

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 10

Child Dependency

Fallon Paiute-Shoshone Tribe

Law & Order Code

LAW & ORDER CODE TITLE 10 CHILD DEPENDENCY

Amended Title 10 Approved by FBC August 28, 2018
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TABLE OF CONTENTS

10-10	GENERAL PROVISIONS	5
10-10-010	Purpose.	5
10-10-020	Intent.	5
10-10-030	Social Services Department.	5
10-10-040	Definitions.	6
10-20	JURISDICTION AND TRANSFER OF JURISDICTION.....	8
10-20-010	General Jurisdiction.	8
10-20-020	Jurisdiction Over Extended Family.	8
10-20-030	Continuing Jurisdiction.....	8
10-20-040	Application of the Indian Child Welfare Act.	8
10-20-050	Transfer to State Court or Other Tribal Court.	8
10-20-060	Transfer from Other Courts.	9
10-20-070	Procedures for Transfer from State Court.	9
10-20-080	Transfer of Jurisdiction.....	10
10-20-090	Intervention in State Court Proceedings.	10
10-30	GENERAL PROCEDURES AND AUTHORIZATIONS.	10
10-30-010	Records Maintenance and Confidentiality.	10
10-30-020	Appeal.....	11
10-40	REPORTING AND INVESTIGATION	11
10-40-010	Duty to Report.	11

10-40-020	Persons Specifically Required to Report.....	11
10-40-030	Immunity for Good Faith Reports; Penalties for Bad Faith Reports.....	12
10-40-040	Confidentiality and Admissibility of Reports.....	12
10-40-050	Initial Reports Made to Tribal Police; Investigation by Tribal Police.....	13
10-40-060	Initial Reports Made to the Social Services Department.....	13
10-40-070	Written Intake Report.....	13
10-40-080	Investigation by Social Services Department.....	14
10-40-090	Waiver of Parental Consent.....	14
10-40-100	Final Written Report.....	15
10-50	EMERGENCY PROTECTIVE CARE	15
10-50-010	Authorization and Duties of Social Services Department and Tribal Police.....	15
10-50-020	Procedure Upon Removal of a Child.....	15
10-50-030	Placement Preferences.....	16
10-50-040	Probable Cause Hearing.....	16
10-60	DEPENDENCY PETITIONS AND PROCEEDINGS	17
10-60-010	Initiation of Proceedings; Hearings Conducted in Closed Court.....	17
10-60-020	Guardian Ad Litem.....	17
10-60-030	Notice.....	17
10-60-040	Persons Permitted to Attend Hearing.....	18
10-60-050	Initial Hearing.....	18
10-60-060	Requirements for Adjudication as a Dependent Child.....	18
10-60-070	Adjudicatory Hearing.....	18
10-60-080	Temporary Dispositional Hearing.....	19
10-60-090	Final Dispositional Hearing.....	20
10-60-100	Diversion to Informal Resolution.....	20
10-70	TERMINATION OR SUSPENSION OF PARENTAL RIGHTS.	21
10-70-010	General Provisions.....	21
10-70-020	Petitions for Involuntary Suspension or Termination of Parental Rights.....	21
10-70-030	Involuntary Suspension or Termination of Parental Rights.....	22
10-70-040	Action on Petition for Involuntary Suspension or Termination of Parental Rights.....	22

10-70-050	Voluntary Suspension or Termination of Parental Rights.....	22
10-80	GUARDIANSHIPS.....	22
10-80-010	Petition for Formal Guardianship.....	22
10-80-020	Court Proceedings on Petition for Guardianship.....	23
10-80-030	Termination of Formal Guardianship.....	24
10-80-040	Creation of Informal Guardianship.....	24

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10-10 GENERAL PROVISIONS

10-10-010 Purpose.

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

- (a) To provide for the welfare, care and protection of the children and families on the Fallon Paiute-Shoshone Reservation and Colony by establishing procedures to protect the best interests of Tribal children and of the Tribe and its customs and culture.
- (b) To prevent the unwarranted break-up of Indian families by incorporating procedures that recognize the rights of children and parents or other custodial adults, and, where possible, to maintain and strengthen the family unit.
- (c) Wherever possible, family life shall be strengthened and preserved, and the primary efforts will be toward keeping the child with his or her family, and if this is not possible, then efforts shall be made toward maintaining the child's physical and emotional ties with the child's extended family and with the Tribal community.
- (d) To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children and to provide a continuum of services for children and their families.

10-10-020 Intent.

- (a) It is the intention of the Tribe in enacting this Title to incorporate to the fullest extent possible the honored customs and traditions of the child's particular Tribe, consistent with the Indian Civil Rights Act, 25 U.S.C. § 1301, and with the needs and realities of Tribal lives and conditions on the Reservation. Evidence may be introduced in any proceeding conducted pursuant to this Title of such customs and traditions, except in cases involving allegations of physical abuse.
- (b) Where it is shown to the satisfaction of the Tribal Judge that the customs and traditions of the child's particular Tribe are consistent with the provisions of this Title, then the judge shall adopt such customs and traditions for the purposes of the hearing and such customs and traditions shall have the effect of law governing that particular hearing.

10-10-030 Social Services Department.

- (a) The Tribe's Social Services Department ("Social Services Department") shall carry out the duties and responsibilities set forth in this Title. The Social

Services Department may obtain the assistance of an attorney to perform its duties.

- (b) Duties. The duties of the Social Services Department under this Title include, but are not limited to, the
 - (1) filing petitions with Tribal, federal or state courts as provided in this Title;
 - (2) representing the Tribe in all proceedings under this Title; and
 - (3) performing such other duties as the Tribal Court may order.

10-10-040 Definitions.

As used in this Title, the following definitions shall apply:

- (a) "Business Council" means the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe.
- (b) "Dependent Child" means a child who has been found to be one or more of the following:
 - (1) an "Abused Child": A child who has been physically, emotionally, psychologically, or sexually abused, mistreated, or exploited by any person; "child abuse" includes, but is not limited to any case:
 - (A) in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, subdural hematoma, soft tissue swelling, or any other physical injury or impact that may be the result of deliberate and /or inappropriate infliction by any person and this condition is not justifiably explained or may not be the result of accidental occurrence;
 - (B) in which a child is mentally or emotionally injured by the behaviors of the parent or guardian of the child and such injuries result in observable and substantial impairment of the child's mental, emotional, or psychological ability to function;
 - (C) in which a child is subjected to sexual assault, rape, sexual molestation, sexual exploitation, sexual contact, sexual abuse, pornography, or prostitution or is otherwise exposed to inappropriate sexual conduct; and/or
 - (D) in which a child is subjected to substantial risk of harm to his or her health, safety or welfare including risks associated with family violence.
 - (2) a "Neglected Child":
 - (A) One whose parent or guardian fails to provide the minimal care which a reasonable prudent parent would provide in the same or similar circumstances for the subsistence, education, and welfare of the child, although the parent or guardian was able to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious harm to the child as determined by appropriate medical

- or professional persons; or
 - (B) One who has a special physical or mental condition for which the youth's parent or guardian neglects or refuses to provide a reasonable level of special care; or
 - (C) One whose parent or guardian is unable to discharge his/her responsibilities for the child because of incarceration.
- (3) an "Abandoned Child": A child whose parent or guardian is not identifiable, or if known, has made no reasonable efforts to care for or arrange substitute care for the child for a period of three (3) months or more, and has not indicated an intent to resume care of the child.
 - (4) a "Child in Need of Care": A child who is homeless or destitute or without proper care and support, through no fault of his/her parent or guardian, including hospitalizations, or other physical or mental incapacity of the parent or guardian.
- (c) "Court" or "Tribal Court" means the Juvenile Court of the Fallon Paiute-Shoshone Tribe, unless another court is clearly specified or intended.
 - (d) "Indian" means any person who is enrolled in (or eligible for enrollment in) any federally-recognized Indian tribe, or any person who is legally recognized as Indian under federal common law, including Canadian Indians and Alaskan Natives.
 - (e) "Reservation" means that area encompassed within the exterior boundaries of the Fallon Paiute-Shoshone Reservation and Colony, and any lands added thereto that are under the Tribe's jurisdiction.
 - (f) "Tribe" means the Fallon Paiute-Shoshone Tribe and all its agencies, programs and departments.
 - (g) "Tribal Child" means a person under the age of 18 years old who:
 - (1) Is a member of the Fallon Paiute-Shoshone Tribe or is eligible for membership in the Tribe; or
 - (2) Is an Indian child residing or domiciled within the Reservation or having significant contacts with the Reservation; or
 - (3) Has been declared a Ward of the Court of the Tribe by the Tribal Court.
 - (h) "Tribal Court" means the Fallon Paiute-Shoshone Tribal Court.
 - (i) "Tribal Member" means an enrolled member of the Tribe.
 - (j) "Tribal Police" means the Tribal Police of the Tribe.
 - (k) "Ward of the Court" means a child who is subject to the supervision, care, and/or management of a person, agency, department, or institution legally appointed by the Tribal Court and who remains under the continuing jurisdiction of the Tribal Court; "ward" also means a child who is made a ward of the Tribal Court under the provisions of this Title.

10-20 JURISDICTION AND TRANSFER OF JURISDICTION

10-20-010 General Jurisdiction.

- (a) The jurisdiction of the Tribal Court shall be civil in nature and shall be governed by the Fallon Paiute-Shoshone Tribe Rules of Civil Procedure. This jurisdiction shall include the right to issue all orders necessary to ensure the safety of children within the boundaries of the Reservation, as well as other children who have been declared to be wards of the Tribal Court.
- (b) Pursuant to this Title, the Tribal Court shall have jurisdiction over the following persons:
- (1) Enrolled members of the Tribe under the age of eighteen (18) years;
 - (2) Children under the age of eighteen (18) who are eligible for enrollment in the Tribe;
 - (3) Indians, as defined in Section 10-10-040 of this Title, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the Reservation;
 - (4) Children of enrolled members of the Tribe or other Indians, as defined in Section 10-10-040 of this Title, including adopted children, who reside within the exterior boundaries of the Reservation; and
 - (5) Children residing within the exterior boundaries of the Reservation, for whatever reason, in the home of an enrolled member of the tribe or other Indians, as defined in Section 10-10-040 of this Title, as long as the parents or guardians have consented to the jurisdiction of the Tribal Court. Such consent, once given, may be revoked only with permission of the Tribal Court.

10-20-020 Jurisdiction Over Extended Family.

Where the Tribal Court asserts jurisdiction over a person under Section 10-20-010 above, the Court shall also have jurisdiction over the child's extended family living in the household.

10-20-030 Continuing Jurisdiction.

The Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the Reservation.

10-20-040 Application of the Indian Child Welfare Act.

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

10-20-050 Transfer to State Court or Other Tribal Court.

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

10-20-060 Transfer from Other Courts.

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

10-20-070 Procedures for Transfer from State Court.

- (a) Receipt of notice. Notice of state court cases shall be received by the Social Services Department or other persons who shall be designated by the Tribe to receive such referrals. This designated person or department shall be the "tribal agent" for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act.
- (b) Investigation and pre-transfer report. Upon receipt of a notice of a child custody proceeding governed by the Indian Child Welfare Act in a state court, or upon receiving notice in any other form that a Tribal child is involved in a child custody proceeding, the Social Services Department shall conduct an investigation and file a written report with the Tribal Chairman within fifteen (15) days of receipt of the notice, excluding weekends and holidays. The Tribal Chairman shall determine if the matter needs to be reported to the Fallon Business Council.
- (c) Investigation procedure and recommendations. Investigation of referrals shall include:
 - (1) contacting appropriate sources to determine the child's membership status with the Tribe;
 - (2) investigating and determining whether the child custody notice is one properly referred to the Tribe under the Indian Child Welfare Act;
 - (3) contacting social, medical, legal, or other sources to obtain necessary information regarding the circumstances of the case;
 - (4) investigating the child's surroundings and emotional contact;
 - (5) investigating the wishes of the child's family, extended family, and other interested persons; and
 - (6) contacting the parent or guardian of the child, and notifying them of the fact of notice to the Tribe and the Tribe's consideration of transfer of the case to Tribal jurisdiction. Contact shall be made by personal delivery of the notice to the parent or the guardian, where practicable. Where such personal service is not practicable, then notice shall be given by registered mail with return receipt requested;
- (d) Upon investigation of the referral, the Social Services Department shall make a recommendation as to whether "transfer" of the case, "intervention," or "no involvement" would be the appropriate action and in the best interests of this child. Factors to be considered in the recommendation include, but are not limited to, the following:
 - (1) age of the child and circumstances of the family;
 - (2) past and present residences of the child;
 - (3) special needs of the child (if any) and availability of Tribe services to serve the child's particular needs;

- (4) location of the family, witnesses, documents, and other evidence;
- (5) existence of subpoena and other process limitations of Tribal jurisdiction;
- (6) whether the State is attempting to reunite the family;
- (7) whether financial assistance for the care of the child will continue if jurisdiction is transferred; and
- (8) availability of a suitable home for placement of the child.

10-20-080 Transfer of Jurisdiction.

- (a) If the Social Services Department determines that transfer is in the best interests of the child, the Social Services Department shall prepare and file with the referring state court a Petition for Transfer of Jurisdiction to the Tribal Court within five (5) days of receipt of the request from the Social Services Department.
- (b) The Social Services Department shall give notice of the filing of a Petition for Transfer of Jurisdiction to all parties of the State court proceeding.
- (c) Upon acceptance of jurisdiction, the Tribal Court shall schedule a Status Hearing within thirty (30) days to conduct an initial review of the proceedings and to order appropriate changes in placement of the child or changes in the family's case plan, or enter other such orders as may be appropriate. Further proceedings shall take place according to relevant sections of this Title.

10-20-090 Intervention in State Court Proceedings.

- (a) If the Social Services Department determines that transfer is not in the best interests of the child, but that the Tribe should intervene in the proceedings as a party, the Social Services Department shall initiate intervention procedures by filing a Motion to Intervene within five (5) days of receiving the request from the Social Services Department. The case shall be assigned to a Social Services Department worker to monitor the State court compliance with the Indian Child Welfare Act and apprise the State court of the Tribe's position in the case.
- (b) The Social Services Department shall give notice of the Tribe's intent to intervene to all parties of the State court proceeding.
- (c) The Tribe may intervene in State court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings. The Social Services Department shall file a Motion to Intervene within five (5) days of any receipt of a recommendation to intervene from the Social Services Department.

10-30 GENERAL PROCEDURES AND AUTHORIZATIONS.

10-30-010 Records Maintenance and Confidentiality.

- (a) Court records. A record of all hearings under this Title shall be made and preserved until the jurisdiction of the Tribal Court has ended.
- (b) Confidentiality. All court documents and files prepared in proceedings under

this Title shall be held confidential. This shall include, but is not limited to:

- (1) reports to the Social Services Department, police officers, or other Tribal personnel involved in child custody proceedings;
- (2) summaries or records of hearings; and
- (3) the names of children, families, or witnesses involved in these proceedings.

(c) Location and access to Court records. All records shall be kept in a secure place by the Clerk of Court, and shall be released only to the following who are directly involved in the case:

- (1) Tribal Judges;
- (2) Tribal Advocates;
- (3) the child's parent or guardian; and
- (4) Social workers, or other Tribal agencies and officers of the Court.

No other person shall be allowed access to such information without an order from the Tribal Court.

10-30-020 Appeal.

Any order of the Tribal Court involving the suspension or termination of parental rights, and any final order of the Tribal Court, may be appealed according to the rules and practices stated in Law and Order Code § 1-90-020.

10-40 REPORTING AND INVESTIGATION

10-40-010 Duty to Report.

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

10-40-020 Persons Specifically Required to Report.

(a) As required by § 5-50-040, the following individuals are required to report any known or suspected abuse or neglect of a child immediately to the Social Services Department or Tribal Police:

- (1) Licensed medical provider, including but not limited to physician, physician assistant, nurse, dentist, physical therapist, chiropractor, podiatrist, optometrist, pharmacist, audiologist, psychologist, etc.
- (2) Employees of a medical facility who are engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of such a medical facility upon notification of suspected abuse or neglect of a child by a member of the staff of the medical facility.
- (3) Coroner.
- (4) A member of the clergy, or religious healer, unless the person has acquired the knowledge of the abuse or neglect from the offender during a confession.

- (5) Social worker.
 - (6) Marriage and family therapist, and clinical professional counselors.
 - (7) Alcohol, drug and family counselors.
 - (8) Any person licensed to conduct a foster home.
 - (9) A person working in a school who is licensed or endorsed pursuant to applicable law.
 - (10) Child care provider, including any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.
 - (11) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer.
 - (12) Except as otherwise provided by applicable law or ethical rules, an attorney.
 - (13) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.
 - (14) Any person who is employed by a youth shelter.
 - (15) Any adult person who is employed by an entity that provides organized activities for children.
 - (16) The members of the Fallon Business Council.
- (b) The reporting requirements stated in this section are in addition to the reporting requirements of 18 U.S.C. § 1169.
 - (c) Those persons under this Section who knowingly fail to report a case of known or suspected abuse or neglect, or willfully prevent someone else from doing so, shall be subject to a civil cause of action proceeding in Tribal Court.

10-40-030 Immunity for Good Faith Reports; Penalties for Bad Faith Reports.

Any person making a report which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making that report. Any person that intentionally makes a false report may be subject to criminal liability under Section 5-60-060.

10-40-040 Confidentiality and Admissibility of Reports.

- (a) The identity of any person making an initial report of child abuse or neglect shall not be disclosed to any person other than the Tribal Court, an employee of the Tribal Social Services Department, Tribal Police, or other state or federal government employee who has a need to know the information in the performance of such employee's duties without the consent of such person.
- (b) Such reports shall not be admissible in evidence in any proceeding under this Title. Information contained in such reports shall not be admissible in any proceeding under this Title unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information. However, any information contained in such report may be

admissible in evidence if offered by some witness other than the reporter, and if such evidence is otherwise admissible under the Rules of Evidence of the Tribal Court.

10-40-050 Initial Reports Made to Tribal Police; Investigation by Tribal Police.

- (a) When a Tribal Police officer receives an initial report from any person that reasonably believes a child is abused or neglected, or in the course of his duty believes that a child is abused or neglected, the officer shall immediately notify the Social Services Department and shall submit a copy of the written intake report required under Section 10-40-070 to the Social Services Department.
- (b) Where a report of abuse involves an Indian child or Indian abuser and a preliminary inquiry indicates a criminal violation, the law enforcement agency also shall immediately report the incident to the Federal Bureau of Investigation pursuant to federal law.
- (c) Tribal Police shall accompany and assist the Social Services Department in investigating Dependent Child cases when requested to do so by the Social Services Department.

10-40-060 Initial Reports Made to the Social Services Department.

When a Social Services Department worker receives an initial report from any person that knows or suspects that a child is being abused or neglected, the worker should as soon as possible notify Tribal Police and then shall submit a copy of the written intake required under Section 10-40-070 to Tribal law enforcement.

10-40-070 Written Intake Report.

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

- (a) the name, address, age, and sex of the child that is the subject of the abuse or neglect;
- (b) the grade and school in which the child is currently enrolled;
- (c) the name and address of the child's parents, guardian, or other person responsible for the child's care;
- (d) the name and address of the alleged perpetrator and their relationship to the child;
- (e) the name and address of the person who made the report including their relationship to the child;
- (f) a brief narrative as to the nature and extent of the child's injuries or circumstances, including but not limited to, any evidence of previous injuries and any previously known or suspected abuse or neglect of the child or the child's siblings and the suspected dates of the abuse or neglect; and
- (g) any other information that might be helpful to the investigation of child abuse or neglect, including but not limited to information useful in establishing the cause of the injuries and the identity of the person or persons responsible for

the injuries.

10-40-080 Investigation by Social Services Department.

- (a) The Social Services Department shall take immediate steps to ensure prompt investigation of any report to determine if there is probable cause to believe that the allegations are true, and to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child who may be in danger of abuse or neglect by the same person.
- (b) The investigation shall include:
 - (1) investigating the home environment of the child;
 - (2) investigating any physical or emotional injuries suffered by the child;
 - (3) investigating all other non-financial matters that, in the discretion of the social worker, are relevant to the investigation; and
 - (4) interviewing the parents or guardians if possible.
- (c) The investigation may also include:
 - (1) interviewing person's at the child's school or day-care facility;
 - (2) interviewing any other person or extended family members involved with caring for the child or with knowledge of the child's care or well-being; or
 - (3) interviewing the child.
- (d) When appropriate, the Social Services Department shall coordinate its investigation with any other Tribal, federal or state department or agency, including, but not limited to: the Tribal Police Department, Tribal probation officer(s), the F.B.I., the B.I.A., any state or city police departments and any state social service agency. The Social Services Department is not relieved of its duty to investigate the report of abuse or neglect even if one or more of these departments or agencies is investigating the circumstances surrounding the alleged abused or neglected child.
- (e) If the investigation is being conducted pursuant to an anonymous report, the investigation must within 48 hours develop independent, corroborative information for the investigation to continue. Without the development of independent, corroborative information, a child may not be removed from the home and the investigation must be terminated.

10-40-090 Waiver of Parental Consent.

- (a) Photographs, x-rays, medical exams, psychological examinations, and such interviews of a child alleged to have been subject to abuse or neglect shall be allowed without parental consent if the law enforcement agency or the Social Services Department have reason to believe the child has been subjected to abuse or neglect.
- (b) In any case where there is a reason to believe that a child has been subject to abuse or neglect, the law enforcement agency or the Social Services Department may interview the child without first obtaining consent of the parents or guardian.

- (c) Examinations and interviews of a child shall be conducted under such circumstances and with such safeguards as to minimize additional trauma to the child.

10-40-100 Final Written Report.

- (a) Upon completion of the investigation of any report of alleged child abuse or neglect, the Social Services Department shall prepare a final written report on the allegations.
- (b) If the report reveals probable cause to believe that the child is abused or neglected or is at substantial risk of being abused or neglected, the Social Services Department shall initiate the procedures outlined in Parts 10-55 or 10-60 of this Title.

10-50 EMERGENCY PROTECTIVE CARE

10-50-010 Authorization and Duties of Social Services Department and Tribal Police.

- (a) No child shall be removed from the home of the child's parent or guardian without the consent of the parent or guardian absent a specific order from the Tribal Court, except a child may be taken into emergency protective care by a Tribal Police Officer or a Social Services Department worker who has reasonable grounds to believe:
 - (1) that a child is in immediate danger of serious physical or emotional harm from his or her parent, guardian or surroundings and removal of the child from such persons, circumstances, or place is necessary for the health, safety, and welfare of the child; or
 - (2) that a child likely has a life-threatening physical injury or illness or is acutely mentally, emotionally, or psychologically disordered and requires immediate medical or psychiatric care, and the parents or guardians of such child are unable or unwilling to seek such care for the child; or
 - (3) that a child is unable to provide for his or her own basic necessities of life, and the parent or guardian is absent and it appears from the circumstances that no satisfactory arrangements have been made to provide such necessities for the child.
- (b) The Social Services Department has the primary responsibility to provide the protective services authorized by this Part 10-50; they shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

10-50-020 Procedure Upon Removal of a Child.

- (a) If a Tribal Police officer or a Social Services Department worker determines that a child is in need of emergency protective care, that person shall immediately notify or attempt to notify the child's parents or guardian of the removal giving the reasons for such removal.
- (b) Notice may be given by any means reasonably certain of notifying the parent

or guardian of the child, including but not limited to written, telephonic, or in-person oral notification. If the notification is not in writing, written notification also shall be provided within 12 hours.

- (c) If a Tribal Police officer is removing a child, he shall:
 - (1) immediately notify the Social Services Department; and
 - (2) make and deliver a report within 24 hours to the Social Services Department containing a summary of the circumstances surrounding the emergency removal and the basis therefore.
- (d) After the emergency removal of a child, the Social Services Department shall immediately investigate the circumstances surrounding the removal and make a determination of whether the child should remain in emergency protective care or can return home without risk of harm.
- (e) If the Social Services Department determines that the child should remain in protective care, they shall:
 - (1) evaluate the placement options and determine whether the best placement has been achieved; and
 - (2) immediately file a motion with the Tribal Court entitled Motion for Emergency Probable Cause Hearing for a hearing to determine further placement of the child.
- (f) In no case shall emergency protective care extend beyond 72 hours, exclusive of weekends and holidays.

10-50-030 Placement Preferences.

- (a) If return of physical custody of the child can be accomplished without danger of harm to the child, the child shall be returned to the parents or guardian.
- (b) If the return of the child to the child's parents or guardian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the following order of priority:
 - (1) a private home of an appropriate extended family member if such placement can be accomplished without risk of harm to the child;
 - (2) a temporary foster home;
 - (3) an appropriate facility having been approved for such placement by the Social Services Department
- (c) A child shall not be placed in a jail facility or other environment where the child is in sight or sound contact with persons in such a facility for the reason of having been accused or convicted of a crime or delinquent act.

10-50-040 Probable Cause Hearing.

- (a) A Probable Cause Hearing, which may be held telephonically, shall be held within 72 hours of the child's removal from his or her parents or guardian to determine whether there was probable cause to remove the child.
- (b) The Tribal Court and the Social Services Department shall use best efforts to notify the child's parents or guardian of the time and place of the hearing and inform them of their right to attend the hearing and be heard.

- (c) If the Tribal Court determines there was probable cause to remove the child, the Court shall also determine the proper placement of the child pending further court proceedings. A Petition for Dependency shall be filed within ten (10) days of such hearing, excluding weekends and holidays. If one is not filed, the Social Services Department shall immediately return the child to his or her parents or guardian from which the child was removed.
- (d) If the Court determines that there was not probable cause to remove the child, the Social Services Department shall immediately return the child to the parents or guardian from which the child was removed.

10-60 DEPENDENCY PETITIONS AND PROCEEDINGS

10-60-010 Initiation of Proceedings; Hearings Conducted in Closed Court.

- (a) All court proceedings under this part shall be initiated by a petition entitled Petition for Dependency. Such petition shall be prepared and filed by the Social Services Department. The petition shall contain the following information:
 - (1) The name and birth date of the child;
 - (2) The name of the parent(s) or guardian(s) of the child;
 - (3) The basis of the Tribal Court's jurisdiction;
 - (4) A summary of any efforts which have been made by the Social Services Department or others to divert the case from the court system to community groups or advisors;
 - (5) An allegation that the child is a Dependent Child or is at substantial risk of being a Dependent Child, and a plain statement of facts supporting this allegation;
 - (6) Whether temporary, permanent, or long-term legal custody of the child is requested by the Social Services Department and a statement of facts supporting this request; and
 - (7) A statement and supporting facts relevant to the present physical or legal custody of the child.
- (b) All hearings under this section shall be in closed court, including only officers of the Court, the child, parent(s) or guardian(s), social services workers, and such other persons who, in the discretion of the Court, may aid in the proceedings or have sufficient interest in the case.

10-60-020 Guardian Ad Litem.

Upon the filing of a Petition for Dependency, the Clerk of the Tribal court shall immediately notify a Tribal Court Judge who may appoint a Guardian ad Litem or other qualified person to represent the child if any such person is available at no cost to the Tribe.

10-60-030 Notice.

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

10-60-040 Persons Permitted to Attend Hearing.

The following persons shall be permitted to attend hearings upon petitions of delinquency or dependency:

- (a) The allegedly delinquent or dependent child, and the representative for the child;
- (b) The parents or guardian of the child, and the representative for the parents or guardian;
- (c) The Tribal prosecutor and any law enforcement personnel involved in the case;
- (d) Any Social Services Department personnel involved in the case;
- (e) Any other interested persons, with the permission of and in the discretion of the court.

10-60-050 Initial Hearing.

Within twenty (20) days of filing a Petition for Dependency, an Initial Hearing shall be conducted unless another time has been set for good cause by order of the Tribal Court. The Initial Hearing shall be held in two parts: the Adjudicatory Hearing and the Temporary Dispositional Hearing. For good cause, these hearings may be separated and held in two proceedings. Such hearings shall be conducted according to the Rules of Civil Procedure and the Rules of Evidence of the Tribal Court, and consistent with all due process and other rights afforded the parties by the Indian Civil Rights Act. The burden of proof on all matters shall be upon the Social Services Department.

10-60-060 Requirements for Adjudication as a Dependent Child.

- (a) Request for temporary legal custody. Unless the allegations are admitted, the Social Services Department shall have the burden of proving, by clear and convincing evidence, at the least that the child is at substantial risk of being a Dependent Child.
- (b) Request for permanent or long-term legal custody. Unless the allegations are admitted, the Social Services Department shall have the burden of proving by clear and convincing evidence that the child is a Dependent Child. However, the Social Services Department may request further time with which to prepare its case following a denial of the allegations in the petition, and the Court may continue the proceedings for such time as the Court determines necessary for further investigation and preparation by the Social Services Department.

10-60-070 Adjudicatory Hearing.

- (a) The Adjudicatory Hearing shall be conducted solely to determine whether the child is a Dependent Child or is at substantial risk of being a Dependent Child.
- (b) The parent(s), guardian(s) or custodian(s) of the child shall be advised of:
 - (1) the nature of the petition;
 - (2) the factual allegations therefore;
 - (3) the present custodial situation;

- (4) the relief requested by the Social Services Department; and
- (5) the right to be represented by legal counsel at their own expense.
- (c) The parent or guardian will be allowed to admit or deny the allegations in the petition.
- (d) Upon hearing evidence from all parties regarding the issue of whether the child is or is at substantial risk of being a Dependent Child, the Court shall issue an order stating the following:
 - (1) the Court's jurisdiction over the case; and
 - (2) whether it has been proven by clear and convincing evidence that the child is a Dependent Child. If the Court finds that it has, the Court shall proceed to temporary disposition. If the Court does not so find, any request for permanent or long-term legal custody must be denied and the petition dismissed; or
 - (3) whether it has been proven by clear and convincing evidence that the child is at substantial risk of being a Dependent Child. If the Court finds that it has, the Court shall proceed to temporary disposition. If the court does not so find, any request for temporary legal custody must be denied and the petition dismissed.

10-60-080 Temporary Dispositional Hearing.

- (a) The Temporary Dispositional Hearing shall be conducted to determine the appropriate placement of the child and further action of the parties and the Court.
- (b) Upon hearing evidence of the appropriate placement of the child and any requests of the Social Services Department, the Court shall issue a temporary dispositional order, including, but not limited to, the following:
 - (1) If out-of-home placement is requested, a determination of whether it is necessary for the protection of the child. If the Court does not so find, the child shall remain with or be returned to the parent, guardian or custodian. If the Court so finds, the Court shall state the appropriate placement of the child;
 - (2) that the child, parents, or guardians undergo medical examinations or psychological assessments and that reports be submitted to the Court, if such examinations or assessments are deemed necessary by the Tribal Court or the Social Services Department;
 - (3) that further investigation be conducted by the Social Services Department;
 - (4) that the parents and/or the child participate in such counseling or other programs as the Court may deem beneficial;
 - (5) that notice of further proceedings be given to additional interested parties;
 - (6) that such other actions consistent with the purposes of this Title be taken; and
 - (7) the date of the final dispositional hearing upon the petition and that

notice of such hearing be given to all parties. The Final Dispositional Hearing shall determine the further custody or placement of the child, and such hearing shall be set no later than ninety (90) days after the Temporary Dispositional Hearing.

10-60-090 Final Dispositional Hearing.

- (a) At the Final Dispositional Hearing, all interested parties may testify and give evidence in their behalf regarding the present circumstances of the child and of the parents or guardians of the child. The Court shall inquire into the compliance with any temporary order issued by the Court, including remedial conditions.
- (b) The Court may order one of the following dispositional alternatives below. If the Court's order does not finally conclude the case, the Court shall specify in its order the date for further reporting to the Court and the date for further dispositional hearing. The dispositional alternatives include:
 - (1) releasing the child to the parent or guardian with no further action, and dismissing the case;
 - (2) suspending the proceedings for a specified period of time, releasing the child to the parent or guardian, or other persons as the Court may direct, subject to the parents or guardian being under the continued supervision of the Social Services Department;
 - (3) temporarily suspending parental rights for a specified period of time and declaring the child a Ward of the Tribal Court and that the child be placed with an extended family member, foster home, or other appropriate person or facility; or
 - (4) suspending parental rights for an indefinite period of time and declaring the child a Ward of the Tribal Court and that the child be placed with an extended family member, foster home, or other appropriate person or facility.
- (c) In any of the above dispositions in which parental rights have been suspended or terminated, but the child has not been adopted, the child shall be considered a Ward of the Tribal Court.
- (d) In determining the disposition of the case, it shall be the policy of the Tribal Court to prefer voluntary guardianships to involuntary suspension or termination of parental rights. The Court shall also prefer suspension of parental rights to termination of parental rights.

10-60-100 Diversion to Informal Resolution.

- (a) It shall be the duty of the Social Services Department, any attorneys or advocates involved in the case, and the Tribal Court to encourage satisfactory, out-of-court solutions to cases brought pursuant to this Title prior to any Final Dispositional Hearing.
- (b) The Social Services Department may recommend a plan including counseling, treatment, or such other remedial actions which, in the Social Services

Department's opinion, is in the best interest of the child. Such plan shall be implemented, without Court action, upon the voluntary consent of the parent or guardian. Upon receiving consent, the Social Services Department shall inform the Court that the case is being resolved informally.

- (c) Upon successful completion of the recommended program, the petition shall be dismissed. No diversion plan shall exceed six (6) months. In cases where a diversion is not successful and/ or not completed, the Social Services Department shall have the right to reactivate the petition.
- (d) An informal diversion may include releasing the child to the parent or guardian with no further action, and dismissing the case. An informal diversion shall not include any disposition which separates the child from the parents or guardian, unless consented to in writing by the parents or guardian, or otherwise ordered by the Court. Any informal disposition shall include voluntary, written consent of all parties.

10-70 TERMINATION OR SUSPENSION OF PARENTAL RIGHTS.

10-70-010 General Provisions.

Parental rights may be suspended or terminated voluntarily or involuntarily. Upon the suspension or termination of parental rights, the person assuming the traditional parental rights of the child shall be deemed a guardian. Suspension or termination of parental rights shall not adversely affect the child's right and privileges as an Indian, nor as a member of any Tribe to which the child is entitled, or to the child's enrollment status with the child's Tribe.

10-70-020 Petitions for Involuntary Suspension or Termination of Parental Rights.

- (a) If the Social Services Department has not already requested permanent or long-term custody in a petition pursuant to Part 10-60, or has previously had a request for permanent or long- term custody denied, but believes the requirements for suspension or termination can be met, the Social Services Department may file a petition pursuant to this Part entitled Petition for Suspension or Termination of Parental Rights.
- (b) A Petition pursuant to this Section shall contain the following:
 - (1) The name and birth date of the child;
 - (2) The name of the parents or guardian of the child;
 - (3) The basis of the Tribal Court's jurisdiction;
 - (4) A summary of any efforts which have been made by the Social Services Department or others to divert the case from the Court system to community groups or advisors;
 - (5) An allegation that the child is a Dependent Child, and a plain statement of facts supporting this allegation;
 - (6) Whether suspension or termination of parental. rights are requested and a statement of facts supporting this request; and
 - (7) A statement and supporting facts relevant to the present physical or legal custody of the child.
- (c) The Social Services Department shall serve the parents or guardians with the

petition within three (3) days of filing the petition with the Court.

10-70-030 Involuntary Suspension or Termination of Parental Rights.

No suspension or termination of parental rights may be ordered unless the Tribal Court determines, beyond a reasonable doubt, that:

- (a) The continued custody of the child by the parent or guardian is likely to result in serious emotional or physical damage to the child; and
- (b) The risk of serious emotional or physical damage to the child will continue due to circumstances that are irremediable by further efforts of the Tribal Court and the Social Services Department.

10-70-040 Action on Petition for Involuntary Suspension or Termination of Parental Rights.

- (a) Along with a petition filed pursuant to Section 10-70-020, the Social Services Department shall file a Motion for Final Dispositional Hearing for Termination of Parental Rights.
- (b) The Court shall set a bearing pursuant to this motion and give all parties at least ten (10) days notice, excluding weekends and holidays.
- (c) The Court shall follow the procedures and meet the requirements of a Final Dispositional Hearing as set for in Section 10-60-090, and may order an appropriate disposition pursuant to such Section.

10-70-050 Voluntary Suspension or Termination of Parental Rights.

Voluntary suspension or termination of parental rights may be initiated formally or informally by creating a guardianship.

10-80 GUARDIANSHIPS.

10-80-010 Petition for Formal Guardianship.

- (a) A formal guardianship may be created by the filing of a petition entitled "Petition for Guardianship" submitted by the parent(s), a proposed guardian or the Social Services Department. The petition shall contain the following information:
 - (1) The name, age, and residence of each living parent of the child;
 - (2) The name, age and residence of the child;
 - (3) The name, age, and residence of the proposed guardian or guardians;
 - (4) The jurisdictional basis of the Tribal Court over the matter;
 - (5) A statement of facts indicating that the guardianship is in the best interest of the child;
 - (6) The duration of the proposed guardianship, and whether it is to be of a definite or indefinite duration;
 - (7) Whether the guardianship is consented to by each living parent of the child, and, if not, any facts excusing such consent, including any facts related to the physical care or custody of the child, past or present, which may be relevant to the petition;

- (8) A full statement of the value of any property of the child's, or of which the child is expected to become entitled to during the duration of the guardianship, and recommendation for disposition of the property during the guardianship.
- (b) The written consent of each parent consenting to the guardianship shall be filed with the petition. Such consents shall be executed before an adult witness. Such consents shall not be invalidated by reason of the minority of the consenting parent.

10-80-020 Court Proceedings on Petition for Guardianship.

- (a) Upon filing of a Petition for Guardianship, the Tribal Court may order such investigation as it deems necessary for a full determination upon the petition.
- (b) If the Tribal Court determines that the proposed guardian is a member of the child's extended family or community, or otherwise has significant ties to the child, and that the guardianship has been consented to by each living parent of the child, and that the guardianship is in the best interests of the child, the court may enter a summary order of guardianship as requested in the petition.
- (c) If the guardianship has not been consented to in writing by each living parent of the child, then each parent not having consented shall be given written notice of the proceedings, including the date of the hearing upon the petition and a copy of the petition. Such notice shall be served personally where the location of the parent is known and such service is practical. Otherwise, service shall be made as ordered by the Tribal Court by the most effective means, and consistent with the due process rights of the parent.
- (d) Unless the guardianship is granted by summary order, the Tribal Court shall hold a hearing upon the petition and shall determine if the guardianship is in the best interests of the child. If a non-consenting parent appears at the hearing and consents the guardianship, the petition shall be denied unless the Court determines, upon clear and convincing evidence, that the guardianship is in the best interests of the child, and the non-consenting parent is unable to furnish a home for the child, and the non-consenting parent is unable to furnish a home for the child which is more beneficial to the needs and the normal development of the child than the home of the proposed guardian.
- (e) Upon a determination that the petition should be granted, the Tribal Court shall enter an order of guardianship. Such order shall contain the following:
 - (1) The jurisdictional basis of the Tribal Court;
 - (2) The name of the guardian or guardians;
 - (3) The duration of the guardianship -whether definite or indefinite;
 - (4) A factual finding that the guardianship is in the best interests of the child and the reasons therefore;
 - (5) Any specific conditions of the guardianship, including rights of the parents.

10-80-030 Termination of Formal Guardianship.

- (a) The guardianship shall terminate upon any of the following:
 - (1) The duration specified in the Order;
 - (2) The further Order of the Court terminating guardianship; or
 - (3) The death of the guardian or other circumstances creating a practical inability of the guardian to care for the child.
- (b) Upon termination of the guardianship, all legal parental rights shall be returned to the person or persons having such rights prior to the creation of the guardianship.

10-80-040 Creation of Informal Guardianship.

- (a) An informal guardianship, or traditional guardianship, may be created by the placement of a child with another person or family member by the parent(s) without Court involvement. Such a guardianship shall be entered into voluntarily by both the natural parent(s) and the guardian and shall be recognized as a legal guardianship for so long as the consensual relationship continues.
- (b) No informal guardianship may be created over the objection of a natural parent having custody or joint custody of the child. A natural parent who does not have custody or joint custody of the child, and who has not consented to such a traditional guardianship, may petition the Tribal Court for denial or termination of the guardianship status, for custody of the child, or for such other appropriate relief as the parent believes may be in the best interests of the child.
- (c) Upon the filing of such a petition by non-consenting parent, the Court shall hold a hearing in accordance with Section 10-80-020, and the matter shall thereafter be determined in accordance with the rules for determination of a formal guardianship petition.
- (d) After the creation of an informal or traditional guardianship, if the natural parent(s) consenting to the guardianship elect to terminate the guardianship and request the return of the child, such request shall be granted by the guardian and the child shall be returned to the parent(s) so requesting.