmissible as evidence against the child in any proceeding in another court, including the adult tribal court.

Section 2503 Rules of Procedure.

The procedures in the Children’s Court shall be governed by those rules of procedure and evidence for the Adult Court which are not in conflict with this Code.

ARTICLE 6 – TRANSFER FROM OTHER COURTS

Section 2601 Transfer from Other Courts.

The Children’s Court may, at its discretion and in the best interest of the Nation, accept or decline transfer from other states or tribal courts involving alleged delinquent children or alleged offenders for the purposes of adjudication and/or disposition.

ARTICLE 7 – CHILDREN’S COURT PERSONNEL

Section 2701 Juvenile Probation Officer.

(A) Appointment

Consistent with Title 6, Chapter 1, Section 2-116 of the Tohono O’odham Code, the Court shall appoint juvenile probation officer(s) to carry out the duties and responsibilities set forth in this Chapter. The Chief Judge of the Tohono O’odham Court shall certify annually to the Legislative Council the number of qualified juvenile probation officer(s) needed to carry out the purpose of this Chapter. The person(s) carrying out the duties and responsibilities as set forth in this section may be labeled juvenile probation officers or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(B) Qualifications

The juvenile probation officer must have an educational background and/or prior experience in the field of delivering social services to youth or other qualifications deemed appropriate by the Chief Judge.

(C) Resource Development

The juvenile probation officer shall identify and develop resources both on and off the reservation, in conjunction with the juvenile court and the Legislative Council, to enhance each tribal child's potential as a viable member of the tribal community.

(D) Duties

- (1) To make investigations as provided in this code or as directed by the Children's Court;
- (2) To make reports to the court as provided by this code or as directed by the Children's Court;
- (3) To conduct informal adjustments;
- (4) To provide counseling services;
- (5) To perform such other duties in connection with the care, custody or transportation of children as the court may require; and
- (6) To serve arrest warrants, summons, or subpoenas as ordered by the Court.

Section 2702 Juvenile Prosecutor.

(A) Appointment

The Chief Prosecutor of the Nation shall appoint the juvenile prosecutor(s) to carry out the duties and responsibilities set forth in this code. The Chief Prosecutor of the Nation shall certify annually to the Legislative Council the number of qualified juvenile prosecutor(s) needed to carry out the purposes of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile prosecutors" or any other title which the Chief Prosecutor finds appropriate so long as they perform the duties and responsibilities as set forth in this section.

(B) Qualifications

The qualifications of the juvenile prosecutor(s) shall be the same as the qualifications for the official who acts as a prosecutor in the tribal court.

(C) Duties

- (1) File with the Children's Court child offender petitions and any other petition or motion deemed necessary to carry out the intent of this Chapter;
- (2) Represent the Nation in all proceedings under this Chapter;

- (3) Perform such other duties as the Court may order for the proper resolution of the proceeding(s).

Section 2703 Additional Court Personnel.

The Court may, in its discretion, set qualifications and appoint additional juvenile court personnel such as guardians *ad litem*, attorneys *ad litem*, court-appointed special advocates (CASAs), juvenile advocates, or referees.

ARTICLE 8 – RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS

Section 2801 Privilege Against Self-Incrimination.

A child alleged to be a juvenile or child offender shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under Section 21403 of this Chapter when the child's health and well-being are in serious jeopardy. A child may be questioned when in the presence of his or her parent(s) after being advised of the privilege against self-incrimination. The parent, guardian, or custodian may waive the right to be present during the child's questioning. These provisions shall not apply if the child is merely being questioned as a witness and is not the subject of an investigation.

Section 2802 Admissibility of Evidence.

In a proceeding on a petition alleging that a child is a juvenile offender:

- (A) An out-of-court statement that would be inadmissible in a criminal matter in Adult Court shall not be received in evidence;
- (B) Evidence illegally seized or obtained shall not be admitted to establish the allegations of a petition;
- (C) Unless advised by counsel, the statements of a child made while in custody to a juvenile probation officer, including statements made during a preliminary inquiry, informal adjustment, or predispositional study, shall not be used against the child in determining the truth of allegations of the petition;
- (D) An admissible admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence;
- (E) Neither the fact that the child has at any time been a party to a proceeding pursuant to

Chapter I of this Code, nor any information obtained during the pendency of such proceedings, shall be received into evidence.

Section 2803 Fingerprinting and Photographs.

A child in custody shall be fingerprinted and photographed for identification purposes. If an order of the Children's Court is so given, the fingerprints or photographs shall be used only as specified by the court. However, such fingerprints and photographs shall be available to both tribal and non-tribal police and investigative agencies upon written permission of the Chief Prosecutor.

Section 2804 Right to Retain Counsel.

The child and his parent, guardian or custodian shall be advised by the court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the court in its discretion may appoint counsel for the child if resources for such appointment have been authorized and funded by the Legislative Council.

Section 2805 Explanation of Rights.

At his first appearance before the Children's Court, and at each subsequent appearance before the court, the child alleged to be a juvenile offender and the child's parent, guardian, or custodian shall be informed by the court of the following:

- (A) the allegations against the child;
- (B) the right to an advocate or attorney at their own expense;
- (C) the right to testify or remain silent and that any statement made by the defendant may be used against him/her;
- (D) the right to cross-examine witnesses;
- (E) the right to subpoena witnesses, and to introduce evidence, on his/her own behalf; and
- (F) the possible consequences if the allegations in the petition are found to be true.

ARTICLE 9 –TAKING A JUVENILE OFFENDER INTO CUSTODY

Section 2901 Taking a Child into Custody.

A law enforcement officer may take a child into custody when:

- (A) the child commits a juvenile offense in the presence of the officer; or
- (B) the officer has a reasonable suspicion to believe a juvenile offense has been committed by the child; or
- (C) an appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child.

Section 2902 Provision of Rights.

At the time the child is taken into custody as an alleged juvenile offender, the arresting officer shall inform the child of the following:

- (A) the child has a right to remain silent;
- (B) anything the child says can be used against the child in court;
- (C) the child has a right to the presence of his/her parent, guardian, or custodian and/or counsel during questioning, and;
- (D) the child has a right to an advocate or attorney at his/her own expense.

Section 2903 Release or Delivery from Custody.

A law enforcement officer taking a child into custody shall give the notice provided in Section 2902 of this Article to any child taken into custody prior to questioning and then shall do one of the following:

- (A) release the child to the child's parent, guardian, or custodian and issue verbal counsel or warning as may be appropriate; or
- (B) release the child to a relative or other responsible adult if the child's parent, guardian, or custodian consents to the release, provided that if the child is ten years of age or older, both the child and his/her parent, guardian, or custodian must consent to the release; or
- (C) deliver the child to the juvenile probation officer, or to a juvenile facility as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment or is under the influence of alcohol or other chemical substances; or
- (D) if no parent, guardian, or custodian is available and willing to take custody of the child upon release, make to the Tohono O'odham Department of Health and Human Services Department Child Welfare Services Division a report pursuant to Chapter I Section 1402(A) of this Title.

Section 2904 Review by Juvenile Probation Officer or Juvenile Facility.

The juvenile probation officer or juvenile official at the juvenile facility (as designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian, or custodian in order to appear at the hearing on a date to be set by the court, unless:

- (A) the act is serious enough to warrant continued detention; and the delivering law enforcement officer or the juvenile prosecutor requests that the child be detained; and
- (B) there is probable cause to believe the child has committed the offense(s) alleged; or
- (C) there is reasonable cause to believe the child will run away and will be unavailable for further proceedings; or
- (D) there is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

Section 2905 Notification of Family.

If a child is taken into custody and not released to his parent, guardian, or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian, or custodian. All reasonable efforts shall be made to advise the parent, guardian, or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian, or custodian, the notice shall be given to a member of the extended family of the parent, guardian, or custodian, and to the child's extended family. If the person taking the child into custody demonstrates to the Court's satisfaction that reasonable good-faith efforts failed to identify or locate such family members, failure to provide this notice shall not be available to the parent or guardian/custodian as a defense to any judicial proceeding, nor shall it interfere with any rights, procedures, or investigations granted or conducted under any other applicable law. If no parent, guardian, or custodian is can be located, the person taking the child into custody shall make to the Tohono O'odham Department of Health and Human Services Department Child Welfare Services Division a report pursuant to Chapter I Section 1402(A) of this Title.

Section 2906 Criteria for Selecting Juvenile Facility.

If the juvenile probation officer or juvenile official at the juvenile facility (as designated by the court) or the juvenile prosecutor determines that there is a need for continued custody of the child in accordance with Section 2904 of this Chapter, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

- (A) A child may be detained in a Court-designated Secure Juvenile Detention only if one or more

of the following conditions are met:

- (1) The child is a fugitive from another jurisdiction where s/he is wanted for a felony offense; or
 - (2) The child is charged with aggravated assault or homicide, sexual assault, or a crime of violence with a deadly weapon or which has resulted in a serious bodily injury; or
 - (3) The child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
 - (4) The child is charged with committing one of the following acts which would be an offense if the child were an adult: vehicular homicide; abduction, rape, arson, burglary, or robbery; or
 - (5) The child is already detained or on conditioned release for another juvenile offense; or
 - (6) The child has a demonstrable recent record of willful failures to appear at juvenile court proceedings; or
 - (7) The child has made a serious escape attempt; or
 - (8) The child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child; or
 - (9) A request is made by the juvenile prosecutor to continue to detain the child. The initial request may be oral with a subsequent written request filed with the court setting forth the reasons for the detention. The written request shall be filed with the Juvenile Court within 72 hours of the child's detention in the juvenile facility.
- (B) A child may be referred to an Alcohol or Substance Abuse Emergency Shelter or Halfway House if the Court determines that:
- (1) There is a need for continued custody of the child in accordance with section 904 of this Chapter, and
 - (2) The child has been arrested or detained for a "juvenile offense" relating to alcohol or substance abuse, and
 - (3) There is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and
 - (4) The child is not found to be a danger to self or others.

(C) A child may be referred to a behavioral health treatment facility if the Court finds that the preponderance of evidence shows that:

- (1) The child is a danger to self or others; and
- (2) The child is likely to benefit from treatment received in such a facility.

ARTICLE 10 – DETENTION HEARINGS FOR JUVENILE OFFENDERS

Section 21001 Requirement of Detention Hearing.

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within 72 hours, exclusive of holidays and weekends, of the child's initial detention under Section 2901 of this Chapter.

Section 21002 Purpose of Detention Hearing.

The purpose of the detention hearing is to determine:

- (A) whether probable cause exists to believe the child committed the alleged juvenile offense; and
- (B) whether continued detention is necessary pending further proceedings.

Section 21003 Notice of Detention Hearing.

Immediately upon setting the date and time for the detention hearing, the Court shall direct the clerk of Court to issue notice of the detention hearing to the child and the child's parent, guardian, or custodian and the child's counsel. The notice shall contain:

- (A) the name of the court;
- (B) the title of the proceedings;
- (C) a brief statement of the juvenile offense the child is alleged to have committed; and
- (D) the date, time, and place of the detention hearing.

Section 21004 Detention Hearing Procedure.

Detention hearings shall be conducted by the Children's Court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights Section 2805 this Chapter. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the court shall be admitted.

Section 21005 Standards to be Considered at Detention Hearing.

The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in Sections 2904 and 21002 of this Chapter. Hearsay shall be admissible as evidence in detention hearings.

Section 21006 Finding at Detention Hearing.

The court shall issue a written finding setting forth the reasons for release or continued detention of the child. If the court determines that there is a need for continued detention, the court shall specify where the child is to be placed until the adjudicatory hearing.

Section 21007 Rehearing the Detention Matter.

If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the hearing, the Court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

ARTICLE 11 – INITIATION OF JUVENILE OFFENDER PROCEEDINGS

Section 21101 Investigation by the Juvenile Probation Officer.

The juvenile probation officer shall make an investigation within 48 hours of the child's detention or release to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the juvenile probation officer shall:

- (A) recommend to the juvenile prosecutor that no further action be taken; or
- (B) suggest to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under Section 21103 of this Chapter; or
- (C) request the juvenile prosecutor to begin transfer to adult tribal court proceedings under Article 4 of this Chapter; or
- (D) recommend that the juvenile prosecutor file a petition under Section 21104 of this Chapter. The petition shall be filed within 72 hours if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within 365 days of the date of the offense.
- (E) The final decision on the initiation of child offender proceedings shall be that of the juvenile prosecutor.

Section 21102 Informal Adjustment.

- (A) During the course of the preliminary investigation to determine what further action shall be taken, the juvenile probation officer shall confer with the child and the child's parent, guardian, or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
- (B) The juvenile probation officer shall consider the following factors in determining whether to recommend to the juvenile prosecutor to proceed informally or to file a petition:
 - (1) nature and seriousness of the offense;
 - (2) previous number of contacts with the police, juvenile probation officer or the court;
 - (3) age and maturity of the child;
 - (4) attitude of the child regarding the offense;
 - (5) Any relevant psychiatric, cognitive, developmental, or other disabilities the child may have or have had at the time the alleged offense was committed;
 - (6) willingness of the child to participate in a voluntary program, and;
 - (7) participation of and input from the child's parent, guardian, or custodian.
- (C) The final decision of whether informal adjustment shall be afforded to the child shall be that of the juvenile prosecutor.

Section 21103 Informal Adjustment Conference.

- (A) After conducting a preliminary investigation, the juvenile probation officer shall hold an informal conference with the child and the child's parent, guardian, or custodian to discuss alternative courses of action in the particular case.
- (B) The juvenile probation officer shall inform the child and the child's parent, guardian, or custodian of their basic rights under Section 2805 of this Chapter. Statements made by the child at the informal conference shall not be used against the child in Court in determining the truth of the allegations in the petition.
- (C) At the informal conference, upon the basis of the information obtained during the preliminary investigation, the juvenile probation officer, after receiving approval from the juvenile prosecutor, may enter into a written agreement with the child and the child's parent, guardian, or custodian specifying particular conditions to be observed during an informal

adjustment period, not to exceed six months. The child and the child's parent, guardian, or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.

- (D) The child shall be permitted to be represented by counsel at the informal conference.
- (E) If the child does not desire to participate voluntarily in a diversion program, the juvenile probation officer shall recommend that the juvenile prosecutor file a petition under Section 21104 of this Chapter. The juvenile prosecutor shall render an independent decision as to whether or not a petition is filed and is not bound by the recommendation of the juvenile probation officer.
- (F) Upon the successful completion of the informal adjustment agreement, the case shall be closed with approval of the juvenile prosecutor and no further action taken in the case.
- (G) If the child fails to successfully complete the terms of his informal adjustment agreement, the juvenile probation officer may recommend that a petition be filed pursuant to Section 21104 of this Chapter.
- (H) A child who has once participated in a diversion program, whether successfully completed or not, is not eligible to participate a second time.

Section 21104 Filing and Content of Petition.

Formal juvenile offender proceedings shall be instituted by a petition filed by the juvenile prosecutor on behalf of the Nation and in the interest of the child. The petition shall be entitled, "In the matter of _____, a minor child" and shall set forth with specificity:

- (A) the name, birth date, residence, and tribal affiliation of the child;
- (B) the names and addresses of the child's parent, guardian, or custodian;
- (C) a citation to the specific section(s) of this code which give the court jurisdiction over the proceedings;
- (D) a citation to the criminal statute or other law or ordinance which the child is alleged to have violated;
- (E) a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and
- (F) whether the child is in custody and, if so, the place of detention and time she or he was taken into custody.

Section 21105 Issuance of Summons or Subpoena.

- (A) After a “child offender” petition has been filed, the Children’s Court shall direct the issuance of summons or subpoena for the purpose of conducting an arraignment on the child offender petition or conducting any other proceeding deemed necessary to:
- (1) the child;
 - (2) the child’s parent, guardian, or custodian;
 - (3) the child’s counsel;
 - (4) appropriate medical and/or drug and alcohol rehabilitation experts, and;
 - (5) any other person the court deems necessary for the proceedings
- (B) Nothing in this Section shall prohibit a Prosecutor from requesting that the Court issue summons or subpoenas for service by the Prosecutor.

Section 21106 Content of the Summons or Subpoena.

The summons or subpoena shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons or subpoena shall also advise the parties of their applicable rights under Section 2805 of this Chapter. A copy of the petition shall be attached to the summons or subpoena.

Section 21107 Service of the Summons or Subpoena.

The summons or subpoena shall be served upon the parties at least five days prior to the hearing. The summons or subpoena shall be delivered personally by a law enforcement official or appointee of the court. If the summons or subpoena cannot be delivered personally, the court may deliver it by registered, certified or regular mail. If the summons or subpoena cannot be delivered by mail, it may be made by publication in conformance with Section 21108 of this Chapter. A party, other than the child, may waive service of summons or subpoena by written stipulation or by voluntary appearance at the hearing. An advocate or attorney for the child may accept service of summons for the child.

Section 21108 Notice by Publication.

- (A) If a party to be served cannot be identified or found, or an address cannot be determined after a diligent effort to search for the party, the Court may order service of notice by publication. An affidavit of due diligence search shall be on file with the Court. Notice by publication is not sufficient if the address or the whereabouts of a party required to receive notice is known or brought to the attention of the Court. Publishing the summons and a statement on how a

copy of the pleading being served can be obtained shall constitute service by publication.

- (B) The notice shall be published at least once a month for two successive months in a newspaper published on the Tohono O’odham Nation; and at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to be served.
- (C) Service is complete 60 days after the first publication.
- (D) In addition to the notice provided above, the clerk of the Children’s Court shall:
 - (1) Cause the Notice to be posted once in the following locations:
 - (a) The post office, community store, law enforcement office, district office for the person sought, or other commonly used public place in the community, or in the community where the person to whom notice is required to be given resides or is last known to have resided; and
 - (b) In any other place ordered by the Court where such posting is reasonably likely to give notice to the person to whom notice is required to be given. Such posting shall be posted not less than five days prior to the day of hearing on the petition.
- (E) The name of the child shall not appear in the notice of hearing served by publication or by posting as provided above.

Section 21109 Arraignment.

On the date, time, and place as stated in the summons or subpoena, an arraignment on the child offender petition shall be conducted. The child and his parent, guardian, or custodian and/or legal counsel shall be present and shall be informed of the child’s rights as enumerated in Section 2805 of this Chapter. The court shall also state, unless waived, each charge contained in the child offender petition. The child shall then enter a plea of admission, denial, or no contest to the petition. If a plea of denial is entered, the court shall set a date for a pre-trial conference, and a date for an adjudicatory hearing pursuant to the provisions of Article 13 of this Chapter. If a plea of admission or no contest is entered, the court shall set a date for disposition of the matter pursuant to Article 15 of this Chapter.

ARTICLE 12 – CONSENT DECREES

Section 21201 Availability of Consent Decree.

At any time after the filing of a “child offender” petition, and before the entry of a judgment, the

court may, on motion of the juvenile prosecutor or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile probation officer with approval of the juvenile prosecutor and agreed to by all the parties affected. The Court's order continuing the supervision of the child under this section shall be known as a "consent decree."

Section 21202 Objection to Consent Decree.

If the child objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case. If the child does not object, but an objection is made by the juvenile prosecutor after consultation with the juvenile probation officer, the court shall, after considering the objections and the reasons therefor, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree or set the matter for adjudication.

Section 21203 Duration of Consent Decree.

A consent decree shall remain in force for six months unless the child is discharged sooner by the juvenile probation officer. Any discharge must be approved by the juvenile prosecutor. Prior to the expiration of the six-month period, and upon the application of the juvenile probation officer or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

Section 21204 Failure to Fulfill Terms and Conditions.

If, either prior to a discharge by the juvenile probation officer or expiration of the consent decree, the child violates the terms of the decree, the juvenile prosecutor may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to Sections 21104-21109 of this Chapter. If the child is found to have violated the terms of the consent decree, the court may:

- (A) extend the period of the consent decree; or
- (B) make any other disposition which would have been appropriate in the original proceeding.

Section 21205 New Juvenile Offense Complaint.

If, either prior to discharge or expiration of the consent decree, a new juvenile offender petition is filed against the child after the juvenile probation officer has conducted a preliminary inquiry and requested the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the juvenile prosecutor may:

- (A) file a petition to revoke the consent decree in accordance with Section 21204 of this Chapter;
or

(B) file a petition on the basis of the new complaint against the child.

Section 21206 Dismissal of Petition.

A child who is discharged by the juvenile probation officer or who completes a period under supervision without reinstatement of the original “juvenile offense” petition shall not again be proceeded against in any tribal court for the same offense and incident alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

ARTICLE 13 – ADJUDICATION PROCEEDINGS

Section 21301 Purpose and Conduct of Adjudicatory Hearing.

Hearings on juvenile offender petitions shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a juvenile offense. At the adjudicatory hearing, the child and the child’s parent, guardian or custodian shall have the applicable rights enumerated in Section 805 of this Chapter. The general public shall be excluded from the proceedings, and only the parties, their counsel, witnesses, and other persons requested by the parties at the court shall be admitted. A jury trial shall not be available to the child at an adjudicatory hearing.

Section 21302 Time Limitations on Adjudicatory Hearings.

If the child remains in custody, the adjudicatory hearing shall be held within 30 days of receipt of the juvenile offender petition by the juvenile court unless good cause is shown to the court or the 30 day limit is waived by the parties or the parties agree to stay the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within 180 days of receipt of the juvenile offender petition by the Children’s Court unless the Court finds that good cause exists or the parties agree to stay the adjudicatory hearing.

Section 21303 Notice of Hearing.

Summons shall issue for the adjudicatory hearing and be served at least five days prior to the hearing. Service shall be effected on the child, the child’s counsel, the child’s parent, guardian, or custodian, and any other person the Court deems necessary for the hearing as prescribed by Sections 21105(A) of this Chapter.

Section 21304 Denial of Allegations.

If the allegations in the juvenile offender petition are denied, the Children’s Court shall set a date, in accordance with Section 21302, to hear evidence on the petition.

Section 21305 Admission of Allegations.

If the child admits the allegations of the petition, the Children’s Court shall consider a disposition only after a finding that:

- (A) The child fully understands his rights under Section 2805 of this Chapter, and fully understands the consequences of his admission;
- (B) The child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for Children’s Court action; and
- (C) The child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

Section 21306 Plea of No Contest or *Nolo Contendere*.

If the child enters a plea of No Contest or *Nolo Contendere* to the petition, the court shall consider a disposition only after a finding that:

- (A) the child fully understands his rights under Section 2805 of this Chapter, and fully understands the consequences of his plea;
- (B) the court finds that the facts presented by the juvenile prosecutor are sufficient to constitute a basis for court action; and
- (C) the court finds that it is in the interests of justice that the court accepts the plea of No Contest.

Section 21307 “Juvenile Offender” Finding After Admission.

If the Court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with Articles 14 and 15 of this Chapter. Additionally, the Court shall specify in writing the child’s release conditions pending the disposition hearing.

Section 21308 “Juvenile Offender” Finding After Hearing.

If after the adjudicatory hearing, the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its finding and schedule a disposition hearing in accordance with Articles 14 and 15 of this Chapter. Additionally, the court shall specify in writing the child’s release conditions pending the disposition hearing.

Section 21309

If the Court finds that the allegations on the juvenile offender petition have not been proved beyond a reasonable doubt, it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

ARTICLE 14 –PREDISPOSITION STUDIES: REPORTS AND EXAMINATIONS

Section 21401 Predisposition Study and Report.

The Children’s Court shall direct the juvenile probation officer to prepare a written predisposition study and report for the court concerning the child, the child’s family, environment, and any other matter relevant to need for treatment or other appropriate disposition of the case when:

- (A) the child has been adjudicated as a juvenile offender; or
- (B) A notice of intent to admit the allegations of the petition has been filed on behalf of the child.

Section 21402 Contents of Predisposition Study and Report.

The predisposition report shall contain a specific plan for the child, aimed at resolving the behaviors leading to the offenses described in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the purposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child’s freedom and are consistent with the interests of the community.

Section 21403 Medical Assessment and Treatment for Alcohol or Substance Abuse.

The court may order a medical assessment of a child arrested or detained for a juvenile offense relating to or involving alcohol or substance abuse in order to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child’s health and well-being.

Section 21404 Pre-Adjudication Examination of Emotionally or Developmentally Disabled Child

Where there are indications that the child may be emotionally disturbed or cognitively or developmentally disabled, the Court, on a motion by the juvenile prosecutor or that of counsel for the child, may order the child to be tested by a qualified physician, psychiatrist, psychologist, neurologist, psychometrician, or other appropriate health care practitioners prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the Court finds that the preponderance of evidence indicates that placement in a hospital or other appropriate facility is necessary.

Section 21405 Pre-Disposition Examinations.

The Court may order an examination of a child adjudicated as a juvenile offender by a qualified physician, psychiatrist, psychologist, neurologist, psychometrician, or other appropriate health care practitioners. The court may also, following the adjudicatory hearing, order such examination of a parent or custodian who gives his or her legally valid consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing.

Section 21406 Transfer for Diagnosis.

The court may order that a child adjudicated as a juvenile offender be transferred to an appropriate facility for a period of not more than 60 days for purposes of diagnosis, with the direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

Section 21407 Submission of Reports.

Evaluations, assessments, dispositional reports, and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court and distributed to the parties no later than three days before the scheduled hearing date. If the report will not be submitted prior to the deadline, a declaration setting forth the reasons for the delay shall be filed with the court no later than three days before the scheduled hearing date. The Court may, in its discretion, dismiss a petition if the necessary reports, evaluations, or other material have not been submitted in a timely manner.

ARTICLE 15 – DISPOSITION PROCEEDINGS

Section 21501 Purpose and Conduct of Disposition Hearing.

Disposition hearings shall be conducted by the Children’s Court separate from other proceedings. The Court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense. The Court shall make and record its dispositional order in accordance with Section 21505 of this Chapter. At the dispositional hearing, the child and the child’s parent, guardian, or custodian shall retain the rights enumerated in Section 2805 of this Chapter. The public shall be excluded from the proceedings, and only the parties, their counsel, witnesses, and persons requested by the parties or the Court shall be admitted.

Section 21502 Time Limitations on Disposition Hearings.

If the child remains in custody, the disposition hearing shall be held within ten days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within 20 days after the adjudicatory hearing.

Section 21503 Notice of Disposition Hearing.

Summons shall issue for the disposition hearing and be served at least five days prior to the hearing. Service shall be effected on the child, the child's counsel, the child's parent, guardian, or custodian, and any other person the Court deems necessary for the hearing as prescribed by Sections 21105(A) of this Chapter.

Section 21504 Evidence and Reports.

In the disposition hearing, the court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even through not otherwise admissible. The court shall consider any predisposition report, physician's report, or social study it may have ordered and afford the child, the child's parent, guardian, or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

Section 21505 Disposition.

If a child is found by the court to be a juvenile offender, the court may make and record one or more of the following orders of disposition for the child's supervision, care, and rehabilitation:

- (A) permit the child to remain with his parent, guardian, or custodian, subject to such conditions and limitations as the court may prescribe
- (B) place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe
- (C) order the child to pay restitution under such conditions and limitations as the court may prescribe. If restitution is ordered, the Court may encumber any current or future per capita disbursements due the child upon application by the Nation to the Children's Court and approved by order of the Children's Court
- (D) place the child under protective supervision under such conditions and limitations as the court may prescribe
- (E) place the child on probation under such conditions and limitations as the court may prescribe
- (F) place the child in a juvenile facility designated by the Court.

**ARTICLE 16 – REVIEW, MODIFICATION, REVOCATION, EXTENSION OR
TERMINATION OF DISPOSITIONAL ORDERS**

Section 21601 Discretionary Review of Disposition Order.

Upon a showing of good cause, the Children's Court may hold, in its discretion, a hearing to modify, revoke, or extend a disposition order at any time upon the motion of:

- (A) the child;
- (B) the child's parent, guardian, or custodian;
- (C) the child's counsel;
- (D) the juvenile probation officer;
- (E) the juvenile prosecutor;
- (F) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
- (G) the Court on its own motion.

Section 21602 Hearing to Modify, Revoke or Extend Disposition Order.

A hearing to modify, revoke, or extend the disposition order shall be conducted according to the same requirements for a disposition hearing pursuant to Article 15 of this Chapter.

Section 21603 Automatic Termination of Disposition Order.

When the child reaches 18 years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one year of the child's 18th birthday or after the child had reached 18 years of age, in which case the disposition order may not continue for more than one year. The records concerning the child shall be destroyed according to Section 21703 of this Chapter, subject to the restrictions therein.

ARTICLE 17 –JUVENILE RECORDS

Section 21701 Juvenile Court Records.

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

- (A) the child;
- (B) the child's parent, guardian or custodian;

- (C) the child's counsel;
- (D) the juvenile court personnel directly involved in the handling of the case including but not limited to the juvenile prosecutor and the juvenile probation officer; and
- (E) by order of the Court, any other person having a legitimate interest in the particular case or work of the court

Section 21702 Law Enforcement Records.

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

- (A) the child;
- (B) the child's parent, guardian or custodian;
- (C) the child's counsel;
- (D) law enforcement personnel directly involved in the handling of the case;
- (E) the juvenile court personnel directly involved in the handling of the case including but not limited to the juvenile prosecutor and the juvenile probation officer; and
- (F) by order of the Court, any other person having a legitimate interest in the particular case or the work of the Court.

Section 21703 Destruction of Records.

- (A) Subject to the exception provided in Section 21703(B) of this Chapter, when a child who has been the subject of any juvenile court proceeding reaches his 18th birthday when the disposition order is terminated if the disposition order extends beyond his eighteenth 18th birthday, or when the child is emancipated pursuant to Article 7 of Chapter 1 of this Children's Code, the court shall order the clerk of the court to destroy both the law enforcement records and the juvenile court records. The clerk of the court shall respond to all record inquiries as if no records had ever existed.
- (B) EXCEPTION: Notwithstanding the requirements of Section 21703(A), the Court shall not order the destruction of the records of juvenile offenders, nor shall such records be destroyed, when the retention of such records is required by federal law, including the "Adam Walsh Child Protection and Safety Act of 2006" (PL 109-248, 42 USC 16901 et seq.).

ARTICLE 18 – JUVENILE APPEALS

Section 21801 Who Can Appeal.

Any party to a Children's Court hearing may appeal a final Children's Court order, including all transfer, adjudication and/or disposition order, except that the Nation cannot appeal an adjudication order.

Section 21802 Time Limit for Appeal.

Any party appealing a final Children's Court order or disposition shall file a written notice of appeal with the court within 30 days of the final order or disposition.

Section 21803 Record.

For purposes of appeal, a record of proceedings shall be made available to the tribe, the child, his parent, guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal, except that under no circumstances shall the Nation be charged a fee for Court records.

Section 21804 Stay of Appeal.

A final court order or disposition of a hearing may be stayed by such appeal at the discretion of the Court.

Section 21805 Conduct of Proceedings.

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

TITLE 3 - CHILDREN

CHAPTER 3 - EFFECT OF CHILDREN'S CODE

Section 3301 Sovereign Immunity

Except as expressly and specifically waived by a resolution of the Tohono O'odham Legislative Council, the Tohono O'odham Nation shall be immune from suit arising from the administration and enforcement of this Children's Code as codified at Tohono O'odham Code, Title 3, Chapters 1-3. Nothing in this Children's Code shall be construed as a waiver of sovereign immunity.

Section 3302 Repeal

The Children's Code of the Papago Tribe, as enacted by the Papago Council on February 13, 1979, and approved by the Papago Agency Superintendent on February 13, 1979, and any amendments thereto are hereby repealed. In addition, any other provisions of the laws of the Nation that directly conflict with the provisions of this Children's Code are hereby repealed, provided that such conflicting provisions shall be deemed repealed only to the extent of the conflict and shall otherwise remain valid.

Section 3303 Effective Date of Code

This Children's Code shall become effective immediately upon enactment in accordance with the Constitution of the Tohono O'odham Nation.