

CHAPTER 3

CHILD IN NEED OF SERVICES

3.01 RIGHTS, RULES AND PROCEDURES

3.01.110 Right to Counsel

- (a) The child shall be represented by counsel:
 - (1) at any services planning conference conducted pursuant to the provisions of §§ 3.06.110, *et seq.*, and at all stages of any subsequent proceedings conducted pursuant to the provisions of this chapter; and
 - (2) at all stages of any proceedings conducted pursuant to the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130.
- (b) The child's parent, guardian or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian or custodian pursuant to the provisions of this chapter.

3.01.130 Guardian *ad Litem* – Appointment

- (a) In all proceedings conducted pursuant to the provisions of this chapter, the Juvenile Court may appoint a guardian *ad litem* if:
 - (1) it appears to the Juvenile Court that the child's parent, guardian or custodian is unable or unwilling fulfill the responsibilities imposed by § 1.05.110;
 - (2) it appears to the Juvenile Court that the child's parent, guardian or custodian is unable or unwilling to make decisions in the best interests of the child with respect to proceedings under this title;
 - (3) the Juvenile Court has, in accordance with the provisions of § 1.05.130(b), excused the child's parent, guardian or custodian from the responsibilities imposed by § 1.05.110; or
 - (4) the Juvenile Court finds that it is otherwise in the child's best interests to do so.
- (b) Neither counsel for the child nor the child's parent, guardian or custodian shall prohibit or impede access to the child by the guardian *ad litem*, provided that the child shall have the right to the presence of counsel during any meeting or conversation with the guardian *ad litem*.

§ 3.01.110(b)

See the comments on § 2.01.110(b).

§ 3.01.130

IJA-ABA *Standards Relating to Pretrial Court Proceedings* 6.7 recommends that neither "the agent, counsel, or employee of a party to the proceeding" nor "an employee of the court or of the intake agency" should be appointed as the child's guardian *ad litem*, which would prevent counsel for the child from being appointed to this role.

As the commentary to Standard 6.7 acknowledges, "it may be less expensive and cumbersome to have one person represent the juvenile in the dual roles of counsel and guardian *ad litem*, [but] cogent arguments have been presented against dual appointment."

Chief among those arguments is that the role of counsel is to advocate for the stated interests of the child – thereby providing the child with an unequivocal voice in the proceedings – while one responsibility of the guardian *ad litem* is to determine and advocate for the child's best interests.

Dual appointment may thereby result in a conflict of interest, and is likely to compromise both the rights of the child and the professional integrity of the individual appointed.

§ 3.01.130(b)

The guardian *ad litem* will be appointed by the Juvenile Court to represent the child's best interests, and will therefore have obligations to both the child and the Juvenile Court which may conflict with the child's stated interests.

In order to fulfill these obligations, the guardian *ad litem* must be allowed to communicate, interact, and establish a trusting relationship with the child.

At the same time, the appointment of a guardian *ad litem* should not be allowed to undermine the child's basic rights and privileges, including the privilege against self-incrimination.

This subsection attempts to balance these potentially conflicting priorities, but there may be other means to accomplish this end. Statements made by the child to the guardian *ad litem* might be protected, for instance, in much the same way as statements made to the Juvenile Case Coordinator under § 2.01.190(c).

3.01.150 Failure to Appear

- (a) In all child-in-need-of-services proceedings conducted pursuant to the provisions of this chapter:
 - (1) if a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:
 - (A) upon a first or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and
 - (ii) issue a warning to the child regarding the potential consequences of a subsequent failure to appear;
 - (B) upon a second or subsequent failure to appear, the Juvenile Court may:
 - (i) when feasible, issue a temporary custody order, in accordance with the provisions of § 3.02.110, directing that the child be brought immediately before the Juvenile Court; and
 - (ii) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of § 3.03.170;
 - (C) upon a third or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a temporary custody order in accordance with the provisions of § 3.02.110; and
 - (ii) conduct a hearing to review the need for placement in accordance with the provisions of §§ 3.03.110, *et seq.*;
 - (2) if a child under sixteen (16) years of age fails to appear before the Juvenile Court after being so ordered:
 - (A) if the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(1); or
 - (B) in the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(3);

§ 3.01.150

See § 1.08.210 and the comments thereon, and the comments on § 1.09.170(a).

Unlike the Juvenile Justice and Delinquency Prevention Act, the Model Code does not include a "valid court order" exception to the prohibition against the secure detention of status offenders; the options set forth in this section are limited accordingly.

- (3) if the child's parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:
 - (A) upon a first or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and
 - (ii) issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear;
 - (B) upon a second or subsequent failure to appear, the Juvenile Court may:
 - (i) issue a bench warrant, in accordance with the provisions of [the tribal code], directing that the child's parent, guardian or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; and
 - (ii) absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to \$100 (one hundred dollars);
 - (C) upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian or custodian in accordance with the provisions of [the tribal code].
- (b) In exercising its authority pursuant to subsection (a)(3)(B)(ii), the Juvenile Court:
 - (1) shall consider the ability of the child's parent, guardian or custodian to pay any fine to be imposed; and
 - (2) shall not impose a fine that would cause undue hardship for the child's parent, guardian, custodian or family.
- (c) The other provisions of this section notwithstanding, whenever it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has failed to appear as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others, the Juvenile Court may:
 - (1) issue a temporary custody order in accordance with the provisions of § 3.02.110;

- (2) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of § 3.03.170; and
- (3) conduct a hearing to review the need for placement in accordance with the provisions of §§ 3.03.110, *et seq.*
- (d) Other provisions of [the tribal code] notwithstanding, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this chapter.

3.02 TEMPORARY CUSTODY

3.02.110 Temporary Custody Orders

- (a) The Juvenile Court may issue a written order that a law enforcement officer shall take a child into temporary custody if:
 - (1) the issuance of a temporary custody order is authorized under § 3.01.150; or
 - (2) the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there are reasonable grounds to believe:
 - (A) the child is a runaway as defined in § 1.02.110(n) of this title; or
 - (B) the present circumstances of the child pose a substantial risk to the health, welfare, person or property of the child or others.
- (b) A temporary custody order issued in accordance with the provisions of this section shall specify:
 - (1) prior to the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, that the child is to be returned to the custody of the child's parent, guardian, or custodian; or
 - (2) following the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130:
 - (A) that the child is to be brought immediately before the Juvenile Court;
 - (B) that the child is to be returned to the custody of the child's parent, guardian, or custodian; or
 - (C) where the child is to be placed, in accordance with the provisions of § 3.03.150, pending a placement hearing to be conducted in accordance with the provisions of §§ 3.03.210, *et seq.*

3.02.130 Taking a Child into Temporary Custody

A law enforcement officer may take a child into temporary custody if:

- (a) the Juvenile Court has issued a temporary custody order in accordance with the provisions of § 3.02.110;
- (b) the child voluntarily agrees to or requests services or shelter; or
- (c) there are reasonable grounds to believe:
 - (1) the child is a runaway as defined in § 1.02.110(n) of this title; or

§ 3.02.130

Temporary custody under the provisions of this chapter should not be a precursor to continued detention, nor a pretense for detaining a child suspected of committing a delinquent act, and should be distinguished as clearly as possible from arrest in a criminal matter or custody in a delinquency case.

Unlike § 2.03.130, therefore, this section does not require the law enforcement officer to advise the child of his or her rights – but this in no way abrogates the child's rights under the provisions of the Model Code.

A child who has been taken into temporary custody still enjoys the privilege against self-incrimination, for instance, and must be advised of his or her rights in accordance with the provisions of § 2.02.130 prior to any interrogation.

- (2) the present circumstances of the child pose a substantial risk to the health, welfare, person or property of the child or others.

3.02.150 Release or Delivery from Temporary Custody

- (a) A law enforcement officer taking a child into temporary custody pursuant to the provisions of § 3.02.130 shall, without unreasonable delay:
 - (1) if the Juvenile Court has issued a temporary custody order in accordance with the provisions of § 3.02.110, bring the child before the Juvenile Court or place the child as specified in the temporary custody order; and immediately notify the Juvenile Case Coordinator; or
 - (2) if the Juvenile Court has not issued a temporary custody order in accordance with the provisions of § 3.02.110, release the child to the child's parent, guardian or custodian.
- (b) If the law enforcement officer has reason to believe the child is in need of medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child before proceeding in accordance with the other provisions of this section.
- (c) Upon releasing the child to the child's parent, guardian or custodian, the law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

3.02.170 Action by Juvenile Case Coordinator

- (a) Upon being notified that a child has been taken into temporary custody pursuant to a temporary custody order issued by the Juvenile Court in accordance with the provisions of § 3.02.110, and has not been released to the child's parent, guardian or custodian, the Juvenile Case Coordinator shall:
 - (1) confirm that the child has been placed as specified in the temporary custody order;
 - (2) file written notice in the Juvenile Court of:
 - (A) the date and time the child was taken into temporary custody;
 - (B) the location where the child has been placed; and
 - (C) the need to conduct a placement hearing in accordance with the provisions of § 3.03.210;

§ 3.02.150(c)

As noted in the comments on the corresponding delinquency section, § 2.03.150(c), participation in services or alternatives to formal processing in response to a law enforcement referral should be strictly voluntary on the part of both the child and the child's parents.

Note, however, that a law enforcement officer may submit a formal request for services under §3.04.110.

- (3) provide copies of the written notice required under subsection (2) to the child, the child's parent, guardian or custodian, the Juvenile Presenting Officer, and counsel for the child; and
 - (4) inform the child of the actions taken by the Juvenile Case Coordinator to comply with the requirements of this subsection.
- (b) Where counsel has not already been appointed or retained to represent the child, a copy of the written notice required under subsection (a)(3) shall be provided to the Juvenile Advocate.

§ 3.02.170(a)(4)

This subsection is identical to § 2.03.170(c)(3) of the delinquency provisions; see the comments on that subsection, which note that it was adapted from IJA-ABA *Standards Relating to Interim Status* 6.5.

§ 3.02.170(b)

This subsection is identical to § 2.03.170(d) of the delinquency provisions; see the comments on that subsection, which note that IJA-ABA *Standards Relating to Interim Status* 6.5 includes a similar requirement.

3.03 OUT-OF-HOME PLACEMENT AND SUPERVISORY CONDITIONS

3.03.010 Adoption and Safe Families Act Compliance

- (a) Before entering an order subjecting the child to out-of-home placement, the Juvenile Court shall determine, on a case-by-case basis:
 - (1) whether continuation in the home of the child's parent, guardian or custodian is contrary to the child's welfare; and
 - (2) whether there are available services that would prevent or eliminate the need for out-of-home placement.
- (b) If the child can be returned to the custody of his or her parent, guardian or custodian through the provision of services to prevent or eliminate the need for removal, the Juvenile Court shall return the child to the custody of the child's parent, guardian or custodian, and order that those services be provided.
- (c) If the child cannot be returned to the custody of his or her parent, guardian or custodian, the Juvenile Case Coordinator shall, as soon as possible, provide referrals for services to enable the child's parent, guardian, or custodian to obtain any assistance that may be needed to effectively provide the care and control necessary for the child to return to the home.
- (d) Upon entering an order subjecting the child to out-of-home placement, and in no event later than sixty (60) days following the child's removal from the home of the child's parent, guardian or custodian, the Juvenile Court shall determine whether reasonable efforts have been made to safely maintain the child in the home.
- (e) Upon making the determinations required by this section, the Juvenile Court shall enter written findings of fact referencing any and all evidence relied upon in reaching its decision.

3.03.110 Least Restrictive Alternatives

- (a) When a child is subject to supervisory conditions or out-of-home placement under the provisions of this chapter, the Juvenile Court shall order only the least restrictive conditions or placement consistent with:
 - (1) the best interests of the child; and
 - (2) the safety of the community.
- (b) Whenever the Juvenile Court enters an order imposing supervisory conditions or subjecting the child to out-of-home placement, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

§ 3.03.010

See the comments on § 2.04.010.

§ 3.03.010(e)

See the comments on § 2.04.010(e).

3.03.130 Out-of-Home Placement – Grounds

A child shall not be subject to out-of-home-placement under the provisions of this chapter unless:

- (a) a child-in-need-of-services petition has been filed in accordance with the provisions of § 3.07.130;
- (b) there are reasonable grounds to believe the child is a child in need of services;
- (c) no less restrictive alternatives will suffice; and
- (d) there is clear and convincing evidence that such placement is necessary:
 - (1) to avert a substantial risk to the health, welfare, person or property of the child or others; or
 - (2) because there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court.

3.03.150 Out-of-Home Placement – Options

A child alleged to be a child in need of services may be placed only in:

- (a) a licensed foster home or a home approved by the Juvenile Court, which may be a public or private home or the home of a noncustodial parent or a relative;
- (b) a juvenile residential care facility; or
- (c) a residential treatment facility, detoxification facility, or halfway house, if there is evidence of recent or ongoing alcohol or substance abuse by the child, and:
 - (1) there is clear and convincing evidence that such placement is necessary to avert a substantial risk to the health or welfare of the child; or
 - (2) out-of-home placement is otherwise necessary and authorized under § 3.03.130, and the child requests or agrees to such placement in lieu of a more restrictive placement.

3.03.170 Supervisory Conditions

- (a) Before ordering that a child be subject to out-of-home placement, the Juvenile Court shall consider, and may impose, supervisory conditions such as:
 - (1) a court-imposed curfew;
 - (2) a requirement that the child or the child's parent, guardian or custodian report to the Juvenile Case Coordinator at specified intervals;

- (3) an order requiring the child to remain at home at all times when the child is not:
 - (A) in the presence of the child's parent, guardian or custodian;
 - (B) attending school or participating in other activities approved by the Juvenile Court; or
 - (C) legally required to be elsewhere;
 - (4) electronic home monitoring or similar means of monitoring the child's whereabouts;
 - (5) community supervision; and
 - (6) other reasonable conditions calculated to ensure adequate supervision of the child during the pendency of the proceedings.
- (b) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section shall not include bail.

3.03.190 Supervisory Conditions – Violations

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated supervisory conditions imposed in accordance with the provisions of § 3.03.170, the Juvenile Court may:

- (a) issue a temporary custody order in accordance with the provisions of § 3.02.110;
- (b) following a hearing on the matter, impose additional or modified supervisory conditions in accordance with the provisions of § 3.03.170; and
- (c) conduct a hearing to review the need for out-of-home placement in accordance with the provisions of § 3.03.130.

3.03.210 Placement Hearing – Requirement and Time Limit

- (a) Whenever a child is taken into temporary custody pursuant to a temporary custody order issued by the Juvenile Court in accordance with the provisions of § 3.02.110, and is not released to the child's parent, guardian or custodian, the Juvenile Court shall conduct a placement hearing within two (2) days.
- (b) Notwithstanding the provisions of § 1.07.190 of this title, the placement hearing shall not be continued so as to fall outside the time limit imposed by this section.
- (c) If the placement hearing is not held within the time limit imposed by this section, the child shall immediately be released to the child's parent, guardian or custodian.

§ 3.03.170(a)(6)

Conditions imposed under this subsection should be appropriately limited in scope, duration, and purpose, and should not include requirements (such as compulsory treatment) that are only appropriate following adjudication.

See also the comments on § 2.04.170(b)(2) and § 2.04.170(b)(5).

§ 3.03.170(b)

Note that the Model Code consistently prohibits the imposition of bail in juvenile proceedings.

See § 2.04.170(b) and the comments thereon, as well as § 4.04.130(c)(1).

3.03.230 Placement Hearing – Notice

§ 3.03.230(a)(1)

See the comments on § 2.04.250(a)(1).

- (a) Written notice of the placement hearing:
 - (1) shall be served on the child, the child's parent, guardian or custodian, and counsel for the child as soon as the time for the placement hearing has been set;
 - (2) shall in all other respects be served in accordance with the provisions of § 1.08.150 of this title;
 - (3) shall contain the name of the court, the nature and purpose of the proceedings, and the date, time, and place of the hearing; and
 - (4) shall advise the parties of their rights under the provisions of this title; and
 - (5) shall specify the Juvenile Court's reason for considering an out-of-home placement.
- (b) Where counsel has not already been appointed or retained to represent the child, the written notice required by subsection (a) shall be served on the Juvenile Advocate.

3.03.250 Placement Hearing – Purpose

The Juvenile Court shall conduct the placement hearing for the purpose of determining:

- (a) whether there are reasonable grounds to believe the child is a child in need of services, unless the Juvenile Court has made such a finding, in accordance with the provisions of § 3.03.270 or § 3.08.150, at a prior hearing;
- (b) whether the child can be returned to the custody of the child's parent, guardian or custodian without supervisory conditions;
- (c) if the child cannot be returned to the custody of the child's parent, guardian or custodian without supervisory conditions, what supervisory conditions, imposed in accordance with the provisions of § 3.03.170, would render out-of-home placement unnecessary; and
- (d) if out-of-home placement is necessary and authorized under § 3.03.130, where the child should be placed pending the child's next appearance before the Juvenile Court.

3.03.270 Order on Placement Hearing

- (a) At the placement hearing, the Juvenile Court shall enter a written order returning the child to the custody of the child's parent, guardian or custodian, without conditions, unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there are reasonable grounds to believe the child is a child in need of services.

- (b) If the Juvenile Court finds that there are reasonable grounds to believe the child is a child in need of services, the Juvenile Court shall, at the conclusion of the placement hearing, enter a written order:
 - (1) returning the child to the custody of the child's parent, guardian or custodian without conditions;
 - (2) returning the child to the custody of the child's parent, guardian or custodian, and setting forth any supervisory conditions imposed by the Juvenile Court; or
 - (3) specifying where the child is to be placed until the next hearing.
- (c) If the child was taken into temporary custody as the result of a failure to appear before the Juvenile Court, the written order entered by the Juvenile Court shall be consistent with the provisions of § 3.01.150.
- (d) No provision of this chapter shall be interpreted to prohibit the Juvenile Court from returning the child to the custody of the child's parent, guardian or custodian prior to the appointment or appearance of counsel for the child.

3.03.290 Placement – Rehearing

Upon the filing of a motion for rehearing and a declaration stating the relevant facts, the Juvenile Court shall rehear the placement matter without unnecessary delay if:

- (a) the child was not returned to the custody of the child's parent, guardian or custodian at the placement hearing;
- (b) the child's parent, guardian or custodian did not receive notice of the placement hearing; and
- (c) the child's parent, guardian or custodian did not appear or waive appearance at the placement hearing.

3.04 REQUEST FOR SERVICES AND INITIAL CONSULTATION

3.04.110 Request for Services

- (a) A written request for services may be submitted to the Juvenile Case Coordinator by any of the following persons who believes a child is a child in need of services:
 - (1) the child;
 - (2) the child's parent, guardian or custodian;
 - (3) a member of the child's extended family;
 - (4) the child's guardian *ad litem*;
 - (5) a social services agency;
 - (6) a school official; or
 - (7) a law enforcement officer.
- (b) If the Juvenile Case Coordinator has reason to believe that a child is a child in need of services, the Juvenile Case Coordinator may:
 - (1) prepare a written request for services on the Juvenile Case Coordinator's own initiative; and
 - (2) otherwise proceed in accordance with the provisions of this chapter.
- (c) To the extent possible, the request for services shall set forth plainly and with specificity:
 - (1) the name, age, residence address, and present location of the child;
 - (2) the name and age of the child's parent, guardian, or custodian;
 - (3) the name, age, and relationship to the child of all persons living within the child's home;
 - (4) the reason(s) for the request, and the nature of the services requested;
 - (5) whether any of the information required under this subsection is unknown.

3.04.130 Review by Juvenile Case Coordinator

- (a) Upon receiving a request for services, the Juvenile Case Coordinator shall:
 - (1) provide a copy of the request to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and

§ 3.04.110(a)

The list of individuals who can submit a request for services is intended to be as comprehensive as possible, while being limited to likely sources of accurate and reliable information about the child.

The Juvenile Presenting Officer is excluded in order to avoid any confusion about his or her role in ongoing or subsequent juvenile proceedings.

The inclusion of law enforcement officers is specifically intended to provide them with a formal response option in cases that warrant more than a voluntary referral to services, but not a citation for delinquency.

One underlying assumption of this section, however, is that anyone with concerns regarding a child's conduct or well-being could bring those concerns to one of the individuals listed here, or to the Juvenile Case Coordinator, who could then submit or prepare a formal request for services.

§ 3.04.110(a)(3)

Regarding the definition of "extended family," see the comments on § 1.02.110(f).

§ 3.04.130(a)(1)

While § 3.01.110 requires that the child be represented by counsel only at and following the services planning conference (see §§ 3.06.110, *et seq.*), this subsection is intended to ensure notice to counsel at the earliest stages of any proceedings under this chapter.

Needless to say, the Juvenile Advocate should not only maintain the confidentiality of any information received pursuant to the provisions of this section, but will need to adopt practices and procedures to identify and avoid conflicts of interest.

- (2) review the request to determine if the alleged facts give rise to a reasonable belief that the child is a child in need of services.
- (b) If the request for services is incomplete, or if the Juvenile Case Coordinator is unable to make the determination required under subsection (a), the Juvenile Case Coordinator:
 - (1) subject to the provisions of § 3.04.210, may conduct an initial consultation with the child and the child's parent, guardian or custodian, in accordance with the provisions of § 3.04.190; and
 - (2) shall conduct additional inquiries as necessary, provided that, subject to the provisions of § 3.04.230, such inquiries may be directed only to:
 - (A) the person who submitted the request for services;
 - (B) any source of information identified by the person who submitted the request for services; and
 - (C) the child's parent, guardian or custodian.
- (c) In conducting additional inquiries pursuant to the provisions of this section, the Juvenile Case Coordinator:
 - (1) shall exercise discretion so as to protect the privacy of the child and the child's family; and
 - (2) subject to the provisions of § 3.04.230, shall not disclose the substance of the request for services to persons other than:
 - (A) the child;
 - (B) the child's parent, guardian or custodian; and
 - (C) counsel for the child.

3.04.150 Residential Respite Services

The Juvenile Case Coordinator shall attempt to secure short-term residential respite services for any child alleged to be a child in need of services, if:

- (a) the Juvenile Case Coordinator determines that the child or the child's parent, guardian or custodian would benefit from residential respite services;
- (b) the child and the child's parent, guardian or custodian agree; and
- (c) residential respite services are available within a reasonable distance from the child's home.

3.04.170 Determination by Juvenile Case Coordinator

- (a) If it does not appear to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator:
 - (1) shall nonetheless refer the child and the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate to address issues or concerns raised by the alleged facts;
 - (2) shall inform the person who submitted the request for services, in writing, of the Juvenile Case Coordinator's determination, including a brief statement of the reasons for that determination;
 - (3) shall provide a copy of the information required under subsection (2) to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and
 - (4) subject to the provisions of § 3.04.230, shall take no further action in the matter.
- (b) If it appears to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator shall, within five (5) business days of receiving the request, and subject to the provisions of § 3.04.210, conduct an initial consultation with the child and the child's parent, guardian or custodian.

3.04.190 Initial Consultation – Purpose and Conduct

- (a) The purpose of the initial consultation shall be:
 - (1) to review with the child and the child's parent, guardian or custodian the contents of the request for services;
 - (2) to assist the Juvenile Case Coordinator in making, confirming or reviewing the determination required under § 3.04.130(a)(2); and
 - (3) to identify and discuss:
 - (A) the particular needs and circumstances of the child and the child's family;
 - (B) any additional issues or concerns raised by the alleged facts; and
 - (C) services and resources available to address those needs, issues and concerns.
- (b) If, at the conclusion of the initial consultation, it does not appear to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator shall proceed in accordance with the provisions of § 3.04.170(a).

(c) If, at the conclusion of the initial consultation, it appears to the Juvenile Case Coordinator that the child is a child of need of services, the Juvenile Case Coordinator shall:

- (1) together with the child and the child's parent, guardian or custodian, develop a voluntary plan for services in accordance with the provisions of § 3.05.110; or
- (2) within ten (10) business days of the initial consultation, and subject to the provisions of § 3.06.150, convene a services planning conference in accordance with the provisions of §§ 3.06.110, *et seq.*

3.04.210 Initial Consultation – Participation Voluntary

- (a) Prior to conducting the initial consultation, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:
 - (1) of their rights under the provisions of this title;
 - (2) of the nature and purpose of the initial consultation; and
 - (3) that participation in the initial consultation is voluntary.
- (b) If the child declines to attend or participate in the initial consultation, the Juvenile Case Coordinator shall, subject to the other provisions of this section, conduct the initial consultation without the participation of the child.
- (c) If the child's parent, guardian or custodian declines to attend or participate in the initial consultation, the Juvenile Case Coordinator shall, within ten (10) business days, and subject to the provisions of § 3.06.150, convene a services planning conference in accordance with the provisions of §§ 3.06.110, *et seq.*

3.04.230 Additional Inquiries or Disclosures – Where Permitted

No provision of this chapter shall be construed to prohibit the Juvenile Case Coordinator from making additional inquiries or disclosure as permitted by law, or from taking further action pursuant to the provisions of [the tribal code] or other applicable laws, where the alleged facts give rise to:

- (a) a reasonable belief that a crime or delinquent act has been committed; or
- (b) a legal duty to report the alleged facts, including but not limited to cases of alleged child abuse or neglect.

§ 3.04.190(c)(1)

Note that under § 3.04.210 the child may decline to participate in the initial consultation and, by extension, the development of the voluntary plan for services.

Also note, however, that if the child repeatedly fails to cooperate in the subsequent implementation of the plan, the Juvenile Case Coordinator may recommend the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.110.

§ 3.04.210(c)

Contrast this subsection with § 2.05.190(c) of the delinquency provisions.

Whereas the child's participation alone may influence the Juvenile Case Coordinator's recommendation in a delinquency case, an implicit assumption of this chapter is that the cooperation of the child's parents is essential to the development of a voluntary plan for services.

3.05 VOLUNTARY PLAN FOR SERVICES

3.05.110 Voluntary Plan for Services – Contents and Requirements

- (a) A voluntary plan for services developed pursuant to the provisions of this chapter shall set forth, in writing:
 - (1) the rights of the child and the child’s parent, guardian or custodian under the provisions of this title;
 - (2) an acknowledgment that participation in the plan for services is voluntary, and neither the child nor the child’s parent, guardian or custodian is obligated to comply with the plan for services;
 - (3) the anticipated course of action to be taken if:
 - (A) the child or the child’s parent, guardian or custodian declines to participate in or does not comply with the plan for services; or
 - (B) the outcomes and goals set forth in the plan for services are not accomplished within a reasonable period of time, to be specified in accordance with the provisions of subsection (a)(9);
 - (4) the specific conduct and circumstances upon which the allegation that the child is a child in need of services is based;
 - (5) the specific services and resources available to address:
 - (A) the particular needs of the child and the child’s parent, guardian or custodian; and
 - (B) any additional issues or concerns raised by the alleged facts;
 - (6) a comprehensive plan for ensuring that the child and the child’s parent, guardian or custodian obtain the services and resources needed;
 - (7) the specific actions to be taken by the child and the child’s parent, guardian or custodian in accordance with the plan, including the frequency and location of appointments for services and contact with the Juvenile Case Coordinator;
 - (8) the anticipated outcomes of the plan and its implementation, including measurable, individualized goals for the child and the child’s parent, guardian or custodian;
 - (9) an estimate of the time which will be needed to accomplish the anticipated outcomes, which shall not exceed six (6) months;

(10) a schedule for reviewing the effectiveness of the plan and the progress of the child and the child's parent, guardian or custodian toward achieving the anticipated outcomes.

(b) The Juvenile Case Coordinator shall provide a copy of the voluntary plan for services to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate.

3.05.130 Voluntary Plan for Services – Monitoring and Review

- (a) The Juvenile Case Coordinator shall periodically review the progress of the child and the child's parent, guardian or custodian toward accomplishing the anticipated outcomes of the voluntary plan for services.
- (b) The periodic review required under subsection (a):
- (1) shall include regular, scheduled contact between the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian; and
 - (2) where appropriate given the circumstances and needs of the child and the child's parent, guardian or custodian, may include:
 - (A) home visits at times and intervals set forth in the voluntary plan for services and agreed to by the child's parent, guardian or custodian; and
 - (B) subject to written consent by the child and the child's parent, guardian or custodian, as may be necessary, communication between the Juvenile Case Coordinator and:
 - (i) any person or agency providing services to the child or the child's parent, guardian or custodian in accordance with the voluntary plan for services; and
 - (ii) school officials or support staff responsible for meeting the child's educational needs and monitoring the child's educational progress.

3.05.150 Termination of Proceedings

- (a) Prior to the filing of a child-in-need-of-services petition, the Juvenile Case Coordinator shall terminate all proceedings initiated pursuant to the provisions of this chapter upon determining that:
- (1) the outcomes and goals of the voluntary plan for services have been accomplished; or
 - (2) it otherwise appears that the child is no longer a child in need of services.

§ 3.05.110(b)

See the comments on § 3.04.130(a)(1).

§ 3.05.150

Prior to the filing of a child-in-need-of-services petition, the provisions of this chapter assign responsibility for decisions regarding the initiation, continuation, and termination of proceedings to the Juvenile Case Coordinator.

An implicit assumption of these provisions is that once a services planning conference has been convened (see §§ 3.06.110, *et seq.*), the Juvenile Case Coordinator will give due consideration to the recommendations of the services planning committee.

Also note that under § 3.01.110, the child will be represented by counsel at and following the services planning conference, ensuring advocacy for the child's position in the event of any disagreement regarding the basis or need for continued proceedings.

- (b) Upon terminating the proceedings pursuant to the provisions of this section, the Juvenile Case Coordinator:
- (1) shall refer the child and the child's parent, guardian or custodian to any social, community, or tribal services or resources from which they may continue to benefit;
 - (2) shall inform the person who submitted the request for services, in writing, that the matter has been resolved;
 - (3) shall provide a copy of the information required under subsection (2) to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and
 - (4) subject to the provisions of § 3.04.230, shall take no further action in the matter.

3.06 SERVICES PLANNING CONFERENCE

3.06.110 Services Planning Conference – Requirement

- (a) Subject to the provisions of § 3.06.150, the Juvenile Case Coordinator shall convene a services planning conference:
 - (1) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian cannot agree on a plan for services;
 - (2) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian agree on a plan for services, and:
 - (A) the child or the child's parent, guardian or custodian does not comply with the plan; or
 - (B) the plan otherwise proves ineffective or unsuccessful;
 - (3) if the Juvenile Case Coordinator requires additional assistance in developing an appropriate plan for services; or
 - (4) at the request of the child or the child's parent, guardian or custodian.
- (b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Advocate prior to convening the services planning conference.

3.06.130 Services Planning Conference – Purpose and Conduct

- (a) The purpose of the services planning conference shall be to assemble a multidisciplinary committee to identify and discuss:
 - (1) the particular needs and circumstances of the child and the child's parent, guardian or custodian;
 - (2) any additional issues or concerns raised by the alleged facts; and
 - (3) services and resources available to address those needs, issues and concerns.
- (b) The composition of the services planning committee shall be based on the particular needs of the child and the child's parent, guardian or custodian, and may include, in addition to the Juvenile Case Coordinator:
 - (1) an official from the child's school;
 - (2) a juvenile mental health professional;
 - (3) a substance abuse treatment professional;
 - (4) tribal elders or community leaders;
 - (5) service providers;

- (6) a family counselor or mediator;
- (7) trained and responsible peer or youth representatives;
- (8) other professionals or community members requested or recommended by:
 - (A) the child;
 - (B) the child's parent guardian or custodian;
 - (C) the Juvenile Case Coordinator; or
 - (D) other members of the services planning committee.
- (c) The child shall be represented by counsel at the services planning conference.
- (d) At the conclusion of the services planning conference, the services planning committee shall, together with the child and the child's parent, guardian or custodian, develop a voluntary plan for services in accordance with the provisions of § 3.05.110.

3.06.150 Services Planning Conference – Participation Voluntary

- (a) Prior to convening the services planning conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:
 - (1) of their rights under the provisions of this title;
 - (2) of the nature and purpose of the services planning conference; and
 - (3) that participation in the services planning conference is voluntary.
- (b) If the child declines to attend or participate in the services planning conference:
 - (1) the services planning conference shall proceed, subject to the other provisions of this section, without the participation of the child; and
 - (2) counsel for the child may, to the extent that such efforts are consistent with counsel's professional and ethical obligations to the child, attend and participate in the services planning conference on behalf of the child.
- (c) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, if:
 - (1) the child's parent, guardian or custodian declines to attend or participate in the services planning conference; and
 - (2) the Juvenile Case Coordinator makes each of the determinations required under § 3.07.110.

§ 3.06.130(d)

Note that under § 3.06.150, the child may decline to participate directly in the services planning conference and, by extension, the development of the voluntary plan for services.

Also note, however, that if the child repeatedly fails to cooperate in the subsequent implementation of the plan, the Juvenile Case Coordinator may recommend the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.110.

See also the comments on § 3.04.190(c)(1).

§ 3.06.150(c)

See the comments on § 3.04.210(c).

3.06.170 Review Conferences

- (a) The Juvenile Case Coordinator shall convene a review conference with the services planning committee:
 - (1) within ten (10) business days of a request by the child, the child's parent, guardian or custodian, or any member of the services planning committee; or
 - (2) upon determining:
 - (A) that adjustments or modifications to the voluntary plan for services are necessary; or
 - (B) that the voluntary plan for services is likely to be ineffective or unsuccessful.
- (b) The purpose of the review conference shall be:
 - (1) to review the progress of the child and the child's parent, guardian or custodian toward accomplishing the anticipated outcomes of the voluntary plan for services;
 - (2) to address any issues or concerns raised by the child, the child's parent, guardian or custodian, the Juvenile Case Coordinator, or members of the services planning committee; and
 - (2) where necessary, to consider and effect adjustments or modifications to the voluntary plan for services.

3.06.190 Conferences – Time and Location

All reasonable efforts shall be made to ensure that the time and location selected for any conference with the services planning committee is convenient for the child and the child's parent, guardian or custodian.

3.07 CHILD-IN-NEED-OF-SERVICES PETITION

3.07.110 Recommendation for Child-in-Need-of-Services Petition

- (a) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, if the Juvenile Case Coordinator determines that:
 - (1) the alleged facts are sufficient to support the filing of a child-in-need-of-services petition;
 - (2) the filing of a child-in-need-of-services petition will serve the best interests of the child and the child's parent, guardian or custodian;
 - (3) services and resources to meet the needs of the child and the child's parent, guardian or custodian are available;
 - (4) an order of the Juvenile Court will make the timely delivery of those services and resources more likely; and
 - (5) there is no substantial likelihood that the child and the child's parent, guardian or custodian will benefit from further attempts to resolve the matter through the implementation of a voluntary plan for services, because:
 - (A) the child's parent, guardian or custodian has declined to attend or participate in a services planning conference or the implementation of a voluntary plan for services; or
 - (B) repeated efforts to resolve the matter through the implementation of a voluntary plan for services, including multiple conferences with the services planning committee, have been unsuccessful.
- (b) The Juvenile Case Coordinator and the services planning committee shall diligently attempt to prevent the filing of a child-in-need-of-services petition.
- (c) The Juvenile Presenting Officer shall not file a child-in-need-of-services petition except upon the recommendation of the Juvenile Case Coordinator.

3.07.130 Child-in-Need-of-Services Petition – Contents

- (a) Adjudicative proceedings under this chapter shall be initiated by a petition:
 - (1) signed and filed by the Juvenile Presenting Officer on behalf of the Tribe;
 - (2) certifying that, to the best of the Juvenile Presenting Officer's knowledge, information and belief, there are

§ 3.07.110

See the comments on § 3.05.150.

§ 3.07.110(a)(5)(B)

This subsection is intended to encompass cases in which the child repeatedly fails to cooperate in the implementation (as opposed to the development) of a voluntary plan for services.

See also the comments on § 3.04.190(c)(1) and § 3.06.130(d).

§ 3.07.130(a)

Regarding the phrase "adjudicative proceedings," see the comments on § 2.07.110(a).

sufficient grounds to believe that the child is a child in need of services;

(3) setting forth with specificity:

- (A) the name, birth date, residence, and tribal affiliation of the child;
- (B) the name and residence of the child's parent, guardian or custodian;
- (C) a citation to the specific section(s) of this code which give the Juvenile Court jurisdiction over the proceedings;
- (D) a plain and concise statement of the facts upon which the petition is based.

(b) The child-in-need-of-services petition shall be accompanied by a statement signed by the Juvenile Case Coordinator and:

- (1) certifying that the requirements of §§ 3.04.130, *et seq.*, were satisfied prior to the filing of the petition;
- (2) briefly setting forth all efforts taken by the Juvenile Case Coordinator, the services planning committee, the child, and the child's parent guardian or custodian, to resolve the matter prior to the filing of the petition; and
- (3) affirming that the Juvenile Case Coordinator:
 - (A) has made each of the determinations required under § 3.07.110(a); and
 - (B) has therefore recommended the filing of the petition.

3.07.150 Child-in-Need-of-Services Petition – Time for Filing

The child-in-need-of-services petition shall be filed within five (5) days after the recommendation by the Juvenile Case Coordinator.

§ 3.07.150

Ideally, most child-in-need-of-services cases will be resolved without the filing of a petition.

In cases where the intervention of the Juvenile Court is required, the time limits in this chapter are intended to minimize not only the time that children and their parents are subject to judicial proceedings, but any delay in the identification and delivery of necessary services.

3.08 INITIAL HEARING

3.08.110 Initial Hearing – Time Limit

The initial hearing shall be held within fourteen (14) days of the filing of the child-in-need-of-services petition.

3.08.130 Initial Hearing – Conduct

At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

- (a) the nature and purpose of the proceedings;
- (b) the contents of the child-in-need-of-services petition;
- (c) the possible consequences if the child is found to be a child in need of services;
- (d) the right to counsel;
- (e) the privilege against self-incrimination;
- (f) the right to an adjudication in accordance with the provisions of this chapter;
- (g) the right to cross-examine witnesses;
- (h) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;
- (i) the right to appeal any final order of the Juvenile Court.

3.08.150 Initial Hearing – Determination of Reasonable Grounds

At the initial hearing, the Juvenile Court shall enter a written order dismissing the child-in-need-of-services petition unless the Juvenile Court finds that the child-in-need-of-services petition sets forth reasonable grounds to believe the child is a child in need of services.

§ 3.08.110

As noted in the comments on § 3.07.150, time limits in this chapter are intended to minimize any delay in adjudicative proceedings.

While this section does not impose a shorter time limit where the child is in an out-of-home placement, such cases should be given priority on the Juvenile Court calendar.

See the comments on § 2.05.130.

3.09 SUSPENSION OF PROCEEDINGS

3.09.110 Motion to Suspend Proceedings

- (a) At any time following the filing of the child-in-need-of-services petition, but prior to adjudication, the child may move the Juvenile Court to suspend adjudicative proceedings for a period of up to six (6) months, to allow for further attempts to resolve the matter through the implementation of a voluntary plan for services.
- (b) The Juvenile Court shall grant a motion brought pursuant to the provisions of this section if:
 - (1) the child's parent, guardian or custodian agrees to participate in further attempts to resolve the matter through the implementation of a voluntary plan for services;
 - (2) the Juvenile Case Coordinator agrees that:
 - (A) further efforts to resolve the matter without the intervention of the Juvenile Court will serve the best interests of the child and the child's parent, guardian or custodian; and
 - (B) services and resources to meet the needs of the child and the child's parent, guardian or custodian are available, and the timely delivery of those services and resources may be accomplished without the intervention of the Juvenile Court.
- (c) Upon granting a motion brought pursuant to the provisions of this section, the Juvenile Court shall enter a written order:
 - (1) suspending all adjudicative proceedings in the matter for a period to be specified by the Juvenile Court;
 - (2) tolling the time limit for adjudicative proceedings, as set forth in § 3.10.110, until a corresponding date to be specified by the Juvenile Court; and
 - (3) in the discretion of the Juvenile Court, or upon the request of any party, setting a hearing for the purpose of determining whether the petition should be dismissed, or the proceedings reinstated, in accordance with the provisions of § 3.09.130.

3.09.130 Dismissal of Petition or Reinstatement of Proceedings

- (a) Prior to the date specified in accordance with the provisions of § 3.09.110(c)(2), the Juvenile Case Coordinator shall notify the Juvenile Court, in writing, whether the matter has been resolved through the implementation of a voluntary plan for services.

- (b) A copy of the notice required under subsection (a) shall be served upon the child, the child's parent, guardian or custodian, and the Juvenile Presenting Officer in accordance with the provisions of § 1.08.150 of this title.
- (c) Upon the filing of the notice required under subsection (a), the Juvenile Court shall:
 - (1) if the matter has been resolved through the implementation of a voluntary plan for services, enter a written order dismissing the child-in-need-of-services petition; or
 - (2) if the matter has not been resolved through the implementation of a voluntary plan for services:
 - (A) enter a written order reinstating adjudicative proceedings in the matter; and
 - (B) issue a new summons in accordance with the provisions of § 1.08.110 of this title.

3.10 ADJUDICATION

§ 3.10.110

See the comments on § 3.08.110.

3.10.110 Adjudication Hearing – Time Limit

The adjudication hearing shall be held within fourteen (14) days of the initial hearing.

3.10.130 Adjudication Hearing – Purpose

The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child is a child in need of services.

3.10.150 Adjudication Hearing – Burden of Proof

The Tribe shall bear the burden of showing, by clear and convincing evidence, that the child is a child in need of services.

3.10.170 Adjudication Hearing – Conduct

- (a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.
- (b) At the adjudication hearing, the Juvenile Court may consider any evidence, including hearsay, which the Juvenile Court finds to be:
 - (1) relevant to the determination of whether the child is a child in need of services; and
 - (2) sufficiently reliable to satisfy the requirements of due process.

3.10.190 Finding on Adjudication

- (a) If, upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the child is a child in need of services, the Juvenile Court shall enter its finding in writing and:
 - (1) proceed immediately to a disposition hearing, to be conducted in accordance with the provisions of §§ 3.12.130, *et seq.*; or
 - (2) if the Juvenile Court finds good cause to continue the disposition hearing:
 - (A) set the matter for disposition in accordance with the time limits set forth in § 3.12.110; and
 - (B) specify in writing whether the child is to be continued in any out-of-home placement pending the disposition hearing.

- (b) If the Juvenile Court does not find that the child is a child in need of services, it shall enter a written order dismissing the petition and releasing the child from any obligations or conditions previously imposed in connection with the child-in-need-of-services proceedings.

3.11 PREDISPOSITION REPORTS AND EXAMINATIONS

3.11.110 Predisposition Report – Requirement

Prior to the disposition hearing, the Juvenile Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the child and the child's parent, guardian or custodian.

3.11.130 Predisposition Report – Contents

- (a) The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include but shall not be limited to:
 - (1) a description of the child's home environment, family relationships, and background;
 - (2) information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;
 - (3) the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;
 - (4) a discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;
 - (5) the identification of appropriate educational and vocational goals for the child, examples of which may include:
 - (A) regular school attendance and completion of the child's current grade;
 - (B) attainment of a high school diploma or its equivalent;
 - (C) successful completion of literacy or vocational courses; or
 - (D) enrollment in an apprenticeship, internship or similar program;
 - (6) a summary of any factual findings entered by the Juvenile Court; and
 - (7) a summary of the child's prior contacts with the juvenile justice system.
- (b) The predisposition report shall include a detailed explanation of:
 - (1) the sources of all information included;

- (2) the necessity of the proposed disposition and plan for services, taking into account the particular needs of the child and the child's parent, guardian or custodian; and
- (3) the anticipated benefits to the child and the child's parent, guardian or custodian of the proposed disposition and plan for services.

§ 3.11.170(a)(2)

See the comments on § 2.11.170(a)(2).

3.11.150 Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 3.11.210.

3.11.170 Predisposition Examinations and Investigations

- (a) Following an adjudication hearing at which the child is found to be a child in need of services, and prior to the entry of any disposition orders, the Juvenile Court may enter a written order:
 - (1) requiring the child undergo a medical, psychological, or psychiatric examination;
 - (2) requiring the child's parent, guardian or custodian undergo a medical, psychological, or psychiatric examination, where their ability to care for or supervise the child is an issue before the Juvenile Court; or
 - (3) directing the Juvenile Case Coordinator:
 - (A) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 3.11.130(a); and
 - (B) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.
- (b) Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:
 - (1) the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and
 - (2) upon receiving the results of any such examination or investigation, the Juvenile Court:
 - (A) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 3.12.230; and

(B) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 3.12.230.

§ 3.11.210(a)

See the comments on § 2.11.210(a).

3.11.190 Predisposition Reports and Examinations – Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this chapter shall be subject to the provisions of § 1.04.210 of this title.

**3.11.210 Predisposition Reports and Examinations –
Filing and Service**

- (a) Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this chapter shall be filed in the Juvenile Court and served upon the Juvenile Presenting Officer, the Juvenile Case Coordinator, counsel for the child, and the child's parent, guardian or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 1.08.150 of this title.
- (b) The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

3.12 DISPOSITION

§ 3.12.110

See the comments on § 2.05.130 and § 3.07.150.

3.12.110 Disposition Hearing – Time Limit

- (a) The disposition hearing shall be held immediately following the adjudication hearing, unless the Juvenile Court finds good cause to continue the disposition hearing.
- (b) If the Juvenile Court finds good cause to continue the disposition hearing, the disposition hearing shall be held:
 - (1) within ten (10) days of the adjudication hearing, if the child is in an out-of-home placement; or
 - (2) within twenty (20) days of the adjudication hearing, if the child continues to reside with the child's parent, guardian or custodian.

3.12.130 Disposition Hearing – Purpose

The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

- (a) what services and resources are most likely to meet the needs of the child and the child's parent, guardian or custodian; and
- (b) the appropriate disposition of the matter.

3.12.150 Disposition Hearing – Conduct

At the disposition hearing, the Juvenile Court:

- (a) shall afford the parties the opportunity:
 - (1) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and
 - (2) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;
- (b) shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and
- (c) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 3.12.130.

3.12.170 Orders on Disposition

- (a) Upon the conclusion of the disposition hearing, the Juvenile Court may enter any written disposition orders authorized under § 3.12.190.

(b) In exercising its discretion under subsection (a), the Juvenile Court shall enter the least restrictive orders appropriate considering the needs of the child and the child's parent, guardian or custodian.

(c) All orders entered by the Juvenile Court pursuant to the provisions of this section shall be:

(1) explained to the child in language the child will easily understand; and

(2) accompanied by a written statement of:

(A) the facts relied upon by the Juvenile Court in entering those orders; and

(B) the reasons for rejecting less restrictive alternatives.

3.12.190 Disposition Options

(a) Pursuant to the provisions of § 3.12.170, the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the child's parent, guardian or custodian:

(1) an order permitting the child to remain with his or her parent, guardian or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;

(2) an order referring the child or the child's parent, guardian or custodian to social, community, or tribal services or resources appropriate for addressing the needs of the child and the child's parent, guardian or custodian;

(3) an order referring the child or the child's parent, guardian or custodian to a tribal elders panel or other body capable of addressing the needs of the child and the child's parent, guardian or custodian;

(4) an order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

(5) an order requiring the child or the child's parent, guardian or custodian to undergo a medical, psychological, or psychiatric evaluation, in accordance with the provisions of § 3.11.170;

(6) an order requiring the child or the child's parent, guardian or custodian to undergo medical, psychological, or psychiatric treatment, where such treatment is:

(A) recommended by a qualified medical, psychological, or psychiatric professional; and

§ 3.12.190(a)(2)-(6)

Regarding orders directed to the child's parents, see the comments on § 2.11.170(a)(2).

- (B) necessary to:
 - (i) address conditions which contributed to the child's adjudication; or
 - (ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.
- (7) an order requiring the child to attend structured after-school, evening, educational, vocational or other court-approved programs appropriate for meeting the needs of the child;
- (8) an order prohibiting the child from driving a motor vehicle for a period not to exceed the date on which the child reaches eighteen (18) years of age;
- (9) an order placing the child in the temporary legal custody of a relative or other responsible adult, subject to such conditions and limitations as the Juvenile Court may prescribe;
- (10) an order imposing supervisory conditions in accordance with the provisions of § 3.03.170; and
- (11) an order providing for the out-of-home placement of the child in accordance with the provisions of § 3.03.150.
- (b) If a child found by the Juvenile Court to be a child in need of services has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.
- (c) If a child is found by the Juvenile Court to be a child in need of services as the result of the child engaging in sexual intercourse or other sexual activity, the Juvenile Court may enter a written order requiring the child and the child's parent, guardian or custodian to participate in an educational program that provides comprehensive information about pregnancy prevention, reproductive health and disease prevention, including HIV/AIDS education.

3.12.210 Out-of-Home Placement – Limitations

- (a) The Juvenile Court shall not enter a disposition order providing for the out-of-home placement of the child unless:
 - (1) no less restrictive alternatives will suffice; and

(2) there is clear and convincing evidence that the child should be placed outside the child's home because:

(A) such placement is necessary to avert a substantial risk to the health, welfare, person or property of the child or others;

(B) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court; or

(C) each of the following conditions is met:

(i) the child has repeatedly failed to comply with the disposition orders of the Juvenile Court;

(ii) less restrictive alternatives have repeatedly failed to bring the child into compliance; and

(iii) the out-of-home placement is reasonably calculated to bring the child into compliance.

(b) The Juvenile Court shall not enter a disposition order providing for the out-of-home placement of the child for any of the reasons set forth in § 1.09.170(d) of this title.

3.12.230 Disposition Orders – Review

(a) The Juvenile Court shall conduct a hearing to review any disposition orders entered pursuant to the provisions of § 3.12.170:

(1) at least once every three (3) months, if the child is not in an out-of-home placement; and

(2) at least once every forty-five (45) days, if the child is in an out-of-home placement.

(b) The Juvenile Court shall conduct the hearing for the purpose of determining:

(1) whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;

(2) the extent to which those disposition orders have accomplished their intended purposes;

(3) whether those disposition orders should:

(A) continue in effect without modification or extension;

(B) be terminated in accordance with the provisions of § 3.12.250(b); or

(C) be modified or extended in accordance with the provisions of § 3.12.270.

§ 3.12.230(a)(1)

This review period is calculated to ensure that the child receives timely and effective services, and is in keeping with the limited duration of disposition orders in child-in-need-of-services proceedings.

See § 3.12.250(a) and the comments thereon.

- (c) Where the child is in an out-of-home placement, the Juvenile Court shall consider:
 - (1) whether the circumstances of the child, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;
 - (2) whether out-of-home placement remains necessary and authorized under § 3.12.210; and
 - (3) whether the child should be released from out-of-home placement in favor of a less restrictive alternative.
- (d) At any review hearing conducted pursuant to the provisions of this section:
 - (1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and
 - (2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

3.12.250 Disposition Orders – Duration and Termination

- (a) Disposition orders entered by the Juvenile Court shall continue in force for not more than six (6) months, unless they are extended in accordance with the provisions of § 3.12.270.
- (b) The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.
- (c) All disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the child-in-need-of-services proceedings, when the child reaches eighteen (18) years of age.

3.12.270 Disposition Orders – Modification or Extension

- (a) Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

§ 3.12.250(a)

The provisions of this subsection and § 3.12.270(f) are intended to provide adequate time to identify and implement necessary services, while limiting the time that children and their parents are subject to judicial supervision outside of proceedings to address delinquency, abuse or neglect.

§ 3.12.250(c)

To ensure the child may be held accountable for his or her delinquent acts without the need for criminal proceedings, § 2.12.290(c) allows the Juvenile Court to exercise jurisdiction in delinquency cases until the child reaches 21 years of age.

While an individual over 18 years of age might continue to benefit from services, however, there is no analogous basis for extending the authority of the Juvenile Court in child-in-need-of-services cases.

- (b) The modification hearing shall be held:
 - (1) within ten (10) days of the placement hearing, if the child is in an out-of-home placement as the result of an alleged violation of a disposition order; or
 - (2) within thirty (30) days of the filing of the motion for modification, if the child is in the custody of the child's parent, guardian or custodian.
- (c) Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.
- (d) In making the determination required by subsection (a), the Juvenile Court may consider:
 - (1) the extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Juvenile Court;
 - (2) evidence that the child has either continued or desisted engaging in conduct bringing the child within the definition of a child in need of services, as set forth in § 1.02.110(c) of this title;
 - (3) changes in treatment or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and
 - (4) any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.
- (e) All modified disposition orders shall be subject to the requirements of § 3.12.170(b) and § 3.12.170(c).
- (f) An extension ordered in accordance with the provisions of this section shall not exceed three (3) months from the expiration of the prior order, and in no event shall the duration of a disposition order be extended:
 - (1) for longer than reasonably necessary to accomplish the purpose of the order;
 - (2) beyond a total of one (1) year; or
 - (3) past the date on which the child shall reach eighteen (18) years of age.

3.12.290 Disposition Orders – Violations

- (a) The violation of a disposition order entered pursuant to the provisions of § 3.12.170 may be reported to the Juvenile Case Coordinator, who may file a motion for modification pursuant to the provisions of § 3.12.270.

§ 3.12.270(f)

The time limit in this section corresponds with the maximum review period under § 3.12.230(a).

See also the comments on § 3.12.250(a).

§ 3.12.270(f)(3)

See the comments on § 3.12.250(c).

- (b) A child in an out-of-home placement as the result of an alleged violation of a disposition order shall immediately be returned to the custody of the child's parent, guardian or custodian unless a modification hearing is held within the time limits imposed by § 3.12.270(b), and:
 - (1) the Juvenile Court enters, in accordance with the provisions of § 3.12.270, modified disposition orders providing for out-of-home placement; or
 - (2) the alleged violation includes the commission of a delinquent act, and:
 - (A) a delinquency petition is filed prior to the modification hearing; and
 - (B) continued detention, pending further delinquency proceedings, is necessary and authorized under § 2.04.130.