



Title V – Children’s Code

Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice

“Children’s Code”

**Adopted May 9, 2005, by Tribal Resolution 2005-11,
Amended March 24, 2008, by Tribal Resolution 2008-17
Codified as Title V of the A-C, C.C.J. on January 24, 2011 by
Tribal Resolution #2011-08, Revised to Supersede on
December 29, 2014 by Tribal Resolution #2014-95,
Revised on May 17, 2016 by Tribal Resolution #2016-44**

Title V – Children’s Code is comprised of Tribal statutes relevant to minor children enrolled and/or eligible for enrollment with the Alabama-Coushatta Tribe or as otherwise provided

Table of Contents

CHAPTER 1.CHILDREN'S CODE		6
Sec. 101	Jurisdiction	6
Sec. 102	Policy	6
Sec. 103	Purpose.....	7
Sec. 104	Interpretation of this Code.....	7
Sec. 105	Definitions	7
Sec. 106	Taking a Child into Protective Custody	13
Sec. 107	Ex Parte Order; Application to Court	14
Sec. 108	Petition to Court.....	14
Sec. 109	Release From Protective Custody; Social Study.....	15
Sec. 110	Initial Hearing	16
Sec. 111	Guardians Ad Litem	17
Sec. 112	Cultural Contact.....	17
Sec. 113	Transfer of Juvenile Proceedings.....	17
Sec. 114	Fact-Finding Hearing.....	18
Sec. 115	Dispositional Hearings.....	18
Sec. 116	Confidentiality.....	21
Sec. 117	Expungement of Records.....	21
Sec. 118	Periodic Review For Delinquents And Status Offenders In Approved Facilities	22
Sec. 119	Petition for Return of Dependent Child Removed From Parent or Custodian	22
Sec. 120	Periodic Review for Abused, Neglected, or Abandoned Child Removed From Parent or Custodian	23
Sec. 121	Permanency Planning	23
Sec. 122	Final Order.....	28
CHAPTER 2.TERMINATION OF PARENT-CHILD RELATIONSHIP		28
Sec. 201	Purpose of Termination of the Parent-Child Relationship	28

Sec. 202	Who May File A Petition.....	28
Sec. 203	Contents of the Petition.....	28
Sec. 204	Social Study Prior to Hearing	29
Sec. 205	Notice.....	29
Sec. 206	Hearing.....	30
Sec. 207	Order.....	30
Sec. 208	Disposition.....	30
Sec. 209	Effects of Termination Order	30
Sec. 210	Duty to Report Child Abuse, Neglect and Abandonment.....	30
Sec. 211	Contents Of Report.....	31
Sec. 212	Immunity for Good Faith Reports; Penalties for Reports Made in Bad Faith	31
Sec. 213	Failure To Report.....	31
Sec. 214	Investigation of Reports.....	31
Sec. 215	Recordkeeping.....	32
Sec. 216	Confidentiality.....	32
CHAPTER 3. PROCEDURES OF THE ALABAMA-COUSHATTA TRIBE OF TEXAS WITH RESPECT TO THE INDIAN CHILD WELFARE ACT		32
Sec. 301	Intent of this Chapter	32
Sec. 302	Definitions	32
Sec. 303	Receipt Of Referrals	32
Sec. 304	Duties of The Clerk of the Court.....	33
Sec. 305	Investigation of Referral by Chief Judge or Designee	33
Sec. 306	Determination of Tribal Membership Status, Domicile and Residency, and Status as Ward of the Tribal Court.....	33
Sec. 307	Best Interests of the Child	34
Sec. 308	Recommendation of the Chief Judge	34
Sec. 309	Final Decision Regarding Transfer of Jurisdiction.....	34
Sec. 310	Notification of Parents and Indian Custodian.....	34
CHAPTER 4. ADOPTION.....		35

Sec. 401	Purpose of Adoption.....	35
Sec. 402	Persons Who May File a Petition to Adopt.....	35
Sec. 403	Petition.....	35
Sec. 404	Investigative Report	36
Sec. 405	Termination of Parental Rights; Relinquishment and Consent to Adoption	36
Sec. 406	Relinquishment and Consent	37
Sec. 407	Revocation of Relinquishment or Consent	37
Sec. 408	Form of Service.....	37
Sec. 409	Failure to Comply With Notice Requirements.....	37
Sec. 410	When Written Consent to an Adoption is Not Required	37
Sec. 411	Hearing on Adoption	38
Sec. 412	Order Final Decree of Adoption	38
Sec. 413	Adoption Records	39
Sec. 414	Contents of Adoption Order.....	39
Sec. 415	Name and Legal Status of Adopted Minor	39
Sec. 416	Cultural Contact.....	39
CHAPTER 5	GUARDIANSHIP	39
Sec. 501	Definition of Guardian.....	39
Sec. 502	How Guardians Are Appointed.....	41
Sec. 503	Types of Guardianship	41
Sec. 504	Guardianship of Property	41
Sec. 505	Permanent Guardianship.....	41
Sec. 506	Temporary Guardianship	42
Sec. 507	Who May File Guardianship Petition	42
Sec. 508	Contents of Guardianship Petition	42
Sec. 509	Guardianship Report	42
Sec. 510	Management of Property	43
Sec. 511	Incompetent Persons	44
Sec. 512	Termination of Guardianship.....	44

Sec. 513	Disbursement of Per Capita Payments	45
CHAPTER 6. FOSTER CARE		45
Sec. 601	Objectives.....	45
Sec. 602	Scope.....	46
Sec. 603	Restrictions	46
Sec. 604	Placement Priorities	46
Sec. 605	Least Restrictive Setting.....	46
Sec. 606	Standards for Foster Care.....	47
Sec. 607	Foster Parent Screening and Training.....	47
Sec. 608	Services to be Provided by Foster Parents	47
Sec. 609	Rights of Foster Care Providers	48
Sec. 610	Responsibilities of Foster Care Providers	49
Sec. 611	Rights of Child’s Parents or Guardians	49
Sec. 612	Responsibilities of Child’s Parents or Guardians.....	50
Sec. 613	Motor Vehicles	50
Sec. 614	Licensure.....	50
Sec. 615	Types of Licenses	51
Sec. 616	Renewal of Foster Home License.....	51
Sec. 617	Licensed Capacity	52
Sec. 618	Appeals.....	52

CHAPTER 1. CHILDREN’S CODE

Sec. 101 Jurisdiction

The Alabama-Coushatta Tribe of Texas Court (“Tribal Court”) shall have original jurisdiction over all matters involving children as defined herein. The Tribal Court shall have jurisdiction, with respect to the matters addressed in this Children’s Code, over all Indian children residing or domiciled within the the territoryf the Alabama-Coushatta Tribe of Texas,as that term is described in Article I Section I of the Tribe’s Constitution or who are wards of the Court. The Tribal Court may, or if compelling reason is demonstrated, decline transfers of jurisdiction from any other court pursuant to Title I, Section 101(b) of Pub. Law 95-608, the Indian Child Welfare Act, 25 U.S.C. § 1911(b), over any case involving an Alabama-Coushatta Indian child. Except as otherwise provided by law, the Tribal Court shall have jurisdiction in proceedings under the authority of this title:

- (A) Concerning any child in need of supervision;
- (B) Concerning any child who is neglected or dependent; or
- (C) Concerning any transfer proceeding;
- (D) To determine the legal custody of any child or appoint a guardian of the person or legal custodian of any child who comes within the Tribal Court’s jurisdiction;
- (E) For the issuance of orders of support of minor children;
- (F) To determine the parentage of a child and to make an order of support in connection therewith;
- (G) For the adoption of a child and to make an order of support in connection therewith; or
- (H) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Tribal Court’s jurisdiction.¹

Sec. 102 Policy

The Alabama-Coushatta Tribe of Texas acknowledges that there is no resource more vital to the continued existence and integrity of the Tribe than its children and that the Tribe has a direct interest in protecting the Alabama-Coushatta children who are members or are eligible for membership.

The Alabama-Coushatta Tribal Council hereby declares that it is the policy of the Tribe to protect the best interests of the Alabama-Coushatta children and to promote the stability and security of the Tribe and unity of families by the establishment of these minimum standards for the removal of the Alabama-Coushatta children from their families and the placement of such children in guardian or adoptive homes which will be consistent

¹ Revised on May 17, 2016 by Tribal Resolution #2016-44

with the values and customs of the Alabama-Coushatta Tribe. Furthermore, it is mandated that any individual or entity involved in such proceeding shall make every effort to reunify the child(ren) and family in the best interests of the child, family and community before permanently placing a child in guardian or adoptive homes.

Sec. 103 Purpose

It is the purpose of the Alabama-Coushatta Children’s Code to:

- (A) Preserve the unity of the family;
- (B) Provide for the full consideration of religious and traditional preferences and practices of families during the disposition of a matter;
- (C) Provide for the care, protection, mental and physical development of the children of the Alabama-Coushatta Tribe;
- (D) Ensure that a program of supervision, care and rehabilitation will be available to those children who come within the provisions of the Code;
- (E) Achieve the foregoing purposes in a family environment whenever possible separating the minor from his parent(s) only when no alternative disposition is suitable to the child’s welfare or in the tribal interest of public safety; and
- (F) Provide fair procedures for enforcing this Code that recognize and protect the rights of the parties.

Sec. 104 Interpretation of this Code

This Code shall be interpreted pursuant to the above purpose and customs and traditions of the Alabama-Coushatta Tribe. Where any doubt arises as to these customs and traditions, the Court may request the advice of Alabama-Coushatta Chief Peacemaker familiar with these customs and traditions. [If none such exist, then the Court may use for guidance, appropriate Federal or State guidelines.]

Sec. 105 Definitions

- (A) **Abandoned Child.** A child whose parent or custodian is not identifiable or, if known, has made no reasonable effort to care for, or arrange substitute care for, the child for a period of six months or more.
- (B) **Abused Child.** A child who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of an individual inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse or molestation.
- (C) **Adoptee.** Any person who is a subject of an adoption petition.
- (D) **Adoptive Placement.** The permanent placement of an Indian child for adoption, including any actions resulting in a final decree of adoption.

(E) Application. Document by which persons who wish to become foster or adoptive parents request an assessment of their home and family and the issuance of a license. The document also authorizes the Alabama-Coushatta ICWA Program to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant’s qualifications. The application is an affidavit by which the applicant affirms that there are no willful misrepresentations in the application and that he/she will adhere to the regulations established by the Tribe during the time that a foster home license is in effect.

(F) Assessment. The process of collecting factual information and conducting interviews with applicants and other persons as deemed appropriate by the Alabama-Coushatta Tribe and of evaluating the information to make a recommendation that a home be licensed.

(G) Best Interests of the Child. A concept which contemplates the placement and supports necessary to contribute to the child’s emotional, physical, mental, spiritual and cultural well-being. The following non-exclusive list of factors may be considered in determining the Best Interests of the Child:

- (1) Continuing contact with the child’s extended Indian family and Indian Heritage;
- (2) Maintaining cultural contact;
- (3) Mentorship by and through extended family and/or tribe member(s);
- (4) Information in the case file;
- (5) Interviews with the child’s family or custodian, foster parents, if any, or other individual(s) with knowledge of the child and/or the case;
- (6) Child’s physical and mental vulnerabilities;
- (7) The magnitude, frequency and circumstances of the harm to the child;
- (8) The results of psychiatric and/or psychological evaluations;
- (9) The willingness and ability of the child’s family to effect positive and environmental changes within a reasonable period of time;
- (10) Whether there is a history of substance abuse by the child’s family or others who have access to the home;
- (11) Whether, in the case of child abuse, the perpetrator of the harm to the child is identified;
- (12) The availability of an adequate support system of an extended family, friends and/or other members of the tribe;
- (13) The wishes of the child’s family (need not be given controlling weight); and

(14) The wishes of the child where the child is of sufficient age (need not be given controlling weight).

(H) Beyond a Reasonable Doubt. A degree of certainty that a reasonable person would want to have when determining matters of utmost importance in his or her life; all reasonable doubt is removed; satisfied to a moral certainty.

(I) Child. Any Indian and/or natural or adopted child, stepchild, foster child, or legal ward, who resides in an Indian household on any lands now held, or hereafter acquired by or for the Tribe and is under eighteen (18) years of age.

(J) Clear and Convincing Evidence. Proof that results in a firm belief in the facts or in a reasonable certainty of the ultimate fact in controversy; proof that requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt; proof where the truth of the facts asserted is highly probable.

(K) Client. Any person who receives services from the Alabama-Coushatta Tribe.

(L) Cultural Contact. Individual who has knowledge of the culture and tradition of the Alabama-Coushatta Tribe and will assume responsibility for maintaining contact with the foster or adoptive parent or guardian to ensure that the subject child/children participate in the cultural activities of the Alabama-Coushatta Tribe.

(M) Custodian. A person or agency, other than a parent, to whom the legal custody of a child has been granted by the order of a court of competent jurisdiction or who is acting in loco parentis.

(N) Delinquent Child. A child who commits an act, which if committed by an adult, would be a criminal violation. Traffic offenses shall be deemed delinquent acts only if committed by an individual less than fifteen (15) years of age.

(1) This section shall also be applicable in the handling of juvenile matters occurring off reservation when:

(a) The act is also deemed delinquent under this subsection; and

(b) The case has been referred to the Tribal Police and/or Tribal Court for processing.

(O) Dependent Child. A child who, through a probable cause determination of the Court, has been deemed to be abused, neglected, or abandoned and has no parent willing or capable of parenting at the time of the Court’s determination.

(P) Detention. The temporary, secure custody of a child in facilities designated by the Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the juvenile has sight or sound contact with incarcerated adult offenders.

(Q) Diversion. A course of remedial action taken in matters arising under this Title designed to avoid formal court action and to serve the best interests of the child involved.

(R) Emergency Placement. A child under the age of eighteen (18) can be placed in the care and custody of a relative, extended family, or other approved emergency or foster care home.

(S) Extended Family. A family that extends beyond the nuclear family, including grandparents, aunts, uncles, and other relatives, who all live nearby or in one household.

(T) Foster Care. The temporary care of a child in a private home or institution approved by the Court as appropriate to provide such care.

(U) Foster Child. A child under the age of eighteen (18) who is placed in the care and custody of the Tribe either under the legal authorization of the Tribe or through voluntary placement agreement signed by the parent/legal guardian.

(V) Foster Home. A licensed home which is maintained by an individual who has the care and control, for periods of time exceeding twenty-four (24) hours, of a child who is deemed to be in need of substitute care by the Tribal Court, or other courts or the ICWA Program.

(W) Foster Home License. The document which bears the name or names and addresses of those to be foster parents for the Tribe. The license displays the gender, age, and number of foster children the licensee is authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the Chairman or of an individual and/or agency authorized by the Chairman to issue the license.

(X) Foster Parent. A person, including a relative of the child, licensed or certified by the Tribe to provide care for children in the custody of the Tribe.

(Y) Guardian ad litem. An individual approved and appointed by the Tribal Court to represent and protect the best interests of the child in a court proceeding.

(Z) Guardianship. The placement of an Indian child in the care of a legal guardian or pursuant to the customary and traditional laws of the Alabama-Coushatta Tribe.

(AA) Home study. The process which begins at the time a signed completed, pre-adoption, adoption, guardianship, and/or foster care application is received and ends with a written home study report and recommendation for certification or with a written denial of licensure sent to the applicant stating the reasons for denial.

(BB) Indian Child. A person under eighteen (18) years of age who is a member of the Alabama-Coushatta Tribe or federally recognized tribe, or who is eligible to become a member as verified by the Tribal Council or a federally recognized tribe.

(CC) Indian Child Welfare Act Program (ICWA Program). The ICWA Program, in corporation with the Social Services Program, will be the child placement department authorized by the Alabama-Coushatta Tribe to place an Indian child in a home for the purpose of emergency placement, foster care, pre-adoptive placement, guardianship or adoption.

(DD) Indian Custodian. Any Indian person who has legal custody of an Indian child under tribal law or custom or under state and federal law or to whom temporary physical care, custody, and control has been transferred by parent of such child.

(EE) Indian Family. A family in which at least one head of the household is a member of the Alabama-Coushatta Tribe or is eligible for membership.

(FF) Legal Guardian. Any individual designated by the Alabama-Coushatta Tribal Court who shall accept legal responsibility of a minor child.

(GG) Neglected Child. A child:

- (1)** Whose parent or custodian fails to provide the minimal care which a reasonably prudent parent would provide in the circumstances for the subsistence, education and welfare of the child; or
- (2)** Who has special physical or mental conditions for which the child’s parent or custodian neglects or refuses to provide a reasonable level of special care; or
- (3)** Whose parent or custodian is unable to discharge his or her responsibilities to and for the child and/or failed to make adequate provision for the physical and emotional needs of the child because of incarceration, hospitalization, or other physical or mental incapacity. A child shall not be deemed neglected if the reason for failing to provide adequate care for the child is the indigence of the parent or guardian. Minimal care shall mean provision of adequate food, clothing, shelter, medical care, and day-to-day supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community.

(HH) Parent. The biological parent of a child, or any person who has lawfully adopted a child. Parent shall not mean the unwed father of a child where paternity has not been established or acknowledged. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.

(II) Permanency Plan. A written plan stating the long-term goal of placing a child in a permanent home in the best interests of the child.

(JJ) Permanent Foster Care. The permanent placement of a child in a foster home or home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated.

(KK) Perpetrator. Any person known to have caused intentional physical, emotional or psychological harm to a child; any person known to have placed a child in danger by reason of neglect or recklessness; the alleged perpetrator as to the subject child in a particular matter currently before the Tribal Court; or any person convicted of either a misdemeanor or felony offense involving a child.

(LL) Pre-Adoptive Placement. The temporary placement of an Indian child in a foster home or institution after the voluntary relinquishment of parental rights or the termination of parental rights, but prior or in lieu of adoptive placement.

(MM) Probable Cause. Such facts and circumstances as would convince a reasonable person.

(NN) Relative Foster Home. A licensed home of an immediate or extended family member of a minor child, including godparents, to provide care for periods of time exceeding twenty-four (24) hours. Relative foster homes do not include placement in the home from which a child was removed or the home of any other related perpetrator.

(OO) Respite Foster Home. A temporary placement for child(ren) to visit for short periods of time when the foster child’s original foster parents are unable to provide care.

(PP) Social Service Program. The department authorized by the Tribe to oversee the comprehensive social welfare program of the Alabama-Coushatta Tribe including the placement of children into foster care or adoptive homes.

(QQ) Specialized Adolescent Foster Home. A home which is maintained by an individual who has studied, trained and has been approved and licensed by the Alabama-Coushatta Tribe to provide special adolescent foster care for up to four (4) children over the age of twelve (12).

(RR) Specialized Foster Home. A family foster home licensed by the Alabama Coushatta Tribe in which at least one adult has the required education, training or experience necessary to care for a child who has been certified by the Alabama-Coushatta Tribe as having special needs.

(SS) Status Offender.

(1) A child:

- (a) Who is subject to compulsory school attendance and is habitually truant from school without justification; or
 - (b) Who has committed an offense committable only by children; or
 - (c) Who is habitually disobedient to the reasonable and lawful commands of the parent or custodian; or
 - (d) Who habitually runs away from home; and
- (2) Who the Court determines is in need of rehabilitation.
- (3) This subsection shall also be applicable in the handling of juvenile matters occurring off reservation when:
 - (a) the juvenile is over fifteen (15) years of age and has been issued a citation by a State, County and/or City Law Enforcement Officer for a violation of the State Traffic Code; and/or
 - (b) the case has been referred to the Tribal Police and/or Tribal Court for processing.

(TT) Tribe. Means the Alabama-Coushatta Tribe of Texas.

(UU) Tribal Court. A court with jurisdiction over child custody proceedings and which was established and operated under the customary law, Constitution, and Ordinances of the Alabama-Coushatta Tribe.

(VV) Termination of Parental Rights. Shall mean any action resulting in the termination of the parent-child relationship.

Sec. 106 Taking a Child into Protective Custody

(A) Any federal, state, local or tribal law enforcement officer who has probable cause to believe a child is a delinquent child and is likely to commit other delinquent acts unless detained may take the child into detention. Status offenders shall not be taken into custody without a court order.

(B) Any licensed physician, law enforcement officer, Tribal/BIA Social Service Department, or ICWA Department designee or designated Tribal representative, who has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home, may place the child in foster care. Such child may be placed in a private home or temporary foster home or institution, but not in a facility where the child has sight or sound contact with:

- (1) Delinquents;
- (2) Incarcerated adult offenders, or

(3) Alleged delinquents or adult offenders who are currently facing formal charges.

(C) A child may be taken into protective custody without a court order by a law enforcement officer or the Social Services Department if such person has probable cause to believe the child is abused and neglected, and

(1) Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm; or

(2) The parent, guardian or custodian is absent and it appears from the circumstances that the child is unable to provide for his own basic necessities of life, and no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

(D) In no event shall a child be kept in custody without a court order for more than seventy-two (72) hours.

Sec. 107 Ex Parte Order; Application to Court

Any law enforcement officer, licensed physician, Tribal/BIA Social Services Department, or designated Tribal representative, who takes a child into custody without a court hearing shall:

(A) Immediately notify the Court and make a good faith effort to notify the parents of the child;

(B) Within twenty-four (24) hours submit to the Court a petition detailing the basis under Section 108. If the child is taken into custody on a weekend or holiday, the individual taking the child into custody shall have twenty-four (24) hours from the start of the first subsequent work day to file a petition in Court; and

(C) If grounds for removal are corrected, the Court in its discretion may dismiss the case, and the child may be returned to the parent by the person originally authorizing removal or the social service or child protective service worker.

Sec. 108 Petition to Court

The Social Service or ICWA Department may submit to the Court a petition to have any child subject to the jurisdiction of the Court declared dependent, delinquent, or a status offender. Such petition shall include:

(A) The name, address, and telephone number of the child and, if known, the child’s parent(s) or custodian;

(B) The basis for the Court’s jurisdiction;

(C) The reason(s) why the petitioner believes the child is dependent, delinquent, or a status offender; and

(D) Supporting credible evidence, including affidavits or written statements from social workers, other child care professionals, or members of the community.

The petition shall indicate whether the child is in protective custody.

Sec. 109 Release From Protective Custody; Social Study

(A) Where the child is in protective custody, the Court shall immediately direct either a tribal Social Services worker or designated tribal representative to review the petition, perform a preliminary investigation, and make a recommendation to the Court. The purpose of the investigation shall be to determine whether the preventive detention is still justified under the standards set forth in Section 106. Upon receiving a recommendation, the Court shall order the child released to the custody of the parent or custodian or order continued protective custody pending the initial hearing. The Court may also order continued protective custody pending the completion of the preliminary investigation.

(B) Social Study. Upon receiving a petition filed under Section 108 of this Title, the Court shall direct a tribal Social Services worker or designated tribal representative to conduct a social study with respect to the petition, to be submitted to the Court. Such study should be undertaken before the initial hearing, if possible, and in all cases before the fact-finding hearing. The social study shall include interviews of the child, parent(s) or custodian and an investigation of the conditions in the home.

(C) In the case of a child who is the subject of a petition based on abuse, abandonment, or neglect, the Court shall order that a licensed physician examine the child.

(D) Informal resolution.

(1) **Dependent children and status offenders.** The personnel authorized may recommend counseling, treatment, or such other disposition of abused dependent child or status offender which in the Social Service staff member’s opinion is in the best interests of the child. Such recommendations shall be implemented, without Court action, only upon the consent of the parent(s) or custodian with the knowledge that consent is voluntary. Upon receiving consent, the personnel authorized shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separates the child from the parent or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six months without written extension by the social services director.

(2) **Delinquent children.** In cases where the child has no previous record of delinquency and the child is alleged to have committed a

misdemeanor, the personnel authorized may recommend a diversion program, including counseling or treatment, in the best interests of the child. The Court may in its discretion approve such recommendation without a hearing. A child who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed six months without written extension by the social services director.

Sec. 110 Initial Hearing

(A) After receiving a petition, the Court shall immediately schedule an initial hearing, to be held immediately, if possible, and in all cases within seventy-two (72) hours of the time a child is placed in protective custody and within seven (7) days if the child is not in protective custody. The Court shall make all reasonable attempts to notify, by telephone or other means, the child and the child’s parent(s) or custodian of the time and place of the initial hearing and of the right of the parent, custodian and the child:

- (1)** To be appointed a Public Defender;
- (2)** To be present at the hearing; and
- (3)** To testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(B) Prior to the initial hearing, the Court shall order that the child be interviewed by a social worker, or other child care professional.

(C) The initial hearing shall be conducted informally and shall be closed to the public.

(D) If, after the initial hearing, the Court determines that there is probable cause to believe that the child is dependent or is delinquent or a status offender, the Court may temporarily order such disposition as is appropriate under Section 114(D) of this Title, pending a fact-finding hearing. Otherwise the case shall be dismissed.

(E) If, after the initial hearing, the Court determines that there is probable cause to believe that a child has been sexually abused, severely physically abused, or severely neglected, and the Court determined that a criminal investigation has commenced or will commence in the near future, the Court shall place the child. Such placement shall remain in force until the fact-finding hearing, at which time determined without regard to the provisions of this subsection. The Court shall have the discretion to implement this subsection according to the best interests of the child.

Sec. 111 Guardians Ad Litem

(A) Appointment. The Court in its discretion may appoint a guardian ad litem to represent the best interests of a child in any proceedings under Chapter 1 of this Title or any criminal proceedings where the child may be a witness. The guardian ad litem shall be at least twenty-one years of age, be of high moral character and integrity, and shall not have any special interest in the case that would prevent the guardian from representing the best interests of the child in an objective way. The Court may appoint the guardian ad litem at the initial hearing or at any other appropriate point during the proceedings, including before a petition is filed.

(B) Duties. The guardian ad litem shall meet and become acquainted with the child as soon as feasible after appointment. The guardian shall attend all court proceedings in the case, be present at interviews between the child and law enforcement officials, social workers, and other personnel who need to speak with the child in connection with the case, visit the child in any foster home or other court-ordered placement for the purpose of determining whether the placement is in the best interests of the child, and determine the views of the child with respect to placement and communicate all of these views to the Court. The guardian ad litem shall perform such other duties as the Court shall order in the best interests of the child.

(C) Terms and compensation. The guardian ad litem shall continue to serve until discharged by the Court and shall be compensated as determined by the Tribal Council.

(D) Notice of Court proceedings. The Court shall notify the guardian ad litem of any court proceeding at which his or her attendance is required. Notice shall be furnished as provided in Section 114(B) of this Title.

Sec. 112 Cultural Contact

The Court in its discretion may appoint a cultural contact as defined herein.

Sec. 113 Transfer of Juvenile Proceedings

(A) Upon motion of petitioner, or on its own motion, the Court may waive juvenile proceedings so that the child may be tried as an adult in the Tribal Court where:

- (1)** The child is sixteen (16) years of age or more and all remedies to rehabilitate the child have been exhausted; and
- (2)** The child has previously been found to be a delinquent.

(B) Factors to Consider. In determining whether the child should be tried as an adult, the Court shall consider the seriousness of the crime alleged to have been committed; the extent of the child’s prior delinquency record; the possibility of rehabilitation of the child; and the effects of prior attempts to rehabilitate the child.

(C) Notice. The Court shall provide the child and the child’s authorized representative with prior notice of a hearing on this issue, as provided in Section 307, and shall hold a hearing as provided in that section.

Sec. 114 Fact-Finding Hearing

(A) When a fact-finding hearing shall be held. The fact-finding hearing shall be held within forty-five (45) days of the initial hearing, unless the child or the child’s authorized representative requests a postponement.

(B) Notice. The Court shall serve prior written notice of the date, time, and place of the hearing upon the child, any person authorized to represent the child, and the parent or custodian. Notice shall be served in person or by certified mail, return receipt requested. The notice shall also specify that the child (and any other party served with notice) has a right to retain counsel or if applicable, counsel will be appointed through the Public Defender, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(C) Procedures. The child may be physically present at the fact-finding hearing in the Court’s discretion, except that in delinquency cases, the child must be present. Hearings shall be closed to the general public. The Court may require the testimony of a physician or child care expert based on an examination of the child. The child or his authorized representative, and the parent or custodian, may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at their own expense. The Court may call such witnesses as it deems necessary.

(D) Order. If the Court shall find, after the fact-finding hearing, that

- (1)** There is clear and convincing evidence that the child is dependent, or a status offender, or
- (2)** That there is evidence beyond a reasonable doubt that the child is delinquent, the Court shall determine the proper disposition of the child under Section 308 of this Title. Otherwise, the petition shall be dismissed.

Sec. 115 Dispositional Hearings

(A) When a dispositional hearing shall be held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing. Adequate time between the hearings, not to exceed fifteen (15) working days, shall be

allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the child.

(B) Notice. The Court shall provide the child and the child’s authorized representative with prior notice of a hearing on this issue, as provided in Section 114(B), and shall hold a hearing as provided in that section.

(C) Rights of the parties to the dispositional hearings. All rights provided at the fact-finding hearing shall be provided at the dispositional hearing. The child shall be physically present at the dispositional hearing if over ten (10) years of age in delinquency and status offender matters, unless the Court determines that the child would likely suffer severe emotional harm as a result of such presence. Otherwise the presence of the child shall be in the discretion of the Court. The Court in its discretion may confer with the child with only the guardian ad litem present in order to determine the child’s desires concerning disposition.

(D) Evidence. At the dispositional hearing the Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Court shall consider all relevant reports submitted at the hearing in making a disposition, including any reports prepared by the child and his or her representative.

(E) Disposition.

- (1) Best interests of child.** The Court shall make such disposition as is in the best interests of the child.
- (2) Dependent children.** If the Court has found a child to have been abused, neglected, or abandoned, the Court shall order one of the following placements, listed in order of preference:
 - (a)** Child returned to the custody of the parent or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the child in the home;
 - (b)** Child returned to the custody of a person related by blood or marriage to the child on or off the Reservation;
 - (c)** Child placed in the custody of an Indian foster home or institution;
 - (d)** Child placed in the custody of an approved institution on the Reservation provided that such institution cannot be used for delinquents as well; or
 - (e)** Child placed in the custody of a non-Indian foster care home or institution off the Reservation, provided that such home or institution shall not be used for delinquent children as well. This disposition requires the approval of the Tribal Council.

Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

- (f) The Tribal Council must approve by resolution any change in the placement priority.
- (g) In addition to the above listed dispositions, the Court may prescribe such counseling or treatment for the custodial parents as it deems necessary.

(3) Determining and changing placements.

- (a) In determining which of several relatives shall have placement of the child under subsection (2) the Court shall consider their ability to provide adequate food, shelter, medical care, love and emotional support, and day-to-day supervision. The Court may also take into account the desires of the child.
- (b) In order to change the placement of a child, the Court must hold another dispositional hearing in accordance with the standards set out previously. This requirement does not in any way limit the emergency removal procedures available under the Children’s Code.

(4) Delinquents or status offenders. If a child is found to be delinquent or a status offender, the Court shall order one of the following dispositions, listed in suggested order of preference:

- (a) Probation with such conditions as the Court deems necessary;
- (b) To the custody of an approved facility for delinquents or status offenders on the Reservation, provided that status offenders shall not have sight or sound contact with delinquents;
- (c) To the custody of an approved facility for delinquents or status offenders off the Reservation, provided that status offenders shall not have sight or sound contact with delinquents; or
- (d) Counseling, to eliminate the need for removal of the juvenile/status offender from the home.

(5) Term of commitment to facility. No order for commitment of any delinquent or status offender in an approved facility shall be for a term longer than six (6) months or extend beyond the child’s eighteenth (18th) birthday. If, after at least five (5) months of a six (6) month term

have elapsed, the child care professional in charge of the delinquent or status offender believes that the child needs further treatment and rehabilitation, he or she shall inform the Court and a hearing shall be held. If the Court finds that further treatment or rehabilitation is in the child’s best interests, the Court shall order a further commitment of up to six (6) months.

- (6) **Off-Reservation placement.** Off-Reservation placement shall be used only as a last resort, where no reasonable on-Reservation placement is available and requires concurrence by the Tribal Council. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

Sec. 116 Confidentiality

All hearings held pursuant to this Title shall be:

- (A) Conducted in closed and/or private chambers;
- (B) The names of all children involved shall not be published; and
- (C) A record of all proceedings shall be made and preserved with the Court. All Court records concerning children under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order to the following persons or agencies:

- (1) The minor upon reaching the age of eighteen (18);
- (2) The child’s guardian ad litem or other representative;
- (3) The child’s parent(s) or custodian and their representatives;
- (4) Authorized personnel; or
- (5) Any other person having a legitimate interest in the case and in the performance of their duties, as determined by the Court.

Sec. 117 Expungement of Records

Records of children involved in juvenile delinquency proceedings under this Title shall be physically sealed when the child reaches the age of eighteen (18) years. Upon reaching the age of eighteen (18) years, any child involved in proceedings under this Title may petition the Court to have such Court records destroyed. In any case of foster care, adoption or guardianship, the Court will ensure that such records are preserved for future review by a necessary party or by an approved order of the Court.

Sec. 118 Periodic Review For Delinquents And Status Offenders In Approved Facilities

(A) Every ninety (90) days, the Court shall hold a hearing to determine if the delinquent or status offender should remain in the approved facility to which he or she has been committed. If the Court finds that the child is not likely to commit additional delinquent acts or status offenses if released, the Court may release the child, subject to such terms and/or probation, as the Court deems necessary. The ICWA Program shall prepare, and any other party or person may prepare, a report to the Court for the 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 five (5) full days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation, if appropriate, and shall:

- (1) Summarize the history of the case and efforts made to offer services to the child and family;
- (2) Detail the child's and family's circumstances, including the case management and casework by the ICWA Program, since the prior Court hearing;
- (3) Detail the compliance made or not made by the parent, guardian, or custodian, the child and the ICWA Program.

(B) Modification of Dispositional Order may occur if the court determines that a substantial change in circumstances requires the modification of the order and that modification is in the best interests of the child.

Sec. 119 Petition for Return of Dependent Child Removed From Parent or Custodian

(A) The child, the child's guardian ad litem, parent or custodian may petition the Court for return of abandoned dependent child to the parent or custodian. Such a petition shall not be filed until three months after the order of disposition and only at six(6) month intervals thereafter. The petition shall be in writing, but need not be in any particular form. Grounds for return include a showing that the child would not be in danger of being abused, neglected or abandoned upon return to the parent or custodian.

(B) Upon receipt of a petition for return of a child, the Court shall order the authorized personnel to undertake a social study. If, after consideration of the petition and social study, the Court finds substantial evidence that the child may safely be returned to the home of the parent or guardian, the Court shall order and hold a hearing on the matter.

Sec. 120 Periodic Review for Abused, Neglected, or Abandoned Child Removed From Parent or Custodian

Whether or not a petition for return is filed, the Court shall hold a hearing every ninety (90) days to determine if the basis for the original removal still exists. If the Court finds that there is no longer clear and convincing evidence that grounds for removal exist, the Court shall order the return of the child to the parent or custodian. The ICWA Program shall prepare, and any other party or person may prepare, a report to the Court for the 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 five (5) full days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation, if appropriate, and shall:

- (A) Summarize the history of the case and efforts made to offer services to the child and family;
- (B) Detail the child's and family's circumstances, including the case management and casework by the ICWA Program, since the prior Court hearing;
- (C) Detail the compliance made or not made by the parent, guardian, or custodian and the ICWA Program.

Sec. 121 Permanency Planning

(A) **Permanent Plan Hearing Required:** Within twelve (12) months of 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 Periodic Review Hearing.

(B) **Notice:** All parties, including children over twelve (12) years of age and foster parents, shall be notified of their right to appear and be heard at the hearing. This notice may be contained within the prior periodic review order.

(C) **Permanency Planning Reports:** The ICWA Program shall prepare, and any other party or person may prepare, a report to the Court for the 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 five (5) full days before the hearing, except by order of the Court. The Program's report shall provide supportive documentation, if appropriate, and shall:

- (1) Summarize the history of the case and efforts made to offer services to the child and family;

- (2) Detail the child's and family's circumstances, including the case management and casework by the ICWA Program, since the prior Court hearing;
- (3) Detail the compliance made or not made by the parent, guardian, or custodian and the ICWA Program;
- (4) Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanent plan;
- (5) Give specific reasons why the particular recommended permanent plan has been chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanent plans which have not been chosen; and
- (6) If required by applicable federal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanent plan.

(D) Permanent Plans: The Court may approve by Court Order, but is not limited to, any of the following permanent plans:

- (1) **Return of Custody:** child will be returned to a parent;
- (2) **Termination of Parental Rights – Adoption:** a Petition for the Termination of Parental Rights be filed and that the permanent plan of the child shall be adoption;
- (3) **Legal Guardianship:** A Legal Guardian be appointed for the child;
- (4) **Permanent Foster Care:** The child be placed in Permanent Foster Care of named custodians;
- (5) **Long Term Foster Care:** The child be continued in Long Term Foster Care while the ICWA Program continues to identify and effect a permanent plan;
- (6) **Long Term Substitute Care:** The child, because of his/her special needs, be placed in Long Term Substitute Care, until such time as the child can accommodate a less restrictive plan; or
- (7) **Return of Custody:** The right to seek return of full legal and physical custody of the child and termination of Wardship.
- (8) **Termination of parental Rights – Adoption:** If parental rights are terminated the parent has no parental rights, except as specified in any termination order or adoption order.
- (9) **Legal Guardianship:** The right to seek visitation. The right to petition the Court no more than once a year for return of custody. At any

hearing on the 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 the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.

- (10) **Permanent Foster Care:** The right to seek visitation. The right to petition the Court no more than once a year for return of custody. At any hearing on the 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 the best interests of the child to be returned to parental care. A hearing on the Petition will be set only if the Petition states a prima facie showing in the Petition to the Court.
- (11) **Long Term Foster Care:** The right to visitation and to seek return of custody.
- (12) **Long Term Substitute Care:** Depending on the circumstances of the case, the right to seek visitation and/or return of custody.
- (13) **ICWA Program Obligations:** In any of the permanent plans identified above, the ICWA Program has the following obligations to the parent, guardian, or custodian:
- (14) **Return of Custody:** The ICWA Program is obligated to continue to provide services designed to result in the return of the child to parental custody.
- (15) **Termination of Parental Rights - Adoption:** Once a Petition to Terminate Parental Rights is filed the ICWA Program has no further obligation to offer services to the parent.
- (16) **Legal Guardianship:** The ICWA Program has no obligation to the parent, guardian, or custodian.
- (17) **Permanent Foster Care:** The ICWA Program is obligated to facilitate court-ordered visitation.
- (18) **Long Term Foster Care:** The ICWA Program is obligated to facilitate Court- ordered visitation, and to continue to offer other services only if return to parental care is the identified permanent plan.
- (19) **Long Term Substitute Care:** The ICWA Program is obligated to facilitate any Court-ordered visitation. Depending on the

circumstances of the case, the ICWA Program may or may not have any obligation to offer other services to the parent.

(E) Further Findings Required: In addition, the Court must enter written findings as follows:

- (1)** Whether the ICWA Program has made reasonable efforts to prevent removal of the child from parental care, and if removal could not have been prevented, whether the ICWA Program has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care. In support of its determination of whether or not reasonable efforts have been made by the ICWA Program, the Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;
- (2)** If necessary, whether the ICWA Program has engaged in concurrent planning to develop an alternative permanent plan for the child in the event that the parent, guardian, or custodian is unable to improve his or her circumstances sufficiently to retrieve custody of the child. The Court shall state specifically what those concurrent planning efforts have been. In the event that the concurrent planning is not developed, reasons why such planning is not necessary.
- (3)** The Court shall specify why permanent plans, other than the one selected, are not in the best interests of the child and that this is the least restrictive placement for the child; and
- (4)** In all cases in which the Court does not direct the filing of a Petition to Terminate Parental Rights, the Court shall specify compelling reasons why termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings must be supported by the ICWA Program case plan and record.
 - (a) Compelling Reasons Defined:** In determining whether compelling reasons exist for not terminating parental rights, the Court shall consider, but not be limited to, the following:
 - (i)** Tribal custom and tradition;
 - (ii)** Tribal policy, whether oral or written, whether by custom, resolution, or ordinance, disfavoring or prohibiting termination of parental rights;
 - (iii)** The relationship between the parent and child;
 - (iv)** The relationship between the child and the Tribe;

- (v) The best interests of the child, including, but not limited to, the health and safety of the child;
 - (vi) The special needs of the child;
 - (vii) The Tribe's interest in maintaining the parent-child status, and the child's contact with the Tribe; and
 - (viii) Any other relevant considerations.
- (b) **Conditions set by the Court:** In designating a permanent plan for the child, the conditions or restrictions which the Court may set upon a child, parent, guardian, custodian, or any other party shall be as set forth in Section 114 (D).
- (c) **Permanency Plan Review Hearings:** The Court shall review the permanent plan of a child at least annually as follows:
- (i) No Permanent Plan Review Hearing need be held for any child who has been adopted and may not be required for Legal Guardianships.
 - (ii) If the child is a Ward of the Court in the custody of a court appointed Legal Guardian, the Legal Guardian shall be responsible for submitting a report to the Court on a yearly basis. If the Court deems a Permanent Plan Review Hearing to be necessary, the Legal Guardian is responsible for appearing at and providing information for, the hearing.
 - (iii) In all other cases in which the child remains a Ward of the Court, the ICWA Program shall be responsible for submitting a report to the Court on a yearly basis and is responsible for appearing at, and providing information for a Permanent Plan Review Hearing of the child's plan.
 - (iv) The legal custodian shall be responsible for immediately notifying the Court of any changes in the child's placement or any substantial changes in the permanent plan.
 - (v) **Findings Required:** At the Permanent Plan Review Hearing conducted by the Court after the establishment of the permanent plan, the Court shall determine:
 - A. The continued appropriateness of the placement and the permanent plan;

- B. The extent of compliance with the permanent plan;
 - C. The adequacy of services provided to the child and custodian in the permanent placement; and
 - D. Whether other services are necessary to support the permanent plan, and if such services can be reasonably provided by the Court or the ICWA Program.
- (vi) **Administrative Review:** The Court may determine if the plan is to be reviewed formally or by the Community Review Board.

Sec. 122 Final Order

A Periodic Review or Permanent Plan Order is a final order for the purposes of appeal.

CHAPTER 2. TERMINATION OF PARENT-CHILD RELATIONSHIP

Sec. 201 Purpose of Termination of the Parent-Child Relationship

The purpose of this Chapter is to provide for termination of the parent-child relationship by court order to enable the child to be adopted by other adults. This section shall only be used in conjunction with a pending adoption proceeding.

Sec. 202 Who May File A Petition

(A) A parent, with the exception of a minor parent, may voluntarily file a petition for termination of the parent-child relationship.

(B) One parent may file a petition for termination of the parent-child relationship between the other parent and the child.

(C) A custodian, any other person having a legitimate interest in the child, or the Tribe, may file a petition for the termination of the parent-child relationship with respect to either or both parents.

Sec. 203 Contents of the Petition

The petition for termination of the parent-child relationship shall include:

- (A) The name and place of residence of the petitioner;
- (B) the basis for the Court’s jurisdiction;
- (C) the name, gender, date and place of birth, residence of the child and evidence of the child’s membership status;
- (D) the relationship of the petitioner to the child, if any;

- (E) the names, addresses, dates, and place of birth of the parents, if known;
- (F) where the child’s parent is a minor, the name and address of the child’s grandparents, if known;
- (G) the name and address of the person having legal custody or guardianship of the child, or acting in the place of the parent of the child; and
- (H) the grounds on which termination of the parent-child relationship is sought.

Sec. 204 Social Study Prior to Hearing

When the Court receives a petition under this Chapter it shall direct authorized tribal social services personnel or request that the appropriate personnel prepare a social study to be submitted to the Court prior to the hearing.

Sec. 205 Notice

(A) After a petition has been filed and the social study has been submitted to the Court, the Court shall set the time and place for a hearing. The Court shall give notice by summoning the petitioner, the child, the parents, custodian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall be served at least twenty (20) days prior to the hearing and shall provide the date, time and place of the hearing. Notice to the child and parent(s) shall specify that each shall have the right:

- (1) To be appointed a Public Defender;
- (2) To be present; and
- (3) To testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(B) Where service cannot be accomplished otherwise, service may be accomplished by publishing the summons, or an order of the Court directing the person to appear by a certain date, in either

- (1) Three (3) consecutive editions of a tribal or Reservation newspaper of general circulation; or
- (2) At least once each week for three consecutive weeks in a newspaper of general circulation published off the Reservation or in the county in which such person was last known to reside.

(C) Proof of service of the summons and petition, or of notice by publication, must be filed with the Court. Where notice is by publication, such proof shall be made by filing an affidavit of the publisher or printer of the newspaper, or the publisher or printer’s foreman, clerk, or bookkeeper, to which is annexed a copy of the summons or order of the Court. The affidavit shall specify the name of the newspaper in which publication was made and the dates upon which publication was made. In addition, a certificate by the Clerk of the Court,

specifying that a copy of the summons and petition was mailed to the person’s last known address not later than ten days after the date of the first publication, shall be filed. It is the petitioner’s responsibility to notify the Clerk when the first publication will occur so that the Clerk can mail the summons and petition.

(D) In the case of a voluntary petition by a parent to terminate his or her parental rights, the parent may waive, in writing, notice and appearance in court, provided the Court is assured that the parent understands the meaning and the consequences of the termination action. Where the parent is a minor, waiver shall not be effective.

Sec. 206 Hearing

The child may be physically present at the hearing, in the Court’s discretion. The hearing shall be closed to the public. The Court may require the testimony of a physician or childcare expert based on examination of the child. The child, the child’s authorized representative, and the parent may summon or produce such witnesses or evidence, as they may desire. The Court may call such witnesses, as it deems necessary.

Sec. 207 Order

The Court shall order a termination of parental rights if the Court finds, after the hearing, that there is evidence beyond a reasonable doubt that:

(A) The child has continuously or repeatedly been abused, neglected, or abandoned; and

(B) The services available cannot adequately reduce the likelihood of further abuse, neglect, or abandonment or there is no other way to protect the child from the risk of serious physical injury; or

(C) The parent whose rights are to be terminated consents to the termination and has not withdrawn that consent for over one year.

Sec. 208 Disposition

A child whose parent-child relationship has been terminated under this Title shall be placed with an adoptive parent in accordance with Chapter 4 of this Code.

Sec. 209 Effects of Termination Order

All rights, duties, and obligations between the parents and the child, including the rights of inheritance, are terminated by a termination order. A termination order shall have no effect upon the child’s tribal membership or quantum of Indian blood. A termination Order shall not be filed absent a concurrent Order of Adoption.

Sec. 210 Duty to Report Child Abuse, Neglect and Abandonment

(A) Any person, parent or child who has reasonable cause to suspect that a child is abused or neglected shall immediately make a report to the Alabama-Coushatta Child Welfare/Social Services Agency, the Alabama-Coushatta Tribal Police Department, or the Alabama-Coushatta Child Protection Team.

(B) Any physician, registered nurse, licensed practical nurse, community health representative, mental health professional, other health professional, staff of a residential care facility or group home, school principal, teacher or teacher’s aide, social worker, foster care worker, law enforcement officer, or juvenile officer having reasonable cause to believe that a child is being or has recently been abused, neglected, or abandoned shall immediately report such abuse to the Alabama-Coushatta Indian Child Welfare/Social Services, the Tribal Law Enforcement Department, or the Tribe’s Child Protection Team.

Sec. 211 Contents Of Report

The report may be made orally or in writing and shall contain as much of the following information as is known to the person making the report:

- (A) The name, address, and age of the child;
- (B) The name and address of the alleged perpetrator of the abuse; and
- (C) The nature and extent of the abuse, and any other pertinent information.

Sec. 212 Immunity for Good Faith Reports; Penalties for Reports Made in Bad Faith

Any person who in good faith makes a report pursuant to this Chapter or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report or testimony. Any person who makes a report pursuant to this Chapter in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report may be true, is guilty of a misdemeanor.

Sec. 213 Failure To Report

Any person failing to make a report as required by this Chapter, or who willfully prevents someone else from doing so, shall be subject to a civil charge and potential criminal charge as determined by the Tribe.

Sec. 214 Investigation of Reports

The official to whom the report is made shall inform the Tribal Court, Tribal Prosecutor, or designated tribal official. The Tribal Court shall assign the case for investigations to a tribal social worker, a court investigator, and/or a police officer as appropriate. In the alternative, the prosecutor may ask appropriate personnel, including the

State of Texas Child Protective Service or federal investigators, to conduct an investigation. If the investigation reveals probable cause that abuse, neglect, or abandonment has occurred, the procedures outlined in Chapter 1 of this Title shall be initiated.

Sec. 215 Recordkeeping

The designated tribal official shall keep a separate file for each report of abuse received under this Chapter. The file shall include a complete record of the complaint itself, the results of all investigations, a summary of any court proceedings and any other pertinent information.

Sec. 216 Confidentiality

Only the Tribal Court shall have access to the case file as needed for criminal proceedings against the offender or for proceedings under the Children’s Code.

**CHAPTER 3. PROCEDURES OF THE ALABAMA-COUSHATTA TRIBE OF TEXAS
WITH RESPECT TO THE INDIAN CHILD WELFARE ACT**

Sec. 301 Intent of this Chapter

The intent of this Chapter is to provide speedy and effective procedures for responding to notices and case referrals of child custody proceedings from state and tribal courts and agencies. It is the policy of the Alabama-Coushatta Tribe to accept transfers of cases and to intervene in cases where such transfer or intervention is in the best interests of the child.

Sec. 302 Definitions

For purposes of this chapter, the terms “child custody proceeding,” “Indian child,” and “Indian custodian,” shall have the definitions set forth in 25 U.S.C. §§ 1903 (1), (4), and (6).

Sec. 303 Receipt Of Referrals

The Tribal Secretary shall be the tribal official designated to receive notice from state and tribal courts and agencies of pending child custody proceedings involving an Indian child.

The Tribe shall make its best efforts to notify state courts and agencies in the local area that the Tribal Secretary has been so designated. If another tribal official receives a notice from a state or tribe concerning a pending child custody matter, that official shall

immediately give the notice to the Tribal Secretary. The Tribal Secretary shall keep a log by date and case name of all notices received. The Secretary shall then give a copy of the notice to the Clerk of the Court.

Sec. 304 Duties of The Clerk of the Court

The Clerk of the Court, upon receiving notice under Section 303 of this Title, shall make a record containing all essential information concerning the case, including:

- (A) The source of the notice;
- (B) The names and addresses of the child, parents, and Indian custodian, if different from the parents;
- (C) The date of the referral;
- (D) Any deadline for responding to the notice;
- (E) The type of proceeding in the referring court or agency; and
- (F) Whether a State or Tribe is requesting that the Alabama-Coushatta Tribe accept jurisdiction over the matter.

Sec. 305 Investigation of Referral by Chief Judge or Designee

Following proper docketing of the referral as described in Section 304 above, the Chief Judge or his designee shall initiate an investigation of the case. The purpose of the investigation is to determine whether the Tribe has jurisdiction and, if it does, whether the Tribe should seek transfer of the case or intervene in the case in the foreign court or agency.

The Chief Judge’s designees can include appropriate social services personnel.

Sec. 306 Determination of Tribal Membership Status, Domicile and Residency, and Status as Ward of the Tribal Court

(A) The initial objectives of the investigation shall be to determine whether the child involved is a member of the Alabama-Coushatta Tribe of Texas or eligible for membership, whether the child has domicile or residence on the Reservation, and whether the child is a ward of the Tribal Court. The child shall be considered a ward of the Tribal Court if the child was removed from the custody of his/her parent or Indian custodian under emergency removal or judicial proceedings of the Children’s Code.

(B) The child custody proceeding is in the Tribe’s exclusive jurisdiction and the Chief Judge shall immediately initiate the investigation process if the child is:

- (1) A member of the Tribe or eligible for membership; and
- (2) A resident or domiciled on the Reservation or is a ward of the Tribal Court.

(C) If the child is a member of the Tribe or eligible for membership, but neither has residence or domicile on the Reservation nor is a ward of the Tribal Court, the Tribe has

concurrent jurisdiction over the case and can either request transfer of the case, intervene in the proceeding in the foreign court or agency, or take no formal action.

(D) If the child is not a member of the Tribe or eligible for membership, then the Indian Child Welfare Act does not guarantee the right to have the case transferred or the right to intervene. Nonetheless, the Tribe can seek transfer of the case or to intervene in a case where it deems that such action would be in the best interests of the child as determined under the standards set forth in this Title.

Sec. 307 Best Interests of the Child

(A) The next objective of the investigation shall be to determine facts that will assist the Chief Judge in determining the course of action that is in the best interests of the child, taking into account that continuing contact with the child’s extended Indian family and Indian heritage is a strong component of that interest.

(B) The Judge shall take into account the wishes of the child’s family and the wishes of the child, where the child is of sufficient age, but these wishes need not be given controlling weight. Whenever possible, the investigation should include review of the case file and interviews with the parent(s) or Indian custodian, the child, the state or tribal social worker or other individual familiar with the case, and the foster parents, if any.

Sec. 308 Recommendation of the Chief Judge

After the investigation is complete, the Chief Judge shall recommend to the Tribal Council that the Tribe either request transfer of the case, seek to intervene in the case, or take no formal action. The Chief Judge shall make his or her best effort to forward the recommendation to the Council within ten working days of the Tribe’s receipt of the referral. The Chief Judge shall be responsible for requesting that the proceedings in the foreign court or agency be stayed so that the Tribe can complete its investigation.

Sec. 309 Final Decision Regarding Transfer of Jurisdiction

After receipt and review of the recommendations from the Chief Judge, the Tribal Council shall make a final decision on the action to be taken. Where the Council has decided to request transfer of jurisdiction or to intervene, the Chief Judge shall immediately file or cause to be filed an appropriate petition in the foreign court or agency.

Sec. 310 Notification of Parents and Indian Custodian

The Tribal Council shall notify the Indian child’s parents, and the Indian custodian where different from the parents, of any decision to request transfer of jurisdiction or to intervene. Notice shall be by certified mail, return receipt requested.

CHAPTER 4. ADOPTION

Sec. 401 Purpose of Adoption

The purpose of this Chapter is to protect the rights and promote the welfare of Indian children, natural parents and adoptive parents.

Sec. 402 Persons Who May File a Petition to Adopt

(A) Any adult person may file a petition to adopt a minor child who is a member of or eligible for membership in the Alabama-Coushatta Tribe. In the case of married persons maintaining a home together, the husband and wife shall both be the petitioners, except that if one of the spouses is the natural parent of the child to be adopted, the natural parent is not required to join in the petition.

(B) Any adult may file a petition to adopt an Indian minor residing within the Reservation or a minor tribal member not residing on the Reservation. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. Subsection 1911(b) and Chapter 4 of this Title. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition.

(C) In any case where all persons petitioning to adopt a child are not Indians, the petition shall not be granted unless no Indian is available who is willing to adopt the child.

Sec. 403 Petition

The Petition for adoption shall be filed with the Tribal Court. It shall be verified by affidavit by the adoptive parent(s) and shall contain:

(A) the full name, residence and place of birth, birth date and sex of the child, with attached documentary proof of the date and place of birth of the child to be adopted;

(B) the basis for the Court’s jurisdiction;

(C) documentary proof of the child’s membership status in the Alabama-Coushatta Tribe;

(D) the full name, residence, date and place of birth, occupation of the proposed adoptive parent(s), and statement of relationship of child;

(E) proof of voluntary relinquishment by the parent(s) or documented Termination of Parental Rights Judgment shall be filed with the Tribal Court;

(F) proof of parental consent, if one or both consent to the adoption;

(G) a full description and statement of value of all property owned, possessed or held in trust by and for the child; and

(H) a brief and concise statement of the facts which may aid the Court in its determination.

Sec. 404 Investigative Report

(A) Within thirty (30) days of the filing of a petition for adoption the Alabama-Coushatta Social Services Division shall prepare and present to the Court a report, or a supplemental report as ordered by the Court, as to the suitability of the child for adoption, as well as to the financial, moral and physical fitness and general background of the adoptive home and of the adoptive parent or parents.

(B) The Alabama-Coushatta Social Services Division shall contact appropriate agencies and individuals who may or do have relevant knowledge about the prospective adoptive parents and such contacts and relevant information shall be included in the report. The Alabama-Coushatta Social Services Division shall make written recommendations on the proposed adoption.

(C) The Court may also order or request other appropriate agencies or individuals to prepare and file written reports with the Court to aid in the Court’s determination of the suitability of the proposed adoption.

Sec. 405 Termination of Parental Rights; Relinquishment and Consent to Adoption

(A) **Termination of parental rights.** In an involuntary proceeding in a tribal court involving an Indian child, the party seeking adoption or termination of parental rights shall notify the parent or Indian custodian by registered mail with return receipt requested of the proceedings and their right of intervention. No termination of parental rights proceedings shall be held until at least ten (10) days after receipt of such notice by the parent or Indian custodian. The parent or Indian custodian shall, upon receipt of notice, be granted up to twenty (20) additional days to prepare for such proceeding.

(B) **Standard of proof.** The grounds for termination of parental rights of an Indian child shall be supported by evidence beyond a reasonable doubt that the continued custody of the Indian child by the Indian parent or Indian custodian is likely to result in serious emotional or physical harm to the Indian child.

Sec. 406 Relinquishment and Consent

(A) An Indian child domiciled within the Alabama-Coushatta Tribe. A Relinquishment of Parental Rights (“Relinquishment”) or a Consent to Adoption (“Consent”) of an Indian child who is domiciled within the Alabama-Coushatta Tribe shall be taken before the tribal judge.

(B) Form of Relinquishment or Consent. Relinquishment or Consent of an Indian child shall include the following:

- (1)** A certification by the judge that the terms and permanent consequences of the consent were explained and were understood by the parent or Indian custodian; and
- (2)** A certification by the judge that the parent or Indian custodian understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.

(C) Implied consent not permitted. A Consent or Relinquishment by an Indian custodian or parent of an Indian child shall not be implied.

Sec. 407 Revocation of Relinquishment or Consent

(A) Revocation of Relinquishment or Consent prior to entry of final decree. A Relinquishment or Consent of an Indian child may be revoked by the parent or Indian custodian of an Indian child for any reason at any time prior to the entry of a final decree. Upon such revocation, the Indian child shall be returned to the parent or Indian custodian.

(B) Revocation of Relinquishment or Consent subsequent to entry of final decree. Within two years after entry of the final decree of adoption of an Indian child in the Alabama-Coushatta Court, the Court may revoke a relinquishment or consent on the ground that the consent or relinquishment was obtained through fraud or duress. If the Court finds that the consent or relinquishment was obtained through fraud or duress, the Court shall vacate the decree of adoption and return the child to the parent or Indian custodian.

Sec. 408 Form of Service

A parent shall be personally served. All other persons shall be served by registered mail with return receipt requested.

Sec. 409 Failure to Comply With Notice Requirements

Failure to comply with notice requirements may result in an invalid adoption decree.

Sec. 410 When Written Consent to an Adoption is Not Required

Written consent to an adoption is not required if:

- (A)** The parent’s parental rights have been involuntarily terminated;

- (B) The parent has voluntarily terminated his parental rights; or
- (C) The parent has been declared incompetent.

Sec. 411 Hearing on Adoption

(A) **Purpose and time limit.** A hearing shall be held within ninety (90) days of receipt of an adoption petition for the purpose of determining if it is in the minor’s best interests to be placed with petitioners.

(B) **Procedure at hearings.** The adoptive parent or parents shall appear personally at the hearing. At or before the hearing, any biological, adoptive or acknowledged parent who is consenting to the adoption must appear personally before the Judge, in open Court so that the Court can determine the voluntariness and understanding with which the consent was given. All other persons whose consent is necessary to the adoption shall be duly notified and may appear in person.

(C) The Judge shall examine all persons appearing as to the suitability of the child for adoption, the validity of the consent to adoption, and financial, moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption.

Sec. 412 Order Final Decree of Adoption

(A) The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of providing the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.

(B) Adoptive Placement Options, listed in order of preference:

- (1) a member of the child’s extended family;
- (2) other members of the child’s tribe;
- (3) other Indian families, which shall be approved only by the Alabama-Coushatta Tribal Council;
- (4) non-Indian families, which shall be approved only by the Alabama-Coushatta Tribal Council; or
- (5) The Tribal Council must approve by resolution any change in the placement priority.

(C) **Granting the petition.** If the Court is satisfied that it is in the best interests of the child to grant the petition, the Court may enter a final decree of adoption.

(D) **Denying the petition.** If the Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied. The Court may request

the Tribal Social Services or the agency authorized to provide such services to assist in the child’s placement and care.

Sec. 413 Adoption Records

(A) All records, reports, proceedings and orders in adoption cases are confidential records of the Court and shall not be available for release to or inspection by the public. Upon request for and approval of the Court, such records, reports, proceedings and orders shall be made available to Bureau of Indian Affairs for use in fulfilling authorized functions.

(B) Upon petition of an adopted person who has reached the age of eighteen (18), for good cause shown, the Court shall release to the adopted person the information contained in such adoption records, reports, proceedings and orders.

Sec. 414 Contents of Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, that the adoptive home is adequate, and that the adoptive parents are capable of providing proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence presented at the hearings. A true and correct copy of each adoption order shall be filed with the Clerk of the Court.

Sec. 415 Name and Legal Status of Adopted Minor

Minors adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights as natural children or heirs of the persons adopting them.

Sec. 416 Cultural Contact

In the event adoption of a minor is granted to non-Indian parent(s), as part of the order of adoption, the Court shall appoint a cultural contact, as that term is defined herein, to ensure the minor’s continued participation in the cultural and traditional activities of the Tribe.

CHAPTER 5 GUARDIANSHIP

Sec. 501 Definition of Guardian

(A) A guardian is an adult appointed to take care of the person or property of another. A ward is a person placed under the protection of a legal guardian. The guardian

must exercise the highest standard of care for the ward, and is subject to supervision by the Tribal Court.

(B) The Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of either children under the Court’s jurisdiction or incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child residing on the reservation as the Court may deem proper, and in cases of incompetent adults, the Court may cause notice to be given to the incompetent at least five (5) days before hearing the petition.

(C) If a child is under the age of fourteen (14) years, the Court may nominate or appoint their guardian. If the child is fourteen (14) years of age or older, the child may nominate their own guardian who, if approved by the Court, must be appointed accordingly. If the guardian nominated by the child is not approved by the Court, or if the child resides outside of the reservation, or if, after being duly cited by the Court, the child neglects for ten (10) days to nominate a suitable person, the Court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

(D) When a guardian has been appointed by the Court for a child under the age of fourteen (14) years, the child, at any time after the child attains that age, may nominate their own guardian, subject to the approval of the Court. A guardian appointed may, as specified by the Court, have the custody and care of the education of the child and the care and management of their property until such child arrives at the age of eighteen (18), marries, is emancipated by the Court, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child’s Individual Indian Money Account and the child’s per capita distribution held for the child’s benefit in the minor’s trust fund. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

(E) The Court may order that the Court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Tribal Council. Said disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall

subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by the Tribal Code.

Sec. 502 How Guardians Are Appointed

(A) By Last Will and Testament. The last surviving parent or spouse of a minor or mental incompetent may designate, in a will, the guardian for the minor or mental incompetent. Upon determination by the Court that the will is valid, and that the person designated is willing to accept the responsibilities of guardianship, the Court shall appoint the person designated; provided that for good cause shown, the Court may decline to appoint the person designated.

(B) By Court appointment. Where a minor or mental incompetent is in need of a guardian, and no guardian is appointed pursuant to a valid will, the Court may appoint a guardian, to promote the best interests of the minor or mental incompetent.

(C) Hearing. In each case where a guardian is to be appointed, either by will or by Court appointment, a hearing shall be held following notice to all interested parties.

Sec. 503 Types of Guardianship

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent.

Sec. 504 Guardianship of Property

The Court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child’s or incompetent’s property if set forth in the written order.

Sec. 505 Permanent Guardianship

The Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather

than the competency or suitability of the parent(s). The parent(s) and the child’s extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

Sec. 506 Temporary Guardianship

The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interests of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child’s extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

Sec. 507 Who May File Guardianship Petition

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

Sec. 508 Contents of Guardianship Petition

The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (A) The full name, address and tribal affiliation (if any) of the petitioner;
- (B) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (C) The basis for the Court’s jurisdiction;
- (D) The relationship of the proposed guardian to the proposed ward;
- (E) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (F) The type of guardianship requested;
- (G) In the case of alleged incompetent persons, the grounds for incompetency under Section 511 below; and
- (H) A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest if guardianship of property is requested.

All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a Clerk of the Court.

Sec. 509 Guardianship Report

Upon the filing of a guardianship petition, the Court shall immediately request that the social services department or other qualified agency conduct a guardianship report on the proposed guardian and the proposed ward. The guardianship report shall contain all

pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

No determination can be made on a petition for guardianship until the report has been completed, submitted to, and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

Sec. 510 Management of Property

(A) In the event that any guardian shall receive any money or funds of any child or incompetent person during their term of office as guardian, before taking and receiving into custody such money or funds, the Court must require of such person a bond with sufficient surety to be approved by the Court and in such sum as the Court shall order, conditioned that the guardian will faithfully execute the duties of their trust, and the following conditions shall form a part of such bond without being expressed therein:

- (1)** To make an inventory of all the estate of the ward that comes into their possession or knowledge and to return the same within such time as the Court may order;
- (2)** To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge their trust in relation thereto, and also in relation to the care, custody and education of the ward; and
- (3)** To render, upon oath, an account of the property, estate and money of the ward in their hands and all the proceeds or interests derived there from, and of the management and disposition of the same, within three (3) months after their appointment, and at such other times as the Court directs, and at the expiration of their trust, to settle their accounts with the Court or judge or with the ward if the ward is of full age, or their legal representative, and to pay over and deliver all of the estate, monies, and effects remaining in their hands, or due from them on such settlement to the person who is legally entitled thereto.

(B) The funds of any child or incompetent must be used by their guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonably be afforded according to the income and estate of said ward.

(C) If determined to be appropriate by the Court, the written order may set forth that the child’s property may not be used for the child’s care, but rather to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the Court.

Sec. 511 Incompetent Persons

(A) **Definition of incompetent.** A person who is not capable of taking care of him or herself and/or not capable of managing their property by reason of mental incapacity of insanity.

(B) **Determination of incompetency.** In the case of an incompetent person, if after a full hearing and examination upon such petition, and upon further proof by the certificate of a qualified physician showing that any person is incompetent, as defined above, it appears to the Court that the person in question is incompetent, such Court must appoint a guardian of the person and estate within the powers and duties specified in this Chapter.

(C) **Management of property.** Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of their ward and the management of their estate until such guardian is legally discharged; the guardian must give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

(D) **Restoration to legal capacity.** A person who has been declared insane or incompetent or the guardian, or any relative of such person within the third degree or any friend, may apply by petition to the Court in which they were declared insane or incompetent, to have the fact of their restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent. The Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed; and at the hearing upon said petition, witnesses shall be examined and a determination made by the Court as to whether the petition should be granted and the insane or incompetent person be declared of sound mind and capable of taking care of themselves and their property, their restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

Sec. 512 Termination of Guardianship

(A) Upon motion of any person, or the Tribe, the Court may provide notice and a hearing on whether to terminate a guardianship. Grounds for termination shall include, but not be limited to, personal use by the guardian of the assets of the ward, failure to provide a reasonable level of care for the ward, or the marriage of a minor ward. No termination of the guardianship of a minor or incompetent person shall give rise, in any way, to any right to or distribution of that minor or incompetent person’s per

capita payment in any way other than as otherwise permitted pursuant to the Alabama-Coushatta Tribal Code.

(B) Guardianship, including guardianship of property, shall terminate automatically upon a minor reaching age eighteen (18), or upon a mental incompetent being adjudged by the Court to have *regained legal capacity*.

Sec. 513 Disbursement of Per Capita Payments

(A) A parent or guardian of the estate of a minor or incompetent person may petition the Tribal Court for the authority to expend or distribute an appropriate portion or all of the income or principal of the per capita payment of the ward being held for the benefit of that ward in accordance **with** the laws of the Tribe for the following purposes:

- (1) Support;
- (2) Maintenance;
- (3) Education;
- (4) General use; and
- (5) Benefit of the ward and the ward’s dependents.

(B) In **considering** any petition filed under Section 513(A) , the Court shall give due regard to:

- (1) The size of the ward’s estate;
- (2) The probable duration of any guardianship and the likelihood that the ward, at some future time, may be fully able to manage his or her affairs and the estate this has been conserved for him or her;
- (3) The accustomed standard of living of the ward and members of the ward’s household;
- (4) Recommendations relating to the appropriate standard of support, education and benefit for the ward made by a parent or guardian of the person, if any; and
- (5) The policy and requirements of the Tribe as enunciated herein.

(C) The Tribal Court shall establish such rules of procedure as may be necessary to administer this **Section**.

CHAPTER 6. FOSTER CARE

Sec. 601 Objectives

(A) To create tribal standards for the licensing of emergency, temporary, and long-term foster care placement homes in the Alabama-Coushatta Tribe which are consistent with the best interests and safety of children.

(B) To enable the Alabama-Coushatta Tribe to license and monitor foster care homes.

(C) To prescribe standards for the application and operation of emergency and foster care homes in the best interests of the child, ensuring the continuation of the child’s cultural, spiritual values, and family and extended family ties, while providing services that meet the individual needs of the child.

(D) To create standards for the approval of adoptive placements in the Alabama-Coushatta Tribe that are consistent with the best interests of the child standard.

Sec. 602 Scope

These regulations shall apply to all entities in the Alabama-Coushatta Tribe providing emergency care, foster care, or permanent foster care; individuals applying for or licensed as foster care parents and parents, guardians or Indian custodians whose child is in foster care.

Sec. 603 Restrictions

A child deemed to be in need of foster care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

Sec. 604 Placement Priorities

A foster child shall be placed according to the following placement priorities:

- (A) A member of the child’s extended family;
- (B) Other members of the child’s tribe;
- (C) Other Indian families, which shall be approved only by the Alabama-Coushatta Tribal Court; and
- (D) In a case where there is no Indian family available, non-Indian families, which shall be approved only by the Alabama-Coushatta Tribal Court.

Sec.605 Least Restrictive Setting

If a child cannot be returned to his parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs, if any, may be met. The child shall also be placed in a reasonable proximity to his/her home, taking into account any special needs of the child.

Sec. 606 Standards for Foster Care

(A) Safety. The house and premises shall be reasonably clean. The physical facilities of the home must present no hazards to the safety of a foster or adoptive child. The foster family must have access to emergency supplies and services in case of crisis.

(B) Location. The foster or adoptive home, in as much as possible, shall be located in an area reasonably accessible to schools, churches, recreational and health facilities, and other community facilities and resources as needed.

(C) Sleeping arrangement/personal space. The foster or adoptive child shall be provided adequate and appropriate sleeping space, consistent with his needs for privacy or personal contact. Space shall be provided for the child’s personal possessions. Exceptions to the sleeping arrangement requirements shall be made to permit placement of brothers and sisters together in the same foster home.

(D) Play space. Play space shall be available and free from hazards which might be dangerous to the life and health of the child.

Sec. 607 Foster Parent Screening and Training

All foster parent applicants shall participate in at least eleven (11) hours of approved pre-service training prior to being licensed and/or approved by the Alabama-Coushatta Social Services Department. Relative foster parent applicants may, as an alternative, participate in a minimum of six (6) hours of individualized pre-service training, which is focused on the specific needs of the child(ren) to be placed in the relative foster parent applicant’s home. All licensed foster parents shall participate in at least eleven (11) hours per household of Alabama-Coushatta approved training each year. The number of training hours required may be reduced to six (6) hours by the Program Director of ICWA for foster homes licensed to accept children birth to eighteen (18) months of age. The training received and a justification for the reduction of hours shall be documented by the Program Director in the foster home case record.

Sec. 608 Services to be Provided by Foster Parents

(A) Health services for foster children

(1) The foster parent shall observe daily the foster child’s behavior for signs of emotional or physical health problems. Any abnormalities shall be promptly reported to the Social Services Director and physician.

(2) Foster parents shall obtain medical attention for any sick or injured child.

(B) Education services for foster children

- (1) Foster parents shall enroll all school-aged foster children in school, as well as school activities for which the child indicates an interest.
- (2) Foster parents shall actively advocate for the foster child’s interests in the school setting, including seeking evaluations of the child’s abilities and placement in any special education programs appropriate to the child’s needs. Foster parents shall attend school conferences and activities when requested by the school. Foster parents shall report significant educational information to the Alabama-Coushatta Tribe.

Sec. 609 Rights of Foster Care Providers

(A) When a child is placed in foster care or presented to a foster care provider for the purpose of placement, the provider shall be informed of the child’s current service plan and the following minimum information regarding the child:

- (1) **Medical concerns.** Current diseases and illnesses, asthma, at risk for AIDS or other communicable diseases, at risk for or diagnosed with Fetal Alcohol Syndrome, all medications or medical treatment being given at time of placement, immunization records, and known allergies.
- (2) **Behavioral concerns.** History of hurting other children, hurting animals, destroying property, fire setting, running away, gang affiliation, sexual acting out, or sexual molestation of other children.
- (3) **Psychological counseling.** A history of psychological counseling; current psychological counseling, including how often, where, whether the foster care provider is expected to be involved, the reason for the counseling, and the projected length of treatment.
- (4) **Education information.** Last school attended, current grade level, enrollment in special education, or behavior disorder classes, copies of Individualized Education Plans (IEP) and history of truancy.
- (5) **Family of origin.** All known history of violence to others and information that may affect the foster parent’s ability to work with the family and provide care to the child.
- (6) **Placement history.** Any out-of-home placements for the child and the reasons for terminations or disruptions.
- (7) When information is not available at the time of placement, the information shall be given to the foster parent as it becomes known.

Sec. 610 Responsibilities of Foster Care Providers

Responsibilities of foster care providers shall be provided in the ICWA Program’s procedures manual and shall include, but not be limited to the following:

(A) The foster parent shall work closely with the Alabama-Coushatta and/or child placement agency staff to implement the service plan for each foster child, including approved visitation for each foster child.

(B) The foster parent shall not use words, language, gestures, either directed at the foster child or made within the foster child’s sight or hearing, which disparage the foster child, the foster child’s parents, relatives or the child’s cultural heritage. Foster children shall be encouraged to recognize and accept such strengths and achievements of the family as can honestly be identified.

(C) Any signs, symptoms or indications of physical or emotional harm, or risk of such harm to the child, shall be promptly reported by the foster care parent to the Alabama-Coushatta, specifically, the social services department.

(D) Licensed foster parents shall participate in continuing training in accordance with the Alabama-Coushatta’s policy and this Code.

(E) The foster parent shall discipline children in accordance with tribal law, protecting children from neglect, abuse, or exploitation. Prohibited forms of discipline include but are not limited to the following: corporal punishment such as shaking, spanking, hitting, whipping, or hair or ear pulling; prolonged isolation; forced exercise; denial of food, sleep or approved visits or contact with parents; verbal assaults which subject the child to ridicule or which belittle him/her or the child’s family, sex, race or cultural identity.

(F) The child shall not be excluded from the foster home and shall not be threatened with exclusion from the foster home as punishment. The child shall not be locked in a room or closet. If the foster parent believes the child needs restraint, this is an indication of emotional harm as set forth in letter (C) above, and the appropriate tribal representative must be notified.

(G) The foster parent shall maintain in confidence information received with respect to the foster child, his or her family, and other foster parents.

Sec. 611 Rights of Child’s Parents or Guardians

The rights set forth above, pertain to parents or guardians who have not relinquished their parental rights or who have received notice from a state or tribe concerning a pending child custody matter. Upon receipt of notice of a child custody matter, the receiving person shall immediately give the notice to the Tribal Secretary. The Tribal Secretary shall keep a log by date and case name of all notices received. The Tribal Secretary shall then give a copy of the notice to the Clerk of the Court.

Sec. 612 Responsibilities of Child’s Parents or Guardians

With the exception of the training provision in Section 607 above, during times of visitation, parents or guardians who have not relinquished their parental rights or who have received notice from a state or tribe concerning a pending child custody matter, shall comply with the responsibilities of foster care providers set forth in Section 609 above. Upon receipt of notice of a child custody matter, the receiving person shall immediately give the notice to the Tribal Secretary. The Tribal Secretary shall keep a log by date and case name of all notices received. The Tribal Secretary shall then give a copy of the notice to the Clerk of the Court.

Sec. 613 Motor Vehicles

Foster parents consenting to the ownership of a motor vehicle by a foster child, or signing for a foster child to have a driver’s license, shall assume all civil and financial liabilities applicable to the foster child’s operation of motor vehicle(s) and shall provide to the Alabama-Coushatta or licensing agency written documentation that all requirements have been met. The Alabama-Coushatta Tribe does not require foster parents to:

- (A) Consent to the child’s ownership of a motor vehicle or
- (B) Sign for a foster child to have a driver’s license; the Tribe will not assume such liabilities if the parent’s consent to such and the Tribe cannot provide legal services or make payment for financial liability incurred.

Sec. 614 Licensure

(A) A foster parent’s license shall be granted or denied by the Alabama-Coushatta Tribe based upon the assessment of the applicant’s application and participation in the licensing process. The issuance of a foster parent license is not a right.

(B) A license is only valid for the foster home visited during the assessment of the application.

(C) A foster home license shall be valid for a period of one (1) year from the date of issuance.

(D) A foster home license may be revoked by the licensing agent at any time after its issuance.

(E) A foster parent agreement outlining the stipulations of licensure shall be reviewed by the licensing agent and the foster parent. Signing of the agreement is an acknowledgment that the stipulations are understood and accepted by all concerned. This shall be done prior to the placement of children in the home and repeated annually thereafter.

(F) The license shall be signed and approved by the social services director and attested to by the Tribal Council Chairman.

Sec. 615 Types of Licenses

(A) Standard Foster Parent License. A one-year license is the license issued by the Alabama-Coushatta when the individual and the home meet Foster Care criteria for licensure.

(B) Conditional License. A conditional license is a license issued by the Alabama-Coushatta Tribe pending the receipt of the criminal records check. A conditional license is valid for six (6) months.

(C) Specialized Foster Home License. A license issued by the Alabama-Coushatta Tribe to a family foster home in which at least one adult has the required education, training or experience necessary to care for a specialized substitute care child. Such homes are limited to no more than three (3) certified children who need specialized substitute care. When there are three (3) special needs children in placement, no other children shall be placed in that home.

(D) Relative Foster Home License. A license issued by the Alabama-Coushatta Tribe to the home of an immediate or extended family member, including godparents, to provide care to a child for periods of time exceeding twenty-four (24) hours. Relative foster homes do not include placement in the home from which the child was removed, the home of any other related perpetrator or placement with a natural, step or adoptive parent.

(E) Respite Foster Home License. A license issued by the Alabama-Coushatta to a family who complies with the minimum standards as specified in these regulations to allow foster children to visit for short periods of time when the child’s currently assigned foster parent(s) is unable to provide care.

(F) Treatment Foster Care License. A license issued by the Alabama-Coushatta Tribe to a family foster home to accept a child requiring intensive services when the family has met both the Code and the Treatment Foster Care Standards.

Sec. 616 Renewal of Foster Home License

Before the end of the one (1) year licensure period, both foster parent and the Alabama-Coushatta Tribe or licensed child placement agency have responsibility for ensuring that ongoing requirements are met to qualify the family for a new license. A reassessment of the foster home shall be made by the Alabama-Coushatta Tribe or child placement agency to determine the ability of the home to continue to provide foster care. The reassessment shall include a visit to the foster home, a review of placements made during the year, which includes successes and disruptions, identification of strengths and training needs, and a review of current policies affecting foster care. Documentation of completed in-service training, as required in Section 607 above, is needed. A new medical report, as required, must be completed every three (3) years. On an annual basis the foster

care home shall be re-evaluated, and if there are no issues or material changes in circumstance, a new license shall be issued to the foster care parent to cover the new licensing period.

Sec. 617 Licensed Capacity

The maximum number of children in a foster home shall be determined by space limitations and the ability of the foster parent(s) to provide for adequate physical and emotional care for each foster child and child of the family residing in the home. A maximum number of six (6) foster children is recommended, however, based upon the prior approval of the Alabama- Coushatta, the recommended maximum number may be exceeded.

Sec. 618 Appeals

(A) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(B) Any party to a hearing before this court may appeal a final order or disposition of the case by filing a written notice of appeal with the Appeals Court within 30 days of the final order of disposition. A copy of said appeal shall be provided to this court as well.

(C) No decree or disposition of a hearing shall be stayed by such appeal.

(D) All appeals shall follow the procedures set forth in Chapter III of Title I, the Judicial Code of the Alabama-Coushatta Tribe of Texas.