

TITLE 3 - CHILDREN

CHAPTER 2 – JUVENILE JUSTICE

Legislative History: The “[Children’s Code of the Papago Tribe](#)” was enacted by the Papago Council on February 13, 1979 and approved by the Papago Agency Superintendent on February 13, 1979. Resolution No. 13-166 enacts and codifies the “Children’s Code of the Tohono O’odham Nation” as 3 Tohono O’odham Code Chapters 1-3 and repeals “Children’s Code of the Papago Tribe,” subject to the savings provisions of Section 3303 of the “Children’s Code of the Tohono O’odham Nation,” effective May 23, 2013.

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TABLE OF CONTENTS

Article 1 – Short Title, Purpose and Definitions 1
 Section 2101 Purpose 1
 Section 2102 Use of Tohono O’odham Customs and Traditions..... 1
 Section 2103 Immunity of Officers and Employees 2

Article 2 – Definitions..... 2

Article 3 – Jurisdiction of the Children’s Court 5

Article 4 – Transfer to Adult Court..... 5
 Section 2401 Transfer Petition 5
 Section 2402 Transfer Hearing 5
 Section 2403 Deciding Factors in Transfer Hearing 6
 Section 2404 Standard of Proof in Transfer Hearing 6
 Section 2405 Written Transfer Order 6
 Section 2406 Automatic Transfer..... 7

Article 5 – Juvenile Court Procedure 7
 Section 2501 Non-Criminal Status of Proceedings 7
 Section 2502 Use in Other Proceedings 7

Article 6 – Transfer from Other Courts..... 7
 Section 2601 Transfer from Other Courts 7

Article 7 - Children’s Court Personnel..... 8
 Section 2701 Juvenile Probation Officer 8
 Section 2702 Juvenile Prosecutor..... 9
 Section 2703 Additional Court Personnel..... 9

Article 8 - Rights of Parties in Juvenile Proceedings..... 9
 Section 2801 Privilege Against Self-Incrimination..... 9
 Section 2802 Admissibility of Evidence 10
 Section 2803 Fingerprinting and Photographs 10
 Section 2804 Right to Retain Counsel..... 11
 Section 2805 Explanation of Rights 11

Article 9 – Taking A Juvenile Offender Into Custody..... 12
 Section 2901 Taking a Child into Custody 12
 Section 2902 Provision of Rights 12

Section 2903	Release or Delivery from Custody	12
Section 2904	Review by Juvenile Prosecutor	13
Section 2905	Notification of Family	13
Section 2906	Criteria for Selecting Juvenile Facility	14
Article 10 – Detention	Hearings for Juvenile Offenders.....	15
Section 21001	Requirement of Detention Hearing	15
Section 21002	Purpose of Detention Hearing	15
Section 21003	Notice of Detention Hearing	15
Section 21004	Detention Hearing Procedure.....	16
Section 21005	Standards to be Considered at Detention Hearing	16
Section 21006	Finding at Detention Hearing.....	16
Section 21007	Rehearing the Detention Matter	16
Article 11 – Initiation	of Juvenile Offender Proceedings.....	16
Section 21101	Investigation by the Juvenile Prosecutor	16
Section 21102	Informal Adjustment	17
Section 21103	Informal Adjustment Conference.....	18
Section 21104	Filing and Content of Petition	18
Section 21105	Issuance of Summons or Subpoena.....	19
Section 21106	Arrest Warrant.....	19
Section 21107	Arraignment	19
Article 12 – Consent	Decrees	19
Section 21201	Availability of Consent Decree.....	19
Section 21202	Objection to Consent Decree	20
Section 21203	Duration of Consent Decree.....	20
Section 21204	Failure to Fulfill Terms and Conditions	20
Section 21205	New Juvenile Offense Complaint	20
Section 21206	Dismissal of Petition.....	21
Article 13 – Adjudication	Proceedings	21
Section 21301	Purpose and Conduct of Adjudicatory Hearing	21
Section 21302	Time Limitations on Adjudicatory Hearings	21
Section 21303	Notice of Hearing	21
Section 21304	Denial of Allegations.....	21
Section 21305	Admission of Allegations	22
Section 21306	Plea of No Contest.....	22
Section 21307	“Juvenile Offender” Finding After Admission	22
Section 21308	“Juvenile Offender” Finding After Hearing	22
Section 21309	Dismissal of Petition.....	23
Article 14 – Predisposition	Studies: Reports and Examinations	23
Section 21401	Predisposition Study and Report.....	23
Section 21402	Contents of Predisposition Study and Report	23
Section 21403	Medical or Behavioral Health Assessment	23

Section 21404	Pre-Adjudication Examination of Emotionally or Developmentally Disabled Child.....	23
Section 21405	Pre-Disposition Examinations.....	24
Section 21406	Transfer for Diagnosis	24
Section 21407	Submission of Reports.....	24
Article 15 – Disposition Proceedings.....		24
Section 21501	Purpose and Conduct of Disposition Hearing.....	24
Section 21502	Time Limitations on Disposition Hearings.....	25
Section 21503	Notice of Disposition Hearing	25
Section 21504	Evidence and Reports	25
Section 21505	Disposition	25
Article 16 – Review, Modification, Revocation, Extension or Termination of Dispositional Orders		26
Section 21601	Discretionary Review of Disposition Order	26
Section 21602	Hearing to Modify, Revoke or Extend Disposition Order.....	26
Section 21603	Automatic Termination of Disposition Order	26
Article 17 – Juvenile Records.....		27
Section 21701	Juvenile Court Records.....	27
Section 21702	Law Enforcement Records.....	27
Section 21703	Destruction of Records	28
Article 18 – Juvenile Appeals.....		28
Section 21801	Who Can Appeal	28
Section 21802	Time Limit for Appeal.....	28
Section 21803	Record.....	28
Section 21804	Stay of Appeal.....	28
Section 21805	Conduct of Proceedings	29

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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:

“Adjudicatory Hearing” means a proceeding in the Children’s Court to determine whether a child has committed a specific juvenile offense.

“Adult” means an individual who is 18 years of age or older.

“Adult Court” means the divisions of the Tohono O’odham Judicial Court which hear traffic, civil, and criminal cases.

“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.

“Alcohol or Substance Abuse Emergency Shelter or Halfway House” means a supervised emergency shelter or halfway house, appropriately designated or approved by the Tohono O’odham Nation, for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.

“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 authorized to practice in the Court in accordance with its rules.

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

“Consent Decree” means a Court order which suspends a “juvenile offender” proceeding prior to adjudication and imposes upon the minor and/or the family terms and conditions in accordance with Article 12.

“Counsel” means an advocate or attorney authorized to practice in the Tohono O’odham Judicial Court.

“Court” or “Children’s Court” means the Children’s Court of the Tohono O’odham Nation.

“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.

"Detention" means 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.

"Dispositional Hearing" means a proceeding in the Children's 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.

"Diversion Program" means a program provided for the child pursuant to this Chapter under direction and order of the Children's Court which, if successfully completed by the child, will cause the Child Offender Petition to be dismissed.

"Domicile" means 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.

"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.

"Guardianship" or "legal guardianship" means the legal status created under this Code, ordered by the Court, or voluntarily entered into, which vests in a person the rights and responsibilities set forth in Chapter 1, Section 1604 of this Code.

"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.

"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.

"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."

"Juvenile Offense" means a violation of the Criminal Code of the Tohono O'odham Nation or other criminal laws of the 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.

“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 2702 of this Chapter.

“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” may be sole or joint and means the legal status created by this Code and ordered by the Court which vests in a person, persons, or agency 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;
- (3) A duty to protect and discipline the child; and
- (4) Decision-making authority concerning the child.

“Nation” means the Tohono O’odham Nation.

“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.

“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.

“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.

“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.

“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. §§ 5601-5792a.

“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.

“Transfer to Adult Court” means transferring a child from the jurisdiction of the Children’s Court to the jurisdiction of the Adult Court in conformance with Article 4 of this Chapter, resulting in the termination of the jurisdiction of the Children’s Court over that offense.

ARTICLE 3 – JURISDICTION OF THE CHILDREN’S COURT

Except as otherwise provided 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 Nation has been alleged to have committed or adjudicated as having committed a juvenile offense, including a child who becomes an adult during the pendency of a child offender proceeding, and the parent(s)/legal guardian(s) of the child, unless the Children’s Court transfers jurisdiction to the Adult Court in accordance with Article 4 of this Chapter.

ARTICLE 4 – TRANSFER TO ADULT 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 Children’s Court transfer jurisdiction over the child to the Adult 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, as provided for in Section 2404(B), 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. The prosecutor shall provide written notice of time, place, and purpose of the hearing 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) probable cause to believe the child committed the offense alleged;
- (C) the nature and condition of the child, as evidenced by his age, mental and physical condition;
- (D) the child's past record of offenses; and
- (E) 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 alleged offense is cognizable either under Chapter 7, § 7.2, Chapter 9, § 9.1, 9.2, or 9.6 of the Tohono O'odham Criminal Code or under 18 U.S.C. § 1153.

Section 2405 Written Transfer Order

A child may be transferred to Adult 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 Court for a criminal offense unless the case has been transferred to Adult Court as provided in this chapter. No written transfer order shall be needed if the transfer is under the provisions of Section 2406 of this Article.

Section 2406 Automatic Transfer

Notwithstanding the provisions of Sections 2402 through 2405 of this Article and upon application of the juvenile prosecutor, the transfer of a child to the jurisdiction of the Adult 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 18 U.S.C. § 1153 and the Tohono O'odham Criminal Code.

If a child has previously been transferred to Adult Court, criminal complaints may be filed against him in Adult 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 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 Court.

ARTICLE 6 – TRANSFER FROM OTHER COURTS

Section 2601 Transfer from Other Courts

Upon petition of the Nation, the Children's Court may, at its discretion and in the best interest of the Nation, accept or decline transfer from other states or 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 6 Tohono O’odham Code Chapter 1, Section 1212, the Court shall employ probation officers necessary to carry out the duties and responsibilities set forth in this Chapter. A person carrying out the duties and responsibilities set forth in this section may be designated a juvenile probation officer or another title which the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section and any additional duties the chief judge directs.

The Court may authorize the probation officer to provide cooperative supervision upon request of an outside jurisdiction to youth residing on the Nation who are under conditions of probation in that outside jurisdiction.

(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) Resources

The juvenile probation officer shall identify resources both on and off the reservation to enhance each child’s potential as a viable member of the Nation’s community.

(D) Duties

- (1) To make investigations as provided in this Code or as directed by the Children’s Court, provided that the Police Department shall be responsible for investigating juvenile offenses in coordination with the Prosecutor’s Office;
- (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 perform such other duties in connection with the care, custody or transportation of children as the Court may require; and

- (5) 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 designate juvenile prosecutors to carry out the duties and responsibilities set forth in this code. A person carrying out the duties and responsibilities set forth in this section may be designated a “juvenile prosecutor” or another title which the chief prosecutor finds appropriate so long as the prosecutor performs the duties and responsibilities as set forth in this section.

(B) Qualifications

The qualifications of a juvenile prosecutor shall be the same as the qualifications for the official who acts as a prosecutor in the Nation’s 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), consistent with the juvenile prosecutor’s supervision by the chief prosecutor and ethical obligations; and
- (4) File with the Children’s Court Child in Need of Care petitions and related motions pursuant to Sections 1501-1517 of this Code, consistent with the intent of Chapter 1 of this Code.

Section 2703 Additional Court Personnel

The Court may, in its discretion and subject to available resources, set qualifications and appoint additional Children’s Court personnel such as guardians *ad litem*, attorneys *ad litem*, court-appointed special advocates (CASAs), or juvenile advocates.

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), guardian, or custodian, 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 and that would be inadmissible in a criminal matter in Adult Court 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) A child in custody shall be fingerprinted and photographed for identification purposes.
- (B) If an order of the Children's Court is issued, the fingerprints or photographs shall be used only as specified by Court order or as authorized by other applicable laws to meet the following circumstances:
 - (1) inquiries received from another Court of law;

- (2) inquiries from the Division preparing a predisposition report for another Court;
- (3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;
- (4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the child has been committed by the Court;
- (5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and
- (6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such child by the Court.

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 are available. The Court, in its discretion, may also appoint a guardian ad litem, if resources for such appointment are available.

Section 2805 Explanation of Rights

At his first appearance before the 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, or the right to an attorney at the Nation's expense if the child alleged to be a juvenile offender's parents are indigent and facing detention in excess of one year;
- (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, including

that a parent, custodian, or guardian may be bound by the terms of the child's disposition order.

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 probable cause 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 the child's parent, guardian, or custodian and/or counsel during questioning, and;
- (D) the child has a right to an advocate or attorney at the child's 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 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 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 a written report to the Tohono O'odham Department of Health and Human Services Department Child Welfare Services Division pursuant to Chapter I, subsection 1402(A) of this Code.
- (E) if no parent, guardian, or custodian is available and willing to take custody of the child upon release, the Division shall take the child into custody on an emergency temporary basis in accordance with subsection 1402(B) of this Code.

Section 2904 Review by Juvenile Prosecutor

The juvenile prosecutor 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 provide to the Tohono O’odham Department of Health and Human Services Department Child Welfare Services Division a report pursuant to Chapter I, subsection 1402(A) of this Code.

Section 2906 Criteria for Selecting Juvenile Facility

If 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 Facility only if one or more of the following conditions are met:
 - (1) The child is a fugitive from another jurisdiction where the child is wanted for a felony offense; or
 - (2) The child is charged with aggravated assault or homicide, an offense defined under Chapter 9 of the Criminal Code of the Tohono O’odham Nation, a gang-related offense, or an offense of violence with a deadly weapon or which has resulted in 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) 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 Children’s 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 2904 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

When the juvenile prosecutor determines a child should not be released pursuant to Sections 2904 and 2906(A)(1)-(8), the juvenile prosecutor shall file a notice of detention hearing and appropriate summonses with the Court. The Court shall set the date and time for the detention hearing, and issue the summonses. The prosecutor shall serve the summonses and 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. The Court may set the detention matter for rehearing upon motion of the prosecutor, child, or the child’s parent or legal guardian, which alleges new facts or circumstances supporting release of the child pending the adjudicatory hearing.

ARTICLE 11 – INITIATION OF JUVENILE OFFENDER PROCEEDINGS

Section 21101 Investigation by the Juvenile Prosecutor

The juvenile prosecutor 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 prosecutor shall:

- (A) determine if no further action should 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) begin transfer to Adult Court proceedings under Article 4 of this Chapter; or
- (D) file a petition under Section 21104 of this Chapter within the applicable statute of limitations. 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 one year 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 prosecutor 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 prosecutor shall consider the following factors in determining whether 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 prosecutor 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 prosecutor 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 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 that the prosecutor may then file a petition under Section 21104 of this section with 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, the juvenile prosecutor shall file a petition under Section 21104 of this Chapter.
- (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 prosecutor may file a petition 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

The issuance, content, and service of the summons or subpoenas shall be in accordance with the Rules of Children's Court: Child Offenders.

Section 21106 Arrest Warrant

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 juvenile prosecutor may file a motion for an appropriate warrant.

Section 21107 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 of the Diversion Program of the Court's Children's Program, 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.

Section 21203 Duration of Consent Decree

A consent decree shall remain in force for six months unless the child is discharged sooner by the Diversion Program. Any discharge must be approved by the juvenile prosecutor. Prior to the expiration of the six-month period, and upon the application of the Diversion Program 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 Court 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 21104-21107 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 prosecutor has conducted a preliminary inquiry and finding that the consent decree 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 Court or who completes a period under supervision without reinstatement of the original “juvenile offense” petition shall not be prosecuted in the 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 Children’s 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 2805 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 Children’s 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 subsection 21105 of this Chapter.

Section 21304 Denial of Allegations

If the child denies the allegations in the juvenile offender petition, then 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

If the child enters a plea of no contest 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 in a written order 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 in a written order 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 Dismissal of Petition

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 to a parent, guardian, or custodian 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, for the offenses for which the child has been adjudicated. 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, and include input from any victim(s).

Section 21403 Medical or Behavioral Health Assessment

- (A) The Court may order a medical health assessment, including a behavioral health assessment, of a child arrested and held in custody for a juvenile offense 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.
- (B) After a medical or behavioral assessment, a report by the medical or behavioral assessor shall be submitted to the Court for consideration prior to an adjudication and final disposition order.

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

Upon motion of a party or on its own motion and for good cause stated, 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, and upon motion of the Court or of a party showing appropriate cause, 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

Upon motion of a party, 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 by the party and distributed to the other 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 or make other appropriate orders 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, unless additional time is needed for any recommended evaluations. 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 subsection 21105 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 though 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, including that the parent, guardian, or custodian is bound to the terms of the child's disposition order;
- (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;
- (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; or
- (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. Upon reaching age 18, the child offender shall be transferred to the adult detention center to finish serving the remainder of his or her disposition. The records concerning the child shall be destroyed according to Section 21703 of this Chapter.

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 or a related matter;
- (E) Prosecutor's Office personnel including but not limited to the juvenile prosecutor directly involved in the handling of the case or a related matter;
- (F) the Children's Court personnel directly involved in the handling of the case including but not limited to the juvenile probation officer; and
- (G) 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 subsection 21703(B) of this Chapter, when a child who has been the subject of any Children’s Court proceeding reaches his 18th birthday or when the disposition order is terminated if the disposition order extends beyond his 18th birthday, or when the child is emancipated pursuant to Article 7 of Chapter 1 of this Children’s Code, the law enforcement records and the Children’s Court records shall be destroyed. The clerk of the court shall respond to all record inquiries as if no records had ever existed.

- (B) Notwithstanding the requirements of subsection 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 tribal or federal law, including the “Adam Walsh Child Protection and Safety Act of 2006” (PL 109-248, 42 U.S.C. §§ 16901-16945), as may be amended.

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 orders, 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 Nation, 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, provided that the Court sets forth its reasons for granting or denying the stay.

Section 21805 Conduct of Proceedings

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