

**TITLE 7B**  
**YAVAPAI-APACHE NATION**  
**CHILDREN AND FAMILIES CODE**

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YAVAPAI-APACHE NATION  
TITLE 7B

CHILDREN AND FAMILIES CODE

**CHAPTER I – GENERAL PROVISIONS**

(A) **PREAMBLE.** The Nation recognizes that its children are its most important resource and their well-being is of paramount concern to the Nation. It is the Nation's responsibility to ensure the future of the Yavapai-Apache people and culture by providing services which preserve and strengthen Yavapai-Apache families and which are consistent with traditional Yavapai-Apache values.

(B) **COUNCIL FINDINGS.** The Tribal Council finds:

- (1) That the Nation has a direct interest in protecting Yavapai-Apache children regardless of whether they reside on or off the reservation;
- (2) That Yavapai-Apache children must receive, preferably in their own homes, the care, guidance, moral, emotional, mental and physical development and protection needed to prepare them to take their places as adult members of the Yavapai-Apache community;
- (3) That when out of home placement is necessary, Yavapai-Apache children should be placed in homes that are familiar with, or willing to ensure involvement with, Tribal cultural beliefs, philosophy, traditions, and ceremonies;
- (4) That in providing services to Yavapai-Apache families, consideration of Tribal customs and traditions regarding child-rearing should be given; and
- (5) That significant efforts must be made toward maintaining a Yavapai-Apache child's physical and emotional ties with the child's extended family and with the Yavapai-Apache community.

(C) **PURPOSE AND CONSTRUCTION.** Consistent with the Tribal Council's findings, this Code shall be liberally interpreted and construed to fulfill the following Tribal purposes:

- (1) To ensure that all Yavapai-Apache children reside in an adequate physical and emotional environment that will protect and promote their health, safety, and development;
- (2) To preserve and strengthen family ties whenever possible;
- (3) To provide a continuum of culturally appropriate services for children and their families with emphasis whenever possible on prevention, early intervention, and community based alternatives;

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- (4) To ensure that, when necessary to remove a child from parental custody, primary placement consideration is given to the child's extended family;
- (5) To ensure all out-of-home placements recognize and acknowledge Tribal customs and traditions of the Nation regarding child-rearing;
- (6) To preserve and strengthen the child's cultural and ethnic identity whenever possible; and
- (7) To secure the rights of and ensure fairness to the children, parents, guardians, custodians, and other parties who come before the Juvenile Court under the provisions of this Code.

### (D) JUVENILE COURT.

(1) Establishment. A division of the Yavapai-Apache Tribal Court known as the Juvenile Court has previously been established. The Juvenile Court has original jurisdiction over all proceedings arising under this Code. The Chief Judge may hear, or assign any judge of the Tribal Court to hear, cases before the Juvenile Court.

#### (2) Jurisdiction.

(a) Except as otherwise provided by applicable federal or Tribal law, the Juvenile Court has jurisdiction over:

- (i) All proceedings involving a Yavapai-Apache Child who resides or is domiciled on the Yavapai-Apache Reservation;
- (ii) All Yavapai-Apache children, regardless of residence or domicile; and
- (iii) Any child who resides within the Yavapai-Apache Reservation; and

(b) In order to effectuate the purposes of this Code and in aid of its powers, the Juvenile Court shall have jurisdiction over a parent, guardian, or custodian of a child that comes within the jurisdiction of the Court.

(3) Wardship. The Court shall make a child found to be within the jurisdiction of the Court as provided in Chapter III(A) or, for which a guardianship is established pursuant to Chapter IV, a ward of the Court. The Court's wardship continues, and the ward is subject to the Court's jurisdiction, until one of the following occurs:

- (a) The Court enters an order terminating wardship and/or dismisses the petition for custody;

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(b) The child reaches eighteen (18) years of age, and has not been thereafter continued in the jurisdiction of the Court. When the circumstances of the child require, jurisdiction may be maintained until the child reaches nineteen (19) years of age or twelve (12) months after the child graduates from high-school, whichever is later, and provided that continuation of wardship is in the best interest of the child. Absent a finding of incompetence by a court of competent jurisdiction, retention of wardship beyond eighteen (18) years of age shall not limit the ward's capacity or otherwise postpone adulthood and the legal rights and obligations associated therewith;

(c) The child is emancipated by marriage or court order; or

(d) A decree of adoption of the child is entered by a court.

(E) DEFINITIONS. The terms used in this Code are hereby defined as follows:

(1) Abandonment. When a parent, guardian, or custodian leaves a child without reasonable support or fails to maintain contact with the child for a substantial period of time and there is no genuine effort by the parent, guardian, or custodian to assume his/her parental role. Failure to maintain contact with and provide reasonable support for a child without good cause for a period of six months constitutes prima facie evidence of abandonment.

(2) Abuse. Any act or failure to act on the part of a parent, guardian, or custodian, which results in death, serious physical or emotional harm, or an act or failure to act which presents a substantial risk of harm to the child's physical, mental, spiritual, moral, emotional and social development, or well-being. The following is a non-exclusive list of examples which, taken together or separately, may constitute abuse:

(a) Inflicting physical, emotional, or mental injury on a child, including sexual abuse or sexual exploitation;

(b) Failing to maintain reasonable care and treatment of a child;

(c) Exploiting or overworking a child to such an extent that the child's health or well-being is endangered;

(d) Subjecting a child to excessive physical discipline;

(e) Exposing a child to domestic violence;

(f) Exposing a child to immediate danger from his or her surroundings, including, but not limited to, permitting a child to live in physical filth;

(g) Exposing an unborn child to harm by using alcohol or illegal drugs during pregnancy;

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- (h) Manufacturing a controlled substance in the presence of a child or on premises occupied by a child;
  - (i) Allowing a child to be present where the chemicals or equipment for manufacturing controlled substances are used or stored;
  - (j) Selling, distributing, or giving illegal drugs or alcohol to a child;
  - (k) Using a controlled substance that impairs a parent, guardian, or custodian's ability to adequately care for the child;
  - (l) Failing to provide a safe environment for the child free from persons who may harm the child; or
  - (m) Knowingly allowing a child to ride in a vehicle operated by a person whose driving abilities are impaired by alcohol or drug usage.
- (3) Adult. A person eighteen (18) years of age or older or a person emancipated by a court of competent jurisdiction or by legal marriage.
- (4) Best interests of the child. Except as otherwise provided in this Code, the deliberation that the Court and/or Department of Social Services ("DSS") undertake when deciding what type of placement, services, actions and/or orders will best serve a child. "Best interests" determinations are made by considering and evaluating the following elements:
- (a) The connection, or the creation of such a connection if one does not currently exist, between a Yavapai-Apache child and the child's culture, family, and Nation;
  - (b) The safety, security, and stability provided to the child;
  - (c) The enrichment of the child's emotional, physical, social, and spiritual health;
  - (d) The moral fitness of the parties involved;
  - (e) The mental and physical health of the parties involved;
  - (f) The capacity and willingness of the parties involved to provide the child with food, clothing, medical care, or other remedial care and other material needs;
  - (g) The love, affection, and other emotional ties between the parties involved and the child;
  - (h) The capacity and willingness of the parties involved to give the child love, affection, and guidance, and to continue the education of the child;

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- (i) The reasonable preference of the child, if the Juvenile Court considers the child to be of sufficient age to express preference; and
  - (j) Any other considerations relevant to the child's overall well-being.
- (5) Child. A person who is under eighteen (18) years of age who has not been emancipated by a court of competent jurisdiction or by legal marriage.
- (6) Concurrent permanent plan. A plan for each child, developed by DSS, as soon as it is reasonably apparent that such a plan is necessary, but in no event more than six (6) months from the date of removal without explanation to the Court as to why such a plan continues to be unnecessary.
- (7) Custodian. A person, other than a parent or guardian, who has physical custody of a child under Tribal law or state law, or to whom physical care, custody, and control has been transferred by the child's parent, and who is providing food, shelter, and supervision to the child.
- (8) Department of Social Services (DSS). The department of the Nation charged with protecting children and serving their families.
- (9) Dependent child. An abandoned, abused, or neglected child, or a child likely to suffer serious physical or emotional harm without court intervention, or who is otherwise in need of Tribal services to prevent the break-up of the child's family.
- (10) Extended family. Any person who is related to the child by blood or marriage, or any person who can establish a significant familial-type relationship to the child.
- (11) Family unity model. A model that is designed to empower families by making them an intricate part of the decision-making and planning process. This model promotes self-sufficiency and positive lifestyle choices. In this model, both the family and service providers identify the needs of the family and develop a case plan that recognizes and builds on their strengths.
- (12) Father. The biological, adoptive, or legal father of a child. Children born to a married couple are presumed to be the biological offspring of the husband absent DNA, blood, or other legally conclusive evidence to the contrary.
- (13) Foster care. Substitute family care for a child who has been voluntarily or involuntarily removed from parental care.
- (14) Guardian. A person, other than the child's parent, who is designated by a court of competent jurisdiction to be legally responsible for the care and custody of the child.



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- (15) Guardian ad-litem (GAL). An adult appointed by a court of competent jurisdiction to represent and protect the legal rights and interests of the child, in any proceeding in which the child may be a party.
- (16) Indian. Any member of, or person eligible for membership in, a federally recognized Indian Tribe, band or community, or an Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. § 1606.
- (17) Intervener. A person, other than the child or parent in a case, to whom the Juvenile Court has granted the right to participate in the proceedings.
- (18) Mother. The biological or adoptive mother of a child.
- (19) Nation. The Yavapai-Apache Nation.
- (20) Neglect. The following, taken together or separately, may constitute neglect:
- (a) Failure of the parent, guardian, or custodian to provide adequate food, clothing, shelter, medical care, education, or supervision of the child's health, safety, and/or well-being;
  - (b) Failure of the parent, guardian, or custodian to take advantage of reasonably available public assistance and service programs designed to meet such needs when the parent, guardian, or custodian cannot meet those needs without assistance.
- (21) Parent. Includes the child's mother and father, but does not include persons whose parental rights to the child have been terminated.
- (22) Party. Any person who is legally entitled to participate in the proceedings, including without limitation, parents, guardians, custodians, the child and the Nation.
- (23) Reasonable efforts. With respect to a given obligation, the efforts that a reasonable person in that position would make to perform the obligation. Reasonable efforts determinations are fact-specific determinations based on the circumstances of the family and available resources.
- (24) Significant familial-type relationship. A ceremonial or religious godparent relationship to a child, or a long-term and ongoing personal relationship with the child in which an individual:
- (a) Has or had physical custody of the child or resided in the same household as the child;
  - (b) Supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline; and

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(c) Through interaction, companionship, interplay and mutuality, helped fulfill the child's psychological needs for a parent as well as the child's physical needs.

(25) Spokesperson. A person approved by the Court to speak for a parent, guardian, or custodian or an older child, or to speak to the best interests of a younger child.

(26) State court child custody proceeding. A state court proceeding as defined in the Indian Child Welfare Act at 25 U.S.C. § 1903(1).

(27) Yavapai-Apache child(ren). A child(ren) who is an enrolled member of, or is eligible for enrollment in, the Nation.

### (F) CONFIDENTIALITY.

(1) All records, files, documents or other material associated with a proceeding under this Code including, but not limited to, the following: the acknowledgment that a case is before the Court; the release of any identifying information (i.e., the names of children, families, or witnesses involved in proceedings); and the substance of such proceeding, shall be kept confidential unless released by order of the Court.

(2) The records listed in Chapter I(F)(1) above are not open to inspection or use by an individual other than the following:

(a) The legal counsel of record or GAL for the child;

(b) The child, the child's parent, guardian, or custodian, or the legal counsel of record for the parent, guardian, or custodian;

(c) DSS or DSS's legal counsel;

(d) A physician, psychologist, therapist, counselor, or other professional engaged for the purpose of providing examination, care or treatment of a child or other party to a dependency proceeding;

(e) Court personnel;

(f) A permanent foster care provider for the child;

(g) Court approved interveners who have been granted such right; or

(h) Any other person who the Court determines has a valid reason to see the records and for whom the Court issues a written order detailing the circumstances under which the inspection and/or use is permitted.

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(3) Notwithstanding Chapter I(F)(1) or (2), DSS may testify before or make reports and records available to any person, court, hearings officer, agency, organization, or other entity, when DSS determines that such disclosure is necessary to administer its child welfare services and is in the best interest of the affected child. Further, disclosure of information, documents, or materials to public agencies in the performance of the official duties of those agencies (e.g., for the purpose of subsequent investigation and prosecution of child abuse), whether tribal, federal, or state, does not violate the mandates of this Chapter I(F).

(G) COURT RECORDS. A record of all proceedings under this Code shall be made and preserved in a secure place by the Juvenile Court. All records of a child shall be sealed and, except for adoption records and absent good cause to the contrary, may be destroyed by order of the Court. The Court shall notify DSS of its intent to destroy records, and DSS shall notify the Court of its objections, if any.

(H) EVIDENCE. Strict rules of evidence shall not apply in proceedings conducted under this Code. All relevant and material evidence that is reliable and trustworthy may be admitted into evidence and may be relied upon by the Juvenile Court to the extent of its probative value.

(I) CONSOLIDATION. Proceedings involving two or more children may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

(J) COMPUTING DAYS. Except as otherwise provided in this Code, the following applies to computing any time period stated in days:

- Exclude the day of the act or event that begins the period;
- Exclude intermediate Saturdays, Sundays, and legal holidays;
- Include the last day of the period unless it is a Saturday, Sunday, legal holiday or, if the act to be done is filing something with the Court, a day when the Court is inaccessible.

(K) LEGAL COUNSEL. Any party has the right to legal counsel at his/her own expense.

### **CHAPTER II – TRANSFERS AND INTERVENTION**

(A) TRANSFER OF STATE COURT CHILD CUSTODY PROCEEDINGS.

(1) Agent for Service of Notice. DSS, through the Nation's ICWA Coordinator, shall be the Nation's agent for service of notice of state court child custody proceedings involving a Yavapai-Apache child.

(2) Policy. Absent good cause to the contrary, it shall be the policy of the Nation to request transfer of a state court child custody proceeding involving a Yavapai-Apache child, pursuant to the Indian Child Welfare Act.

(3) Assessment Procedure for Transfer of Jurisdiction.

(a) *Assessment of Case by DSS.* Upon receiving notice that a Yavapai-Apache child is the subject of a state court child custody proceeding, DSS shall prepare a written assessment of the family's situation and make a recommendation as to whether good cause exists not to request a transfer from state court to Tribal Court. DSS may file a motion to intervene in the state court child custody proceeding prior to the assessment if DSS determines such intervention is prudent in the interest of time or helpful to obtain information needed for the assessment.

(b) *Factors to be Considered in Determination.* In determining whether there is good cause not to transfer the proceeding, the following factors shall be considered:

- (i) Age of the child;
- (ii) Any special needs of the child;
- (iii) Location and circumstances of the family;
- (iv) Existence of non-Yavapai-Apache siblings;
- (v) Availability of state and/or Tribal services to meet the family's particular needs;
- (vi) Availability of a suitable Yavapai-Apache Tribal home for placement of the child;
- (vii) Whether financial assistance for the care of the child will continue if jurisdiction is transferred; and
- (viii) Any other relevant factors.

(c) *Determination.* DSS shall present its assessment and recommendation to the Tribal Council. The Tribal Council shall have sole authority to determine, by a majority vote, whether or not the Nation will request the transfer of a state court child custody proceeding involving a Yavapai-Apache child to Tribal Court, or in the alternative, whether the Nation will intervene in the state court child custody proceeding under Chapter II(C) or continue with the intervention if DSS intervened prior to the assessment as provided for in Chapter II(A)(3)(a) above.

(4) Petition for Transfer of Jurisdiction.

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- (a) *Who May File for Transfer of Jurisdiction.* DSS or any parent, guardian, custodian, or child, may file a petition for transfer of jurisdiction and concurrently petition the Tribal Court for acceptance of jurisdiction.
- (b) *Petition for Transfer of Jurisdiction.* The petition shall:
- (i) Be filed in the state court having jurisdiction over the Yavapai-Apache child;
  - (ii) State that the petitioner has concurrently petitioned the Tribal Court for acceptance of jurisdiction, and that Tribal jurisdiction will be accepted unless affirmatively declined for good cause by order of the Tribal Court; and
  - (iii) Request that the matter be transferred from the state court to the Tribal Court and dismissed from the state court upon the acceptance of the case by the Tribal Court.
- (c) *Petition for Acceptance of Tribal Court Jurisdiction.* Concurrently upon petitioning the state court for transfer of jurisdiction, the petitioner shall petition the Tribal Court for acceptance of jurisdiction. The petition shall state:
- (i) That the petitioner has concurrently petitioned the state court for transfer of jurisdiction;
  - (ii) The full name, residence, date of birth and sex of the child who is the subject of the petition;
  - (iii) Documentary proof of the child's membership status in the Nation;
  - (iv) The names of the persons with whom the child has lived and the residences at which the child has lived for the previous year, and the length of time the child has lived with each person and at each residence;
  - (v) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians;
  - (vi) The status of the case in state court;
  - (vii) If the petitioner is DSS, a statement setting forth DSS's assessment regarding transfer of jurisdiction. If the petitioner is not DSS, a statement setting forth the reasons the petitioner is petitioning for transfer of jurisdiction; and
  - (viii) Any other information relevant to transfer.

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- (d) *Petition to be Referred to DSS; DSS Granted Automatic Standing.* Upon receipt of a petition for acceptance of jurisdiction from a petitioner other than DSS, the Court shall refer the petition for an assessment by DSS. The Court shall automatically grant standing to DSS as an interested party to express its views on whether the petition for acceptance of jurisdiction should be granted or denied. DSS shall have twenty (20) days from the date of referral by the Court to prepare and submit a written assessment to the Tribal Court.
- (5) Transfer Hearing. Except by order of the Court for good cause shown, the Court shall set a hearing on a petition for acceptance of jurisdiction within thirty (30) days of the filing of the petition.
- (6) Summons. The parties to the transfer petitions shall be served as provided by law with a copy of the petitions, and with a summons that shall contain the following:
- (a) The date, time and location of the hearing;
  - (b) A statement to the effect that the rights of the parent or parents may be affected, that the child dependency proceeding may be transferred from state court to Tribal Court, and that if the parent or parents fail to appear at the time and place specified in the summons, the state and/or Tribal courts may order transfer or acceptance of jurisdiction, and take any other action that is authorized by law; and
  - (c) A statement advising the parent or parents of the right to legal counsel at their own expense.
- (7) Order Accepting Jurisdiction. Following a transfer hearing, the Court shall enter an order accepting jurisdiction unless the Tribal Court affirmatively declined jurisdiction for good cause. Upon acceptance of jurisdiction, the case will have the same status as it had in the state court unless the Tribal Court finds good cause to change the status. The Tribal Court shall enter an order directed to the state court notifying the state court of the Tribal Court's acceptance of jurisdiction and requesting the state court to transfer its files to the Tribal Court.
- (8) Order Denying Jurisdiction. Following a transfer hearing, the Court shall enter an order denying jurisdiction if it found good cause for declining jurisdiction. The Tribal Court shall set forth the findings in support of the denial in the order, and shall forward a copy of the order to the state court. In making its determination the Court may consider, but is not limited to, the following factors:
- (a) DSS's assessment and the factors listed in Chapter II(A)(3)(b); and
  - (b) The ability of necessary witnesses to appear in the Court.
- (9) Subsequent Hearings. Upon acceptance of jurisdiction, the Tribal Court shall set further hearings as necessary.

(10) Final Order. An order accepting or denying jurisdiction is a final order for the purpose of appeal.

(B) TRANSFER OF DEPENDENCY PROCEEDINGS INVOLVING JURISDICTIONS OTHER THAN STATE COURT.

(1) The Tribal Court may accept or decline the transfer of a child dependency proceeding from any other court, tribunal, tribal council or other governing body, or administrative body.

(2) The Tribal Court may transfer a child dependency proceeding involving a child who is not a Yavapai-Apache child to another jurisdiction.

(3) The Tribal Court may transfer a proceeding from or to other jurisdictions in accordance with the following procedures:

(a) *Petition for Transfer of Jurisdiction*. Any person may petition the Tribal Court to transfer a child custody proceeding. The petition shall include:

(i) The full name, residence, date of birth, sex, and tribal affiliation, if known, of the child who is the subject of the proceeding; and

(ii) A plain and concise statement of the reasons the transfer should be granted.

(b) *Transfer Hearing*. The Tribal Court shall hold a hearing on the transfer request within thirty (30) days of the filing of the petition

(c) *Summons*. The parties to the transfer petition shall be served as provided by law with a copy of the petition, and with a summons that shall contain the following:

(i) The date, time and location of the hearing;

(ii) A statement to the effect that the rights of the parent or parents may be affected, that the child dependency proceeding may be transferred from or to Tribal Court, and that if the parent or parents fail to appear at the time and place specified in the summons, the Tribal Court may order transfer and take any other action that is authorized by law; and

(iii) A statement advising the parent or parents of the right to legal counsel at their own expense.

(d) *Notice to other jurisdiction*. The Tribal Court shall provide notice of the date, time and location of the transfer hearing to the court, tribunal, tribal council

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or other governing body, or administrative body from or to which transfer has been requested.

(e) *Order.* Following a transfer hearing, the Court shall enter an order accepting or declining the transfer request. The Tribal Court shall set forth the findings in the order, and shall forward a copy of the order to the other jurisdiction. If applicable, the Court shall arrange for the transfer of all files concerning the proceeding.

### (C) INTERVENTION IN STATE COURT CHILD CUSTODY PROCEEDINGS.

(1) Agent for Service of Notice. DSS, through the Nation's ICWA Coordinator, shall be the Nation's agent for service of notice of state court child custody proceedings involving a Yavapai-Apache child.

(2) Policy. Absent good cause to the contrary, it shall be the policy of the Nation to intervene in a state court child custody proceeding involving a Yavapai-Apache child, pursuant to the Indian Child Welfare Act, when the Nation does not request transfer of the proceeding to Tribal Court or when the request for transfer has been denied.

#### (3) Assessment Procedure for Intervention.

(a) *Assessment of Case by DSS.* Upon receiving notice that a Yavapai-Apache child is the subject of a state court child custody proceeding, DSS shall prepare a written assessment of the family's situation and determine whether good cause exists not to intervene in the state court child custody proceeding.

(b) *Factors to be Considered in Determination.* In determining whether there is good cause not to intervene in the case, DSS shall consider, among other factors, the following:

- (i) Age of the child;
- (ii) Location and circumstances of the family; and
- (iii) Ability of DSS to participate in the state court proceedings.

(4) Intervention. If the Nation does not request transfer of the proceeding to Tribal Court or the request for transfer has been denied, and DSS does not find good case not to intervene, DSS shall intervene in the proceeding in accordance with applicable law.

### (D) INTERVENTION IN DEPENDENCY PROCEEDINGS INVOLVING JURISDICTIONS OTHER THAN STATE COURT. If DSS determines that intervention in a child dependency proceeding taking place in a jurisdiction other than state court is in the best interests of the child and the Nation, DSS shall intervene in the proceeding in accordance with applicable law.



**CHAPTER III – DEPENDENT CHILD PROCEEDINGS**

(A) **BASES OF DEPENDENCY JURISDICTION.** The Juvenile Court has dependency jurisdiction in any case involving a child:

- (1) Who has been abandoned as defined in this Code;
- (2) Who has been abused as defined in this Code;
- (3) Who has been neglected as defined in this Code;
- (4) Who has a history of serious unexplained injuries while in the care or custody of the parent, guardian, custodian, or other persons responsible for the child's care;
- (5) Whose behavior endangers the well-being of himself/herself or others; or
- (6) Whose parent, guardian, or custodian, is unable to care for the child.

(B) **STANDARDS OF PROOF.**

- (1) **Adjudicatory Hearing.** In an adjudicatory hearing to determine if a child is a dependent child, the standard of proof shall be clear and convincing evidence.
- (2) **Return of Custody.** In a hearing in which a parent, guardian, or custodian seeks return of a child from a permanent guardianship or permanent foster care, the standard of proof shall be clear and convincing evidence.
- (3) **Permanent Guardianship and Adoption.** In a hearing to appoint a permanent guardian or approve an adoption, the standard of proof shall be clear and convincing evidence.
- (4) **Termination of Parental Rights.** In a hearing to terminate parental rights, the standard of proof shall be proof beyond a reasonable doubt.
- (5) **Revocation of Consent or Release and Surrender.** In a hearing to revoke consent or release and surrender for adoption, the standard of proof shall be clear and convincing evidence.
- (6) **Transfer of Jurisdiction.** In a hearing to determine whether or not to accept a transfer of jurisdiction from state court to Tribal Court, the standard of proof shall be a preponderance of the evidence.
- (7) **Contempt.** In a hearing to determine whether or not a person is in contempt of court, the standard of proof shall be clear and convincing evidence.
- (8) **Other Hearings.** In all other hearings the standard of proof shall be a preponderance of the evidence.

(C) OUT-OF-HOME PLACEMENT.

(1) Placement Preferences.

(a) Any placement under this Chapter III shall be made for the best interests of the child. All placement decisions should (i) allow the child to be placed in as close proximity to the parent as possible in order to facilitate and encourage visitation and reunification; (ii) support the child's affiliation with the Nation or Indian culture; (iii) allow siblings to be placed together whenever possible, if it is in their best interests to do so; and (iv) provide the least restrictive environment which meets the child's needs.

(b) With the understanding that the prioritization must be interpreted with flexibility and recognizing that the best interests of the child are primary, the following order of priority must be followed should an out-of-home placement be necessary:

- (i) Placement with the natural parent(s);
- (ii) Placement with extended family member(s);
- (iii) Placement with a Yavapai-Apache foster family licensed by DSS;
- (iv) Placement with an Indian foster family licensed by DSS;
- (v) Placement in a non-Indian foster family licensed by DSS;
- (vi) Placement in a tribal youth shelter or other facility.

(2) Foster Care.

(a) *Duties of Foster Parent.* Foster care is designed to enhance the overall health and welfare of children. A foster parent shall:

- (i) Provide a safe, healthy and caring environment for foster children;
- (ii) Serve as a role model to children for cultural and spiritual growth and encourage children to be motivated to learn and respect themselves, their family, and their Nation;
- (iii) Promote consistent and fair discipline through guidance and a structured environment;
- (iv) Assist children by listening to their needs, concerns and fears; and

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(v) Participate in foster care training and activities including tribal activities in the hope of restoring the overall health of Yavapai-Apache children and families.

(b) *Relative Foster Care.*

(i) A child may be placed in the foster care of a relative after DSS completes the following steps:

- a. Verification of the family relationship;
- b. A criminal background check of the prospective foster parent as required by applicable funding sources;
- c. A check into the prospective foster parent's driving record and vehicle insurance status; and
- d. A home visit to assess the safety of the home and the placement.

(ii) To receive foster care payments under Title IV-E of the Social Security Act, if such funding is available, a relative providing foster care for a child must meet the licensing standards established by the Nation and be approved as a foster home for the child.

(c) *Non-Relative Foster Care.* Foster care licensing standards shall be used to determine the appropriateness of non-relative foster care placements. Any person seeking to provide foster care for children who are not family members shall be formally licensed and certified in accordance with this Code and the Nation's foster care licensing procedures.

(d) *Foster Parent Agreement.* Before a child is placed in foster care, a foster parent agreement shall be established in writing and shall be signed and dated by the foster parent(s) and DSS. The foster care agreement shall state the roles and responsibilities of the biological parent(s), foster parent(s) and DSS, consent to tribal jurisdiction for all matters arising from the foster parent relationship and regarding the child, outline any payments that will be made for the support and care of the child, and state the need for adherence to the case plan.

(e) *Training and Counseling.* Whenever possible, DSS shall provide the foster parent(s) with training and counseling referrals to assist the foster parent(s) with the care of the child.

(f) *Approving Tribal Foster Homes.*

(i) Any person wishing to serve as a tribal foster parent shall apply in writing to DSS. Each applicant shall furnish DSS with a written

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application, which shall include the reasons the applicant wishes to become a foster parent, and at least four (4) personal references.

(ii) DSS shall perform a criminal background check on all persons residing in the applicant's home as required by applicable funding sources.

(iii) DSS shall check the applicant's driving record and vehicle insurance status.

(iv) DSS shall conduct a home study. The home study shall include a personal interview with the applicant and the applicant's family, and an inspection of the applicant's home. DSS shall complete a written report of its findings and recommendations concerning the applicant's suitability as a foster parent. The report shall describe:

a. The number of persons who reside in the applicant's home, including the age, sex and relationship of each person to the applicant;

b. The number of beds in the applicant's home, and their location and suitability for a foster child;

c. The availability of space for a foster child to sleep, study and store clothing and personal effects, as appropriate to the child's age and needs;

d. The availability of adequate indoor and outdoor areas where a child can play safely;

e. Whether potentially dangerous items such as guns, drugs or poisons are stored in the applicant's home and if so, whether adequate safeguards exist to prevent a child from coming into contact with the items; and

f. Whether special arrangements are necessary to contact the applicant in the event of an emergency.

(v) In addition to the information provided under subsection (iv) above, DSS may, with the applicant's consent, request:

a. Information concerning the suitability of the applicant as a foster parent from other sources, including neighbors, employers or agencies who have had contact with the applicant and the applicant's family;

b. Information concerning the applicant's physical and mental health; and

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- c. Inspections by authorized fire and safety and public health officials to ensure that the home is adequately protected from hazards.
- (vi) To be approved as a foster parent, each applicant shall:
- a. Have child-rearing practices and attitudes that will serve the best interests of a foster child;
  - b. Provide a stable, harmonious home and a health environment for rearing children;
  - c. Be a responsible person and a positive adult role model who exercises sound judgment and displays the ability to provide good care for children;
  - d. Respect the cultural values of the Nation and the religious preferences of a foster child;
  - e. Have sufficient income to meet the needs of his or her family without any supplementary payment for a foster child's care and apply any foster care payments towards the foster child's care;
  - f. Comply with the directions of the Court concerning the care of a foster child and maintain the confidentiality of information about the child and child's family;
  - g. Cooperate with DSS and the implementation of the case plan;
  - h. Provide adequate supervision by a responsible adult at all times when the foster child is in the home;
  - i. Provide the foster child with a well-balanced and nutritious diet;
  - j. Not require a foster child to do work that presents a health and safety hazard to the child or that interferes with the child's education; and
  - k. Not administer corporal punishment to the child.
- (vii) Within ninety (90) days of receiving a complete application from a prospective foster parent, DSS must complete its review of the application and issue a foster care license to each applicant who DSS determines

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meets the standards set forth by the Nation and who agrees to accept foster children referred by DSS.

a. Each foster care license shall specify the maximum number of children that the foster home can care for at any one time.

b. Subject to renewal upon an updated review by DSS, each foster care license shall expire two (2) years after the date the license is issued, unless revoked by DSS or cancelled by the Court.

c. DSS may issue a provisional license to any applicant who cannot satisfy the standards in these rules if DSS finds that the deficiencies will not affect a foster child's physical health, safety or emotional well-being and that the applicant can take corrective steps within a reasonable period of time. A provisional license shall expire within ninety (90) days unless cancelled by DSS.

(viii) Any foster care license shall be cancelled automatically if the foster parent moves or otherwise changes residence, until such time as DSS has evaluated the new home and issued an updated license.

(ix) Any foster care license shall be cancelled if a material change that would disqualify the foster parent from being licensed occurs in the foster parent's family or home. Examples of material changes that might justify cancellation of a license include a change in the foster parent's marital or employment status, a change in the condition of the foster home, or the foster parent's repeated refusal to accept foster child referred by DSS.

(g) *Ineligibility.* Because of the potential for conflicts of interest, both actual and perceived, employees and staff within the following Departments of the Nation shall be ineligible to serve as foster parents for any child under the jurisdiction of the Tribal Court, or for any child under the jurisdiction of another court who is enrolled or eligible for enrollment with the Nation: (1) Office of Attorney General; (2) DSS; (3) Tribal Court; and (4) the Yavapai-Apache Police Department. This provision does not apply to employees and staff that serve as a relative foster parent, which means an extended family member as defined in this Code.

(h) *Additional Standards.* DSS is responsible for developing foster care standards consistent with this Code and applicable laws.

### (D) PARTIES; INTERVENTION.

(1) In dependency proceedings, the parties to the proceeding are:

(a) DSS;

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- (b) The parents;
  - (c) The child alleged to be a dependent child.
- (2) The following persons may be permitted to intervene in a dependency proceeding under terms and conditions as the Juvenile Court may prescribe:
- (a) The grandparents of the child;
  - (b) A person determined by the Juvenile Court to have a significant familial-type relationship to the child;
  - (c) An extended family member;
  - (d) A permanent or long-term foster parent; and
  - (e) A person who wishes to become the child's adoptive parent or permanent guardian.
- (3) In determining whether a person in Chapter III(D)(2) may intervene, the Juvenile Court shall consider the best interests of the child and whether intervention might unreasonably delay the proceedings.
- (4) Rights of Intervener. The Court will determine, in the best interests of the child, what rights similar to those of a party shall be extended to an intervener, including, but not limited to, notice of hearings, the rights of discovery, counsel, examination of the record and witnesses, custody, and visitation.
- (E) DEPARTMENT OF SOCIAL SERVICES.
- (1) Establishment and Purpose. DSS has been established for the purpose of protecting all Yavapai-Apache children from abandonment, abuse, neglect, and other serious threats to their physical and mental well-being.
- (2) Duties and Responsibilities. In cases involving allegations of child abandonment, abuse, neglect, or any other dependent child situation falling within the provisions of this Code, DSS shall have the duty and responsibility to:
- (a) Assess the case upon receipt of an initial referral by interviewing alleged victims, family members, witnesses, and other persons involved and by considering relevant social and/or cultural factors, and physical evidence;
  - (b) Take appropriate actions after determining the risk to the child, including the development of informal agreements with the family or initiation of appropriate court actions;

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- (c) Conduct investigations with such law enforcement assistance as deemed necessary;
- (d) Direct the short-term emergency placement of the child, if appropriate under the circumstances, in accordance with the provisions of this Code; and
- (e) Perform other related duties as specified in this Code.

(3) Qualifications. DSS investigators and caseworkers shall be familiar with Native American child-rearing practices and customs. DSS shall develop and adopt training programs and policies to ensure that investigators and caseworkers are familiar with Tribal cultural practices and customs. The Nation, in its sole discretion, shall determine whether this requirement has been met.

### (F) CHILD WELFARE INVESTIGATIONS.

(1) Duty to Report Abuse and Neglect. To further the interest of the Nation in protecting its children from abuse and neglect and to stabilize families, the Nation encourages voluntary reporting of abuse, neglect, and other serious threats to a child's physical or mental health by everyone and requires certain persons to report suspected abuse.

(a) *General.* Persons who know or suspect a Yavapai-Apache child has been abused, abandoned, or neglected should report the information to DSS or to the police.

(b) *Persons Required to Report.* The following persons are required to report suspected abuse or neglect: physicians, nurses, or other medical or mental health professionals, teachers, school personnel, social workers, child care workers, peace officers, judges, court staff, attorneys or other judicial officers, and any other persons required to report pursuant to federal or Tribal law. This paragraph shall not be interpreted to override ethical rules defining the attorney-client privilege. Reports must be made no later than twenty-four (24) hours from receipt of information leading to a suspicion of abuse.

(c) *Anonymity.* The identity of the person reporting is confidential, but is subject to disclosure with the reporter's consent or by judicial process. Any person found to have willfully disclosed the name of an anonymous reporter without a lawful purpose shall be subject to civil sanction by the Juvenile Court.

(d) *Immunity.* Persons reporting suspected abuse in good faith are immune from civil and criminal liability for such report.

(2) Investigation and Action on Reports.



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(a) *Duty to Investigate.* Upon the receipt of any report or information regarding a Yavapai-Apache child who may be a dependent child, DSS will investigate, or cause to be investigated, the circumstances surrounding the report.

(b) *Investigator.* Unless screened out, the report shall be referred to a Tribal investigator for investigation. The investigator may request the assistance of law enforcement or state child protective agencies.

(c) *Scope of Investigation.* The investigation shall consider the circumstances surrounding the report, including the home environment of the child; family and parental history; any physical or emotional injuries suffered by the child; the condition of other children in the same residence; and all other relevant matters. In the course and scope of the investigation, DSS shall:

(i) Determine if the child can safely remain in the home if services are provided;

(ii) Make preliminary conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety until further investigation can be conducted; and

(iii) Seek out grandparents, extended family members, or others with whom the child is familiar, and with whom the child can be placed, if necessary, pending further investigation.

(d) *Action.* If from the investigation it appears that there is probable cause to believe that the child is a dependent child, then DSS shall take action to ensure the child's safety. Such action may include, as appropriate:

(i) Holding an informal resolution conference with the child's parent(s), guardian, custodian and child (if appropriate) and others who may provide helpful participation, as approved by DSS, to discuss alternatives to filing a petition alleging that the child is dependent child; such alternatives could include offering culturally appropriate in-home support services to the family, such as counseling, parent education, respite care, or placing the child in the care of relatives;

(ii) Petitioning the Juvenile Court for a custody order to allow DSS to supervise the child in the home and require that the family meet certain conditions and engage in certain services; or

(iii) Taking emergency custody of the child.

### (G) VOLUNTARY CASES.

(1) When Permitted. Any time before an adjudicatory hearing on a petition alleging that a child is a dependent child, DSS may hold an informal resolution conference with

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the child's parent(s), guardian, custodian and child (if appropriate) and others who may provide helpful participation, as approved by DSS, to discuss alternatives to filing a petition alleging that the child is a dependent child, or further Court involvement if a petition has been filed, if:

- (a) The admitted facts would bring the case within the jurisdiction of the Court;
- (b) An informal resolution of the matter would be in the best interests of the child, the child's family and the Nation; and
- (c) The child's parent(s), guardian, or custodian and child (if appropriate) voluntarily consent to an informal resolution.

(2) Voluntary Agreement. As a result of the informal resolution conference, DSS may enter into a voluntary service agreement or agreements with the child's parent(s), guardian or custodian and child (if appropriate) to provide prevention services and assistance, without formal Court involvement, in a manner designed to promote family unit and stability. The primary goal of the voluntary agreement shall be the child's safety.

- (a) If a voluntary agreement is reached, DSS shall set out in writing both the agreement and the admitted facts that would have brought the case within the jurisdiction of the Court. The family and DSS shall sign the voluntary agreement.
- (b) The agreement may include, but shall not be limited to:
  - (i) Referrals for the child and the child's parent(s), guardian or custodian to a community agency, service provider, and/or a medical or mental health facility for needed assistance; and
  - (ii) Terms of supervision that regulates the activities of the child and the child's parent(s), guardian or custodian, and are calculated to assist and benefit the family.

(3) Time Frame. A voluntary agreement shall not exceed six (6) months in length, unless the time period is extended by recommendation of DSS based upon its assessment of the family's engagement in and progress in fulfilling their obligations under the voluntary agreement, and upon a determination of the Juvenile Court that continuation of the voluntary agreement is in the best interest of the child.

(4) Period Review of Agreement. DSS shall review the family's progress every thirty (30) days. If, after the initial thirty (30) day period but before the end of six (6) months, DSS decides that a party to the agreement is non-compliant or the terms of the agreement as it is being followed are not serving the best interests of the child or that the child's health or safety is in jeopardy, DSS shall file a petition alleging that the child is a dependent child pursuant to this Code.

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(5) Closing the Case. If the parties follow and fulfill the terms of the voluntary agreement and DSS does not recommend that a petition be filed, at the expiration of the agreement, DSS shall close the case.

(6) Lack of Agreement. If a voluntary agreement cannot be reached and it appears that no other alternative will be in the best interests of the child and the Nation, DSS shall file a petition alleging that the child is a dependent child.

### (H) EMERGENCY CUSTODY.

(1) When Permissible. A child may be taken into emergency custody whenever there are reasonable grounds to believe that:

(a) The child is in immediate danger of serious physical or emotional harm in his/her home environment and that removal is necessary to avoid harm to the child;

(b) The child is a dependent child and without intervention the child will leave or be removed from the area before the matter can be brought before the Juvenile Court; or

(c) Upon an order of the Juvenile Court.

(2) Notice of Hearing. When a child is taken into emergency custody, the child's parent, guardian, or custodian shall be notified immediately, or as soon thereafter as is practicable, of the removal and the reasons therefore, and the date of the preliminary inquiry hearing.

(3) Release of Child Taken into Emergency Custody. A child taken into emergency custody shall be released to the physical custody of his/her parent, guardian, or custodian if safeguards are in place which make it reasonable to believe that the child is no longer in immediate danger of harm while in the parent, guardian, or custodian's care. Notwithstanding placement in the physical custody of the child's parent, guardian, or custodian, the child remains in the emergency custody of the Nation pending the preliminary inquiry hearing or termination of emergency custody as provided below.

(4) Placement. A child who cannot be released to a parent, guardian, or custodian shall be placed, pending the preliminary inquiry hearing, according to the placement preferences set forth in Chapter III(C)(1).

(5) Termination of Emergency Custody. Emergency custody of a child under this Chapter III shall terminate five (5) days after the child was taken into custody unless the Juvenile Court has issued an order continuing custody of the child with the Nation.

(I) COMMENCEMENT OF DEPENDENCY PROCEEDINGS.

(1) Commencement of Proceeding. A dependency proceeding commences when:

- (a) A child is taken into emergency custody as permitted in Chapter III(H); or
- (b) A petition alleging that a child is a dependent child is filed as set forth in Chapter III(I)(2).

(2) Petition. A petition for custody shall be prepared and filed by DSS or the Prosecutor's Office/Office of Attorney General and entitled "In the Matter of \_\_\_\_\_, a Child."

(a) *Content.* The petition for custody will contain the following information:

- (i) The full name, residence, date of birth, sex, and tribal affiliation of the child who is the subject of the petition;
- (ii) The names, residences, and tribal affiliation of the child's parents, guardians or custodians;
- (iii) Whether the child is in an out-of-home placement and, if so, the place, if not confidential, and the date the child was placed;
- (iv) The facts necessary to establish Juvenile Court jurisdiction;
- (v) A concise statement of facts upon which the allegations are based; and
- (vi) A summary of efforts which have been made by DSS or others to prevent the need for the petition.

(b) *Preparation.* The statements in the petition may be made upon information and belief and the petition shall be signed under oath.

(3) Summons. Upon the filing of a petition, the Court shall issue a summons.

(a) *Content.* The summons shall contain:

- (i) A statement indicating that the rights of the parent, guardian, or custodian may be affected in the proceeding and that if the parent, guardian, or custodian fails to appear at the time and place specified in the summons, the Juvenile Court may take legal custody of the child from the parent, guardian, or custodian, make the child a ward of the Court, and take any other action that is authorized by law; and

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(ii) A statement advising the parent or parents of the right to legal counsel at their own expense.

(b) *Service.* The summons shall be served as provided by applicable law with a true copy of the petition on all parties to the proceeding.

### (J) PRELIMINARY INQUIRY HEARING.

(1) Purpose. Following the taking of a child into emergency custody or the filing of a petition for custody, the Court shall conduct a preliminary inquiry hearing to determine if there is probable cause to believe the child is a dependent child.

(a) *Emergency Custody.* If the child is taken into emergency custody pursuant to Chapter III(H), the Court shall conduct the preliminary inquiry hearing within five (5) days following emergency removal. Prior to this hearing, DSS shall file and attempt to serve a copy of the petition for custody and a summons pursuant to Chapter III(I)(3).

(b) *Non-Emergency Custody.* The Court shall conduct the preliminary inquiry hearing within ten (10) days after the filing of a petition for custody.

(2) Parent, Guardian, or Custodian Not Present. If the child's parent, guardian, or custodian is not present at the preliminary inquiry hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court shall continue the hearing for not more than twenty-four (24) hours and direct DSS to make continued efforts to obtain the presence of the child's parent, guardian, or custodian. The preliminary inquiry hearing may be conducted in the parent, guardian, or custodian's absence.

(3) Preliminary Inquiry Hearing Procedure. The Court shall:

(a) Read the allegations in the petition in open court, unless the reading of the allegation is waived by the parent, guardian, or custodian;

(b) Advise the parent, guardian or custodian of the right to have counsel represent them, at their own expense;

(c) Advise the parent, guardian, or custodian of the right to a trial on the allegations in the petition; and

(d) Advise the parent, guardian, or custodian of their right to remain silent.

(4) Findings. At the hearing, the Court shall determine whether or not probable cause exists to believe that the child is a dependent child.

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(a) *Probable Cause Not Found.* If probable cause to believe that the child is a dependent child is not found the Court shall dismiss the petition and, if the child was taken into emergency custody, order the child returned to the child's parent, guardian, or custodian.

(b) *Probable Cause Found.* If the Court finds that probable cause exists to believe that the child is a dependent child, the Court shall determine the following:

(i) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, or emotional or mental well-being;

(ii) Whether any alternative except removal of the child is reasonably available to adequately safeguard the child from such risk; and

(iii) If the child was taken into emergency custody, whether or not DSS made reasonable efforts to prevent removal of the child from the parent, guardian, or custodian considering the circumstances of the child and parent, guardian, or custodian, and if removal could not have been prevented, whether DSS has made reasonable efforts to reunite the family once separated and eliminate the need for removal.

(5) Order. Following a preliminary inquiry hearing at which probable cause to believe a child is a dependent child is found, the Court shall issue an order addressing the following:

(a) *Custody.* The Court shall grant temporary legal custody of the child to DSS.

(b) *Placement of Child.*

(i) The Court may order placement of the child with someone other than the parent, guardian, or custodian if the Court determines that each of the following conditions exist:

a. Placement of the child with the parent, guardian, or custodian presents a substantial risk of harm to the child's safety, physical health, or emotional or mental well-being, and no provision of services or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk;

b. Out-of-home placement of the child is in the child's best interest; and

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c. Conditions of placement of the child away from a parent, guardian, or custodian are adequate to safeguard the child's safety and well-being.

(ii) The Court may release the child to the custody of the child's parent, guardian, or custodian under such reasonable terms and conditions as are necessary for the safety and well-being of the child.

(c) *Visitation.* The Court may order such restrictions on contact or visitation that the Court deems appropriate.

(d) *Additional Preliminary Inquiry Hearings.* The Court shall determine whether additional preliminary inquiry hearings are warranted.

(e) *Settlement Conference; Pre-Trial Conference; Adjudicatory Hearing.* The Court shall set in the following order: a settlement conference, a pre-trial conference, and an adjudicatory hearing. The Court shall order the parent, guardian, or custodian to appear on the dates and times set by the Court. The pre-trial conference shall be set at least fourteen (14) days before the date set for the adjudicatory hearing. The adjudicatory hearing shall be set no later than forty-five (45) days after the petition for custody was filed.

(f) *Court Ordered Evaluations and Assessments.* The Court may order any involved child, parent, guardian, or custodian or any family member or extended family member, who may be a part of the problem or part of the solution, to undergo a criminal background check, a physical, mental, psychological, or substance abuse evaluation and assessment by a qualified professional.

(g) *Affirm Reasonable Alternative to Adjudication.* The Court may affirm any other reasonable plan supported by the evidence, including but not limited to the postponement of proceedings, a voluntary agreement, mediation, or a plan stipulated to by the parties.

### (K) PRE-ADJUDICATION PROCEDURES AND SERVICES.

#### (1) Disclosures.

(a) Prior to adjudication of the petition for custody, each party, including DSS, shall disclose to each other party the following information and material within the possession or under the control of the party, and upon which they intend to rely at the hearing:

(i) The names, and addresses if appropriate, of all persons the party intends to call as witnesses at the hearing, together with any relevant written or recorded statements or memoranda and the subject of their testimony; and

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(ii) Any reports, books, papers, documents, or photographs.

(b) *Time of Disclosure.* Disclosure shall be made as soon as practicable following the filing of a petition for custody. The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, it shall be promptly disclosed.

(c) *Information That Need Not be Disclosed.*

(i) The following material and information need not be disclosed: attorney work product, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of legal counsel or their agents, or any other privileged attorney-client communications.

(ii) When some parts of certain material are subject to disclosure and other parts are not, only those parts which are subject to disclosure need be disclosed.

(iii) Privileged or confidential medical information, including the results of physical or mental health exams, may be disclosed only by court order. The Court may restrict disclosure to the party's legal counsel or spokesperson who shall be prohibited from copying said material, but shall be allowed to read or summarize for the client. If the parent or child is pro se, the Court may restrict disclosure to DSS, or other appropriate person, who may be directed to read or summarize the document for the parent or child.

(iv) Upon a showing of good cause, the Court may, at any time, order that a specified disclosure be denied, restricted, or deferred or make such other order as is appropriate. A good cause showing may be made in camera, recorded, and/or sealed. Notwithstanding the above, attorney-client privileged communications shall not be subject to disclosure.

(2) Scope of Continued Investigation and Provision of Services by DSS. Pending the adjudicatory hearing, DSS shall continue its investigation and shall continue to offer appropriate services to the parent, guardian, or custodian and the child, and shall make reasonable efforts to prevent the removal of the child from the care of the parent, guardian, or custodian, and/or to eliminate the need for continued removal. In the course and scope of the continuing investigation, DSS shall, to the extent possible:

(a) Contact and interview all parties and, if appropriate, caretakers, relatives, extended family members, neighbors, teachers, and treatment personnel;

(b) Visit the home or place where the child was residing and/or now resides;



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- (c) Address the child's past and current circumstances, including home environment, family and parental history, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
  - (d) Determine if the child can remain safely in parental care with services provided, and assist in providing those services;
  - (e) Determine what services are necessary to facilitate return of the child to parental care, with or without continuing supervision; locate and offer, and refer the parent to, those services;
  - (f) Seek out relatives, extended family members, or others with whom the child is familiar, and with whom the child can be placed if return home is not possible; and
  - (g) Draw conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible.
- (3) Settlement Conference. A settlement conference shall be held on the date and time set by the Court pursuant to Chapter III(J)(5)(e) at a location agreed to by the parties. If no location can be agreed to by the parties, the settlement conference shall be held at the DSS Office Building. All parties, including DSS and the child's parent, guardian, or custodian are required to be present at the settlement conference.
- (a) *Purpose*. The purpose of the settlement conference is for the parties to discuss the allegations in the petition and determine whether the parties can avoid an adjudicatory hearing on the allegations in the petition for custody by:
    - (i) Entering into a voluntary agreement pursuant to Chapter III(G);
    - (ii) Amending the allegations in the petition for custody so that if the petition is so amended, one or all of the parent, guardian, or custodian will stipulate to the truth of the allegations; or
    - (iii) Otherwise agreeing to the entry of an order of dependency.
  - (b) *Report on Need for Trial*. If the parties cannot reach a settlement, the parties will inform the Court at the pre-trial conference.
- (4) Pre-Trial Conference. The Court shall hold a pre-trial conference on the date set by the Court in Chapter III(J)(5)(e). All parties must be present at the pre-trial conference unless specifically excused by the Court. Failure of a party to appear at the pre-trial conference or to otherwise plead or respond to the petition for custody shall be a basis for the Court to enter an order of default and findings of dependency and disposition against that party at the pre-trial conference.

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(a) *Status.* At the pre-trial conference, the parties will report to the Court the results of the settlement conference and any agreed upon voluntary agreement, stipulations, or the readiness of the parties to proceed to an adjudicatory hearing. The Court may continue the pre-trial conference up to five (5) days to allow the parties additional time to attempt to reach a settlement of the allegations in the petition for custody.

(b) *Waiver of Right to Adjudicatory Hearing.* The parent, guardian, or custodian may waive his/her right to an adjudicatory hearing by stipulation or otherwise agreeing to the entry of an order of dependency.

(i) Prior to entry of any stipulated or agreed upon order, the parent, guardian, or custodian must appear before the Court. The Court must establish on the record that the parent, guardian, or custodian possesses the knowledge and understanding of the legal effect of the stipulated order.

(ii) The Court's order upon conclusion of the pre-trial conference shall also include findings as to whether DSS has satisfied the Court that reasonable efforts have been made to provide remedial services and rehabilitative programs designed to prevent the removal of the child or to allow a return of the child from protective custody, and that efforts have proven unsuccessful.

(iii) Upon entry of any stipulated or agreed upon order, no adjudicatory hearing shall be held; however, the Court shall set an appropriate date and time for a dispositional hearing, which may be held immediately or within twenty (20) days of the pre-trial conference.

### (L) ADJUDICATORY HEARING.

(1) Purpose. Except as provided in Chapter III(K), the Court shall conduct an adjudicatory hearing for the purpose of determining whether the child is a dependent child.

(2) Commencement. Unless continued by the Court pursuant to Chapter III(K)(4)(a) or III(L)(3), the adjudicatory hearing shall commence on the date set by the Court pursuant to Chapter III(J)(5)(e).

(3) Continuances. Continuances of an adjudicatory hearing may be granted by the Court upon stipulation of the parties or other good cause shown.

#### (4) Adjudicatory Hearing Procedure.

(a) *Parties Required to Appear.* All parties must be present at the adjudicatory hearing unless specifically excused by the Court. Failure of a party to appear or to otherwise plead or respond to the petition for custody shall be a

basis for the Court to enter an order of default and findings of dependency and disposition.

(b) *Witnesses.*

(i) **Exclusion.** The Court may exclude witnesses at the request of a party.

(ii) **Children.** The Court may, on its own motion or on the motion of a party, take testimony from a child or determine that it is not in the best interest of the child to testify due to age or mental capacity. If the Court determines that a child under twelve (12) years of age should testify, the Court will take steps to ensure that the testimony is taken in a manner that protects the child's physical, mental, and emotional well-being, by such means as taking video testimony or conducting an in-chamber interview with the judge that excludes the parent, guardian, or custodian. If a child's testimony is taken by a process that excludes a party, the party's representative must be allowed to hear the testimony. A recording of the testimony shall be made available to the parties and made a part of the record.

(iii) **Cross Examination.** Any party shall be allowed to cross-examine any witness except as set out in Chapter III(L)(4)(b)(ii).

(5) **Burden of Proof.** DSS has the burden of proving, by clear and convincing evidence, the basis of dependency jurisdiction under Chapter III(A).

(6) **Findings.** If the Court finds that DSS met its burden of proof, the Court shall find the child to be a dependent child under the jurisdiction of the Court, make the child a ward of the Court, and determine the following:

(a) ***Best Interests of the Child.*** Whether removal of the child from the legal custody of the parent, guardian, or custodian was, and continues to be, in the best interests of the child;

(b) ***Reasonable Efforts.*** Whether or not DSS made reasonable efforts to prevent removal of the child from the parent, guardian, or custodian considering the circumstances of the child and parent, guardian, or custodian, and if removal could not have been prevented, whether DSS has made reasonable efforts to reunite the family once separated and to eliminate the need for removal;

(i) Where the Court finds that reasonable preventive or reunification efforts have not been made, but that such efforts, even if made, could not have prevented the need for removal of the child, DSS shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child.

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(ii) Reasonable efforts are not required, but may be offered at the discretion of DSS, and with approval of the Court, where:

- a. The parent has committed murder or manslaughter, or has aided or abetted to commit murder or manslaughter, of any of his or her children;
- b. The parent attempted or conspired to cause the death of any of his or her children;
- c. The parent's abuse or neglect, or aiding or abetting another person whose abuse or neglect, resulted in death or serious physical injury of any of his or her children; or
- d. The parent has subjected any of his or her children to, or inflicted upon any of his or children, extreme physical, sexual, or emotional abuse

(c) *Disposition.* An appropriate time for disposition to be made in the case. The dispositional hearing may be held immediately or within twenty (20) days of the adjudicatory hearing.

(7) Order. Following a hearing in which the Court determines that the child is a dependent child, the Court shall issue an order setting forth its findings, making the child a ward of the Court, and continuing custody of the child with DSS. An adjudicatory order is a final order for purposes of appeal.

### (M) DISPOSITIONAL HEARING.

(1) Purpose. The purpose of the dispositional hearing is for the Court to determine a plan for the child, which plan includes, but is not limited to legal custody, physical custody, placement, and services to the child, parent, and family.

(2) Time. A dispositional hearing may be heard in conjunction with the pre-trial conference as set forth in Chapter III(K)(4)(b)(iii), or immediately following the adjudicatory hearing. In the alternative, the Court may set the dispositional hearing to be held not more than twenty (20) days after the pre-trial conference or the adjudicatory hearing, as applicable, to allow the parties to present additional information on the needs of the child, parent, guardian, or custodian and the availability of a preferred placement.

(3) DSS Obligations.

(a) *Dispositional Report.* At least two (2) days before the dispositional hearing (which may occur immediately following the pre-trial conference or adjudicatory hearing), DSS shall provide the Court with a report on the following:

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- (i) DSS's assessment of services needed to prevent or eliminate the need for removal of the child from parental care, and a description of DSS's efforts to locate, secure, offer, and refer the family to those services;
- (ii) Recommendations for placement; reasons for choosing that placement and reasons why the placement is the least restrictive, and the most family-like setting available to meet the child's needs; whether the placement is in close proximity to the parent; and, if the child is not to be placed with an extended family member or a familiar person, the reasons why not;
- (iii) Recommendations as to what is in the child's best interest and how best to protect the child's health and safety to prevent removal or make return to parental care possible; and
- (iv) Other recommendations regarding disposition.

(b) *Case Plan.* DSS shall prepare a written case plan to be submitted to the Court along with the dispositional report. The case plan shall be consistent with the best interests of the child.

- (i) *Development of Case Plan.* The case plan will be developed by DSS with the assistance and involvement of the family, including extended family, and other relevant participants whenever possible, under a family unity model approach. The case plan will name the participants and their relationship to the case.
- (ii) *Case Plan Contents.* The case plan will contain provisions for care of, and assistance to, the child and family calculated to prevent or eliminate the need for removal of the child from parental care and to resolve the problems adjudicated in the petition for custody. The case plan must contain:
  - a. A description of the child and family's needs;
  - b. A description of services which will be required to address those needs;
  - c. The timelines to which the family and DSS will be held for completion of services;
  - d. A description of how the family's progress or lack of progress will be measured;

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- e. If the child is placed out of parental care, details of the visitation which DSS will provide between child and parent, guardian, custodian, and relatives, if appropriate; and
  - f. Any other requirements that may be required by applicable funding sources.
- (4) Dispositional Hearing Procedure. At the dispositional hearing, the Court will consider the dispositional report submitted by DSS and afford the other parties an opportunity to respond and/or object to the recommendations in the report. The Court may hear testimony and receive reports or other material relating to the child's mental, physical and social history, and prognosis.
- (5) Findings. The Court shall determine the following:
- (a) Whether the child can remain with his/her parent, guardian, or custodian subject to such limitations and conditions as the Court may prescribe;
  - (b) Whether the best interests of the child require an out-of-home placement;
  - (c) If applicable, whether the recommended placement meets the requirements of Chapter III(c)(1) and if not, whether a suitable alternative placement is available;
  - (d) Whether or not DSS is providing services to prevent or eliminate the need for removal of the child;
  - (e) Whether the case plan meets the approval of the Court and is designed to make reunification of the family likely and if not, what additional planning or services are necessary; and
  - (f) If necessary at the time, whether the case plan reflects a concurrent permanent plan for the child, and what efforts DSS is making to develop and implement that plan in the event the child cannot be returned to parental care.
- (6) Dispositional Order. The Court shall issue a dispositional order, which shall include the Court's findings and address the following:
- (a) *Placement*. The Court may order temporary physical custody of the child be with a parent, foster parent, extended family member, a child or youth care center, or a similarly appropriate custodian, provided that the Court shall follow the placement preferences set forth in Chapter III(C)(1). The Court may impose such conditions and restrictions on the temporary physical custodian as are necessary to protect the health, safety, and well-being of the child, and as are in the child's best interests.

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(b) *Conditions Set by the Court.* The conditions or restrictions which the Court may set upon a child, parent, guardian, custodian, or any other person, shall be designed to improve the circumstances of the child. Such conditions or restrictions include, but are not limited to: cooperation with DSS; compliance with the case plan; participation in DSS meetings for the purpose of case planning; medical, psychological or psychiatric evaluation and treatment; individual and/or family counseling; prescriptive therapy; alcohol/drug evaluation and treatment; drug testing; sex offender evaluation and treatment; domestic violence counseling; anger management classes; parenting classes; mediation to resolve family or other disputes; visitation with the child with or without restrictions; attendance at child's school functions; participation in Tribally-sponsored activities; restrictions on contact, associations, or travel; payment of support or other necessary costs; and cooperation with and participation in all services in which the child is engaged, including on-site residential or institutional services.

(c) *Final Order.* A dispositional order is a final order for purposes of appeal.

### (N) STATUS REVIEW HEARINGS.

#### (1) Timing.

(a) *Required Hearing.* A status review hearing must be held within ninety (90) days of the dispositional hearing, and at least every six (6) months thereafter so long as the child remains within the Court's jurisdiction and a permanent plan for the child has not yet been established by court order.

(b) *Requested Hearing.* Any party may request a status review hearing at any time. The Court shall grant the request if there appears to be good cause to do so.

(2) Status Review Reports. The DSS shall prepare, and any other party may prepare, a report to the Court for each status review hearing. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than two (2) days before a status review hearing, except by order of the Court. DSS's report shall provide supportive documentation if appropriate, and shall:

(a) Briefly summarize the history of the case, including the date of removal, the date of adjudication, the date of disposition, the date of the last hearing (if applicable) and the status of the case at the time of the last hearing;

(b) Describe the child's circumstances since the last hearing, including status of placement, family visitation and efforts made to provide services;

(c) Describe the parent, guardian, or custodian's circumstances since the last hearing, including efforts made to provide services and compliance with the case plan;

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- (d) Describe the efforts made to develop a concurrent permanent plan to be implemented in the event the family cannot be reunified, or why a concurrent permanent plan is not practical at this time, and efforts made to implement that concurrent permanent plan. Unless required by applicable federal law, development of a concurrent permanent plan is not necessary until six (6) months after the dispositional hearing;
- (e) Describe the status of any financial resources available to the child; and
- (f) Include DSS's recommendations on continued jurisdiction, placement, visitation, and services.

(3) Status Review Hearing Procedure. At a status review hearing, the Court will consider the status review report submitted by DSS and afford the other parties an opportunity to respond and/or object to the recommendations in the report. Children twelve (12) years of age and older and foster parents have the right to appear and be heard at a status review hearing.

(4) Order. Following a status review hearing, the Court shall enter an order which addresses the following:

- (a) Continuing need for jurisdiction and appropriateness of the child's placement;
- (b) Extent of compliance by all parties with the case plan;
- (c) Extent of progress the parent, guardian or custodian has made toward eliminating the need for removal of the child from parental care and whether sufficient progress is being made to consider return home likely in the near future;
- (d) Whether reasonable efforts are being made by DSS to alleviate the need for removal of the child from parental care; and
- (e) Assess DSS's concurrent case planning, if any, and DSS's efforts to establish a concurrent permanent plan for the child in the event there is insufficient progress to restore custody the parent, guardian, or custodian.

(5) Final Order. A status review order is a final order for the purposes of appeal.

### (O) PERMANENCY.

(1) Permanent Plans. The following is a list of permanent plans which the Court may adopt and the associated rights of the parent, guardian, or custodian (depending on the best interest of the child) and DSS's obligations to the parent, guardian, or custodian under those plans:



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- (a) *Return of Custody.* The child will be returned to the parent, guardian or custodian.
- (i) *Parental Rights.* The parent has the right to seek return of full legal and physical custody of the child and termination of wardship.
  - (ii) *DSS Obligations.* DSS is obligated to continue to provide services designed to result in the return of the child to parental custody.
- (b) *Permanent Foster Care.* The child will be placed in foster care with a named provider until wardship terminates.
- (i) *Parental Rights.* The parent has the right to seek visitation and the right to petition the Court for return of custody pursuant to Chapter III(O)(4).
  - (ii) *DSS Obligations.* DSS is obligated to facilitate court-ordered visitation.
- (c) *Long Term Foster Care.* The child will be placed in foster care while the DSS identifies a permanent provider.
- (i) *Parental Rights.* The parent has the right to seek visitation and the right to petition the Court for return of custody pursuant to Chapter III(O)(4).
  - (ii) *DSS Obligations.* DSS is obligated to facilitate court-ordered visitation.
- (d) *Long Term Substitute Care.* The child, because of his/her special needs, will be placed in a specialized foster home, group home, facility, or other specialized placement until such time as a less restrictive plan is appropriate.
- (i) *Parental Rights.* The parent has the right to seek visitation and the right to petition the Court for return of custody pursuant to Chapter III(O)(4).
  - (ii) *DSS Obligations.* DSS is obligated to facilitate court-ordered visitation.
- (e) *Permanent Guardianship.* A petition for permanent guardianship will be filed and a permanent guardian will be appointed for the child pursuant to Chapter IV of this Code.
- (i) *Parental Rights.* The parent has the right to petition the Court for return of custody pursuant to Chapter IV(J).

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(ii) DSS Obligations. DSS has no further obligation to provide services to the parties except where DSS has consented otherwise.

(f) *Termination of Parental Rights/Adoption.* A petition to terminate parental rights will be filed pursuant to Chapter VI, and the permanent plan for the child shall be adoption.

(i) Parental Rights. If parental rights are terminated, the parent has no parental rights, except as specified in any termination or adoption order.

(ii) DSS Obligations. DSS has no further obligation to provide services to the parties except where DSS has consented otherwise.

### (2) Permanent Plan Hearing.

(a) *Purpose.* The Court will conduct a permanent plan hearing for the purpose of establishing an initial permanent plan for the child.

(b) *Timing.* Within twelve (12) months from the date the child is removed from parental care, or the date of the adjudicatory order making the child a ward of the Court, whichever comes first, the Court shall hold a permanent plan hearing to determine the permanent status of the child. The permanent plan hearing may be combined with a status review hearing.

(c) *Permanent Plan Report.* DSS shall prepare, and any other party may prepare, a report to the Court for the permanent plan hearing. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than two (2) days before the permanent plan hearing, except by order of the Court. DSS's report shall provide supportive documentation if appropriate, and shall:

(i) Briefly summarize the history of the case, including the date of removal, the date of adjudication, the date of disposition, the date of the last hearing and the status of the case at the time of the last hearing;

(ii) Describe the child's circumstances since the last hearing, including placement, family visitation, and services provided;

(iii) Describe the parent, guardian, or custodian's circumstances since the last hearing, including services offered and the parent, guardian, or custodian's compliance with the case plan;

(iv) Identify DSS's recommended permanent plan, specifying why that plan meets the child's particular needs and best interests rather than the other permanent plans which have not been recommended. When required by federal law and when the designated permanent plan is not termination of parental rights/adoption, DSS shall specify compelling

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reasons why termination of parental rights should not be sought. Compelling reasons include, but are not limited to, the following:

- a. The child is being adequately cared for by a relative;
  - b. The parent is substantially compliant with the case plan;
  - c. The Nation's policy disfavoring termination of parental rights;
  - d. An appropriate parent-child relationship exists;
  - e. The relationship between the child and the Nation would be harmed by termination of parental rights;
  - f. Another permanent plan is better suited to meet the health and safety needs of the child; and
  - g. Any other relevant factors to make a determination regarding the best interests of the child.
- (v) If DSS's recommended permanent plan is return of custody, the concurrent permanent plan to be implemented in the event the family cannot be reunified; and
- (vi) In addition to the permanent plan recommendation, include DSS's recommendations on continued jurisdiction, placement, visitation, and services.
- (d) *Permanent Plan Hearing Procedure.* At the permanent plan hearing, the Court will consider the permanent plan report submitted by DSS and afford the other parties an opportunity to respond and/or object to the recommendations in the report. Children twelve (12) years of age or older and foster parents have the right to appear and be heard at the hearing.
- (e) *Order.* Following a permanent plan hearing, the Juvenile Court shall enter an order which includes findings on the following:
- (i) Extent of compliance by all parties with the case plan;
  - (ii) Extent of progress the parent, guardian, or custodian has made toward eliminating the need for removal of the child from parental care and whether sufficient progress is being made to consider return home likely in the near future;
  - (iii) Whether DSS has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care;

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(iv) The designated permanent plan and why that plan meets the child's particular needs and best interests rather than the other permanent plans not selected;

(v) If the designated permanent plan is return of custody, whether DSS has developed a concurrent plan to be implemented in the event the family cannot be reunified; and

(vi) When required by federal law and when the designated permanent plan is not termination of parental rights/adoption, the Court shall specify compelling reasons why termination of parental rights should not be sought. Compelling reasons include, but are not limited to, the following:

- a. The child is being adequately cared for by a relative;
- b. The parent is substantially compliant with the case plan;
- c. The Nation's policy disfavoring termination of parental rights;
- d. An appropriate parent-child relationship exists;
- e. The relationship between the child and the Nation would be harmed by termination of parental rights;
- f. Another permanent plan is better suited to meet the health and safety needs of the child; and
- g. Any other relevant factors to make a determination regarding the best interests of the child.

(f) *Final Order.* A permanent plan order is a final order for the purposes of appeal.

### (3) Permanent Plan Review Hearing.

(a) *Purpose.* After the initial permanent plan hearing, the Court will conduct permanent plan review hearings for the purpose of reviewing the appropriateness of the permanent plan.

(b) *Timing.*

(i) *Required Hearing.* Following the permanent plan hearing, a permanent plan review hearing shall be held at least annually so long as a child remains within the Court's jurisdiction. No permanent plan review

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hearing need be held for a child who has been adopted or placed in a guardianship.

(ii) Requested Hearing. Any party may request a permanent plan review hearing at any time. The Court shall grant the request if there appears to be good cause to do so.

(c) *Permanent Plan Review Reports.* DSS will prepare, and any other party may prepare, a report to the Court for the permanent plan review hearing. These reports will be filed and copies shall be given to all parties or sent to a place calculated to assure receipt no later than two (2) days before the permanent plan review hearing, except by order of the Court. DSS's report shall provide supportive documentation if appropriate, and shall:

(i) Briefly summarize the history of the case, including the date of removal, the date of adjudication, the date of disposition, the date of the permanent plan hearing, the date of the last hearing (if applicable) and the status of the case at the time of the last hearing;

(ii) Describe the child's circumstances since the last hearing, including placement, family visitation, and services provided;

(iii) If the permanent plan is return of custody, describe the parent, guardian, or custodian's circumstances since the last hearing and the extent of progress the parent, guardian, or custodian has made toward eliminating the need for removal of the child from parental care and whether sufficient progress is being made to consider a return home likely in the near future. If sufficient progress has not been made, whether the concurrent plan should be implemented;

(iv) If DSS is recommending a change in the permanent plan, describe the circumstances necessitating a change in the permanent plan, DSS's recommended permanent plan, and why that recommended plan meets the child's particular needs and best interests rather than other permanent plans which have not been recommended; and

(v) DSS's recommendations on continued jurisdiction, continuation of the permanent plan, placement, visitation, and services.

(d) *Order.* Following a permanent plan review hearing, the Court shall enter an order which includes findings on the following:

(i) Whether reasonable efforts have been made to achieve the permanent plan;

(ii) The continued appropriateness of the placement and the permanent plan;

(iii) If the permanent plan is return of custody, the extent of progress the parent, guardian, or custodian has made toward eliminating the need for removal of the child from parental care and whether sufficient progress is being made to consider a return home likely in the near future. If sufficient progress has not been made, whether the concurrent plan should be implemented;

(iv) If the current permanent plan is no longer appropriate, the new designated permanent plan and why the selected plan meets the child's particular needs and best interests better than other permanent plans;

(v) The adequacy of services provided to the child and the provider; and

(vi) Whether other services are necessary to support the permanent plan and whether such services can be reasonably provided by the Court or DSS.

(e) *Final Order.* A permanent plan review order is a final order for the purposes of appeal.

(4) Petition for Return of Custody. A parent whose child is in permanent foster care, long-term foster care, or long-term substitute care has the right to petition the Court not more than once a year for return of custody. At any hearing on a petition for return of custody the petitioner must show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on such petition for return of custody will be set only if there is a prima facie showing in the petition for return of custody of a substantial change in circumstances.

#### **CHAPTER IV – PERMANENT GUARDIANSHIPS**

(A) POLICY. It shall be the policy of the Nation to prefer guardianships over adoption. It shall further be the policy of the Nation to prefer guardianships that maintain and preserve the child's connection to the Nation and the child's family.

(B) PETITION FOR PERMANENT GUARDIANSHIP.

(1) Who May File for Permanent Guardianship.

(a) *Dependency.* In a guardianship arising out of a dependency case, the following people may file a petition for permanent guardianship: (i) child's legal counsel or GAL, (ii) DSS, or (iii) prospective guardian.

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(b) *Non-dependency*. In a guardianship not arising out of a dependency case, only the prospective guardian may file a petition for permanent guardianship.

(2) Contents of the Petition. A petition for permanent guardianship shall be signed under oath by the petitioner(s) and shall contain the following information:

(a) The full name, residence, date of birth, sex, and tribal affiliation of the child who is the subject of the petition;

(b) The names of the persons with whom the child has lived and the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;

(c) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians;

(d) The full name, residence, date of birth, tribal affiliation, and occupation of the proposed guardian(s) and statement of relationship to the child;

(e) A statement by the proposed guardian(s) of the desire that a relationship of permanent guardian and child be established between the proposed guardian(s) and the child; and

(f) The proposed guardian's agreement, where appropriate, to maintain ties with the child's extended family and the Nation.

(C) SUMMONS. The parties to a petition for permanent guardianship shall be served as provided by law with a copy of the petition for permanent guardianship, and with a summons that shall contain a statement to the effect that the rights of the parent may be affected, that a certain person(s) is proposed to be appointed as the child's permanent guardian in the proceeding, and that if the parent fails to appear at the time and place specified in the summons, the Court may appoint that person as the child's permanent guardian, and take any other action that is authorized by law.

(D) PARTIES. The parties to a guardianship proceeding are as follows:

(1) For guardianship arising out of a dependency case, the parties shall include DSS, prospective guardian, parents, and the child.

(2) For all other guardianships, the parties shall include the prospective guardian, parents, and the child.

(E) MEDIATION. For guardianship arising out of a dependency case, the use of mediation in a guardianship proceeding is encouraged.

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(F) INVESTIGATION AND REPORT. For guardianships arising out of a dependency case, DSS shall conduct a home study of any party to be appointed as permanent guardian, and shall prepare and submit a written report to the Court prior to the guardianship hearing.

(1) The report shall address the suitability and character of the permanent guardian(s), including, but not limited to, the financial, physical, and general background of the permanent guardian and his/her home.

(2) The report shall reflect contact with appropriate agencies and individuals who have relevant knowledge and information.

(3) A copy of the report shall be served on the parties at the same time it is presented to the Court.

(G) GUARDIANSHIP HEARING.

(1) Purpose. The Court shall conduct a guardianship hearing to determine if it is in the child's best interest to have a guardian appointed.

(2) Commencement. Unless continued by the Court pursuant to Chapter IV(G)(3), a guardianship hearing shall commence within ninety (90) days of the filing of the petition for permanent guardianship.

(3) Continuances. Continuances of a guardianship hearing may be granted by the Court upon stipulation of the parties or other good cause shown.

(4) Guardianship Hearing Procedure.

(a) *Parties Required to Appear.* All parties must be present at the guardianship hearing unless specifically excused by the Court. If a party fails to appear, the Court may act on the petition for permanent guardianship in that party's absence.

(b) *Burden of Proof.* The petitioner has the burden of proving by clear and convincing evidence that guardianship is in the best interest of the child.

(c) *Children.* For all children twelve (12) years of age or older, the Court shall give weight to the opinion of the child.

(d) *Findings.* The Court shall determine the following:

(i) Whether the best interests of the child will be promoted by the permanent guardianship;

(ii) Suitability of the proposed guardian;



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- (iii) What cultural components and Tribal connections will be fostered or protected by the permanent guardianship;
- (iv) Whether parents should be ordered to pay child support;
- (v) Frequency and nature of visitation or contact with parents and other relatives; and
- (vi) Whether continued services are necessary to support the guardianship.

(5) Order. Following a hearing in which the Court determines that a guardian shall be appointed, the Court shall issue an order setting forth its findings, appointing the guardian, and addressing the following:

- (a) *Services*. For guardianships arising out of a dependency case, any continued services DSS consents to provide;
- (b) *Scope*. The term of the guardianship and the rights and duties of the guardian including the guardian's responsibilities related to annual reviews;
- (c) *Other*. Any other provision to benefit the child's continuing safety and well-being; and
- (d) *Letter of Guardianship*. A certified copy of the letter of guardianship will be prepared and attached to the order.

(6) Final Order. A guardianship order is a final order for purposes of appeal. Upon issuance of a final order of guardianship arising out of a dependency case, the dependency case shall terminate and the child shall continue as a ward of the Court under the guardianship provisions of this Code. Upon issuance of a final order of guardianship in a non-dependency case, the child shall be made a ward of the Court.

(H) TERM, RIGHTS, AND DUTIES OF PERMANENT GUARDIAN. A permanent guardian appointed by the Court shall:

- (1) Have custody, and be responsible for all care, of the child and the care and management of his/her property until the child reaches eighteen (18) years of age or, when circumstances of the child require, until the child reaches nineteen (19) years of age or twelve (12) months after the child graduates from high-school, whichever is later, marries, is emancipated by a court of competent jurisdiction, or until the permanent guardian is legally discharged;
- (2) Have the authority to enroll the child in educational institutions, consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child;

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(3) Be responsible for reporting to the Court on a yearly basis, or more often as required by the Court; and

(4) Have the authority, but only with the express written consent of the Court, to dispose of any real property or Tribal member benefits of the child.

(I) GUARDIANSHIP REVIEW. The Court shall review the guardianship at least annually throughout the duration of the guardianship. The Court shall provide notice of the guardianship review hearing to the guardian and the child's legal counsel or GAL, if applicable, which shall require the guardian to submit a report in the form prescribed by the Court prior to the review date set by the Court. If upon review of the guardianship report, the Court determines that a guardianship review hearing is not necessary, the Court may conduct the review on the written report without a guardianship review hearing.

(1) Review Procedure. At a guardianship review hearing, the guardian shall report on the well-being of the child including the following:

- (a) The child's health;
- (b) The child's education;
- (c) The child's contacts, if any, with the child's parents and extended family;
- (d) The child's involvement with Tribal cultural events and activities; and
- (e) The expenditure and use of any of the child's assets or income.

(2) Review Order. Following a guardianship review hearing, the Court may enter appropriate orders including modifying or vacating a guardianship when the Court determines it is in the best interest of the child or other provisions designed to protect the well-being of the child.

(J) RETURN TO PARENT. For guardianships arising out of a dependency case, a parent shall have the right to petition the Court no more than once a year for return of custody. A hearing on a petition for return to parent will be set only if the petition for return to parent sets forth a prima facie showing that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. Petitioner shall have the burden of proving by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care.

### **CHAPTER V – RELINQUISHMENTS**

(A) COURT AUTHORITY. The Court may accept a parent's voluntary relinquishment of parental rights in accordance with this Chapter V.

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(B) NOTICE OF INTENT TO RELINQUISH PARENTAL RIGHTS. Upon the Court's receipt of notice that a parent intends to relinquish his/her parental rights, the Court shall set a hearing within sixty (60) days to accept the parent's release and surrender. The release and surrender must be knowingly and voluntarily given and signed before a judge of the Court and must contain the following:

- (1) The full name, residence, date of birth, sex and tribal affiliation of the child;
- (2) A statement by petitioner that he/she wishes to have his/her parental rights terminated; and
- (3) A statement asking the Court to accept petitioner's voluntary relinquishment of parental rights.

(C) RELINQUISHMENT HEARING. At a relinquishment hearing to accept the parent's release and surrender, the Court shall confirm that:

- (1) The parent understands that by signing the release and surrender his/her parental rights over the child will be terminated and that he/she will no longer have any rights or obligations of a parent to the child from the date the order terminating petitioner's parental rights is entered;
- (2) The parent understands that the parental rights he/she is voluntarily relinquishing include, but are not limited to, the rights of custody, visitation, and any other contact with the child, whether in person, by mail, or any electronic means, and any input regarding decisions made about the child;
- (3) The parent understands that the parental obligations he/she is voluntarily relinquishing include, but are not limited to, obligations to provide for the care, support, education, and moral training of the child;
- (4) The parent understands that he/she must pay any obligation for support of the child incurred before the date he/she signs the release and surrender;
- (5) The parent understands that termination of his/her parental rights does not extinguish the child's right to inherit from the parent's estate upon the parent's death;
- (6) The parent understands that termination of parental rights does not affect the child's Tribal enrollment status or eligibility for benefits from any third person, including, but not limited to, any agency or state, the United States or any Indian tribe;
- (7) The parent is not under the influence of alcohol, prescription or non-prescription drugs, or any substance that might affect his/her thinking or behavior; and
- (8) The parent freely and voluntarily signed the release and surrender.

(D) ORDER ACCEPTING RELEASE AND SURRENDER. If the Court accepts the release and surrender, the Court shall issue an order:

- (1) Acknowledging the Court has made the confirmations set forth in Chapter V(C);
- (2) Acknowledging that the parent signed the release and surrender in the presence of the Court;
- (3) Accepting the release and surrender; and
- (4) Declaring the parent's rights permanently relinquished.

(E) FINAL ORDER. An order accepting release and surrender shall be a final order for purposes of appeal.

(F) ENROLLMENT AND INHERITANCE STATUS. No relinquishment of parental rights shall affect a child's enrollment status as a member of the Nation, a child's degree of blood quantum, or a child's rights of inheritance under Tribal law from biological parents who die intestate.

(G) EFFECT OF RELINQUISHMENT. The parent's rights to the child are permanently relinquished and the parent has no standing to appear in any legal proceeding concerning the child, with the exception of a motion for revocation as set forth in Chapter V(H) or an appeal.

(H) REVOCAION OF RELINQUISHMENT. The parent's release and surrender may be withdrawn for any reason at any time prior to the entry of a decree of adoption. After the entry of a decree of adoption, the parent may revoke the release and surrender only upon a showing that it was obtained through fraud, duress, or coercion, and may petition the Court to vacate the decree of adoption. No adoption which has been effective for two (2) years or more may be invalidated under the provisions of this Chapter V(H).

## **CHAPTER VI – TERMINATION OF PARENTAL RIGHTS**

(A) POLICY. The Nation disfavors termination of parental rights, but may pursue or support termination of parental rights as set forth in Chapter VI(B). This policy shall govern the Nation's position in state court child custody proceedings in which the Nation has intervened as well as Tribal Court dependency proceedings under this Code. Any recommendation of DSS to pursue or support termination of parental rights as set forth in Chapter VI(B) shall be approved by a majority vote of the Tribal Council.

(B) BASES FOR TERMINATION OF PARENTAL RIGHTS.

- (1) When Termination of Parental Rights Is Appropriate. A termination of parental rights is appropriate if an adoptive resource is available, and at least one of the following exists:

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- (a) The parent has committed murder or manslaughter, or has aided or abetted to commit murder or manslaughter, of any of his or her children;
- (b) The parent attempted or conspired to cause the death of any of his or her children;
- (c) The parent's abuse or neglect, or aiding or abetting another person whose abuse or neglect, resulted in death or serious physical injury of any of his or her children; or
- (d) The parent has subjected any of his or her children to, or inflicted upon any of his or children, extreme physical, sexual, or emotional abuse.

(2) When Termination of Parental Rights May Be Appropriate. A termination of parental rights may be appropriate if: (i) an adoptive resource, with whom the child has been placed for at least one year, is available; (ii) the parent is unfit as described in Chapter VI(B)(2)(a); and (iii) termination is in the best interests of the child as described in Chapter VI(B)(2)(b).

(a) *Unfitness.* The parent is unfit by reason of conduct or condition seriously detrimental to the child and, given such conduct or conditions, integration of the child into parental care is improbable within a reasonable time. Conduct or conditions which render a parent unfit are:

- (i) Emotional illness, mental illness, or mental deficiency of the parent of such a nature and duration as to place the child's physical or mental health at risk;
- (ii) Unresolved addictive or habitual use of alcohol and/or drugs to the extent that the ability to parent has been substantially impaired;
- (iii) Imprisonment (actual or pending) of the parent for a period of three (3) years or more while the child is a ward of the Court;
- (iv) Conduct toward any child of an abusive, cruel, or sexual nature;
- (v) The parent has left the child without reasonable support or has failed to maintain contact with the child for a substantial period of time and there is no genuine effort by the parent to assume his/her parental role; or
- (vi) Criminal conduct that impairs the parent's ability to provide adequate care for the child.

(b) *Best Interests of Child.* The "best interests" determination for purposes of a termination of parental rights, is made by considering and evaluating the following factors:

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- (i) Whether an appropriate parent-child relationship exists;
- (ii) Whether the relationship between the child and the Nation will be harmed by termination of parental rights;
- (iii) Whether the child has been in Tribal custody for a substantial period of time;
- (iv) The existence of non-Tribal siblings of the child;
- (v) Whether adoption is the plan best suited to meet the health and safety needs of the child; and
- (vi) Any other factors relevant to make a determination regarding the best interests of the child.

### (C) PETITION TO TERMINATE PARENTAL RIGHTS.

(1) Who May File a Petition to Terminate Parental Rights. DSS or the child's legal counsel or GAL may file a petition to terminate parental rights. DSS shall not be required to file a petition to terminate parental rights except where required by federal law.

(2) Contents of the Petition. A petition to terminate parental rights shall be signed under oath by the petitioner and shall contain the following information:

- (a) The full name, residence, date of birth, sex, and tribal affiliation of the child who is the subject of the petition;
- (b) The names of the persons with whom the child has lived and the residences at which the child has lived for the previous year, and the length of time the child has lived with each person and at each residence;
- (c) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians; and
- (d) The facts upon which the petition to terminate parental rights is based, including, but not limited to, the bases set forth in Chapter VI(B).

(3) Summons. The parties to a petition to terminate parental rights shall be served as provided by law with a copy of the petition, and with a summons that shall contain the following:

- (a) A statement to the effect that the rights of the parent or parents are proposed to be terminated in the proceeding and that if the parent or parents fail to

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appear at the time and place specified in the summons, the Court may terminate parental rights and take any other action that is authorized by law; and

(b) A statement advising the parent or parents of the right to legal counsel at their own expense.

(D) MEDIATION. The use of mediation in cases involving the termination of parental rights is encouraged.

(E) TERMINATION HEARING.

(1) Timing. Except by order of the Court for good cause shown, the Court shall set a hearing on the petition to terminate parental rights not earlier than ten (10) days after service or final publication of the summons, and no later than sixty (60) days from the date on which the summons for the petition to terminate parental rights is served.

(2) Hearing Procedure.

(a) *Parent Required to Appear*. Failure of a parent to appear at the termination of parental rights hearing without good cause shall be a basis for the Court to enter an order terminating the parent's parental rights.

(b) *Witnesses*.

(i) Exclusion. The Court may exclude witnesses at the request of a party.

(ii) Children. The Court may, on its own motion or on the motion of a party, take testimony from a child or determine that it is not in the best interest of the child to testify due to age or mental capacity. If the Court determines that a child under twelve (12) years of age should testify, the Court will take steps to ensure that the testimony is taken in a manner that protects the child's physical, mental and emotional well-being, by such methods as taking video testimony or conducting an in chamber interview with the judge that excludes the parent, guardian, or custodian. If a child's testimony is taken by a process that excludes a party, the party's representative must be allowed to hear the testimony. A recording of the testimony shall be made available to the parties and made a part of the record.

(iii) Cross Examination. Any party shall be allowed to cross-examine any witness except as set out in Chapter VI(E)(2)(b).

(c) *Burden of Proof*. The petitioner has the burden of proving beyond a reasonable doubt the bases for termination.

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(d) *Order.* If the Court finds that the petitioner met its burden of proof, the Court shall issue an order terminating the parent's parental rights.

### (F) EFFECT OF TERMINATION ORDER.

(1) Parental Rights Terminated. An order terminating parental rights permanently terminates all rights of the parent, except as provided below, and the parent will have no standing to appear in any legal proceeding concerning the child, with the exception of an appeal. The rights of one parent may be terminated without affecting the rights of the other parent.

(2) Enrollment and Inheritance Status. No termination of parental rights shall affect a child's enrollment status as a member of the Nation, a child's degree of blood quantum, or a child's rights of inheritance under Tribal law from biological parents who die intestate.

(3) Child's Relationship with Extended Family. A child's relationship with extended family members shall be as allowed by the adoptive parents, or as ordered by the Court if such relationship is determined to be in the best interests of the child.

(G) FINAL ORDER. An order terminating parental rights shall be a final order for purposes of appeal.

## CHAPTER VII – ADOPTION

(A) POLICY. It shall be the policy of the Nation to prefer adoptions that maintain and preserve the child's connection to the Nation and the child's family.

(B) WHO MAY BE ADOPTED. A child who is subject to the jurisdiction of the Court, and whose living parent's or parents' parental rights have been terminated or relinquished may be adopted under this Chapter VII of this Code.

### (C) ADOPTION PROCEDURES.

#### (1) Filing of Petition.

(a) *Who May File for Adoption.* Any adult may file a petition for adoption.

(b) *Contents of a Petition for Adoption.* A petition for adoption shall be signed under oath by the petitioner(s) and shall contain the following information:

(i) The full name, residence, date of birth, sex, and tribal affiliation of the child who is the subject of the petition;



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- (ii) The names of the persons with whom the child has lived and the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
- (iii) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians;
- (iv) The full name, residence, date of birth, tribal affiliation, and occupation of the petitioner(s) and statement of relationship to the child;
- (v) A statement by petitioner(s) of the desire that a parent-child relationship be established between petitioner(s) and the child;
- (vi) An agreement, where appropriate, to maintain ties with the child's extended family and the Nation; and
- (vii) A citation to the specific section of this Code giving the Court jurisdiction over the proceedings.

(2) Parties. The parties in an adoption proceeding are as follows: the petitioner(s), any parent whose rights have not been terminated, any guardian, any person or agency having legal custody of the child, and any person acting in loco parentis to the child.

(3) Summons. The parties shall be served as provided by law with a copy of the petition, and with a summons as required by law. The summons shall contain a statement to the effect that an adoption of the child is proposed, and that if the party fails to appear at the time and place specified in the summons, the Court may approve or deny the adoption and take any other action that is authorized by law.

(D) INVESTIGATION AND REPORT. For adoptions arising out of a dependency case, DSS shall conduct a home study of any potential adoptive parent, and shall prepare and submit a written report to the Court prior to the adoption hearing.

(1) The report shall address the suitability and character of the petitioner(s), including, but not limited to, the financial, physical, and general background of the petitioner and his/her home.

(2) The report shall reflect contact with appropriate agencies and individuals who have relevant knowledge and information.

(3) A copy of the report shall be served on the parties at the same time it is presented to the Court.

(E) ADOPTION HEARING.

(1) Purpose. The Court shall conduct an adoption hearing to determine if it is in the child's best interest to be adopted by the petitioner(s).

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(2) Commencement. Unless continued by the Court pursuant to Chapter VII(E)(3), an adoption hearing shall commence within ninety (90) days of the filing of a petition for adoption.

(3) Continuances. Continuances of an adoption hearing may be granted by the Court upon stipulation of the parties or other good cause shown.

(4) Adoption Hearing Procedure.

(a) *Parties Required to Appear*. All parties must be present at the adoption hearing unless specifically excused by the Court. If a party fails to appear, the Court may act on the petition for adoption in that party's absence.

(b) *Children*. Absent contrary court order, the consent of any child twelve (12) years of age or older shall be necessary under this Chapter VII. Consent must be knowing, voluntary, and signed before the Court.

(c) *Findings*. The Court shall determine the following:

(i) Whether the best interests of the child will be promoted by the adoption;

(ii) Suitability of the prospective adoptive parent(s);

(iii) What cultural components and Tribal connections will be fostered or protected by the adoption; and

(iv) What arrangements for continued contact with the biological parents and family, if any, have been agreed upon through mediation conducted in conjunction with a termination of parental rights or relinquishment proceeding.

(F) ORDER ENTERING DECREE OF ADOPTION. Following a hearing in which the Court determines that the petition for adoption should be granted, the Court shall issue an order entering decree of adoption. The order shall address the following:

(1) That the child is eligible and suitable for adoption, and that the adoptive parent(s) is capable of providing proper care for the child;

(2) Rights and liabilities of the natural parents (including inheritance);

(3) Visitation, if any, of parties or others;

(4) Cultural and Tribal connections that will be preserved under the adoption;

(5) Provisional placement, if any, prior to final decree;

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- (6) Where the adoption includes a signed agreement between the adoptive parent(s) and the biological parent(s), the Court shall incorporate the agreement into its order and shall enter an order compelling compliance with the agreement and providing judicial review in the event of noncompliance;
- (7) That the name of the adopted child shall be the surname of the person(s) by whom he/she is adopted, unless otherwise requested by the petitioner;
- (8) That the child is entitled to the same rights as a biological child of the adoptive parent(s);
- (9) That the adoptive parents have no authority to relinquish the child's membership in the Nation;
- (10) The effective date of the decree of adoption; and
- (11) That a decree of adoption has been prepared and is attached to the order and will be provided by the Court to the state vital statistics office.
- (G) **FINAL ORDER.** An order denying a petition for adoption shall be considered a final order for the purposes of appeal.
- (H) **CHILD'S REVOCATION OF CONSENT.** Any child twelve (12) years of age or older may withdraw consent for any reason at any time prior to the entry of a decree of adoption. After the entry of a decree of adoption, the child may withdraw consent upon a showing that consent was obtained through fraud, duress, or coercion, and may petition the Court to vacate the decree of adoption. No adoption which has been effective for two (2) years or more may be invalidated under this Chapter VII(H).
- (I) **ADOPTION RECORDS.** All records, reports, proceedings and orders are confidential, permanent records of the Court, and shall be sealed, and shall not be available for release or inspection by the public, except by order of the Court with good cause shown.
- (J) **ADOPTIVE BIRTH CERTIFICATE.** Within five (5) days of the issuance of the decree of adoption, the Court shall mail the decree of adoption to the state vital statistics office which issued the original certificate of birth for the child to provide notification that the adoption has taken place. The decree of adoption shall set forth the full name, sex, date and place of birth, and names of biological parents, in order that a new record of birth in the child's new name and with the name or names of the adoptive parent(s) may be recorded.

### **CHAPTER VIII – EMANCIPATION**

- (A) **REQUIREMENTS.** The Court in its discretion may enter a decree of emancipation for a child if the Court finds that the best interest of the child will be served by emancipation. Emancipation may occur pursuant to a petition for emancipation submitted by the child, or the

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child's legal counsel or GAL, or as a dispositional alternative in a dependency case under this Code, if the child wishes to be free from parental control and protection and no longer needs that control and protection and all of the following exist:

- (1) The child is sixteen (16) years of age or older;
- (2) The child has demonstrated the ability to care for and support himself/herself;
- (3) The child understands the consequences of being free from parental control and protection; and
- (4) The child has an acceptable plan for independent living.

(B) CONTENTS OF A PETITION FOR EMANCIPATION. A child or a child's legal counsel or GAL may apply to the Court for a decree of emancipation by filing a petition for emancipation setting forth the following:

- (1) The full name, residence, date of birth, sex, and tribal affiliation of the child who is the subject of the petition;
- (2) The names of the persons with whom the child is living;
- (3) The names, residences, and tribal affiliation of the child's parents, guardians, or custodians;
- (4) A declaration by the child of his/her financial stability;
- (5) A declaration by the child of his/her ability to manage his/her affairs;
- (6) The child's plan for supporting himself/herself; and
- (7) A declaration by the child of his/her desire to be emancipated.

(C) NOTICE. Before the petition for emancipation is heard, notice of the date and time of the emancipation hearing shall be given to the child's parent(s), guardian, or custodian.

(D) EMANCIPATION HEARING. The Court shall conduct an emancipation hearing on the child's petition for emancipation within thirty (30) days of the date on which it is filed or as soon as possible thereafter. At the emancipation hearing, the Court shall advise the child of the civil and criminal rights and liabilities of an emancipated minor. This advice shall be recited in the decree of emancipation.

(E) CONSIDERATIONS. In making its determination as to whether the best interests of the child will be served by emancipation, the Court shall take into consideration the following factors:

- (1) Whether the parent of the child consents to the proposed emancipation;

(2) Whether the child has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision; and

(3) Whether the child has demonstrated to the satisfaction of the Court that the child is sufficiently mature and knowledgeable to manage the child's affairs without parental assistance.

(F) ENTRY OF DECREE OF EMANCIPATION. If the Court accepts the child's petition for emancipation, it shall immediately enter a decree of emancipation. The emancipated child shall be given a copy of the decree of emancipation. The decree of emancipation shall instruct that the child obtain a state driver's license or identification card through the department of transportation so that the department of transportation can make a notation of the child's emancipated status on the license or identification card.

(G) EFFECT OF EMANCIPATION.

(1) A decree of emancipation shall serve only to:

(a) Recognize the child as an adult for the purpose of contracting and conveying, establishing a residence, suing and being sued, and recognize the child as an adult for purposes of the criminal laws of the Nation. An emancipated child shall be subject to the jurisdiction of adult courts for all criminal offenses.

(b) Terminate the parent-child relationship.

(2) A decree of emancipation shall not affect any age qualification for purchasing alcoholic liquor or the requirements for obtaining a marriage license.

(3) The emancipated minor shall remain subject to the Nation's laws and rules governing the disbursement of Tribal monetary benefits.

## **CHAPTER IX – VOLUNTARY TEMPORARY GUARDIANSHIP**

(A) PROCEDURE. A parent or guardian of a child may voluntarily delegate to another person the temporary guardianship of a child by a notarized power of attorney.

(B) TIME FRAME. A voluntary temporary guardianship shall not exceed twelve (12) months in length and may be terminated at any time by the parent or guardian executing the power of attorney, or by lawful order of a court of competent jurisdiction.

(C) LEGAL STATUS. Unless otherwise specified in the notarized power of attorney, a temporary guardian shall have custody, and be responsible for all care, of the child and the care and management of the child's property during the term of the voluntary temporary guardianship, including the authority to enroll the child in educational institutions and to consent

to the medical care and treatment of the child. A temporary guardian shall not have the power to consent to marriage or adoption of the child.

**CHAPTER X – MISCELLANEOUS**

- (A) **SOVEREIGN IMMUNITY**: Nothing in this Code shall be deemed to waive the sovereign immunity of the Nation.
- (B) **SEVERABILITY**: If a court of competent jurisdiction finds any provision of this Code to be invalid or illegal under applicable federal or Tribal law, such provision shall be severed from this Code and the remainder of this Code shall remain in full force and effect.
- (C) **EFFECTIVE DATE**. This Yavapai-Apache Nation Children and Families Code shall be effective as of the date specified in the Tribal Council Resolution adopting the Code.
- (D) **REPEAL OF PRIOR LAW**. To the extent that any prior motion, resolution, ordinance, code, act, or other Tribal law conflicts with any provisions of this Code, the provisions of this Code shall control and the conflicting provision(s) are hereby repealed.