

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

### Title 9

### Delinquency Proceedings

# Fallon Paiute-Shoshone Tribe

## Law & Order Code

### LAW & ORDER CODE TITLE 9 JUVENILE PROCEEDINGS

Amended Title 9 Approved by FBC August 28, 2018  
Resolution No. 18-F-199  
Effective October 1, 2018

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**Law and Order Code**  
**TITLE 9**  
**FAMILY CODE – DELINQUENCY PROCEEDINGS**

**Title 9 Approved by FBC August 1, 2018**  
**Resolution No. 18-F-199**  
**Effective October 1, 2018**

**9-10            GENERAL PROVISIONS**

**9-10-010        Purpose**

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

- (a) To preserve and retain the family unit whenever possible. To provide for the care, protection and wholesome mental and physical development of juvenile delinquents who are within the provisions of this Title;
- (b) To recognize that alcohol and substance abuse among youths is a disease, which is both preventable and treatable;
- (c) To provide a program of supervision, care and rehabilitation consistent with the protection of the Reservation;
- (d) To achieve the purposes of this Title utilizing the family unit whenever possible and to separate the youth from the family unit only when necessary for the youth's welfare or to protect public safety;
- (e) To clearly provide the juvenile delinquent with services under this Title and to provide appropriate and distinct dispositional options for treatment and rehabilitation;
- (f) To provide judicial and other procedures through which the provisions of this Title are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights are protected under the Tribe's Constitution and under the Tribe's Law and Order Code;
- (g) To provide a continuum of services for youths and their families, from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and
- (h) To provide a forum where an Indian youth who is an enrolled member of (or eligible for enrollment in) the Fallon Paiute-Shoshone Tribe or any federally recognized tribe and is charged in other jurisdictions may be referred for adjudication and/or disposition.

**9-10-020        Definitions**

The following definitions shall apply to this Title. Where his or her is used in this Title, it is meant to include both genders.

- (a) "Adjudicatory Hearing" means a proceeding in the Juvenile Court to determine whether a youth has committed a specific "juvenile offense" or is a "child in need of supervision" as set forth in a petition.
- (b) "Adult" means a person who is 18 years of age or older.

- (c) "Attorney" means Tribal Court advocate or licensed attorney.
- (d) "Child" or "youth" means a person who is less than eighteen (18) years old.
- (e) "Consent Decree" is a Juvenile Court order that suspends a juvenile delinquent proceeding prior to adjudication and continues the child under supervision subject to the terms and conditions negotiated with the Tribal Prosecutor and agreed to by all parties.
- (f) "Detention facility" is a place where the primary function is to restrain a child or prevent a child from inflicting harm or damage to other persons or property that provides for the care and custody of a child.
- (g) "Counsel" means Tribal Court advocate or licensed attorney.
- (h) "Court" or "Juvenile Court" means the Fallon Paiute-Shoshone Tribe's Juvenile Court.
- (i) "Custodian" means a person, other than a parent or guardian, to whom legal custody of a child has been given.
- (j) "Detention" means exercising authority over a child by physically placing them in any juvenile facility designated by the court and restricting the child's movement in that facility.
- (k) "Dispositional Hearing" means a proceeding in the Juvenile Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense" or is a "child in need of supervision."
- (l) "Domicile" means a person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers their permanent home. Domicile for the purposes of jurisdiction is established at the time of the alleged acts.
- (m) "Group home facility" is a place that is not the home of the parents, guardian or custodian of any child, but which is licensed to provide for the care and custody of children.
- (n) "Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter and control of a child.
- (o) "He/His" includes the use of he or she, his or her, and singular includes plural.
- (p) "Institutional facility" is a place that is not the home of the parents, guardian or custodian of any child, but which provides for the care and custody of more than fifteen (15) children.
- (q) "Juvenile delinquent" means a youth who commits a juvenile offense prior to the child's eighteenth (18) birthday.
- (r) "Juvenile offense" means a violation of one or more of the acts provided in Part 9-60 of this Title or a criminal violation of the Law and Order Code of the Fallon Paiute-Shoshone Tribe that is committed by a person who is under the age of eighteen (18) years at the time the offense was committed.
- (s) "Juvenile or youth probation officer" means a person who performs the duties and responsibilities for a juvenile or youth probation officer as set forth in this Title. If no one has been designated by the Tribe for this position, then the

- Tribal Police will undertake the duties and responsibilities.
- (t) "Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.
  - (u) "Probation" means a legal status created by Court order whereby a "juvenile delinquent" is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the Court. A "juvenile delinquent" on probation is subject to return to Court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.
  - (v) "Reservation" means that area encompassed within the exterior boundaries of the Fallon-Paiute Shoshone Reservation and Colony, and any lands added thereto that under the Tribe's jurisdiction.
  - (w) "Restitution" is financial or other reimbursement by the child to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment of injury to persons, and lost wages resulting from injury; which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.
  - (x) "Tribal Court" means the adult court for the Fallon Paiute-Shoshone Tribe.

**9-10-030 Jurisdiction**

- (a) There is hereby established for the Fallon Paiute-Shoshone Tribe a court to be known as the Juvenile Court.
- (b) The Juvenile Court shall have exclusive original jurisdiction over all proceedings established in this Title in which an Indian youth residing in or domiciled on the Reservation is alleged to have committed a juvenile offense within the exterior boundaries of the Reservation, unless the Juvenile Court transfers jurisdiction to the Tribal Court in accordance with this Title.
- (c) The Juvenile Court shall have jurisdiction over all proceedings established in this Title in which an Indian youth is alleged to have committed a juvenile offense within the exterior boundaries of the Reservation, unless the Juvenile Court transfers jurisdiction to the Tribal Court or a State or another tribal Juvenile Court according to this Title.
- (d) When the Tribal Court sits as the Juvenile Court, it shall have such jurisdiction over adults, whether Indian or non-Indian, and within or without the exterior boundaries of the Reservation, as may be incidental to its jurisdiction over youths pursuant to Subsection (b) above and as necessary to accomplish the purposes of this Title.

**9-10-040 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; and
- (e) Any other interested persons, with the permission of and in the discretion of the court.

## **9-15            TRANSFER OF JURISDICTION TO TRIBAL COURT**

### **9-15-010        Motion to Transfer Jurisdiction**

After a petition has been filed alleging a youth to be a "juvenile delinquent," the Court may, upon motion of a law enforcement officer, probation officer, or Tribal prosecutor, and before hearing the petition on its merits, transfer the matter for prosecution as an adult to the Tribal Court only if the youth was fourteen (14) years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute one of the following if committed by an adult:

- (a) homicide;
- (b) arson;
- (c) aggravated assault;
- (d) robbery;
- (e) burglary;
- (f) kidnapping;
- (g) sale of dangerous drugs;
- (h) sexual assault; and
- (j) attempt of any of the act enumerated in Subsection (1) through (8);
- (k) or any other serious adult offense allegedly committed in an aggressive, violent of premeditated manner.

### **9-15-020        Transfer Hearing**

- (a) The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the youth should be transferred to the Tribal Court. The transfer hearing shall be held within fifteen (15) days of receipt by the court of the motion to transfer.
- (b) Written notice of the time, place, and purpose of the hearing is to be given to the youth, his counsel, and his parents, guardian, or custodian at least ten (10) days before the hearing.
- (c) At the commencement of the hearing, the Juvenile Court shall notify the youth and his parent, guardian or custodian of their rights.

### **9-15-030        Standard of Proof**

The Juvenile Court may transfer jurisdiction of the youth to Tribal Court only if the court finds by clear and convincing evidence that both of the following exist:

- (a) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
- (b) the alleged offense was committed in an aggressive, violent, or premeditated

manner.

**9-15-040 Deciding Factors**

In transferring the matter for prosecution as an adult to the Tribal Court, the Juvenile Court may also consider the following factors:

- (a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;
- (b) the record and previous history of the youth, including previous contacts with the Juvenile Court, law enforcement agencies, juvenile courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with juvenile courts will not of itself be grounds for denying the transfer.

**9-15-050 Transfer Order**

- (a) A youth may be transferred to Tribal Court only after the Juvenile Court issues a written order after the conclusion of the transfer hearing that contains specific findings and reasons why the jurisdiction of the Juvenile Court was waived and the case transferred.
- (b) The written order terminates the jurisdiction of the Juvenile Court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted as an adult for a criminal offense originally subject to the jurisdiction of the Juvenile Court unless the case has been transferred as provided in this section.
- (c) Upon written order of the Juvenile Court transferring the case for prosecution as an adult, the Tribal prosecutor shall file a complaint against the youth without unreasonable delay in the Tribal Court.

**9-20 JUVENILE COURT PROCEDURE**

**9-20-010 Evidence Not Used in Other Proceedings**

The adjudication, disposition, and evidence presented to the Juvenile Court is inadmissible as evidence against the youth in proceeding in another court, including the adult Tribal Court.

**9-20-020 Rules of Procedure**

The Juvenile Court procedures are governed by the Tribal Court rules of procedure that do not conflict with this Title.

**9-20-030 Consideration of Prior Youth Record**

The Juvenile Court may consider a youth's prior record from any jurisdiction at detention and dispositional hearings unless the youth's record has been sealed.

**9-20-040 Confidentiality and Juvenile Court Records**

- (a) All juvenile proceedings held pursuant to this Title shall be closed to the public. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Juvenile Court may be admitted at the discretion of the judge.

- (b) All petitions, pleading files, decrees, and orders, as well as medical and police reports and records, pre-dispositional reports and supervision records of a probationer shall be kept separate from adult records and files and shall be closed to public inspection. Only Juvenile Court or law enforcement personnel directly involved in handling the case, the youth and his attorney or advocate, or any other person ordered by the Juvenile Court may have access to the records and files for purposes authorized by the Court.
- (c) Juvenile Court and law enforcement records shall be sealed when the youth reaches the age of eighteen (18), unless the case is on-going. Youth records shall be destroyed three (3) years after jurisdiction over the youth ends. After that time, the Juvenile Court personnel shall respond to all record inquiries as if no records ever existed.

## **9-25 JUVENILE COURT AUTHORITY**

### **9-25-010 Scope of Juvenile Court Authority**

The Juvenile Court may do any of the following:

- (a) Cooperate fully with any federal, state, Tribal, public, or private agency to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this Title. This authority is subject to the approval of the Business Council;
- (b) Utilize any social service that is furnished by a Tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense; and
- (c) Accept or decline transfers from other states or tribal courts involving alleged delinquent youth or alleged status offenders for the purposes of adjudication and/or disposition.

### **9-25-020 Powers and Duties of the Juvenile Court**

The Juvenile Court shall have the same powers and duties as the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants. The rules on disqualification or disability of a Juvenile Court judge shall be the same as those which govern Tribal Court judges.

### **9-25-030 Additional Juvenile Court Personnel**

The Juvenile Court may appoint additional personnel including a guardian ad litem, Court appointed special advocate, or referee as it deems appropriate or upon recommendation by juvenile probation, the Tribal prosecutor, the youth or his parents.

## **9-30 TAKING JUVENILE DELINQUENT INTO CUSTODY**

### **9-30-010 Taking a Youth Into Custody**

A law enforcement officer may take a youth into custody when:

- (a) The youth commits an offense in the presence of the officer;

- (b) The officer has probable cause to believe an offense has been committed by a youth; or
- (c) An appropriate custody order or warrant has been issued by the Juvenile Court, or other appropriate court with permission of the Juvenile Court, authorizing the taking of a particular youth.

**9-30-020      Advisement of Reasons for Custody and Rights**

- (a) At the time the youth is taken into custody, the arresting officer shall advise the youth of the reason(s) that he has been taken into custody and the following juvenile Miranda warnings:
  - (1) You have the right to remain silent.
  - (2) Anything you say can and will be used against you in a court of law.
  - (3) If you are under the age of eighteen (18), anything you say can be used against you in a juvenile court prosecution for a juvenile offense and can be used against you in an adult court criminal prosecution if the juvenile court decides that you are to be tried as an adult.
  - (4) You have the right to speak with an attorney before any questioning if you wish. However the Tribe does not have a duty to appoint an attorney for you.
  - (5) Do you understand these rights?
  - (6) Having understood these rights, do you wish to speak with me at this time?
- (b) Tribal law enforcement shall not question any youth without the presence of his parent(s), guardian or custodian, or legal counsel, unless a person is in immediate danger, or for public safety reasons.

**9-30-030      Notification and Advisement to Parent, Guardian or Custodian**

- (a) Upon taking a youth into custody, the officer shall immediately notify the youth's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the youth into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment. If notification cannot be provided to the youth's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian, or custodian, or youth's extended family.
- (b) The parent, guardian or custodian shall also be advised of the juvenile Miranda warnings.

**9-30-040      Release and Delivery from Custody**

- (a) A law enforcement officer shall have discretionary authority to do the following after taking a youth into initial custody:
  - (1) Release the youth to the youth's parent, guardian or custodian;
  - (2) Release the youth to a relative or other responsible adult designated by the juvenile probation officer, if the youth's parent, guardian or custodian consents to the release or the parent either is not capable of

- consenting or cannot be located; or
- (3) Deliver the youth to a youth custody or detention facility as designated by the juvenile probation officer or to a medical facility if the youth is believed to need prompt medical treatment.
- (b) If a Petition is not filed within seventy-two (72) hours, excluding weekends and holidays, after a youth has been placed into custody, the youth must be released from custody.

**9-30-050 Review for Need of Continued Custody**

Prior to delivery of a youth to a youth custody or detention facility, the law enforcement officer shall review the need for continued custody, and release the youth to his parent, guardian or custodian with instructions to appear at the hearing on a date to be set by the Juvenile Court, unless:

- (a) The act is serious enough to warrant continued detention; and
- (b) There is probable cause to believe the youth has committed the offense(s) alleged; or
- (c) There is reasonable cause to believe the youth will commit a serious act causing damage to a person, property or himself; or
- (d) The youth's parent, guardian or custodian or other extended family are unsuitable for or unwilling or unable to accept return custody of the youth.

**9-30-060 Use of Custody and Detention Facilities**

- (a) No youth shall be placed in any custody or detention facility unless the facility is contracted by the Bureau of Indian Affairs or approved by the Tribe.
- (b) In emergencies, the Juvenile Court may place a child in a non-approved custody or detention facility to be closely supervised by a law enforcement or juvenile probation officer, but such placement shall not last for more than three (3) days.
- (c) No child shall be placed in any area of any custody or detention facility that is used for adult custody or detention.

**9-35 DETENTION HEARINGS**

**9-35-010 When Detention Hearing Required**

When a youth has been taken into continued custody as provided in Section 9-30-050, a detention hearing shall be convened by the Juvenile Court within seventy-two (72) hours of the youth's initial detention, exclusive of weekends and holidays.

**9-35-020 Purpose of Detention Hearing**

The purpose of the detention hearing is to determine:

- (a) Whether probable cause exists to believe the youth committed the alleged juvenile offense; and
- (b) Whether continued detention is necessary pending further proceedings.

**9-35-030 Notice of Detention Hearing**

- (a) When a time for the detention hearing has been set, notice shall be immediately



given to the youth, the youth's counsel, and reasonable efforts shall be made to locate and give notice to the youth's parent, guardian or custodian.

- (b) The notice shall contain:
- (1) The name of the Juvenile Court;
  - (2) The title of the proceedings;
  - (3) A brief statement of the juvenile offense the youth is alleged to have committed; and
  - (4) The date, time and place of the detention hearing.

**9-35-040 Notification of Rights at Detention Hearing**

At the commencement of the detention hearing, the Juvenile Court shall notify the youth and the youth's parent, guardian, or custodian of their rights.

**9-35-050 Court Findings at Detention Hearing**

The Juvenile Court shall issue a written finding stating the reasons for release or continued detention of the youth. If the Juvenile Court determines that there is a need for continued detention, the Juvenile Court shall specify where the youth is to be placed until the Admit-Deny Hearing.

**9-35-060 Rehearing of Detention Matter**

The Juvenile Court shall rehear a detention matter within twenty (20) days if:

- (a) The youth is not released at the first detention hearing; and
- (b) Counsel for the youth was not notified of the hearing and did not appear or waive appearance at the hearing; and
- (c) A motion for a rehearing and a declaration stating the relevant facts has been filed with the Juvenile Court.

**9-40 JUVENILE DELINQUENT PETITIONS**

**9-40-010 Contents of Petition**

Juvenile Delinquent Petitions shall contain the following:

- (a) A caption or heading which clearly identifies the child involved and states the nature of the Petition;
- (b) Information concerning the child, including the name, date of birth and permanent residence address;
- (c) Information concerning the parents, guardian or custodian of the child, including their names, addresses and relationship to the child;
- (d) The present custodial status of the child and the length of time the child has been in custody or detention;
- (e) A statement of the alleged juvenile offense, with sufficient factual detail sufficient to invoke the jurisdiction of the Juvenile Court and establish that probable cause exists for filing the Petition;
- (f) Citation to the specific provision of the Tribal Code or Tribal Ordinance violated; and
- (d) The signature of the person filing the Petition, which person must certify that

the information contained in the Petition is true and accurate to the best of his/her knowledge, information and belief;

**9-40-020 Filing Petitions**

- (a) The Tribal Prosecutor shall file a Petition after investigating the accuracy of the information and upon finding probable cause.
- (b) Petitions shall be filed with the Court Clerk or with some other official designated by the Tribal Judge

**9-40-030 Service of Petitions**

The following persons shall be served with a copy of a Juvenile Delinquent Petition:

- (a) The alleged juvenile delinquent;
- (b) The parent(s), guardian or custodian of the child, if known, or if not known, the most closely related known blood relative; and
- (c) The person, agency or facility having actual physical custody of the child.

**9-40-040 Initial Disposition of Petitions**

The Tribal Prosecutor shall make one of the following initial dispositions of a Petition within forty-five (45) days of filing the Petition:

- (a) Dismissal;
- (b) Entering into a Consent Decree with the youth;
- (c) Hold an informal conference, mediation or conflict resolution gathering attended by the law enforcement officer, youth probation officer, the alleged juvenile delinquent, the parent(s), guardian(s) or custodian(s) of the child, and counsel for the child, if requested by the child or parents, and any other interested party; or
- (d) Schedule the case on the Court's calendar for an Admit-Deny Hearing.

If the Tribal Prosecutor fails to take any of these actions within the stated time, the Tribal Court shall hold a status hearing on the case.

**9-40-050 Report of Disposition of Petitions**

All Juvenile Delinquent Petitions, reports on the disposition of Petitions, and the substance of all informal conferences conducted and dispositions or resolution made shall be provided to the Juvenile Court.

**9-45 CONSENT DECREES**

**9-45-010 Availability of Consent Decrees**

At any time after the filing of a Juvenile Delinquent Petition, and before the entry of a judgment, the court may, on motion of the Tribal prosecutor, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile counselor and agreed to by all the parties affected. The Court's order continuing the youth under supervision under this section shall be known as a "Consent Decree."

**9-45-020 Youth's Objection to Consent Decree**

It is necessary that the child does not object to the Consent Decree as his willingness is essential to accomplish the purposes.

**9-45-030 Duration of Consent Decree**

A Consent Decree shall remain in force for nine months unless the youth is discharged sooner by the juvenile probation officer. Prior to the expiration of the nine (9) month period, and upon the application of the juvenile probation officer or any other agency supervising the child under a Consent Decree, the Juvenile Court may extend the decree for an additional six (6) months. If the youth objects to the extension, the Juvenile Court shall hold a hearing and make a determination of the issue of extension.

**9-45-040 Failure to Fulfill Terms and Conditions**

If, either prior to a discharge by the Youth Probation Officer or expiration of the Consent Decree, the youth fails to fulfill the terms of the decree, the Tribal Prosecutor may file a petition to revoke the Consent Decree. Proceedings on the Petition shall be conducted according Part 9-55 of this Title. If the youth is found to have violated the terms of the Consent Decree, the Court may:

- (a) extend the period of the Consent Decree; or
- (b) make any other disposition which would have been appropriate in the original proceeding.

**9-45-050 Dismissal of Petition**

A youth who is discharged by or who completes a period under supervision without reinstatement of the original Juvenile Delinquent Petition shall not again be proceeded against in any court for the same offense alleged in the Petition, and the original Petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the youth for damages arising from this conduct.

**9-50 CONFLICT RESOLUTION****9-50-010 Informal Conference, Mediation or Conflict Resolution Gathering**

- (a) The Youth Probation Officer or other person designated by the Business Council may initiate and facilitate an informal conference, mediation or conflict resolution gathering.
- (b) If an informal conference, mediation or conflict resolution gathering is initiated, the person initiating the conference or gathering shall give written notice to the Juvenile Court and the Tribal Prosecutor within twenty (20) days of the Petition being filed and request a specific amount of time to complete the conference or gathering.
- (c) If a disposition or resolution is agreed to in writing by all parties, the written disposition or resolution shall be filed with the Juvenile Court within the time granted. The Juvenile Court shall defer disposition of the Petition, continue to have jurisdiction over the matter, and shall set a Review Hearing ninety (90) days from the filing of the written disposition or resolution.

**9-50-020 Disposition Following Review Hearing**

- (a) At the ninety (90) day Review Hearing, the Juvenile Court may make one of the following dispositions:
  - (1) Dismiss the Petition if all actions required by any party to implement the disposition or resolution are completed;
  - (2) Grant a continuance to allow the youth or any other party to complete any requirements of the agreed disposition or resolution; or
  - (2) Grant a continuance to allow the Tribal Prosecutor to file a Juvenile Delinquent Petition. If a petition is not filed within the time allowed, the matter shall be dismissed.
- (b) If no disposition or resolution is agreed to in writing within the time granted by the Court, the case will proceed in accordance with Part 9-55 with the time beginning to run as of that date.

**9-55 JUVENILE DELINQUENT PROCEEDINGS**

**9-55-010 Admit or Deny Hearing**

- (a) The Juvenile Court shall conduct an Admit-Deny Hearing for the purpose of advising the youth of his or her rights, ensuring that the youth understands his or her rights, reading of the petition, ensuring that the youth understands the allegations contained in the petition, and for the youth to enter an admission or denial to the allegations in the petition.
- (b) The Admit-Deny Hearing shall be held within twenty (20) days of the filing of the petition if the youth is in custody. If the youth was released from detention or the youth was never detained, the initial hearing shall be held within a reasonable time and shall be set by the Juvenile Court.
- (c) Notice of the Admit-Deny Hearing shall be given to the youth and the youth's parent, guardian or custodian, the youth's counsel and any other person the Juvenile Court deems necessary at least five (5) days prior to the hearing.
- (d) If the youth denies all or some of the allegations of the petition, the Juvenile Court shall set the matter for an Adjudicatory Hearing pursuant to Section 9-55-020.
- (e) If the youth admits the allegation of the petition, the Juvenile Court shall accept his admissions only after a finding that:
  - (1) The youth and his parent(s), guardian or custodian fully understand his rights and fully understand the consequences of his admission; and
  - (2) The youth voluntarily, intelligently and knowingly, admits all facts necessary to constitute a basis for Juvenile Court action, and no facts are apparent to the Court which if found to be true, would be a defense to the allegation.
- (f) If the Juvenile Court finds that the youth has validly admitted the allegations contained in the petition, the Juvenile Court shall make and record its finding and schedule a Dispositional Hearing pursuant to Section 9-55-040. Additionally, the Juvenile Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the Dispositional Hearing.

**9-55-020      Adjudicatory Hearing**

- (a) If the youth remains in custody after the Admit-Deny Hearing, the Juvenile Court shall hold the Adjudicatory Hearing within thirty (30) days of the Initial Hearing. If the youth is not in custody after the Admit-Deny Hearing, the Adjudicatory Hearing shall be held within a reasonable time and shall be set by the Juvenile Court.
- (b) Adjudicatory Hearings shall be conducted by the Juvenile Court without a jury. There is no right to a jury trial in any Juvenile Court proceeding.
- (c) Except in cases of continued custody, notice of the Adjudicatory Hearing shall be given to the youth and the youth's parent, guardian or custodian, the youth's counsel and any other person the Juvenile Court deems necessary at least twenty (20) days prior to the hearing.
- (d) If the Juvenile Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Juvenile Court shall make a record of its finding and schedule a Dispositional Hearing in accordance with Section 9-55-040. Additionally, the Juvenile Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the dispositional hearing.
- (e) If the Juvenile Court finds that the allegations of the Juvenile Delinquent Petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the youth released from any detention imposed in connection with the proceedings.

**9-55-030      Pre-Disposition Reports**

- (a) The Juvenile Court may direct the youth probation officer to prepare a written pre-disposition study and report for the Juvenile Court concerning the youth, the youth's family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case when the youth has been adjudicated as a juvenile delinquent or the youth has admitted the allegation of the petition. The Juvenile Court may direct the Tribal Social Services to assist the youth probation officer with the report.
- (b) The report shall contain the following:
  - (1) Information concerning the history and present condition of the youth and his parent(s), guardian or custodian and other relatives of the youth.
  - (2) A specific plan for the youth, aimed at resolving the problems presented in the Petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the youth under the proposed plan. Preference shall be given to the dispositional alternatives that are least restrictive of the youth's freedom and are consistent with the interests of the Reservation; and
  - (3) The available Tribal and community resources that are available to implement the disposition.
- (c) The pre-disposition report shall be provided to the youth, parent(s), guardian or custodian of the youth, counsel for the youth, the Tribal Prosecutor and Juvenile Court at least forty-eight (48) hours before the dispositional hearing.

**9-55-040 Dispositional Hearing**

- (a) The Juvenile Court shall conduct a Dispositional Hearing no earlier than one (1) week and no more than four (4) weeks after a juvenile delinquent finding is made.
- (b) At the disposition hearing, the Juvenile Court shall consider the pre-disposition report, if any, and receive any additional evidence relating to an appropriate disposition of the case.
- (c) The Juvenile Court may make any of the following dispositions:
  - (1) Permit the youth to remain with his or her parent(s), guardian or custodian;
  - (2) Place the youth in the legal custody of a relative or other suitable person;
  - (3) Order the youth to pay restitution;
  - (4) Place the youth on probation;
  - (5) Place the youth in a youth detention or custody facility contracted by the Bureau of Indian Affairs or approved by the Tribe;
  - (6) Impose a fine;
  - (7) Order the youth to complete community service;
  - (8) Require the youth, and/or the youth's parent(s), guardian or custodian to receive counseling services;
  - (9) Require the youth and/or the youth's parent(s), guardian or custodian to obtain a medical, psychological or chemical dependency evaluation; and/or
  - (10) Any other disposition the Juvenile Court deems appropriate.

**9-55-050 Modification, Revocation and Termination of Dispositional Orders**

- (a) The Juvenile Court shall hold a hearing to modify or revoke a dispositional order upon the motion of the youth, the youth's parent(s), guardian or custodian, youth's counsel or counselor, the juvenile probation officer, Tribal prosecutor or the agency, facility or person having physical custody of the youth.
- (b) The modification or revocation hearing shall be conducted according to Section 9-55-040, except the hearing shall be held no less than one (1) week and no more than four (4) weeks from the date the motion to modify or revoke is filed.
- (c) All dispositional orders shall automatically terminate when the youth reaches eighteen (18) years of age, unless otherwise ordered by the Juvenile Court. The disposition order shall not, however, extend beyond the youth's nineteenth (19) birthday.

**9-60 ACTS OF JUVENILE DELINQUENCY**

**9-60-010 Possession or Consumption of Alcoholic Beverages**

- (a) Offense. Any juvenile who possesses or consumes any alcoholic beverage is guilty of an act of juvenile delinquency, and shall be subject to disposition as provided in this Title.

- (b) Exemption. The provision of this Section shall not apply to a juvenile who consumes non-intoxicating amounts of an alcoholic beverage:
  - (1) As part of a recognized religious ceremony or celebration; or
  - (2) When such alcoholic beverage is intentionally provided by the juvenile's parent, guardian, or custodian and is consumed in the juvenile's home.

**9-60-020 Curfew Violation**

- (a) Offense. Any juvenile who violates a curfew established by this Section, is guilty of an act of juvenile delinquency, and shall be subject to disposition as provided in this Title.
- (b) Establishment of Curfew.
  - (1) No juvenile sixteen years of age or older shall be about on Tribal lands, including the Reservation and Colony, between the hours of twelve midnight and 6:00 a.m. except as provided in Subsection (c) below.
  - (2) No juvenile twelve (12) years of age or older but not yet sixteen (16) years of age shall be about on Tribal lands, including the Reservation and Colony, between the hours of 11:00 p.m. and 6:00 a.m., except as provided in Subsection (c) below.
  - (3) No juvenile under the age of twelve (12) years shall be about on Tribal lands, including the Reservation and Colony, between the hours of 10:00 p.m. and 6:00 a.m., except as provided in Subsection (c) below.
- (c) Exemption from Curfews.
  - (1) General Exemptions – The curfews established in Subsection (b) above, shall not apply to:
    - (A) Any juvenile who is in the company of his parent, guardian or custodian;
    - (B) Any juvenile who is proceeding directly to his home from any scheduled school, religious or tribal activity and is proceeding without delay;
    - (C) Any juvenile who is in the home of another with the permission of the juvenile's parent, guardian or custodian and the person residing in the home where the juvenile is found; or
    - (D) Any juvenile who is in the company of an adult, if the juvenile's parent, guardian, or custodian has knowledge of the juvenile's whereabouts and has given express permission for the juvenile to be away from this home or place of residence on that particular occasion.
  - (2) Special Exemptions. By resolution, the Business Council may establish special exemptions from the curfews established in Subsection (b) above, to allow juveniles to attend or participate in governmental, educational, or cultural events, or in other events of general public interest.
- (d) Definitions. For the purpose of this Section, the term "about on Tribal lands" shall mean being away from the residence or usual place of abode of the person

involved.

**9-60-030 Possession of Marijuana**

Any juvenile is guilty of possession, if he has in his possession any amount of marijuana.

**9-60-040 Bullying**

- (a) Any juvenile engaging in harassment or bullying is guilty of an act of juvenile delinquency.
- (b) "Harassment or bullying" means the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying, that (1) has or would have the effect of unreasonably and substantially interfering with another child's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (2) reasonably causes or would reasonably be expected to cause another child to fear for his or her physical safety; or (3) reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student. Acts of harassment and bullying shall include, but not be limited to, those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. For the purposes of this definition the term "threats, intimidation or abuse" shall include verbal and non-verbal actions. Ordinary teasing, horseplay, argument, or peer conflict do not constitute harassment or bullying.
- (c) "Cyberbullying" shall mean harassment or bullying where such harassment or bullying occurs through any form of electronic communication.

**9-65 CONTRIBUTING**

**9-65-010 Contributory Delinquency/Neglect of Children**

- (a) Definitions — As used in this Part 9-65, a delinquent child, neglected child, or child in need of supervision shall mean a person less than eighteen (18) years of age:
  - (1) Who has no parent or guardian; or who has no parent or guardian willing to exercise or capable of exercising proper parental control or who has no parent/guardian actually exercising such proper parental control, and who is in need of such control.
  - (2) Who is destitute, or who is not provided with the necessities of life by his parents, and who has no other means of obtaining such necessities.
  - (3) Whose home is an unfit place for him, by reason of neglect, cruelty, or depravity of either of his parents/guardians, or other person in whose custody or care he is in.
  - (4) Who is found living in any house with any disreputable person.
  - (5) Who is found wandering and either has no home, or a place of abode, no visible means of subsistence or no proper guardianship.
  - (6) Who frequents the company of criminals, prostitutes, vagrants, or of



- such company.
- (7) Who habitually uses intoxicating liquors or any controlled substance without a prescription.
  - (8) Who habitually refuses to obey the proper orders of his parents, guardians; or who is beyond the control of such person.
  - (9) Who is a habitual truant from school.
  - (10) Who is leading, or from any cause is in danger of leading an idle, dissolute, lewd, or immoral life.
  - (11) Who writes or uses vile, obscene, profane, or indecent language, or is guilty of indecent, immoral, or lascivious conduct.
  - (12) Who violates any laws of the Tribe.
  - (13) Who is a runaway, unmanageable, or a habitual truant.
- (b) Any person who commits any act, through encouragement, threats, force, or any other such means, that causes a juvenile to become a delinquent child, neglected child, or child in need of supervision shall be guilty of contributory neglect or contributory delinquency. Contributory Neglect or Contributory Delinquency by an adult is a Class C offense.

## **9-70            PENALTIES**

### **9-70-010        Penalties**

All juvenile delinquents, parents, guardians, or custodians of juveniles when charged with Sections 9-60-010 to 9-65-010 shall within seventy-two (72) hours be referred to the Fallon Paiute-Shoshone Social Services Program for review and recommendations.

## **9-75            RESTITUTION**

### **9-75-010        Liability for Incurred Damages**

- (a) A child found to be delinquent, and the parents or guardians who have custody of such child, shall be jointly and severally liable for all damages to persons or public/private property resulting from the acts of willful misconduct of the child upon which the finding of delinquency is based.
- (b) As a part of the proceedings involving a delinquent child, the Court shall have jurisdiction over a delinquent child, and over the parents or guardian having custody of such a child to enter jointly and severally for all damages described in Subsection (a) as restitution to the persons suffering such damages.
- (c) The liability of the parents or guardians having custody of a child, arising under Subsection (a) shall not exceed the sum of \$10,000 for any one act of the child.
- (d) Liability arising from Subsection (b) shall be in addition to any other liabilities which may exist or arise under law.
- (e) In the event that the parent or guardian of any juvenile adjudged delinquent fails to make restitution in the amount so ordered by the Juvenile Court, he or she shall be guilty of Failure to Obey a Lawful Order of the Juvenile Court, and shall be held in Contempt of Court.
- (f) In the event of willful contempt, the parent, guardian or custodian shall be held

liable for said restitution in addition to charges for Contempt of Court.

**9-75-020 Failure to Obey Orders of Restitution**

Any person subject to the jurisdiction of the Juvenile Court, whether an adult or a minor child, who without good reason fails to obey a lawful order, subpoena, warrant, or command of the Juvenile Court, having had notice of the order, subpoena, warrant, or command, is guilty of contempt of the Juvenile Court. Contempt of the Juvenile Court is a Class E offense for a first offense, and a Class D offense for any second or more offenses within a two year period. No person shall be found guilty of contempt of the Juvenile Court except after being given reasonable notice of the alleged contempt and being afforded a hearing before the Juvenile Court, at which the person shall have the right to be represented by the representative of his or her choice, at his or her own expense.

**9-80 SCHOOL ATTENDANCE**

**9-80-010 Required School Attendance and Unexcused Absences**

- (a) Every child between the ages of 5 and 18 years residing on the Reservation shall regularly attend school, unless excused due to illness or other circumstances that make the absence reasonable.
- (b) It is the duty of the parent, legal guardian or custodian of every child to assure that the child attends school.
- (c) The parent, legal guardian or custodian of the child shall provide to the child's school a written explanation of the reason for the child's absence from school. If a child is absent for more than three days due to physical or mental illness, the parent, legal guardian or custodian shall provide the child's school with a written recommendation from a licensed physician.
- (d) An unexcused absence is one in which a school, parent, legal guardian or custodian has not given written approval of a pupil's absence or the absence is not due to illness or other circumstances which make the absence reasonable.

**9-80-020 Conditions Under Which Child Deemed Truant**

- (a) The Attendance/Truancy Officer, designated law enforcement officer, or other person designated by the Business Council is authorized to make a finding of truancy after investigation into the reasons for the reported absence.
- (b) A child shall be deemed a truant whose absence from school has been determined to not be unexcused under Section 9-80-010.
- (c) An unexcused absence for at least one period, or the equivalent of one period for the school, of a school day may be deemed a truancy for purposes of this section.
- (d) Under this Section, each day that a child is absent without an excuse for any period of time may be considered a separate occurrence of truancy, if the child's parent, legal guardian or custodian receives written notice of each such absence.

**9-80-030      Truancy Notices**

- (a) If the Attendance/Truancy Officer, designated law enforcement officer, or other person designated by the Business Council determines that the pupil's absence was unexcused, the truancy officer, designated law enforcement officer, or other designated person shall notify the parent, legal guardian or custodian in writing of the pupil's unexcused absence.
- (b) The notice of an unexcused absence under Subsection (a) above shall specifically inform the child's parents, guardian or custodian of the dates, times and any known circumstances of the unexcused absence and also state that the child was a truant child upon that occasion.

**9-80-040      Taking Absent Children Into Custody**

- (a) Any child who has been reported by a school to be absent from school in probable violation of Section 9-80-010 may be apprehended and taken into custody.
- (b) Upon apprehending a child absent from school, the apprehending officer may decline to take the child into custody if the apprehending officer considers custody to be unwarranted. Nonetheless, the apprehending person or other person designated by the Business Council shall investigate the circumstances of the incident and include all results of the investigation and a description of actions taken in the written report.
- (c) Any child taken into custody pursuant to Subsection (a) shall immediately be delivered to their school. If the child cannot be delivered to their school during regular school hours, the child shall be immediately delivered to their parents, guardian or custodian.
- (d) A written report of all actions taken under this Section, which includes the circumstances of any decision not to take an apprehended child into custody, shall be made to the social services and if requested from the juvenile probation officer.

**9-80-050      Habitual Truancy**

A "habitual truant" is a child who:

- (a) has been found to be truant under Section 9-80-020 upon three (3) separate occasions in one six-week period or who has once been declared a habitual truant and whose absence from school in an immediately succeeding year is determined to be unexcused under Section 9-80-010(d); and
- (b) has been determined by the Attendance/Truancy Officer, designated law enforcement officer, or other person designated by the Business Council to be in need of the Juvenile Court's supervision to assure further school attendance.

**9-80-060      Habitual Truant Petitions**

- (a) Any truancy or law enforcement officer, school official or the parent, guardian or custodian of a child may request the Attendance/Truancy Officer, designated law enforcement officer, or other person designated by the Business Council to file a petition with the Juvenile Court alleging that the child is a habitual truant.

Such a petition may be filed only if the person filing the petition reasonably believes that the child involved is a habitual truant.

- (b) The Juvenile Court shall consider Habitual Truancy Petitions under the same procedures found in this Title. All parties to such proceedings shall have all of the rights provided in other Juvenile Court proceedings.

**9-80-070 Decree of Habitual Truancy**

If the Juvenile Court finds that the evidence presented at the hearing establishes that it is more probable than not that the child is a habitual truant, the Juvenile Court shall enter a decree to that effect.

**9-80-080 Effect of Habitual Truancy Decree**

- (a) If a child is found to be a habitual truant, the Juvenile Court may make any disposition regarding the custody, placement or supervision of the child which will assure the child's future school attendance.
- (b) Preference shall be given to a disposition which provides for the custody of the child by parents, guardian or blood relatives.

**9-80-090 Truancy Offenses**

- (a) Failure of Parents, Guardians, or Custodians to Comply with Duty to Assure School Attendance. The intentional failure of any parent, guardian, or custodian of a child to assure the school attendance of such child is a Class D offense. Any person guilty of failing to assure school attendance may be prosecuted and punished as provided in Title 4 and Title 5 of the Tribe's Law and Order Code.
- (b) Inducing Truancy. Intentional or knowing action by any person to induce a child to be truant is a Class D offense. Any person guilty of inducing truancy may be prosecuted and punished as provided in Title 4 and Title 5 of the Tribe's Law and Order Code.

**9-80-100 Homeschool**

The provisions in Part 9-80 shall apply except for any homeschooled child that complies with all State and school district requirements for homeschooled children.