

## CHAPTER 6

# JUVENILE JUSTICE

### PART 1. JUVENILE PROCEDURE.

#### § 3.6.100. GENERAL PROVISIONS.

#### § 3.6.102. Authority.

This Chapter is adopted by the Pyramid Lake Paiute Tribal Council pursuant to Article VI (j) of the Constitution of the Pyramid Lake Paiute Tribe and Article V of the By-Laws of the Pyramid Lake Paiute Tribe. It is the policy of the Tribe, that:

A. The young people within the jurisdiction of the Pyramid Lake Paiute Tribe are the Tribe's most important resource and their welfare is of paramount importance to the Pyramid Lake Paiute Tribe.

B. It is imperative that the young people within the jurisdiction of the Tribe receive the care and guidance needed to prepare them to take their places in adult society.

#### § 3.6.104. SHORT TITLE, PURPOSE AND DEFINITIONS.

#### § 3.6.106. Short Title.

This Chapter shall be entitled "The Juvenile Justice Chapter."

#### § 3.6.108. Purpose.

The Juvenile Justice Chapter provisions shall be liberally interpreted and construed to fulfill the following expressed purposes:

A. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this Code;

B. To recognize that alcohol and substance abuse is a disease that is both preventable and treatable;

C. To remove from juveniles committing juvenile offenses, the legal consequences of criminal behavior and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the Pyramid Lake Paiute Tribe;

D. To achieve the purposes of this Code in a family environment whenever possible, separating the juvenile from the juvenile's parents only when necessary for the child's welfare or in the best interests of public safety;

E. To separate clearly in the judicial and other processes affecting minor children under this Code the "juvenile offender" and the "family in need of services," and to provide

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appropriate and distinct dispositional options for treatment and rehabilitation of these minor children and families;

F. 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 their civil and other legal rights are recognized and enforced;

G. To provide a continuum of services for minor children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and

H. To provide a forum where an Indian child charged to be "delinquent" or a "juvenile offender" in other jurisdictions may be referred for adjudication and/ or disposition.

**§ 3.6.110. Definitions.**

A. "Adjudicatory Hearing" means a proceeding in the Juvenile Court to determine whether or not a child has committed a specific "juvenile offense" or is a "minor in need of services" as set forth in a petition.

B. "Adult" means an individual who is 18 years of age or older.

C. "Alcohol or substance abuse emergency shelter or halfway house" is an appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles who have alcohol and/or substance abuse problems.

D. "Child" or "minor" means an individual who is less than 18 years old.

E. "Counsel" means a tribal advocate or attorney.

F. "Court" or "Juvenile Court" means the Juvenile Court of the Pyramid Lake Paiute Tribe.

G. "Curriculum change" includes, but is not necessarily limited to a: change in the child's instructor, if available; change in the scheduling of a child's classes, if available; reassignment of a child into another class section, if available; change in the content of a child's course of instruction, if available; or change in the child's school, if available.

H. "Custodian" means a person, other than a parent or guardian, to whom legal custody of the minor child has been given.

I. "Detention" means exercising authority over a minor child by physically placing them in any juvenile facility designated by the court and restricting the minor child's movement in that facility.

J. "Dispositional Hearing" is a proceeding in the Juvenile Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the minor child has committed a specific "juvenile offense(s)" or is a minor child whose family is in need of services.

K. "Domicile" is a person's permanent home, legal home or main residence. The domicile of a minor child is generally that of the custodial parent or guardian. Domicile

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includes the intent to establish a permanent home or a home which the parent or guardian considers to be his permanent home. Domicile for the purposes of jurisdiction is established at the time of the alleged acts.

L. "Emergency foster home" is a placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.

M. "Family in Need of Service" means a family whose minor child, while subject to compulsory school attendance, is habitually and without justification absent from school; or a family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardian or custodian to permit a minor child to live with them or based on the minor child's refusal to live with his parents, guardian or custodian; and in either of the foregoing situations: the conduct complained of presents a clear and substantial danger to the minor child's life or health and the intervention of the Juvenile Court is essential to provide the treatment, rehabilitation or services needed by the minor child or his family; or; the minor child or his family is in need of treatment, rehabilitation or services not presently being received and the intervention of the Juvenile Court is essential to provide this treatment, rehabilitation or services.

N. "Extended Family" means any familial or culturally defined clan or band relationships.

O. "Foster home" means placement with a family whose home has been licensed to accept placement of children under the age of 18 years.

P. "Guardian" is a person other than a parent, assigned by a court of law, who has the duty and authority to provide care, shelter, and control of a minor child.

Q. "Group home" is a residential detention facility which is licensed to care for children under the age of 18 years.

R. "He/His" means that the use of he or his is gender neutral and includes she or her; the singular includes the plural.

S. "Interim care" is the status of temporary physical control of a child whose family is "in need of services".

T. "Juvenile counselor" means the juvenile counselor or the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in the Chapter 6 of this Code or as required by the Court.

U. "Juvenile facility" means any facility other than a school that cares for juveniles or restricts their movement, including secure juvenile facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes as defined herein.

V. "Juvenile offender" is a minor child who commits a "juvenile offense" prior to his 18<sup>th</sup> birthday.

W. "Juvenile offense" is a criminal violation of the Law and Order Code of the Pyramid Lake Paiute Tribe which has been committed by a person who is under the age 18 years at the time the offense was committed.

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X. "Minor in Need of Care" is a person under the age of 18 years who: has no parent, guardian or custodian available and willing to care for him; has suffered or is likely to suffer a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, permanent disfigurement or impairment of bodily or mental functions; has not been provided adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and welfare; has been sexually abused; has been suffering emotional abuse by his parents, guardian, or custodian through the use of abusive or profane language, or derogatory remarks, including the cultural heritage of the child or his parents, or repeated false accusations; has been committing delinquent acts as a result of parental pressure, guidance, or approval or lack of adequate supervision; or has committed an offense which would be a crime if committed by an adult.

Y. "Juvenile shelter care facility" is any juvenile facility other than a secure juvenile detention facility.

Z. "Least restrictive alternative" means that the Court shall select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives.

AA. "Parent" includes a natural or adoptive parent, but does not include parents whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

BB. "Probation" is 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 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.

**§ 3.6.200. JURISDICTION.**

**§ 3.6.202. Jurisdiction.**

Except as otherwise provided by law, the Juvenile Court shall have jurisdiction in proceedings:

A. Concerning any Indian juvenile in need of supervision within the Tribe's territorial jurisdiction;

B. Concerning any Indian juvenile who is delinquent, neglected, or dependent, within the Tribe's territorial jurisdiction;

C. Concerning any transfer proceeding to or from a court of another sovereign in a juvenile's case;

D. To determine the legal custody of any juvenile or to appoint a guardian of the person or legal custodian of any juvenile who comes within the Court's jurisdiction;

E. For the issuance of orders for the support of minors;

F. To determine the parentage of a minor child and to make an order of support in connection therewith;

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- G. For the adoption of a person of any age;
- H. For judicial consent to the marriage, employment, or enlistment of a juvenile when such consent is required by law; and
- I. For the treatment or commitment of a mentally ill or developmentally disabled juvenile who comes within the Court's jurisdiction.

**§ 3.6.204. Concurrent Jurisdiction.**

The Court has concurrent jurisdiction over the following:

- A. Any person who is a member or a descendant of a member of any Federally-recognized Indian tribe;
- B. Any juvenile residing off the Reservation who is a member of the Tribe in proceedings covered by the Indian Child Welfare Act pending in state courts or other tribal courts.
- C. The Court may issue temporary restraining orders providing for protection, support, or medical or surgical treatment as it deems in the best interest of any juvenile concerning whom a petition has been filed prior to adjudication or disposition of his case.
- D. Jurisdiction over Extended Family. Where the Court asserts jurisdiction over a juvenile under this Code, the Court shall also have jurisdiction over the juvenile's extended family whenever necessary to further the best interests of the juvenile.
- E. Continuing Jurisdiction. The Juvenile Court may retain continuing jurisdiction over juveniles and their extended families that, while subject to the Court's jurisdiction, leave the Reservation, whenever necessary to further the best interest of the juvenile.
- F. Full Faith and Credit. Orders of state courts and other tribal courts involving juveniles over whom the Court could assume jurisdiction shall be recognized and given full faith and credit if:
  - 1. The issuing court had jurisdiction over the parties and the subject matter;
  - 2. The procedures specified in the Indian Child Welfare Act, if applicable, were properly followed; and
  - 3. Due process and other rights provided by the Indian Civil Rights Act were accorded to all interested parties.

**§ 3.6.300. TRANSFER TO ADULT COURT.**

**§ 3.6.302. Transfer Petition.**

An Officer of the Court may file a petition requesting the Juvenile Court to transfer the juvenile to the jurisdiction of the Adult Court if the juvenile is over 16 years of age and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

**§ 3.6.304. Transfer Hearing.**

The Court shall conduct a hearing to determine whether or not jurisdiction of the juvenile should be transferred to the Adult Court. Written notice of the time, place, and purpose of the hearing is to be given to the juvenile and the juvenile's parent, guardian, or custodian at least five days before the hearing. At the commencement of the hearing, the Court shall notify the juvenile and the juvenile's parent, guardian or custodian of their rights under § 3.6.604 of this Code.

**§ 3.6.306. Deciding Factors in Transfer Hearing.**

The following factors shall be considered when determining whether or not to transfer jurisdiction of the juvenile to the Adult Court:

- A. The nature and seriousness of the offense with which the juvenile is charged;
- B. The nature and condition of the minor child, as evidenced by his age, mental and physical condition; and
- C. The past record of offenses.

**§ 3.6.308. Standard of Proof in Transfer Hearing.**

The Court may transfer jurisdiction of the juvenile to the Adult Court only if the Court finds clear and convincing evidence that both of the following circumstances exist:

- A. There are no reasonable prospects for rehabilitating the juvenile through the resources available to the Juvenile Court; and
- B. The offense(s) allegedly committed by the juvenile evidence a pattern of conduct which constitutes a substantial danger to the public.

**§ 3.6.310. Pre-Hearing Report in Transfer Proceedings.**

At least three days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the Court and make copies of that report available to the juvenile and the juvenile's advocate, parent, guardian, or custodian. The pre-hearing report shall address the issues described in § 3.6.306 and § 3.6.308 above.

**§ 3.6.312. Written Transfer Order.**

A juvenile may be transferred to Adult Court only if the Juvenile Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with § 3.6.306 and § 3.6.308. This written order terminates the jurisdiction of the Juvenile Court over the minor child with respect to the juvenile offense(s) alleged in the petition. No juvenile shall be deemed prosecuted in the Adult Court for a criminal offense unless the case has been transferred to the Adult Court as provided in this Chapter.

**§ 3.6.400. JUVENILE COURT PROCEDURE.**

**§ 6.3.6402. Non-Criminal Proceedings.**

No adjudication upon the status of any minor child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of a crime unless the Juvenile Court transfers jurisdiction to the Adult Court according to § 3.300 *et seq.* of this Code.

**§ 3.6.404. Use in Other Proceedings.**

The adjudication, disposition, and evidence presented before the Juvenile Court shall be inadmissible as evidence against the juvenile in any proceeding in another court, including Tribal Court.

**§ 3.6.406. Effects of Proceedings.**

A. No adjudication or disposition in proceedings under this Chapter shall impose any civil liability on a juvenile or disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.

B. No adjudication, disposition, or evidence given in proceedings brought under this Chapter shall be admissible against a juvenile in any criminal or other action or proceedings, except in subsequent proceedings under this Chapter concerning the same juvenile.

**§ 3.6.408. Inspection of Court Records.**

A. Records of Court proceedings shall be open to inspection by the parent, guardian or custodian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of court proceedings in formal adoption and formal relinquishment proceedings shall be confidential and open to inspection only by court order.

B. With consent of the Court, records of Court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

C. Probation officer's records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court.

**§ 3.6.410. Law Enforcement Records.**

A. The records of law enforcement concerning all juvenile cases or juveniles taken into temporary custody or issued a summons under the provisions of this Chapter shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public except:

1. To the victim in each case when the juvenile is found guilty of a delinquent act;
2. When the juvenile has escaped from an institution to which he has been committed;
3. By order of the Court;

4. When the Court orders the juvenile to be held for criminal proceedings; or

5. When the disclosure is to a Tribal, Federal or State officer, employee, or agency in their official capacity that shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

**§ 3.6.412. Rules of Procedure.**

The procedures in Court shall be governed by the rules of procedure for the Court that are not in conflict with this Chapter.

**§ 3.6.500. RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS.**

**§ 3.6.502. Privilege against Self-Incrimination.**

A juvenile alleged to be a "juvenile offender" or a juvenile whose family is "in need of services" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the juvenile is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the juvenile's parent or legal guardian, or to conduct medical assessment or treatment for alcohol or substance abuse when the juvenile's health and well-being are in serious jeopardy.

**§ 3.6.504. Admissibility of Evidence.**

In proceeding on a petition alleging that a juvenile is a "juvenile offender" or a juvenile whose family is "in need of services:"

A. An out-of-court statement that would be inadmissible in a criminal matter in Court shall not be received in evidence;

B. Evidence illegally seized or obtained shall not be received into evidence to establish the allegations of a petition;

C. Unless advised by counsel, the statements of a juvenile made while in custody to the Juvenile Probation Officer, including statements made during a preliminary inquiry, informal disposition or pre-dispositional study, shall not be used against the juvenile in determining the truth of allegations of the petition;

D. A valid out-of-court admission or confession by the juvenile is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence; and

E. Neither the fact that the juvenile has at any time been a party to a "family in need of services" proceeding nor any information obtained during the pendency of such proceedings shall be received into evidence.

**§ 3.6.506. Fingerprinting and Photographs.**

A juvenile in custody shall not be fingerprinted nor photographed for criminal identification except by order of the Court. If an order of the Court is given, the fingerprints or photographs shall be used only as specified by the Court.



**§ 3.6.508. Right to Retain Counsel.**

In “juvenile offender” and “family in need of supervision” cases, the juvenile and his parent, guardian or custodian shall be advised by the Court and/or its representative, that the juvenile may be represented by counsel at all stages of the proceedings. If counsel is not retained for the juvenile, or if it does not appear that counsel will be retained, the Court in its discretion may appoint the Defense Advocate as counsel for the juvenile.

**§ 3.6.510. Explanation of Rights.**

At his first appearance before the Court, the juvenile alleged to be a “juvenile offender” or a “minor in need” and the juvenile's parent, guardian or custodian shall be informed by the Court of the following:

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

**§ 3.6.600. JUVENILE OFFENDER TAKEN INTO CUSTODY.**

**§ 3.6.602. Taking a Juvenile into Custody.**

A law enforcement officer or otherwise authorized person may take a juvenile into custody when:

- A. The juvenile commits a “juvenile offense” in the presence of the officer;
- B. The officer has a reasonable suspicion to believe a “juvenile offense” has been committed by the juvenile being detained; or
- C. An appropriate custody order or warrant has been issued by the Court authorizing the taking of a particular juvenile.

**§ 3.6.604. Provision of Rights.**

At the time the juvenile is taken into custody as an alleged “juvenile offender,” the arresting officer or otherwise authorized person shall give the following warning:

- A. The juvenile has a right to remain silent;
- B. Anything the juvenile says can be used against the juvenile in Court;

C. The juvenile has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and

D. The juvenile has a right to an advocate or an attorney at his own expense

**§ 3.6.606. Release or Delivery from Custody.**

A law enforcement officer or otherwise authorized person taking a juvenile into custody shall give warnings listed in § 6.604 to any juvenile he takes into custody prior to questioning and then shall do one of the following:

A. Release the juvenile to the juvenile's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

B. Release the juvenile to a relative or other responsible adult Tribal member if the child's parent, guardian or custodian consents to the release (if the juvenile is 10 years of age or older, the juvenile and his parent, guardian or custodian must both consent to the release); or

C. Deliver the juvenile to the Juvenile Probation Officer or to a juvenile facility as designated by the Court, or to a medical facility if the juvenile is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances.

**§ 3.6.608. Review by Juvenile Probation Officer or Juvenile Facility.**

The Juvenile Probation Officer or the juvenile official at the juvenile facility shall, immediately upon delivery of the juvenile for custody, review the need for continued custody and shall release the juvenile 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;

B. There is probably cause to believe the juvenile has committed the offense(s) alleged;

C. There is reasonable cause to believe that the juvenile will run away so that he will be unavailable for further proceedings;

D. There is reasonable cause to believe that the juvenile will commit a serious act causing damage to a person or property; or

E. There is reasonable cause to believe that the juvenile will cause harm to himself directly or indirectly.

**§ 3.6.610. Notification of Family.**

If a juvenile is taken into custody and not released to his parent, guardian or custodian, the person taking the juvenile into custody shall immediately attempt to notify the juvenile's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the juvenile 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 juvenile'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 juvenile's extended family.

**§ 3.6.612. Criteria for Selecting Juvenile Facility.**

If the juvenile probation officer or juvenile official at the juvenile facility determines that there is a need for continued custody of the juvenile in accordance with § 3.6.602 of this Code, then the following criteria shall be used to determine the appropriate facility for the juvenile:

A. A juvenile may be detained at a secure juvenile detention facility as designated by the Court only if one or more of the following conditions are met:

1. The juvenile is a fugitive from another jurisdiction wanted for a felony offense;
2. The juvenile is charged with murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in a serious bodily injury;
3. The juvenile is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention;
4. The juvenile 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;
5. The juvenile is already detained or on conditioned release for another "juvenile offense;"
6. The juvenile has a demonstrable recent record of willful failures to appear at Juvenile Court proceedings;
7. The juvenile has made a serious attempt to escape; or
8. The juvenile 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 juvenile.

B. A juvenile may be housed in a juvenile shelter care facility or a foster home upon Court approval only if one of the following conditions exist:

1. One of the conditions described in § 3.6.612.A exists;
2. The juvenile is unwilling to return home or to the home of an extended family member;
3. The juvenile's parent, guardian, custodian or an extended family member is unavailable, unwilling, or unable to permit the juvenile to return to his home; or
4. There is an evident and immediate physical danger to the child in returning home and all the extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the juvenile.

C. A juvenile may be referred to an alcohol or substance abuse treatment facility or halfway house if it is determined that there is a need for continued custody of the juvenile in accordance with § 3.6.608 of this Chapter and:

1. The juvenile has been arrested or detained for a “juvenile offense” relating to alcohol or substance abuse,
2. There is space available in an alcohol or substance abuse treatment facility or halfway house; and
3. The juvenile is not deemed to be a danger to himself or others.

**§ 3.6.700. JUVENILE OFFENDER – DETENTION HEARING.**

**§ 3.6.702. Requirement of Detention Hearing.**

Where a juvenile who has been taken into custody is not released, a detention hearing shall be convened by the Court at the next available court date, exclusive of holidays and weekends, on the juvenile's initial detention under § 3.6.600 *et seq.* of this Chapter or at the next date set for court hearings.

**§ 3.6.704. Purpose of Detention Hearing.**

The purpose of the detention hearing is to determine:

- A. Whether or not probable cause exists to believe the juvenile committed the alleged “juvenile offense;” and
- B. Whether or not continued detention is necessary pending further proceedings.

**§ 3.6.706. Notice of Detention Hearing.**

Notice of the detention hearing shall be given to the juvenile and the juvenile's parent, guardian or custodian and the juvenile's counsel as soon as the time for the detention hearing has been set. 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 juvenile is alleged to have committed; and
- D. The date, time and place of the detention hearing.

**§ 3.6.708. Detention Hearing Procedure.**

Detention hearings shall be conducted by the Court separate from other proceedings. At the commencement of the detention hearing, the Court shall notify the juvenile and the juvenile's parent, guardian or custodian of their rights under § 3.6.500 *et seq.* of 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.

**§ 3.6.710. 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 § 3.6.608 and § 3.6.612 of this Chapter.

**§ 3.6.712. Finding at Detention Hearing.**

The Court shall issue a written finding stating the reasons for release or continued detention of the juvenile. If the Court determines that there is a need for continued detention, the Court shall specify the type of detention facility in which the child is to be placed until the adjudicatory hearing.

**§ 3.6.714. Rehearing the Detention Matter.**

If the juvenile is not released at the detention hearing, and a parent, guardian, 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 declaration stating the relevant facts.

**§ 3.6.800. INITIATING PROCEEDINGS AGAINST A JUVENILE OFFENDER.**

**§ 3.6.802. Filing of the Petition.**

A. Formal "juvenile offender" proceedings shall be instituted by Petition filed by the Prosecutor on behalf of the Tribe and in the best interests of the juvenile, or as cited by law enforcement.

B. The Prosecutor shall file a Petition after investigating the accuracy of the information submitted to him and upon a finding of probable cause.

C. Petitions shall be filed with the Clerk of the Court.

**§ 3.6.804. Contents of the Petition.** A Juvenile Offender Petition shall contain the following information:

A. Name, date of birth of the juvenile alleged to be a juvenile offender,

B. Residence and tribal affiliation of the juvenile;

C. Name and address of the parent, guardian or custodian of the juvenile;

D. Name and address of the person filing the petition;

E. Signature of the person filing the petition and certification by that person that the information contained in the petition is true and accurate to the best of his knowledge, information and belief;

F. Statement of the alleged offense, with sufficient factual specificity to establish probable cause that an offense has been committed;

G. Citation to the criminal statute or other law or ordinance which the juvenile is alleged to have violated; and

H. Citation to the specific provision of the Tribal Code or Tribal Ordinance violated.

I. Statement as to whether or not the juvenile is in custody and, if so, the place of detention and the time such juvenile was taken into custody.

**§ 3.6.806. Issuance of Summons.**

After a Juvenile Offender Petition has been filed, the Court shall direct the issuance of a summons to the following parties:

- A. Juvenile;
- B. Juvenile's parent, guardian or custodian;
- C. Juvenile's counsel;
- D. Appropriate medical and/or alcohol rehabilitation experts; and
- E. Any other person the Court deems necessary for the proceedings.

**§ 3.6.808. Contents of the Summons.**

The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. The summons shall also advise the parties of their applicable rights under § 3.6.604 of this Chapter. A copy of the Petition shall be attached to the summons.

**§ 3.6.810. Service of the Summons.**

The summons shall be served upon the parties at least 5 days prior to the hearing. The summons shall be delivered by a law enforcement official or an officer of the Court. If the summons cannot be delivered personally, the Court may deliver it by registered mail. If the summons cannot be delivered by registered mail, service may be perfected by publication. A party other than the juvenile may waive service of summons by written stipulation or by voluntary appearance at the hearing.

**§ 3.6.900. DISPOSITION OF PETITION.**

The Prosecutor shall make an investigation within 20 days of the filing of the petition to determine whether or not the interests of the juvenile and the Tribe require that further action be taken. Upon the basis of his investigation, the Prosecutor shall:

- A. File a dismissal;
- B. Enter into a Consent Decree with the juvenile;
- C. Recommend to the Court that the matter be set for an informal conference, mediation or conflict resolution meeting attended by the law enforcement officer, the juvenile probation officer, the alleged juvenile offender, the parent(s), guardian(s) or custodian(s) of the juvenile, counsel for the juvenile if requested by the juvenile or parents, and, if appropriate, the Director of Social Services; or

- D. Proceed with adjudication.

**§ 3.6.902. Reports of Disposition of Petitions.**

The Prosecutor shall provide reports to the Court on the disposition of all petitions, including the substance of informal conferences.

**§ 3.6.904. Consent Decree.**

A. Availability of Consent Decree. At any time after the filing of a "Juvenile Offender" petition and before the entry of a judgment, the Court may, on motion of the Prosecutor or counsel for the juvenile, suspend the proceedings and continue supervision of the juvenile in the juvenile's own home under terms and conditions negotiated with the Juvenile Probation Officer and agreed to by all the parties affected. The court order continuing the juvenile under supervision under this Section shall be known as a "Consent Decree."

B. Objection to Consent Decree. If the juvenile objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the juvenile does not object, but an objection is made by the Prosecutor after consultation with the Juvenile Probation Officer, the Court shall, after considering the objections and the reasons given, proceed to determine whether or not it is appropriate to enter a consent decree and may, in its discretion, proceed to enter the consent decree.

C. Duration of Consent Decree. A consent decree shall remain in force for 6 months unless the juvenile is discharged sooner by the Juvenile Probation Officer. Prior to the expiration of the 6-month period, and upon the application of the Juvenile Probation Officer or any other agency supervising the juvenile under the consent decree, the Court may extend the decree for an additional 6 months in the absence of an objection to extension by the juvenile. If the juvenile objects to the extension, the Court shall hold a hearing and make a determination on the issue of extension.

D. Failure to Fulfill Terms and Conditions. If, either prior to a discharge by the Juvenile Probation Officer or expiration of the consent decree, the juvenile fails to fulfill the terms of the decree, the Prosecutor may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to § 3.6.1200 *et seq.* If the juvenile is found to have violated the terms of the consent decree, the Court may:

1. Extend the period of the consent decree; or

2. Make any other disposition which would have been appropriate in the original proceeding.

E. New Juvenile Offense Petition. If either prior to discharge or expiration of the consent decree, a new "juvenile offender" petition is filed against the juvenile and the Prosecutor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal resolution is not in the best interests of the juvenile and public, the Prosecutor may:

1. File a petition to revoke the consent decree in accordance with § 3.6.904.D of this Chapter; or

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2. File a petition on the basis of the new petition which has been filed against the juvenile.

E. Dismissal of Petition. A juvenile who is discharged by or who completes a period under supervision of the Court without reinstatement of the original "juvenile offense" petition shall not again be proceeded against in any court for the same offense 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 juvenile for damages arising from their conduct.

#### **§ 3.6.906. Informal Disposition.**

A. Informal Resolution. During the course of the preliminary investigation to determine what further action shall be taken, the Prosecutor or Social Services if appropriate, shall determine whether or not referral of the matter by the Court for an informal resolution would be in the best interests of the juvenile and the Tribe.

B. Factors Supporting Informal Resolution. In advising the Court, the Prosecutor shall consider the following factors in determining whether or not to proceed informally or to adjudicate the petition:

1. Nature and seriousness of the offense;
2. Previous number of contacts with the police, prosecutor, or the Court;
3. Age and maturity of the juvenile;
4. Attitude of the juvenile regarding the offense;
5. Willingness of the juvenile to participate in a voluntary program; and
6. Participation and input from the juvenile's parent, guardian or custodian.

C. Recommendation of Informal Resolution. The Prosecutor shall advise the Court that informal disposition is possible at the Probable Cause hearing and the Court shall order that an informal conference be held with all relevant parties in attendance before any dispositional hearing shall be held.

D. Informal Conference. All relevant parties shall meet at the informal conference, including the juvenile, the juvenile's parents, guardian or custodian, any law enforcement officer or school official involved, the Juvenile Probation Officer, if appropriate, and a representative of Social Services.

1. The Prosecutor shall inform the juvenile, the juvenile's guardian or custodian of their basic rights under § 3.6.604 of this Chapter. Statements made by the juvenile at the informal conference shall not be used against the juvenile in determining the truth of the allegations contained in the petition.

2. At the informal conference, on the basis of the information obtained during the preliminary investigation and the conference, the Tribal Prosecutor may enter into a written agreement with the juvenile and the juvenile's parent, guardian or custodian specifying particular conditions to be observed during an informal resolution period not to



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exceed 9 months. The juvenile and the juvenile's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the resolution period at any time and petition the Court for a hearing on the case.

3. The juvenile shall be permitted to be represented by counsel at the informal conference.

4. If the juvenile does not desire to participate voluntarily in a diversion program, the Prosecutor shall recommend that the petition proceed to adjudication.

5. Upon successful completion of the informal resolution agreement, the case shall be closed and no further action taken in the case.

6. If the juvenile fails to complete the terms of his informal resolution agreement successfully, the Prosecutor may recommend that the petition proceed to adjudication.

### **§ 3.6.1000. ADJUDICATION PROCEEDINGS – JUVENILE OFFENDER.**

#### **§ 3.6.1002. Purpose and Conduct of Adjudicatory Hearing.**

Hearings on "Juvenile Offender" Petition 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 or not the juvenile has committed a "juvenile offense." At the adjudicatory hearing, the juvenile and the juvenile's parent, guardian or custodian shall have the applicable rights listed in § 3.6.604 of this Chapter. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and other persons requested by the parties shall be admitted.

#### **§ 3.6.1004. Time Limitations on Adjudicatory Hearings.**

If the juvenile remains in custody, the adjudicatory hearing shall be held within ten days of receipt of the "Juvenile Offender" petition by the Court, or by the next Court date. If the juvenile is released from custody or was not taken into custody, the adjudicatory hearing shall be held within thirty days of receipt of the "Juvenile Offender" Petition by the Court or as deemed appropriate by the Judge.

#### **§ 3.6.1006. Notice of Hearing.**

Notice of the adjudicatory hearing shall be given to the juvenile and the juvenile's parent, guardian or custodian, the juvenile's counsel and any other person the Court deems necessary for the hearing at least 5 days prior to the hearing in accordance with § 3.6.706 of this Chapter.

#### **§ 3.6.1008. Denial of Allegations.**

If the allegations contained in the "Juvenile Offender" petition are denied, the Juvenile Court shall set a date, in accordance with § 3.6.1004 above, to hear evidence on the petition.

#### **§ 3.6.1010. Admission of Allegations.**

If the juvenile admits the allegations of the petition, the Court shall consider a disposition only after a finding that:

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A. The juvenile fully understands his rights under § 3.6.604 of this Chapter, and fully understands the consequences of his admission;

B. The juvenile voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for Court action; and

C. The juvenile has not in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

#### **§ 3.6.1012. "Juvenile Offender" Finding after Hearing.**

If 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 § 3.6.1200 of this Chapter. Additionally, the Court shall specify in writing whether or not the juvenile is to be continued in an out-of-home placement pending the disposition hearing.

#### **§ 3.6.1014. Dismissal of Petition.**

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

#### **§ 3.6.1100. JUVENILE OFFENDER PRE-DISPOSITION STUDIES: REPORTS AND EXAMINATIONS.**

#### **§ 3.6.1102. Predisposition Study and Report.**

The Court shall direct the Juvenile Probation Officer to prepare a written predisposition study and report for the Court concerning the juvenile, the juvenile's family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case when:

- A. The juvenile has been adjudicated as a "juvenile offender;" or
- B. A notice of intent to admit the allegations of the petition has been filed.

#### **§ 3.6.1104. Contents of Pre-Disposition Study and Report.**

The report shall contain a specific plan for the juvenile aimed at resolving the problems presented in the Petition. The report shall contain a detailed explanation showing the necessity of the proposed plan. Preference shall be given to the dispositional alternatives which are the least restrictive of the juvenile's freedom and are consistent with the interests of the Tribe.

#### **§ 3.6.1106. Medical Assessment and Treatment for Alcohol or Substance Abuse.**

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

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#### **§ 3.6.1108. Pre-Adjudication Examination of Emotionally or Developmentally Disabled Juvenile.**

Where there are indications that the juvenile may be emotionally disturbed or developmentally disabled, the Court may order the juvenile to be tested by a qualified psychiatrist or psychologist prior to a hearing on the merits of the Petition. An examination made prior to the hearings, or as a part of the pre-disposition study and report, shall be conducted on an outpatient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.

#### **§ 3.6.1110. Pre-Disposition Examination.**

The Court may order an examination of a juvenile adjudicated as a "juvenile offender" by a physician, psychiatrist or psychologist. Following the adjudicatory hearing, the Court may also order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a juvenile is an issue before the Court at a dispositional hearing.

#### **§ 3.6.1112. Transfer for Diagnosis.**

The Court may order that a juvenile 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 direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

#### **§ 3.6.1114. 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 to the parties no later than 3 days before the scheduled hearing date. A declaration, including reasons why a report has not been completed, shall be filed with the Court no later than 3 days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may, in its discretion, dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner, unless good cause can be shown for the delay.

#### **§ 3.6.1200. JUVENILE OFFENDER – DISPOSITION PROCEEDINGS.**

##### **§ 3.6.1202. Purpose and Conduct of Disposition Hearing.**

Disposition hearings shall be conducted by the Court separate from other proceedings. The Court shall conduct the disposition hearings to determine how to resolve a case after it has been specifically determined at the adjudicatory hearing that the juvenile has committed a specific "juvenile offense." The Court shall make and record its dispositional order in accordance with § 3.6.1210 and § 3.6.1300 *et seq.* of this Chapter. At the disposition hearing, the juvenile and the juvenile's parent, guardian or custodian shall have the applicable rights listed in § 3.6.604 of this Chapter. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and persons requested by the parties shall be admitted.

##### **§ 3.6.1204. Time Limitations on Disposition Hearings.**

If the juvenile remains in custody, the disposition hearings shall be held within fourteen days after the adjudicatory hearing or by the next scheduled Court date. If the juvenile is

released from custody or was not taken into custody, the disposition hearing shall be held within 30 days of the adjudicatory hearing.

**§ 3.6.1206. Notice of Disposition Hearing.**

Notice of the disposition hearing shall be given to the juvenile and the juvenile's parent, guardian or custodian, the juvenile's counsel and any other person the Court deems necessary for the hearing at least 5 days before the hearing in accordance with § 3.6.706 of this Chapter.

**§ 3.6.1208. 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 competent. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the juvenile, the juvenile's parent, guardian or custodian and the juvenile's counsel the 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 juvenile or the juvenile's counsel, if any.

**§ 3.6.1210. Disposition Alternatives.**

If a juvenile is found by the Court to be a "juvenile offender," the Court may make and record any of the following orders of disposition for the juvenile's supervision, care and rehabilitation:

A. Permit the juvenile to remain with the parent, guardian or custodian, subject to such conditions and limitations as the Court may prescribe;

B. Place the juvenile in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe; order the juvenile to pay restitution;

C. Order the juvenile to pay restitution;

D. Place the juvenile under protective supervision under such conditions and limitations as the Court may prescribe;

E. Place the juvenile on probation, either formal or informal as is appropriate, under such conditions and limitations as the Court may prescribe; or

F. Place the juvenile in a juvenile facility designated by the Court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or a secure juvenile detention facility.

**§ 3.6.1300. JUVENILE OFFENDER – REVIEW, MODIFICATION, REVOCATION, EXTENSION OR TERMINATION OF DISPOSITIONAL ORDERS.**

**§ 3.6.1302. Mandatory Review of Disposition Order.**

Dispositional orders are to be reviewed at the Court's discretion at least once every 6 months.

**§ 3.6.1304. Modification, Revocation, or Extension of Disposition Order.**

The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of the:

- A. Juvenile;
- B. Juvenile’s parent, guardian or custodian;
- C. Juvenile's counsel;
- D. Juvenile Probation Officer;
- E. Prosecutor;
- F. Institution, agency or person vested with the legal custody of the juvenile or responsibility for protective supervision; or
- G. Court on its’ own motion.

**§ 3.6.1306. Hearing to Modify, Revoke or Extend Disposition Order.**

A hearing to modify, revoke or extend the disposition shall be conducted according to the procedures set out in § 3.6.1200 *et seq.* of this Chapter.

**§ 3.6.1308. Automatic Termination of Disposition Order.**

When the juvenile reaches the age of 18 years, all disposition orders shall automatically terminate, unless the original disposition order was made within 1 year of the juvenile's 18<sup>th</sup> birthday or after the juvenile has reached 18 years of age, in which the disposition order may not continue more than 1 year. The records concerning the juvenile shall be destroyed according to § 3.6.1510 of this Chapter.

**§ 3.6.1400. APPEALS.**

- A. Who Can Appeal. Any party to a Juvenile Court hearing may appeal a final court order, including all transfer, adjudication and/or disposition orders except that the Tribe cannot appeal an adjudication order.
- B. Time Limit for Appeal. Any party appealing a final court order or disposition shall file a written notice of appeal with the Court within 30 days of the final order or disposition.
- C. Record. For purposes of appeal, a record of proceedings shall be made available to the juvenile, guardian or custodian and the juvenile's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.
- D. Stay of Execution of Final Order. A final Juvenile Court order or disposition of a hearing may be stayed by the filing of an appeal.
- E. Conduct of Proceedings. All appeals shall be conducted in accordance with the Code and the Court’s Rules of Procedure so long as those provisions are not in conflict with the provisions of this Code.

## PART 2. JUVENILE OFFENSES.

### § 3.6.1500. Juvenile Delinquency.

The juvenile shall be brought before the Juvenile Court to be cited as a juvenile delinquent under the provisions of the Law and Order Code only if the juvenile has committed an act which, if committed by an adult, would be a violation of the Law and Order Code. In addition, a minor child may be declared a "juvenile delinquent" if found in violation of the provisions of certain actions which are offenses only because they are committed by a person under the age of 18 years of age, as listed below.

### § 3.6.1502. School Attendance.

#### A. Required School Attendance and Unexcused Absences.

1. Every child between the ages of 5 and 18 years of age residing on the Reservation shall regularly attend school unless excused due to illness or other circumstances which make the absence reasonable.

2. It is the duty of the parent, legal guardian or custodian of every child to assure that the child attends school.

3. The parent, legal guardian or custodian of the child shall provide to the child's school a written explanation for the child's absence from school. If a child is absent for more than three days due to physical or mental illness, the parent, legal guardian or custodian shall provide to the child's school a written recommendation from a licensed physician.

4. An unexcused absence is one for which a school, parent, guardian or custodian has not given written approval of a child's absence or the absence is not due to illness or other circumstances which make the absence reasonable.

#### B. Attendance Standards and Records. It is the duty of each school administrator or his designated representative:

1. To establish and provide parents, guardians or custodians and pupils with a written non-exclusive list of reasonable excuses for absence prior to the beginning of each school year; and

2. To maintain accurate and complete records or attendance during the school year.

#### C. Conditions Under Which Child Deemed Truant:

1. The Attendance Officer or other person designated by the Tribal Council is authorized to make a finding of truancy after investigation into the reasons for the unexcused absence.

2. A child shall be deemed a truant whose absence from school has been determined to be unexcused under § 3.6.1502.A.

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3. An unexcused absence for at least one period, or the equivalent of one period may be deemed a truancy for purposes of this Section.

4. Under this Section, each day that a child is absent without an excuse for any period of time may be considered a separate occurrence of truancy, if the child's parent, guardian or custodian receives a written notice of each such absence.

#### D. Notices of Truancy.

1. If the school administrator or other person designated by the Tribal Council determines that the pupil's absence was unexcused, the officer or other designated representative shall notify the parent, legal guardian or custodian in writing of the pupil's unexcused absence.

2. The notice of an unexcused absence under Subsection 1 above shall specifically inform the child's parent, guardian or custodian of the unexcused absence and also state that the child was truant upon that occasion.

#### E. Taking Absent Children into Custody.

1. Any minor child who has been reported by a school to be absent from school in probable violation of § 3.6.1502.A. may be apprehended and taken into custody without a warrant.

2. Upon apprehending a minor child absent from school, the officer apprehending the minor child may decline to take the child into custody if the apprehending officer or other person designated by the Tribal Council shall investigate the circumstances of the incident and include all results of investigation and a description of actions taken in the report required by § 3.6.1502.D.

3. Any minor child taken into custody pursuant to Subsection 1 shall immediately be delivered to his school. If the minor child cannot be delivered to his school during regular school hours, the minor child shall be immediately delivered to his parent, guardian or custodian.

4. A written report of all actions taken under this Section, which includes the circumstances of any decision not to take an apprehended minor child into custody, shall be made to Social Services and the Juvenile Probation Officer within 2 days of such actions.

#### F. Habitual Truancy.

1. A minor child is a habitual truant who has been found by designated school officials to be truant on at least four separate occasions in one 9-week period and who needs the supervision of the Juvenile Court to assure future school attendance.

2. Any truancy or law enforcement officer, school official or the parent, guardian or custodian of a minor child may request the attendance officer or other person designated by the Tribal Council to file a petition with Juvenile Court alleging that the minor child is a habitual truant.

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3. The Juvenile Court shall consider habitual truancy petitions under the same procedures found in this Chapter. All parties to such proceedings shall have all of the rights provided in other Juvenile Court proceedings.

4. Decree of Habitual Truancy. If the Juvenile Court finds that the evidence presented at the hearing establishes that it is more probable than not that the minor child is a habitual truant, the Juvenile Court shall enter a Decree of Habitual Truancy.

5. Effect of Decree of Habitual Truancy.

a. If a minor child is found to be a habitual truant, the Juvenile Court may make any disposition regarding custody, placement or supervision of the minor child which will ensure the minor child's future school attendance.

b. Preference shall be given to a disposition which provides for the custody of the minor child by parents, legal guardian or blood relatives.

G. Failure of Parent, Guardian or Custodian to Comply with Duty to Assure School Attendance. The failure of any parent, guardian or custodian of a minor child to ensure the school attendance of such minor child may be grounds for the Tribal Court to assume jurisdiction over the minor child and to make a disposition of the child regarding custody, placement and supervision of the child to ensure future school attendance by the child. Such failure may also be grounds for the Prosecutor to bring a complaint against the parent, guardian or custodian under § 3.6.1502 of this Chapter.

**§ 3.6.1504. Exceptions for Home School or Private School Students.**

A. Pursuant to the provisions of the Nevada Revised Statutes § 392.070, attendance of a child required by the provisions of § 3.6.1502 of this Chapter must be excused when:

1. The minor child is enrolled in a private school pursuant to this Chapter; or

2. The parent of a minor child chooses to provide education to the child and files a Notice of Intent to Home School the minor child with the school district in which the child resides.

**§ 3.6.1506. Running Away.**

Any minor child under 18 years of age who runs away from his home or placement shall be immediately reported to the Tribal Police and the Tribal Police will notify Social Services. Upon the *ex parte* petition of a parent, guardian or custodian, Social Services or Tribal Police, the Court shall issue a warrant to take the child into protective custody.

**§ 3.6.1508. Curfew Violations.**

A. A minor child found after the following time periods in a place other than his domicile shall be presumed to be in violation of the specified curfew:

1. Minors under Age 14 Years. For minors under the age of 14 years, the following curfew hours are established:



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a. On week nights during the school term, except for vacation periods, the curfew shall be between the hours of 8:00 p.m. and 6:00 a.m.

b. On Saturday and Sunday nights and during school vacations periods, the curfew hours shall be between the hours of 9:00 p.m. and 6:00 a.m.

2. Minors Age Fourteen 14 Years and Older. For minors age 14 and older, the following curfew hours are established:

a. On week nights during the school term, except for vacation periods, the curfew shall be between the hours of 9:00 p.m. and 6:00 a.m.

b. On weekend nights and during school vacation periods, the curfew shall be between the hours of 11:00 p.m. and 6:00 a.m.

B. Exception to Curfew Hours. The curfew hours specified in this section shall not be applicable to those minors who:

1. Are under the supervision of a responsible adult and are accompanied by such adult;

2. Are returning to their domiciles after participating in an activity which ended after the designated curfew hour; or

3. Are attending a function sponsored by a religious, educational, cultural, sport or tribal organization.

C. Penalties for Violations.

1. Penalty for Minor. Those minors who are found violating the designated curfew shall be considered "juvenile offenders" under this Chapter and shall be subject to the jurisdiction of the Juvenile Court for adjudication. In addition, the Court may impose a community service obligation on the minor which is equivalent to not less than \$50.00 and not more than \$150.00 for each curfew violation.

2. Penalty for Parent, Guardian or Custodian. Any parent, guardian or custodian who shall negligently or purposefully permit a violation of the curfew requirements for a minor under his care shall be liable for a fine of not less than \$100.00 and not more than \$250.00 and/or a jail term of not more than 5 days.

3. Penalty for Other Adults. Any adult who shall assist, aid, abet, counsel or lure a minor to be in violation of this Chapter shall be subject to a jail term of not more than 10 days and/or a fine of not more than \$500.00.

#### **§ 3.6.1510. Expungement of Records.**

A. Any juvenile offender who has reached the age of 18 shall automatically have the records of his case sealed.

B. Any juvenile offender who has reached the age of 21 shall automatically have the records of his case destroyed.

## PART 3. DEPENDENCY HEARING.

### § 3.6.1600. GENERAL PROVISIONS.

#### § 3.6.1602. Authority.

This Part is adopted by the Pyramid Lake Paiute Tribal Council pursuant to Article VI (j) of the Constitution of the Pyramid Lake Paiute Tribe and Article V of the By-Laws of the Pyramid Lake Paiute Tribe. It is the policy of this Code, that:

A. The young people within the jurisdiction of the Pyramid Lake Paiute Tribe are the Tribe's most important resource and their welfare is of paramount importance to the Pyramid Lake Paiute Tribe.

B. It is imperative that the young people within the jurisdiction of the Tribe receive the care and guidance needed to prepare them to take their places in adult society.

#### § 3.6.1604. Purpose.

This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

A. To provide for the welfare, care and protection of the children and families on the Reservation by establishing procedures to protect the best interests of children and families on the Reservation and to protect its customs and culture.

B. To prevent the unwarranted break-up of Indian families by incorporating procedures that recognize the rights of children and parents or other custodial adults, and, where possible, to maintain and strengthen the family unit.

C. Whenever possible, family life shall be strengthened and preserved, and the primary efforts will be toward keeping the child with his or her family, and if this is not possible, then efforts shall be made toward maintaining the child's physical and emotional ties with the child's extended family and with the Tribal community.

D. To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children and to provide a continuum of services for children and their families.

#### § 3.6.1606. Intent.

A. It is the intent of the Tribe in enacting this Chapter to incorporate to the fullest extent possible the honored customs and traditions of the minor child's tribe, consistent with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and with the needs and realities of tribal lives and conditions on the Reservation. Evidence may be introduced in any proceeding conducted pursuant to this Chapter of such customs and traditions, except in cases involving allegations of physical abuse.

B. Where it is shown to the satisfaction of the Tribal Judge that the customs and traditions of the minor child's tribe are consistent with the provisions of this Chapter, then the Judge shall adopt such customs and traditions for the purposes of the hearing and such customs and traditions shall have the effect of law governing that particular hearing.

**§ 3.6.1608. Definitions.**

A. "Minor in Need of Care" means a minor child who has been found to be one or more of the following:

1. "Abused Child:" A minor child who has been physically, emotionally, psychologically, or sexually abused, mistreated, or exploited by any person; "child abuse" includes, but is not limited to, any case:

a. In which the minor child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, subdural hematoma, soft tissue swelling, or any other physical injury or impact that may be the result of deliberate and/or intentional infliction by any person and this condition is not justifiably explained or may not be the result of accidental occurrence;

b. In which a minor child is mentally or emotionally injured by the behaviors of the parent, guardian or custodian of the minor child and such injuries result in observable and substantial impairment of the minor child's mental, emotional, or psychological ability to function;

c. In which a minor child is subjected to sexual assault, pornography, prostitution, or is otherwise exposed to inappropriate sexual conduct; and/or

d. In which a minor child is subjected to substantial risk of harm to his or her health, safety or welfare, including risks associated with family violence.

e. See also § 3.6.110 X: "Minor in Need of Care."

2. "Neglected Child is:"

a. One whose parent, guardian or custodian fails to provide the minimum care which a reasonably prudent parent would provide in the same or similar circumstances for the subsistence, education, and welfare of the minor child, although the parent or custodian was able to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious harm to the minor child as determined by appropriate medical or professional persons;

b. One who has a special physical or mental condition for which the minor child's parent, guardian or custodian neglects to provide a reasonable level of special care; or

c. One whose parent, guardian or custodian is unable to discharge his or her responsibilities for the minor child because of incarceration.

3. "Abandoned Child" is one whose parent, guardian or custodian is not identifiable, or, if known, has made no reasonable efforts to care for or arrange substitute care for the minor child for a period of 24 hours or more, and has not indicated an intent to resume care of the minor child; or a runaway minor child that has not been reported missing by the parent within 24 hours.

4. "Dependent Child" is one who is homeless or destitute or without proper care and support, through no fault of his parent, legal guardian or custodian,

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including hospitalizations, or other physical or mental incapacity of the parent, guardian or custodian.

B. "Court" means the Juvenile Court of the Pyramid Lake Tribal Court, unless another court is clearly specified or intended.

C. "Indian" means any person who is enrolled in (or eligible for enrollment in) any federally-recognized Indian Tribe, or any person who is legally recognized as Indian under Federal common law, including Canadian Indians and Alaskan Natives.

D. "Tribe" means the Pyramid Lake Paiute Tribe and all its agencies, programs and departments.

E. "Tribal Child" means a person under the age of 18 years of age who:

1. Is a member of the Pyramid Lake Paiute Tribe; or
2. Is an Indian child residing or domiciled within the exterior boundaries of the Pyramid Lake Paiute Reservation; or
3. Has been declared a Ward of the Court of the Pyramid Lake Paiute Tribe.

F. "Tribal Council" means the Tribal Council of the Pyramid Lake Paiute Tribe.

G. "Tribal Court" means the Pyramid Lake Tribal Court.

H. "Tribal Member" means an enrolled member of the Pyramid Lake Paiute Tribe.

I. "Tribal Police" means the law enforcement of the Pyramid Lake Paiute Tribe.

J. "Ward of the Court" means a child who is subject to the supervision, care, and/or management of a person, agency, department, or institution legally appointed by the Tribal Court and who remains under the continuing jurisdiction of the Tribal Court; "ward" also means a child who is made a ward of the Tribal Court under the provisions of this Part.

#### **§ 3.6.1610. General Procedures and Authorizations.**

§ 3.6.400 and § 3.6.412 shall apply to all dependency hearings held under this Part.

#### **§ 3.6.1612. Appeal.**

Any order of the Court involving the suspension or termination of parental rights, and any final order of the Court, may be appealed according to the rules and practices of the Tribe's Appellate Court.

#### **§ 3.6.1614. Cooperation and Grants.**

The Court and Social Services are authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training programs and to receive grants to carry out the purpose of this Part.

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This authority is subject to the approval of the Tribal Council if it involves an expenditure of Tribal funds.

The Court shall utilize such social services as may be furnished by any Tribal, Federal, or State agency provided that it is economically administered without unnecessary duplication and expense.

#### **§ 3.6.1614. Contracts.**

The Court or Social Services may negotiate contracts with Tribal, Federal or State agencies and/or departments on behalf of the Tribe for the care and placement of children before the Tribal Court, subject to approval by the Tribal Council.

#### **§ 3.6.1700. JURISDICTION AND TRANSFER OF JURISDICTION.**

##### **§ 3.6.1702. General Jurisdiction.**

A. The jurisdiction of the Tribal Court under this Part shall be civil in nature and shall be governed by the Law and Order Code, Rules of Civil Procedure. This jurisdiction shall include the right to issue all orders necessary to insure the safety of children within the exterior Reservation boundaries, as well as other children who have been declared to be wards of the Court.

B. Pursuant to this Part, the Court shall have jurisdiction over the following persons:

1. Enrolled members of the Tribe under the age of 18 years;
2. Children under the age of 18 who are eligible for enrollment in the Tribe;
3. Indians, as defined in § 3.6.1610.C of this Part, who are under the age of 18 years and who are residing within the exterior Reservation boundaries; and
4. Children of enrolled members of the Tribe or other Indians, as defined in § 3.6.1610.C of this Part, including adopted children, who reside within the exterior boundaries of the Reservation; and
5. Native children residing within the exterior boundaries of the Reservation, for whatever reason, in the home of an enrolled member of the Tribe or other Indians, as defined in § 3.6.1610.C of this Part, as long as the parents, guardian or custodians have consented to the jurisdiction of the Court. Such consent, once given, may be revoked only with permission of the Court.

C. The provisions of § 3.6.200 in Part 1 of this Code shall also apply.

#### **§ 3.6.1704. Application of the Indian Child Welfare Act.**

The Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Part. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in this Part.

#### **§ 3.6.1706. Transfer to Other Tribal Courts or State Court.**

In any proceeding before the Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child.

**§ 3.6.1708. Transfer from Other Courts.**

The Court may accept or decline, under the procedures set forth in this Chapter, transfers of child welfare cases from other federal, state or tribal courts.

**§ 3.6.1710. Procedures for Transfer from Other Tribal or State Courts.**

A. Receipt of Notice. Notice of other tribal court or state court cases shall be received by Social Services. The designated person or department shall be the "tribal agent" for service of notice of other tribal court or state court child custody proceedings, as defined by the Indian Child Welfare Act.

B. Investigation and Pre-Transfer Report. Upon receipt of a notice of a child custody proceeding governed by the Indian Child Welfare Act in another tribal court or state court, or upon receiving notice in any other form that a Tribal child is involved in a child custody proceeding, Social Services shall conduct an investigation and file a written report and recommendation with the Tribal Prosecutor within 10 days of the notice, excluding weekends and holidays.

C. Investigation Procedure and Recommendations. Investigation of referrals shall include:

1. Contacting appropriate sources to determine the child's membership status in the Tribe;

2. Investigating and determining whether or not the child custody notice is one properly referred to the Tribe under the Indian Child Welfare Act;

3. Contacting social, medical, legal or other sources to obtain necessary information regarding the circumstances of the case;

4. Investigating the minor child's surroundings and emotional contact;

5. Investigating the wishes of the minor child's family, extended family, and other interested persons; and

6. Contacting the parent or custodian of the minor child, and notifying them of the fact of notice to the Tribe and the Tribe's consideration of the case to Tribal jurisdiction. Contact shall be made by personal delivery of the notice to the parent or the custodian where practicable. Where such personal service is not practicable, then notice shall be given by registered mail with return receipt requested.

D. Upon investigation of the referral, Social Services shall make a recommendation as to whether "transfer" of the case, "intervention" or "no involvement" would be the appropriate action and in the best interests of the minor child. Factors to be considered in the recommendation include, but are not limited to, the following:

1. Age of the minor child and circumstances of the family;

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2. Past and present residences of the minor child;
3. Special needs of the minor child (if any) and availability of Tribal services to serve the minor child's specific needs;
4. Location of the family, witnesses, documents, and other evidence;
5. Existence of subpoena or other process limitations of Tribal jurisdiction;
6. Whether or not the State is attempting to reunite the family;
7. Whether or not financial assistance for the care of the minor child will continue if jurisdiction is transferred; and
8. Availability of a suitable home for placement of the minor child.

#### **§ 3.6.1712. Transfer of Jurisdiction.**

A. If Social Services determine that transfer is in the best interests of the minor child, he shall prepare and file with the referring Tribal or State Court, a Petition to Transfer of Jurisdiction to the Tribal Court within 5 days of the receipt of the request from Social Services. If the State or Federal Court does not transfer jurisdiction, Social Services shall take all actions necessary to obtain the transfer.

B. Social Services shall give notice of the filing of a Petition for Transfer of jurisdiction to all parties of the other Tribal Court or State Court proceedings.

C. Upon acceptance of jurisdiction, the Court shall schedule a Status Hearing within 30 days to conduct an initial review of the proceedings and to order appropriate changes in placement of the minor child or changes in the family's case plan, or enter other such orders as may be appropriate. Further proceedings shall take place according to relevant sections of this Part.

#### **§ 3.6.1714. Intervention in Other Tribal or State Court Proceedings.**

A. If Social Services determine that transfer is not in the best interests of the minor child, but that the Tribe should intervene in the proceedings as a party, Social Services shall initiate intervention procedures by filing a Motion to Intervene within 5 days of receiving the request from the outside Tribal or State Court. The case shall be assigned to Social Services to monitor the other Tribal Court or State Court compliance with the Indian Child Welfare Act and apprise the other Tribal Court or State Court of the Tribe's position in the case.

B. Social Services shall give notice of the Tribe's intent to intervene to all parties of the outside Tribal or State Court proceeding.

C. The Tribe may intervene in other Tribal or State Court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings. Social Services shall file a Motion to Intervene within 5 days of any receipt of a recommendation to intervene.

#### **§ 3.6.1800. GENERAL PROCEDURES AND AUTHORIZATIONS.**

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§ 3.6.400 *et seq.* shall apply to all dependency hearings held under this Part.

#### **§ 6.1802. Appeal.**

Any order of the Court involving the suspension or termination of parental rights, and any final order of the Court, may be appealed according to the rules and practices of the Inter-Tribal Court of Appeals, or subsequent Court of Appeals.

#### **§ 3.6.1804. Cooperation and Grants.**

A. The Court and Social Services are authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training programs and to receive grants to carry out the purposes of this Part. This authority is subject to the approval of the Tribal Council if it involves an expenditure of Tribal funds.

B. The Court shall utilize such social services as maybe furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

#### **§ 3.6.1806. Contracts.**

The Court or Social Services may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Tribal Court, subject to the approval of the Tribal Council before the expenditure of any Tribal funds.

#### **§ 3.6.1900. REPORTING AND INVESTIGATION.**

##### **§ 3.6.1902. Duty to Report.**

Any individual who knows or suspects that a minor child is an abused or neglected child, or believes actions are going to be taken which could result in a child being an abused or neglected child, should report the suspected abuse or neglect to Social Services or Tribal Police. Those persons reporting may remain anonymous.

##### **§ 3.6.1904. Persons Specifically Required to Report.**

A. The following individuals are required to report any known or suspected Abuse or neglect of a minor child immediately to Social Services or Tribal Police: Any licensed physician, chiropractor, nurse, physician's assistant, or other health care provider treating a child; any law enforcement officer, probation officer, or juvenile counselor; any school teacher, counselor, teacher's aide, or bus driver; child day care worker, Head Start teacher, public assistance worker or employee of Tribe. This requirement is in addition to the reporting requirements of 18 U.S.C. § 1169.

B. Those persons under this Section who knowingly fail to report a case of known or suspected abuse or neglect, or willfully prevent someone else from doing so, shall be subject to a civil and/or criminal liability in Tribal or federal court.

##### **§ 3.6.1906. Immunity from Liability for Good Faith Reports; Penalties for Bad Faith Reports.**



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Any person making a report which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report. Any person knowingly making a report which is false shall not be immune from civil or criminal liability for making that report.

#### **§ 3.6.1908. Confidentiality and Admissibility of Reports.**

A. The identity of any person making an initial report of child abuse or neglect shall not be disclosed to any person other than the Court, an employee of Social Services, Tribal Police, or other state or federal government employee who has a need to know the information in the performance of such employee's duties without the consent of such person.

B. Such reports shall not be admissible in evidence in any proceeding under this Part. Information contained in such reports shall not be admissible in any proceeding under this Part unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information; however, any information contained in such report may be admissible in evidence if offered by some witness other than the reporter, and if such evidence is otherwise admissible under the Rules of Evidence of the Tribal Court.

#### **§ 3.6.1910. Initial Reports Made to the Tribal Police; Investigation by Tribal Police.**

A. When a Police Officer receives an initial report from any person who reasonably believes a minor child is abused or neglected, or in the course of his duty believes that a child is abused or neglected, the officer shall immediately notify Social Services and shall submit a copy of the written intake report required under § 3.6.1914 to Social Services.

B. When a report of abuse involves an Indian minor child or an Indian abuser and preliminary inquiry indicates a criminal violation, the law enforcement agency shall also immediately report the incident to the Federal Bureau of Investigation pursuant to Federal law.

C. Tribal Police shall accompany and assist Social Services in investigating "Minor in Need of Care" cases when requested to do so by Social Services.

D. Upon probable cause of abuse or neglect, Tribal Police may refer the case to the Prosecutor for appropriate action.

#### **§ 3.6.1912. Initial Reports Made to Social Services.**

When a Social Services worker receives an initial report from any person who knows or suspects that a minor child is being abused or neglected, the worker will promptly notify Tribal Police and submit a copy of the written intake report required under § 3.6.1914.

#### **§ 3.6.1914. Written Intake Report.**

Within 36 hours after receiving an initial report of minor child abuse or neglect, excluding weekends and holidays, the receiving agency or department shall prepare a written intake report including, but not limited to, the following information:

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- A. Name, address, age and sex of the minor child who is the subject of the abuse or neglect;
- B. Grade and school in which the minor child is currently enrolled;
- C. Name and address of the minor child's parents, guardian, custodian or other person responsible for the minor child's care;
- D. Name and address of the alleged perpetrator and his relationship to the minor child;
- E. Name and address of the person who made the report, including his relationship to the minor child;
- F. A brief narrative as the nature and extent of the minor child's injuries or circumstances, including, but not limited to, any evidence of previous injuries and any previously known or suspected abuse or neglect of the minor child or the minor child's siblings and the suspected dates of the abuse or neglect; and
- G. Any other information which might be helpful to the investigation of minor child abuse or neglect, but not limited only to information useful in establishing the cause of the injuries and the identity of the person responsible for the injuries.

**§ 3.6.1916. Investigation by Social Services.**

- A. Social Services shall take immediate steps to ensure prompt investigation of any report to determine if there is probable cause to believe that the allegations are true, and to protect the health or welfare of the alleged abused or neglected minor child, as well as that of any other minor child who may be in danger of abuse or neglect by the same person.
- B. The investigation shall include:
  - 1. Investigating the home environment of the minor child;
  - 2. Investigating any physical or emotional injuries suffered by the minor child;
  - 3. Investigating all other non-financial matters that, in the discretion of the social worker, are relevant to the investigation; and
  - 4. Interviewing the parents, guardian or custodians, if possible.
- C. The investigation may also include:
  - 1. Interviewing persons at the minor child's school or day-care facility;
  - 2. Interviewing any other person or extended family members involved with caring for the minor child or with knowledge of the minor child's care or well-being; or
  - 3. Interviewing the minor child.
- D. When appropriate, Social Services shall coordinate its investigation with any other tribal, federal or state department or agency, including, but not limited to: the Tribal

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Police Department, the Tribal Probation Officer(s), the Federal Bureau of Investigation, the Bureau of Indian Affairs, any state or city police departments and any state social service agency. Social Services is not relieved of its duty to investigate the report of abuse or neglect even if one or more of these departments or agencies is investigating the circumstances surrounding the alleged abuse or neglect of the minor child.

E. If the investigation is being conducted pursuant to an anonymous report, the investigation must develop independent, corroborative information within 72 hours in order for the investigation to continue. Without the development of independent, corroborative information, a minor child may not be removed from the home and the investigation must be terminated.

#### **§ 3.6.1918. Waiver of Parental Consent.**

A. Photographs, x-rays, medical exams, psychological examinations, and such interviews of a minor child alleged to have been subject to abuse or neglect shall be allowed without parental consent if the law enforcement agency or Social Services has reason to believe the minor child has been subjected to abuse or neglect.

B. In any case where there is a reason to believe that a minor child has been subject to abuse or neglect, Tribal Police or Social Services may interview the minor child without first obtaining the consent of the parents, guardian or custodian.

C. Examinations and interview of a minor child shall be conducted under such circumstances and with such safeguards as to minimize additional trauma to the minor child.

#### **§ 3.6.1920. Final Written Report.**

A. Upon completion of the investigation of any report of alleged minor child abuse or neglect, Social Services shall prepare a final written report on the allegations.

B. If the report reveals probable cause to believe that the minor child is abused or neglected or is at substantial risk of being abused or neglected, Social Services shall initiate the procedures outlined in § 3.6.2000 *et seq.* and/or 6.2100 *et seq.* of this Part.

#### **§ 3.6.2000. EMERGENCY PROTECTIVE CARE.**

#### **§ 3.6.2002. Authorization and Duties of Social Services and Tribal Police.**

A. No minor child shall be removed from the home of the child's parent, guardian, or custodian without the consent of the parent, guardian or custodian, without a specific order from the Court, except that a minor child may be taken into emergency protective care by a Police Officer or Social Services who has reasonable grounds to believe that a minor child:

1. Is in immediate danger of serious physical or emotional harm from his or her parent, guardian, custodian or physical surroundings and removal of the child from such persons, circumstances, or place is necessary for the health, safety and welfare of the minor child;

2. Likely has a life-threatening physical injury or illness or has a mental, emotional, or psychological disorder and requires immediate medical or psychiatric care,

and the parents, guardian or custodian of such child are unable or unwilling to seek such care for the minor child; or

3. That a minor child is unable to provide for his own necessities of life, and the parent, guardian or custodian is absent and it appears from the circumstances that no satisfactory arrangements have been made to provide such necessities for the minor child.

B. Social Services have the primary responsibility to provide the protective services authorized by this Part; Social Services shall respond to emergency reports of known or suspected abuse or neglect 24 hours a day, 7 days a week.

**§ 3.6.2004. Procedure upon Removal of a Minor Child.**

A. If a Police Officer or Social Services determines that a minor child is in need of emergency protective care, that person shall immediately notify or attempt to notify the minor child's parents, guardian or custodian of the removal, giving the reasons for such removal.

B. Notice may be given by any means reasonably certain of notifying the parent, guardian or custodian of the minor child, including, but not limited to, written, telephonic, or verbal notification in person. If the notification is not in writing, within 12 hours, written notification shall also be provided.

C. If a Tribal Police Officer is removing a minor child, he shall:

1. Immediately notify Social Services; and

2. Make and deliver a report within 24 hours to Social Services containing a summary of the circumstances surrounding the emergency removal and the basis therefore.

D. After the emergency removal of a minor child, Social Services shall immediately investigate the circumstances surrounding the removal and make a determination of whether or not the minor child should remain in emergency protective care or can return home without risk of harm.

E. If Social Services determine that the minor child should remain in protective care, it shall:

1. Evaluate the placement options and determine whether or not the best placement has been achieved; and

2. Immediately file an *ex parte* motion with the Court to declare the minor in need of care and set a probable cause hearing for the next available court date to determine further placement of the minor child.

F. In no case shall emergency protective care extend beyond 72 hours, exclusive of weekends and holidays.

**§ 3.6.2006. Placement Preferences.**

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A. If return of physical custody of the minor child can be accomplished without danger or harm to the minor child, the minor child shall be returned to the parents, guardian or custodian.

B. If the return of the minor child to the minor child's parents, guardian or custodian is impossible or would involve continued risk of such harm to the minor child, the minor child shall be placed in the following order of priority:

1. A private home of an appropriate extended family member if such placement can be accomplished without risk of harm to the minor child;
2. A temporary foster home; or
3. An appropriate facility which has been approved for such placement by Social Services.

B. A minor child shall not be placed in a jail facility or other environment where the minor child is in sight or sound contact with persons in such a facility for the reason of having been accused or convicted of a crime or delinquent act.

**§ 3.6.2008. Probable Cause Hearing.**

A. A Probable Cause Hearing shall be held at the next available court date regarding the minor child's removal from his parents, guardian or custodian and to determine whether or not there was probable cause to remove the minor child.

B. The Court and Social Services shall use their best efforts to notify the minor child's parents, guardian or custodian of the time and place of the hearing and inform them of their right to attend the hearing and to be heard.

C. A Tribal Advocate may be appointed for the parents, guardian or custodian of the minor child, if requested and if the parents, guardian or custodian cannot afford one.

D. If the Court determines that there was probable cause to remove the minor child, the Court shall also determine the proper placement pending further court proceedings. A "Petition for Temporary Legal Custody, Long-Term Custody or Permanent Legal Custody" shall be filed within 10 days of such hearing, excluding weekends and holidays. If one is not filed, Social Services shall immediately return the minor child to his parent, guardian or custodian from whom the minor child was removed.

E. If the Court determines that there was not probable cause to remove the minor child, Social Services shall immediately return the minor child to the parents, guardian or custodian from whom the minor child was removed.

**§ 3.6.2100. MINOR IN NEED OF CARE PETITION AND PROCEEDINGS.**

**§ 3.6.2102. Initiation of Proceedings Petition: Hearings Conducted in Closed Court.**

A. All Court proceedings under this Part shall be initiated by a Petition entitled "Petition for Declaration of Minor in Need of Care." Such Petition shall be prepared and filed by Social Services. The Petition shall contain the following information:

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1. Name and birth date of the minor child;
2. Name of the parent(s), guardian or custodian of the minor child;
3. The basis of the Court's jurisdiction;
4. A summary of any efforts which have been made by Social Services or others to divert the case from the court system to community groups or advisors;
5. An allegation that the minor child is a Minor in Need of Care or is at substantial risk of being a Minor in Need of Care and a plain statement of facts supporting this allegation;
6. Whether or not temporary, permanent, or long-term legal custody of the minor child is requested by Social Services and a statement of facts supporting this request; and
7. A statement supporting the facts relevant to the present physical or legal custody of the minor child.

B. All hearings under this Section shall be in closed court, including only officers of the Court, the minor child, parent(s), guardian, or custodian, Social Services representatives and such other persons who, in the discretion of the Court, may aid in the proceedings or have sufficient interest in the case.

#### **§ 3.6.2104. Guardian Ad Litem.**

Upon the filing of a petition, the Clerk of the Court shall immediately notify the Judge who shall appoint a *Guardian ad Litem* or other qualified person to represent the minor child, if one has not already been appointed and if one is available.

#### **§ 3.6.2106. Notice.**

Written notice of a hearing held under this Part shall be given to the parent(s), guardian or custodian and to other persons as the Court may direct at least 5 days prior to a hearing date. A copy of the petition shall also be served no later than 5 days prior to a hearing.

#### **§ 3.6.2108. Intervention.**

A. Intervention into the proceedings as an interested party shall be allowed as follows:

1. Any extended family member shall be allowed to intervene as an interested party;

2. Community counselors, spiritual leaders, and other persons may be allowed to intervene as interested parties at the discretion of the Court.

B. When applicable, the Court shall follow the traditions and customs of the minor child's tribe regarding the involvement of such interested persons.

C. Notice of intervention shall be served by mail by the Clerk of the Court upon all parties to the proceedings at least five days prior to the hearing. The Court may excuse

such notice if the Court determines that lack of notice has not detrimentally affected the other parties. If the Court finds such detrimental effect, the Court may deny intervention or continue the hearing date for an appropriate period.

**§ 3.6.2110. Initial Hearing.**

At the next available court date, the Initial Hearing shall be conducted unless another time has been set for good cause by order of the Court. The Initial Hearing shall be held in 2 parts: the Adjudicatory Hearing and the Temporary Dispositional Hearing. For good cause, these hearings may be separated and held in two proceedings on separate days. Such hearings shall be conducted according to the Rules of Civil Procedure and the Rules of Evidence of the Court and consistent with all due process and other rights afforded the parties by the Indian Civil Rights Act. The burden of proof on all matters shall be upon Social Services.

**§ 3.6.2112. Requirements for Adjudication of Minor in Need of Care.**

A. Request for Temporary Legal Custody: Unless the allegations are admitted, Pyramid Lake Social Services shall have the burden of proving, by clear and convincing evidence, at least that the child is at substantial risk of being a Minor in Need of Care.

B. Request for Permanent or Long-Term Legal Custody: Unless the allegations are admitted, Social Services shall have the burden of proving, beyond a reasonable doubt, that the minor child is a Minor in Need of Care; however, Social Services may request further time to prepare its case following a denial of the allegations in the petition, and the Court may continue the proceedings for such time as the Court may determine is necessary for further investigation and preparation by Social Services.

**§ 3.6.2114. Adjudicatory Hearing.**

A. The Adjudicatory Hearing shall be conducted solely to determine whether or not the minor child is a Minor in Need of Care or is at substantial risk of being a Minor in Need of Care.

B. The parent(s), guardian, or custodian of the minor child shall be advised of:

1. The nature of the Petition;
2. The factual allegations therein;
3. The present custodial situation;
4. The relief requested by Social Services; and

5. The right to be represented by legal counsel at their own expense and the right to request a Tribal Advocate appointed at the Tribe's expense if (1) the parent(s), guardian or custodian cannot afford representation, (2) if an advocate is available, and (3) funds are available for this purpose.

C. The parent(s), guardian or custodian of the minor child will be allowed to admit or deny the allegations in the Petition.

D. Upon hearing evidence from all parties regarding the issue of whether or not the minor child is a Minor in Need of Care or is at substantial risk of being a Minor in Need of Care, the Court shall issue an order stating the following:

1. The Court's jurisdiction over the case;
2. Whether or not it has been proven beyond a reasonable doubt that the minor child is a "Minor in Need of Care." If the Court finds that it has been proven beyond a reasonable doubt, the Court shall proceed to temporary disposition. If the Court does not so find, any request for permanent or long-term legal custody must be denied and the Petition dismissed; or
3. Whether or not it has been proven by clear and convincing evidence that the minor child is at substantial risk of being a "Minor in Need of Care." If the Court finds that it has been proven, the Court shall proceed to temporary disposition. If the Court does not so find, any request for temporary legal custody must be denied and the Petition dismissed.

**§ 3.6.2116. Temporary Dispositional Hearing.**

A. The Temporary Dispositional Hearing shall be conducted to determine the appropriate placement of the minor child and further action of the parties and the Court.

B. Upon hearing evidence of the appropriate placement of the minor child and any requests of Social Services, the Court shall issue a temporary dispositional order, including, but not limited to, the following:

1. If out-of-home placement is requested, a determination of whether or not it is necessary for the protection of the minor child. If the Court does not so find, the minor child shall remain with or be returned to the parent(s), guardian or custodian. If the Court so finds, the Court shall state the appropriate placement of the minor child;
2. That the minor child, parents, or custodians undergo medical examinations or psychological assessments and that reports be submitted to the Court, if such examinations or assessments are deemed necessary by the Court or Social Services;
3. That further investigation is conducted by Social Services;
4. That the parent(s) and/or the minor child participate in such counseling or other programs as the Court may deem beneficial;
5. That notice of further proceedings is given to additional interested parties;
6. That such other actions consistent with the purposes of this Part be taken;
7. The date of the Final Dispositional Hearing upon the petition and that notice of such hearing shall be given to all parties. The Final Dispositional Hearing shall determine further custody or placement of the minor child, and such hearing shall be set no later than ninety days after the Temporary Dispositional Hearing.

**§ 3.6.2118. Final Dispositional Hearing.**



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A. At the Final Dispositional Hearing, all interested parties may testify and give evidence on their behalf regarding the present circumstances of the minor child and of the parent(s), custodian or guardian of the minor child. The Court shall inquire into the compliance with any temporary order issued by the Court, including remedial conditions.

B. The Court may order one of the following dispositional alternatives below. If the Court's order does not finally conclude the case, the Court shall specify in its order the date for a further Status Conference and the date for further dispositional hearing, if necessary. The dispositional alternatives include:

1. Releasing the minor child to the parent or custodian with no further action, and dismissing the case;

2. Suspending the proceedings for a specified period of time, releasing the minor child to the parent(s), guardian or custodian, or other persons as the Court may direct, subject to the parent(s), guardian or custodian being under the continued supervision of Social Services;

3. Temporarily suspending the parental rights for a specified period of time and declaring the minor child a Ward of the Court and that the minor child be placed with an extended family member, foster home, or other appropriate person or facility;

4. Suspending parental rights for an indefinite period of time and declaring the child a Ward of the Court and that the minor child be placed with an extended family member, foster home or other appropriate person or facility; or

5. Terminating parental rights.

D. In any of the above dispositions in which parental rights have been suspended or terminated, but the child has not been adopted, the minor child shall be considered a Ward of the Court.

E. In determining the disposition of the case, it shall be the policy of the Court to prefer voluntary custodianships to involuntary suspension or termination of parental rights.

F. If the Court terminates parental rights, the Court shall include in its order that the Court has considered the question of inheritance and residual parental rights, and the Court shall determine as follows:

1. That the inheritance rights of the minor child and natural parents have been terminated or that the inheritance rights of the minor child or natural parents, or both, shall be continued, with such conditions as the Court may impose;

2. That all of the natural parent(s) rights to the minor child have been terminated or that the natural parent(s) may enjoy certain residual rights. Such parental rights may include:

a. The right to communication with the minor child(ren);

b. The right to visitation with the minor child(ren);

c. The right to contribute to support or education;

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d. The right to be consulted regarding the minor child's religious affiliation, major medical treatment or other matters of major importance in the minor child's life; or

e. Such other residual rights as the Court may deem appropriate considering the circumstances.

3. The Court may grant similar residual rights to extended family members upon the termination of parental rights.

G. Nothing in this Chapter shall prohibit a parent whose parental rights have been terminated under judicial process to petition the Court to restore the parent to certain residual parental rights.

**§ 3.6.2120. Diversion to Informal Resolution.**

A. It shall be the duty of Social Services, the Tribal Advocates, and the Court to encourage satisfactory, out-of-court solutions to cases brought pursuant to this Part prior to any Final Dispositional Hearing.

B. Social Services may recommend a reunification plan to the Court including counseling, treatment, or such other remedial actions which in its opinion is in the best interest of the minor child.

**§ 3.6.2122. Unmanageable and Uncontrollable Children.**

If a minor child who has been adjudicated a Minor in Need of Care and who has been placed in the custody of Social Services becomes unmanageable and uncontrollable while in its legal custody, Social Services may return the minor child to the Court for further disposition or may provide information to the Prosecutor and request the filing of a petition alleging the minor child to be delinquent, in need of supervision or in need of mental health treatment, if such a petition is warranted by the facts.

**§ 3.6.2124. Emancipation.**

A minor child who is 17 years of age may petition the Court for emancipation. The Court shall grant such status when the minor child proves to the Court that the minor child is capable of functioning as an independent and responsible member of the community.

**§ 3.6.2126. Authorization of Medical Treatment.**

A. At any time, regardless of whether or not a minor child is under the authority of the Court, the Court may authorize medical or surgical care for a minor child when:

1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

2. A physician informs the Court verbally or in writing that in his professional opinion, the life of a minor child would be greatly endangered without certain treatment and the parent, guardian or custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an informal hearing, but the hearing shall not be allowed to jeopardize the minor child's life or health further.

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B. Parental Use of Spiritual Treatment May be Given Consideration. In making its order, the Court shall give due consideration to any treatment being given the minor child by prayer or through other traditional spiritual practices, if the minor child or his parent, guardian or custodian are legal adherents of an established religious denomination that relies on this form of treatment, in lieu of medical treatment.

C. Written Order. After entering any authorization under this Section, the Court shall reduce the circumstances, findings and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate physician, hospital or both.

D. Verbal Authorization for Treatment Sufficient. Verbal authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician, hospital, nurse, technician or other person under the direction of such physician or hospital shall be liable for any criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the minor child's and/or parent authorization.

#### **§ 3.6.2128. Cost of Support and Care.**

In the event that a minor child is removed from his home by an order of the Court, the minor child's parent, guardian or custodian may be ordered by the Court to pay the costs of the minor child's support. Such payments are to be made to Social Services who shall in turn release the support money to the person or organization with whom the minor child is placed. Whenever the Court enters such a reimbursement order and the parent, guardian or custodian refuses to pay, that person may be punished under the contempt powers of the Court.

#### **§ 3.6.2130. Power of Attorney.**

A parent, legal custodian or guardian, including Social Services, by a properly executed power of attorney, may delegate to another person for a period not to exceed six months any of the powers of the parent, legal custodian or guardian, except the power to consent to marriage, or adoption of a minor child and the power to release a minor child for adoption.

#### **§ 3.6.2132. Rehearing.**

A. Time and Grounds. A party may seek a rehearing or new trial of any matter decided under this Chapter by filing a written motion stating the basis for the relief sought within thirty days after the decision of the disposition or supplemental disposition. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented by not previously considered by the Court, which, if true, would cause the Court to reconsider the case.

B. Notice. All parties must be given notice of the motion in accordance with § 3.6.2106 of this Chapter.

C. Response by Parties. Any response by parties must be in writing and filed with the Court and opposing parties within seven days after notice of the motion.

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D. Procedure. The Judge may affirm, modify or vacate the decision previously made, in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court, in its discretion, finds appropriate for the case.

E. Hearings. The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

F. Stay. The Court may stay an order pending a ruling on a motion.

**§ 3.6.2134. Appeals.**

A. Who Can Appeal. Any party to a Court hearing may appeal a final Juvenile Court order to the Court of Appeals.

B. Time for Appeal. Any party seeking to appeal a final Juvenile Court order shall file a written notice of appeal within 10 days of the entry of the final order.

C. Standard of Review. The standard of review used in reviewing the final order of the Court is a finding of "clearly erroneous."

D. Record. For purposes of appeal, a record of the proceedings in Juvenile Court shall be made available to the minor child's *guardian ad litem*, his parents, guardian or custodian, their counsel and others upon court order. Cost of obtaining this record shall be paid by the party seeking the appeal.

E. Stay. An order of the Court may be stayed upon order of the Appellate Court.

**PART 4. TERMINATION OF PARENTAL RIGHTS.**

**§ 3.6.2300. General Provisions.**

The purpose of this Part is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process.

A. This Part shall be construed in a manner consistent with the philosophy that the family unit is of the most value to the community and the individual family members when that unit remains united, and that termination of the parent-child is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interest of the child concerned and of the Tribe to proceed under this Part.

B. Termination of parental rights shall not adversely affect the minor child's rights and privileges as an Indian nor as a member of any tribe in which the minor child is entitled to be enrolled, nor to the minor child's enrollment status with the minor child's tribe.

**§ 3.6.2302. Jurisdiction.**

The Court has jurisdiction to terminate or suspend parental rights according to the provisions of this Part.

**§ 3.6.2304. Procedural Requirements for Involuntary Termination of Parental Rights.**

A. Petitions for Involuntary Termination of Parental Rights. A Petition for Involuntary Termination of Parental Rights may be filed by the Prosecutor or Social Services if either believe that the requirements for termination can be met.

B. Contents of Petition for Involuntary Termination of Parental Rights. A Petition filed pursuant to this Section shall contain:

1. Name and birth date of the minor child;
2. Name of the parent(s) or custodian of the minor child;
3. Basis of the Court's jurisdiction;
4. A summary of the efforts which have been made by Social Services or others to meet the best interest of the minor child;
5. Whether a suspension or termination of parental rights is requested and a statement of facts supporting this request; and
6. A statement and supporting facts relevant to the present physical or legal custody of the minor child or if the minor child is in shelter care, the time and place the minor child was taken into custody.

C. Notice of Petition and Initial Hearing. The Clerk of the Court shall notify the parent(s) of the filing of the Petition and the date and time of the hearing in writing no more than 30 days of the filing of the Petition. The initial hearing shall be at the next available court date.

D. Pre-Termination Report. Social Services shall prepare a written pre-termination report to be submitted to the Court at least 7 days prior to the hearing. The report shall contain the following information

1. A statement of the circumstances giving rise to the filing of the petition;
2. The present condition of the minor child;
3. Proposed plans for the minor child;
4. Results of interviews with the minor child's parent(s), custodian or guardian;
5. Any and all reports, notes or memoranda obtained from all social services, health professionals, school officials with whom the minor child has been in contact and prior interactions with the judicial system; and
6. A recommendation and the reasons therefore as to whether or not the parent and minor child relationship should be terminated.

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E. Termination at Initial Hearing. If a petition to terminate parental rights to a minor child is filed, the Court may enter an order terminating parental rights under at the initial dispositional hearing providing that the grounds for such a termination have been met beyond a reasonable doubt.

G. Final Dispositional Hearing. If the Prosecutor or Social Services need additional time to present the findings of investigation into the case, a Motion for Final Dispositional Hearing shall be made at the initial hearing.

1. The Court shall set a hearing pursuant to this motion and the Clerk of the Court shall notify all relevant parties at least 10 days prior to the hearing date, excluding weekends and holidays.

2. The Court shall follow the procedures and meet the requirements of a Final Dispositional Hearing as set forth in § 3.6.2118 *et seq.* of this Chapter.

H. Burden of Proof. The burden of proof lies with the Petitioner to prove that the allegations in the termination petition are supported by clear, concise, and convincing evidence, and that the best interests of the minor child will be served by termination of parental rights.

#### **§ 3.6.2306. Grounds for Involuntary Termination.**

The Court may terminate the parental rights of a parent to a minor child adjudicated as a Minor in Need of Care if the Court finds beyond a reasonable doubt, that one or more of the following conditions exist:

A. The parent of the minor child has abandoned the minor child without provisions for his support and without communication. The failure to provide support and to communicate shall be presumptive evidence of the parent's intent to abandon the minor child.

B. The minor child or a sibling of the minor child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

1. A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the minor child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or

2. A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so, and the Court finds that there is a reasonable likelihood that the minor child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

C. The parent was a respondent in a proceeding brought under this Code and twelve or more months have elapsed since the issuance of the initial dispositional order, and the Court finds beyond a reasonable doubt that either of the following exists:

1. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the minor child, and there is a reasonable expectation that custody of the minor child by the parent is likely to result in serious emotional or physical damage to the minor child; or

2. Other conditions exist that cause the minor child to be a minor in need of care, and there is a reasonable expectation that custody of the minor child by the parent is likely to result in serious emotional or physical damage to the minor child. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing and has given a reasonable opportunity to rectify conditions, and there is not reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the minor child.

D. Parental rights to one or more siblings of the minor child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful, and there is a reasonable expectation that custody of the minor child by the parent is likely to result in serious emotional or physical damage to the minor child.

**§ 3.6.2308. Findings of Fact and Conclusions of Law.**

A. The Court will make formal findings of fact and conclusions of law as a basis for the written order terminating the parent-child relationship, whether involuntary or voluntary.

**§ 3.6.2310. Procedures for Voluntary Termination of Parental Rights.**

A. Parental rights may be voluntarily terminated by a parent in writing if signed by the parent in the presence and with the approval of the Court. Voluntary termination shall not be accepted or acknowledged by the Court prior to 30 days after birth of the minor child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it.

B. Withdrawal of Voluntary Termination. A parent who has voluntarily terminated parental rights to a minor child may withdraw such consent to termination of parental rights within thirty days or prior to the issuance of a final decree of adoption. A person who has voluntarily terminated parental rights may withdraw such consent and demand re-establishment of the parent-child relationship upon a showing to the Court by clear and convincing evidence that such consent was obtained by fraud or duress.

**§ 3.6.2312. Result of Termination Order.**

Upon the termination of parental rights, all rights powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation or support existing between the minor child and the parent shall be forever severed and terminated unless otherwise directed by the court. The parent shall have no standing to appear at any future legal proceedings concerning the minor child. Any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A termination order shall not prevent a minor child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination.

**§ 3.6.2314. Minor Child's Continued Right to Benefits.**

An order terminating the parent-child relationship shall not disentitle a minor child to any benefit due the minor child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that the minor

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child derives from the minor child's descent from a member of a federally-recognized Indian tribe.

**§ 3.6.2316. Custody after Termination Order.**

If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the Court shall commit the minor child to the custody of a social services agency for the purpose of placing the minor child for adoption, or in the absence of an adoptive home, the agency may place the minor child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the minor child. The custodian shall have the authority to consent to the adoption of the minor child, the marriage of the minor child, the enlistment of the minor child in the armed forces of the United States, necessary surgical and other medical treatment for the minor child and consent to such matters as might normally be required of the minor child's parent.

**§ 3.6.2318. Future Review Hearings.**

If a minor child has not been adopted or permanently placed within 3 months of the termination order, another three month review hearing will be held. Such 3-month review hearings will continue until the minor child is adopted or permanently placed.

**§ 3.6.2320. Counsel.**

In any termination proceedings, the parent whose rights may be terminated shall have the right to be represented by legal counsel at their own expense and the right to request a Tribal Advocate appointed at the Tribe's expense if (1) the parent cannot afford representation, (4) an advocate is available, and (3) funds are available for this purpose.