

## **QUECHAN LAW AND ORDER CODE**

### **TITLE 6**

#### **JUVENILE CODE**

##### **Chapter 6.1** **General Provisions**

###### **§6.1.1. Authority**

Under Article III, Section 7 of the Quechan Indian Tribe Constitution, the Tribal Council shall have the power to promulgate Codes for the purpose of safeguarding the peace and safety of residents of the Fort Yuma Indian Reservation, and to establish minor courts for the adjudication of claims or disputes arising amongst the members of the Tribe and for the trial and punishment of members of the Tribe charged with the commission of offenses set forth in such Codes.

###### **§6.1.2. Purpose**

Recognizing that children are the most important resource of the Quechan Indian Tribe and that children are vital to the continuing existence of the Quechan Tribe, this Juvenile Code has been developed as a means of safeguarding the health, safety, welfare, and culture of the Quechan Tribe for all future generations. From time immemorial the Quechan people have flourished on their ancestral homeland by valuing unique Quechan culture and traditions, which include family and children. The purpose of the Juvenile Code is to ensure the future of the Quechan Tribe by establishing procedures and laws to protect the best interest of children and the Quechan Tribe. This Code shall be liberally construed to achieve this purpose.

###### **§6.1.3. Policy**

It shall be the policy of the Quechan Indian Tribe to:

- A. Exert and utilize the full extent of the authority of the Tribe to protect Indian children and keep them within the tribal community;
- B. Provide services to Indian children and their families consistent with the traditions, laws, customs and cultural values of the Tribe, whenever possible;
- C. Promote stability and security within the tribal community by establishing a judicial process for appropriately handling juvenile offender and Child-In-Need-Of-Care proceedings;
- D. Provide judicial and other procedures through which the provisions of this Code are executed and enforced and in which the parties are assured a fair hearing and the protection of their civil and other legal rights;
- E. Ensure that off-Reservation courts will be able to return Indian children to the Tribe for care and guidance;

- F. Provide for the care, protection, and development of Indian children and preserve and retain the unity of tribal families whenever possible;
- G. Provide a continuum of services for Indian children and their families, from prevention to residential treatment, with an emphasis whenever possible on prevention, early intervention, and community-based alternatives;
- H. Discourage delinquent acts, hold juveniles accountable for their behavior, and provide rehabilitation and guidance to juvenile offenders and their families;
- I. Correct the behavior of incorrigible children;
- J. Encourage, guide, assist, and compel if necessary, parents, Guardians, and custodians to provide a safe and nurturing physical and emotional environment for their children;
- K. Educate each Quechan child about the rich Quechan history, culture and traditions;
- L. Encourage the reporting and investigation of suspected child neglect and abuse, and where necessary to secure the safety and well-being of children in need of care, judicial intervention for removal and placement in tribally-approved homes and facilities that reflect the values and culture of the Tribe;
- M. Maintain the connection of Indian children to their families, the Tribe, and the tribal community, whenever possible in the best interest of the child; and
- N. Preserve traditional concepts, including, but not limited to, the importance of Extended Family and the obligations of family members to one another.

**§6.1.4. Savings Clause; Miscellaneous**

If any Chapter, Section, subsection, or clause of this Code is found by the Juvenile Court or any other court of competent jurisdiction to be inconsistent with or in violation of the Tribe's governing law or otherwise invalid or unenforceable, such Section, Section, subsection, or clause will be deemed to be severed and deleted from this Code, which will remain in full force and effect. In construing this Code, the present tense includes the past and future tenses, and the future tense includes the present tense. When reference is made to any portion of this Code, the reference will apply to all amendments made hereafter. Section headings will not be used in construing this Code.

**§6.1.5. No Waiver**

Nothing in this Code will be construed as a waiver of the immunity of the Tribe or of any Tribal entity, agency, or instrumentality, from unconsented suit or administrative proceedings unless otherwise explicitly provided.

**§6.1.6. Definitions**

Terms used in this Juvenile Code shall be liberally construed so as not to limit the jurisdiction of the Quechan Indian Tribe of the Fort Yuma Indian Reservation over Indian children, and to

facilitate the authority of the Juvenile Court to act to protect the interests of Indian children and their families. The following terms, whenever used or referred to in this Juvenile Code, will have the following respective meanings, whether used in the singular or plural forms:

- 1) Abandon. To fail to maintain contact with and provide reasonable support for a child for a substantial period of time, without good cause. Abandonment may include the intent, through words or behavior, to abdicate all further obligation or responsibility for the child. Failure to maintain contact with and provide reasonable support for a child without good cause for a period of 6 months shall constitute prima facie evidence of abandonment.
- 2) Abuse. Any of the following, taken together or separately:
  - a) The infliction of physical, emotional, mental, or sexual harm on a child;
  - b) Failing to maintain reasonable care and treatment of a child;
  - c) Exploiting or overworking a child to such an extent that the child's health or well-being is endangered;
  - d) Subjecting a child to excessive physical discipline;
  - e) Failing to provide a safe environment for a child, free from persons who may harm the child;
  - f) Exposing a child to immediate danger from his or her surroundings, including, but not limited to, permitting a child to live in physical filth;
  - g) Exposing a child to or allowing the child to remain in a place where methamphetamines are or have been used or manufactured;
  - h) Exposing a child to illegal substances, including but not limited to the use of such substances in the child's presence;
  - i) Exposing a child to domestic violence;
  - j) Exposing a child to repeated alcohol or drug abuse;
  - k) Knowingly allowing a child to ride in a vehicle operated by a person whose driving abilities are impaired by alcohol or drug use; and
  - l) The use of alcohol or illegal drugs by a pregnant woman.
- 3) Adult. Any person eighteen (18) years of age or older.
- 4) CASA. Court Appointed Special Advocate.
- 5) Child or Juvenile. Any person who is:
  - a) Under eighteen (18) years of age; or
  - b) Eighteen (18) years of age or older, and who was under the jurisdiction of the Juvenile Court immediately preceding his or her eighteenth (18th) birthday, and over whom the Court has continued to maintain jurisdiction beyond such eighteenth (18th) birthday. Those persons are considered juveniles until the Court releases them from jurisdiction, or until they turn twenty-five, which occurs sooner.
- 6) Child Dependency Proceeding or Dependency Proceeding. A proceeding concerning a child who is alleged or found to be a Child-In-Need-Of-Care including, but not limited to, proceedings for shelter care, foster care, Guardianships, termination of parental rights, adoption, and emancipation, and the review of any such action.

- 7) **The Tribe.** The Quechan Indian Tribe of the Fort Yuma Indian Reservation, also referred to as the Quechan Indian Tribe.
- 8) **Contempt.** Any interference with a Juvenile Court proceeding or the willful disobedience of any Juvenile Court order.
- 9) **Counsel.** An attorney or advocate admitted to practice in the Quechan Tribal Juvenile Court.
- 10) **Court or Juvenile Court.** The Quechan Tribal Juvenile Court established under the provisions of Title 5 of the Quechan Law and Order Code, and the judges of that Court, collectively and individually, serving and acting in that office and capacity. The Juvenile Court is the court in which all juvenile offender matters are heard, unless referred to the Trial Division pursuant to the provisions of Title 5 of the Quechan Law and Order Code, and all other matters involving minors that may be assigned to the Court pursuant to tribal law.
- 11) **Court Clerk.** The Quechan Tribal Court Clerk, who may be functioning as a court clerk for the Trial Division, Supreme Court, or Juvenile Court, as indicated by the context.
- 12) **Custodian.** A person, other than a parent or Guardian, who has temporary physical care, custody, and control of a child, including the duty to provide food, clothing, shelter, medical care, education, and supervision to the child.
- 13) **Deferral.** A delinquency or status offense case which originated in another jurisdiction and the other jurisdiction has transferred supervision of the case to the Juvenile Court for diversion.
- 14) **Delinquent Act.** An act enumerated as an offense under this Code, or an act that if committed by an adult would constitute a crime under the Quechan Law and Order Code.
- 15) **Detention Facility.** A physically restrictive facility that is licensed by the Tribe to exercise authority over and care for juveniles offenders and not used in the incarceration of adults.
- 16) **Disposition.** A determination by the Juvenile Court of a plan for a child that includes, but is not limited to, legal custody, physical custody, placement, sanctions, guidance, treatment, and services to the child, and the child's family, or both.
- 17) **Domicile.** The domicile of a child is generally that of the child's custodial parent or Guardian, including the place the child's parent or Guardian considers their permanent home. Domicile for the purposes of Juvenile Court jurisdiction is established at the time of the alleged acts.
- 18) **DSS.** The Quechan Department of Social Services.
- 19) **Emancipation.** A Juvenile Court process through which the legal duty of a child's parent(s) or Guardian to provide care, shelter, and support for the child is terminated and the child is recognized as an adult for the purposes of the criminal laws of the Quechan Indian Tribe, as

well as for the purposes of contracting and conveying, establishing a residence, and suing and being sued.

- 20) Ex Parte. Situations in which only one party (and not the adversary) appears before a Juvenile Court Judge to discuss a Juvenile Court proceeding.
- 21) Expunge. To remove and destroy a judgment or order or to remove and destroy all records and all references to a particular matter.
- 22) Extended Family. The grandparents, aunts, uncles, brothers, sisters, brothers-in-law, sisters-in-law, nieces, nephews, first or second cousins, and/or step-parents of a child, any other person who would be considered family according to tradition and custom.
- 23) Foster Home or Foster Care. Substitute care for a child who has been voluntarily or involuntarily removed from parental care.
- 24) Guardian. A person, other than a parent, who is by law responsible for providing care, shelter, and control of a child and the management of the child's property.
- 25) Guardian *Ad Litem*. A person, other than a parent, who is appointed to look out for the best interests of a juvenile who has a matter pending before the Juvenile Court.
- 26) ICWA. The Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq., as amended.
- 27) Immediate Family. An adult person who is the child's parent or stepparent, excluding a parent or stepparent from whose custody the child was removed, aunt or uncle, brother or sister, brother-in-law or sister-in-law, or grandparent.
- 28) Indian.
  - a) Any enrolled member of the Quechan Indian Tribe or any person eligible for enrollment with the Quechan Indian Tribe;
  - b) An Alaska Native who is a member of a regional corporation as defined in 43 U.S.C. § 1606;
  - c) Any enrolled member of or any person eligible for enrollment with any other federally recognized Indian tribe;
- 29) Juvenile Offender. A person who commits a delinquent act, traffic offense, or status offense prior to his or her eighteenth (18th) birthday.
- 30) Legal Custody. A relationship created by order of the Juvenile Court which vests in the custodian any or all of the following duties and authorities, subject to the supervision of the Court:
  - a) To have physical custody and control of the child;
  - b) To supply or authorize the supplying of food, clothing, shelter, education, supervision, discipline, medical or dental care, and other necessities for the child; and

- c) To make, authorize, or consent to decisions involving the child's behavior, health, safety, welfare, and morals, except decisions of major legal significance, which shall be made by the Juvenile Court.

31) Child-In-Need-Of-Care. An unmarried child:

- a) Whose parent(s), Guardian, custodian, or other person responsible for the child's care has abandoned the child;
- b) Whose parent(s), Guardian, custodian, or other person responsible for the child's care has subjected the child to abuse or neglect;
- c) Who has suffered a serious unexplained injury or a series of unexplained injuries while in the care or custody of the child's parent(s), Guardian, custodian, or other person responsible for the child's care;
- d) Whose behavior endangers the health, safety, or welfare of the child or others;
- e) Whose life or health is in evident danger and for whom the intervention of the Juvenile Court is essential to provide the treatment, rehabilitation, and/or services needed by the child and/or the child's family;
- f) Who has committed delinquent acts as a result of pressure, guidance, approval or failure to properly supervise by the child's parent(s), Guardian, or custodian;
- g) Who is born addicted to alcohol or to any controlled substance;
- h) Whose parent, legal Guardian, or custodian had an opportunity to prevent abuse or avoid neglect of the child and failed to do so;
- i) Whose parent(s), Guardian, custodian, or other person responsible for the child's care have been convicted of a crime of a nature that demonstrates that parent's, Guardian's, custodian's, or other person's unfitness to provide adequate care for the child;
- j) Who has special needs beyond the parenting abilities of the child's parent(s), Guardian, or custodian;
- k) Who has run away from the home of the child's parent(s), Guardian, custodian, or other person responsible for the child's care;
- l) Who, while subject to compulsory school attendance, is habitually and without justification absent from school; or
- m) Who is found under conditions that would support grounds for involuntary termination of parental rights found in Section 6.3.20 of this Code.

32) Motion. A request, either written or oral, made to a court for an order.

33) Neglect. Failing to, for reasons other than poverty, provide a child with adequate food, clothing, shelter, education, supervision, or medical or dental care necessary for the child's health, safety, and well-being.

34) Parent. The natural or adoptive mother or father of the child, but not a person whose parental rights have been legally terminated. Any disputes regarding paternity shall be resolved pursuant to the procedures set forth in the Quechan Law and Order Code.

35) Party. Any person who is a participant, or involved in or the subject of or to, whether active or inactive, voluntary or involuntary, including one made a party by the action of another

person, in or to any case, trial, hearing, controversy, matter, relationship, or proceeding that is governed by this Code.

- 36) Presenting Attorney. An attorney who is authorized to represent the Tribe in proceedings arising under this Code, and proceedings in tribal courts and state courts under ICWA to advocate for the Tribe's interests, which includes ensuring compliance with ICWA in state court.
- 37) Probation. A legal status created by a Juvenile Court order whereby a juvenile offender is under the supervision of a person designated by the Court. A juvenile offender on probation shall be ordered to return to Juvenile Court for further proceedings if the juvenile fails to comply with any of the conditions of the probation.
- 38) Attorney Representing the Tribe or Attorney Representing the Tribe. The Quechan Attorney Representing the Tribe.
- 39) Protective Supervision. A legal status created by a Juvenile Court order whereby a juvenile offender is permitted to remain in the juvenile's home or is placed with a relative or other suitable individual, and supervision and assistance is provided to the juvenile by Juvenile Probation Officer, the Department of Social Services, and/or other suitable agency. The Juvenile Court may specify particular requirements to be observed during the protective supervision.
- 40) Reservation. All lands within the boundaries of the Quechan Indian Tribe of the Fort Yuma Indian Reservation.
- 41) Restitution. Financial or other reimbursement to a victim of a juvenile offense, limited to ascertainable damages that are a direct and proximate result of the juvenile offense. Restitution may include reimbursement for injury to or loss of property, actual medical, psychiatric, and psychological treatment expenses, and lost wages that resulted from the injury, but shall not include reimbursement for mental anguish, pain and suffering, or other intangible losses.
- 42) Shelter Care Facility. A home or other residential facility that is licensed to care for children in an unrestricted setting and that is suitable for the safekeeping of a child who is taken into temporary custody pending investigation and disposition, including substance abuse shelters and halfway houses.
- 43) Status Offense. An act that is an offense because it is committed by a juvenile. Status offenses include curfew violations, possession of alcoholic beverages, and runaway and truancy violations.
- 44) Territorial Jurisdiction. All lands within the boundaries of the Quechan Indian Tribe of The Fort Yuma Indian Reservation.
- 45) Title IV-E. Title IV-E of the Social Security Act (42 U.S.C. §§ 671-679b)

- 46) Tribal Court. The Quechan Tribal Court system consisting of the Trial Division, the Juvenile Court, and the Supreme Court established by the Quechan Indian Tribe to exercise jurisdiction over matters arising under the laws of the Quechan Indian Tribe.
- 47) Tribal Council or Council. The Tribal Council of the Quechan Indian Tribe existing and functioning pursuant to the Tribe's Constitution.
- 48) Tribe. The Quechan Indian Tribe of the Fort Yuma Indian Reservation also referred to as the Quechan Indian Tribe, or the Tribe.
- 49) Unfit. The inability to care for a child due to conduct or a condition that is seriously detrimental to the child and that is not likely to change within a reasonable time. In assessing such conduct or conditions, the Juvenile Court shall consider:
- a) Emotional illness, mental illness, or mental deficiency that is of such a nature and duration as to place the child's physical or mental health at risk, or to render the person incapable of providing proper care for the child for extended periods of time;
  - b) Conduct toward any child of an abusive, cruel, or sexual nature;
  - c) A substantial history of alcohol and/or drug abuse and/or addictive or habitual use of alcohol and/or drugs to the extent that parenting abilities have been substantially impaired;
  - d) Criminal conduct that impairs the ability to provide adequate care for the child; and
  - e) Imprisonment (actual or pending) for a significant period of time while the child is in the person's custody.
- 50) Ward. A child who has been adjudicated to be a Child-In-Need-Of-Care or a child for whom the Juvenile Court has appointed a Guardian or a Conservator, and over whom the Juvenile Court has asserted jurisdiction. A Child-In-Need-Of-Care and any child for whom the Juvenile Court has appointed a Guardian or a Conservator is a temporary ward of the Court until the time the case is dismissed and jurisdiction terminates. In cases where parental rights are terminated, except as may otherwise be provided by Juvenile Court order, the child is a permanent ward of the Juvenile Court until the child is lawfully adopted or emancipated.

**Chapter 6.2**  
**Juvenile Court Generally**

**§6.2.1. Quechan Juvenile Court**

**A. Establishment.**

- 1. There is established by and for the Quechan Indian Tribe of the Reservation a court to be known as the Quechan Juvenile Court.

**B. Authority.**

- 1. Where a matter involving a child is within the jurisdiction of the Juvenile Court, the Court shall have broad authority to make orders for the care, custody, supervision, protection, placement, and physical residence of the child. The Juvenile Court's authority shall include, but is not limited to, the power:
  - a. To make a child a ward of the Juvenile Court;



- b. To place a child in the legal custody of DSS and order DSS to arrange out-of-home placement of the child;
- c. To order any actions, treatment, services, assessments, sanctions, or conditions on the activities of the child as the Juvenile Court may deem advisable, appropriate, and in the best interest of the child and the Tribe;
- d. To order any actions, treatment, services, assessments, sanctions, or conditions on the activities of the child's parent(s), Guardian, or custodian as the Juvenile Court may deem advisable, appropriate, and in the best interest of the child and the Tribe including the termination of parental rights;
- e. To order any person who is obligated by law to support a child within the jurisdiction of the Juvenile Court to pay for the cost of the Court proceedings, any services and/or treatment ordered by the Court, and/or for the support of the child if the child is placed outside the home, in an amount determined by the Court to be fair and reasonable. Such orders may be enforced in the same manner as other judgments for money under tribal law, including the contempt power of the Juvenile Court and the garnishment of per capita payments.

#### **§6.2.2. Jurisdiction of Juvenile Court**

- A. Exclusive Jurisdiction.
  - 1. The Juvenile Court shall have exclusive jurisdiction in any child dependency proceeding concerning an Indian child residing or domiciled on the Reservation.
  - 2. The Juvenile Court shall have exclusive jurisdiction in any child dependency proceeding concerning an Indian child who is a ward of the Juvenile Court.
- B. Original Jurisdiction.

The Juvenile Court shall have original jurisdiction in any child dependency proceeding concerning an Indian child when the acts giving rise to the allegations that the child is a Child-In-Need-Of-Care occur within the territorial jurisdiction of the Tribe.
- C. Transferred Jurisdiction.

The Juvenile Court shall have jurisdiction in any child dependency proceeding concerning an Indian child not residing or domiciled on the Reservation when jurisdiction is transferred to the Juvenile Court by a state, tribal, or other court and the Juvenile Court accepts the transfer of jurisdiction.
- D. The Juvenile Court shall have jurisdiction over the parent(s), Guardian, or custodian of any child who is within the Court's jurisdiction, as necessary to protect the best interest of the child, if the child's parent(s), Guardian, or custodian has been served with notice of the proceedings.
- E. Continuing Jurisdiction.
  - 1. Once the Juvenile Court asserts jurisdiction over a person, the Juvenile Court may retain jurisdiction over that person even if the person leaves the physical boundaries of the Reservation.
  - 2. Jurisdiction is continuing and exclusive unless the Juvenile Court enters an order terminating its jurisdiction or transferring jurisdiction to another court or the child is emancipated or reaches the age of twenty five (25).

- F. Nothing in this section shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subsection, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

### **§6.2.3. Officers of Court**

A. Attorney Representing the Tribe.

1. Authorization.

The Attorney Representing the Tribe is authorized to represent the Tribe in proceedings arising under this Code and proceedings in tribal courts, and state courts under the ICWA, and advocate the Tribe's interests, which includes ensuring compliance with the ICWA in state court;

2. Roles.

The Attorney Representing the Tribe may provide legal counsel to DSS with respect to matters under this Code, including recommendations on transfer of jurisdiction; make recommendations to DSS and the Tribal Council regarding amendments to this Juvenile Code; and may pursue appeals of state court orders that negatively affect the interest of the Tribe.

3. Electronic Appearances.

Given the importance and delicacy of the proceedings under this Code, the Attorney Representing the Tribe shall appear in person when required to do so by this Code. On a showing of good cause, the Attorney Representing the Tribe may appear by telephone if:

- a. The appointment of court staff pursuant to §6.2.3(E) to temporarily assume the Attorney Representing the Tribe's duties is not feasible;
- b. The Attorney Representing the Tribe appearing by telephone can participate in the hearing in real time, with no delay in aural transmission or reception;
- c. The statements of participants are audible to all other participants and court staff;
- d. The Court is assured that the proceedings remain confidential as required by this Code.

B. Tribal Prosecutor.

1. Authorization.

The Prosecutor is authorized to represent the Tribe in juvenile justice proceedings arising under this Code.

2. Duties.

The Tribal Prosecutor shall perform duties including, but not limited to:

- a. Filing petitions with the Juvenile Court or Tribal Court as provided in this Code;

- b. Representing the Tribe in all juvenile offender proceedings conducted pursuant to this Code;
- c. Consulting with the Probation Officer regarding all referrals to Informal Diversion;
- d. Consulting with county, state or federal prosecutors who have deferred prosecution of juvenile cases;
- e. Keeping up to date on juvenile justice training; and
- f. Performing such other duties as provided in this Code, or any such duties ordered by the Juvenile Court or the Tribal Court.

3. Electronic Appearances.

Given the importance and delicacy of the proceedings under this Code, the Prosecutor shall appear in person when required to do so by this Code. On a showing of good cause, the Attorney Representing the Tribe may appear by telephone if:

- a. Appointment of court staff pursuant to §6.2.3(E) to temporarily assume the Prosecutor's duties is not feasible;
- b. The Prosecutor appearing by telephone can participate in the hearing in real time, with no delay in aural transmission or reception;
- c. The statements of participants are audible to all other participants and court staff;
- d. The Court is assured that the proceedings remain confidential as required by this Code.

C. Guardian *Ad Litem*.

1. Appointment.

At any stage of a proceeding conducted under this Code, the Juvenile Court may, in its discretion, appoint an attorney Guardian *Ad Litem* for the child.

2. Duties.

When the Juvenile Court, in its discretion, has appointed an attorney Guardian *Ad Litem*, that person will perform the following duties:

- a. Appear at all hearings to competently represent the best interests of the child;
- b. Make an independent evaluation, as necessary, to ascertain the facts and circumstances underlying any allegation that the child is in need of protection;
- c. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
- d. If a conflict exists between what the attorney Guardian *Ad Litem* believes to be in the child's best interest and what the child's wishes are, the attorney Guardian *Ad Litem* may request the juvenile court appoint the child a separate attorney to advocate for the child's wishes;
- e. Provide written reports of findings and recommendations as requested by the juvenile court;
- f. Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child, parents, Guardians, custodians, and members of the child's household;

- g. In consultation with DSS, monitor the implementation of case plans and disposition orders to determine whether services ordered by the juvenile court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
  - h. In coordination with DSS, inform the juvenile court if the services are not being made available to the child, parents, Guardians, custodians, and members of the child's household, whether there is compliance with the service plan or whether such services are not achieving their purposes;
  - i. Coordinate with DSS and other service providers in advocating for the interests of the child in mental health, educational, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the juvenile court; and
  - j. Prior to all court hearings, the attorney Guardian *Ad Litem* will meet with the child in the home, foster home, or at a location that is familiar to the child in order to assess the child's well-being and progress.
- D. Counsel for Parent(s), Guardian, or Custodians.
- 1. The child's parent(s), Guardian, or custodian, and any other party to the case may be represented by an attorney, lay advocate, or spokesperson, selected and retained at the party's own expense.
  - 2. Any such attorney, lay advocate or spokesperson must be admitted to the Quechan Tribal Bar or otherwise approved to appear by the Juvenile Court.
  - 3. The Juvenile Court may, in its discretion, appoint counsel for any party if the Court finds that such party is indigent.
- E. Additional Juvenile Court Staff.
- The Juvenile Court may appoint additional staff including, but not limited to, Tribal Advocates, Pro Tem Judges, referees, or CASAs when the Court determines that the individual is adequately trained and that their appointment is in the best interest of a child and/or the Tribe. This provision regarding Court-appointed representation takes precedence over all other provisions in this Code addressing who may appear in juvenile proceedings.

#### §6.2.4. DSS

- A. Duties.
- DSS shall perform duties including, but not limited to:
- a. Making timely investigations and/or reports as provided in this Code or as directed by the Juvenile Court;
  - b. Comply with the provisions of this Code when taking children into emergency shelter care; and
  - c. Performing other duties in connection with the care or custody of children and the rehabilitation of families as the Juvenile Court may require.
- B. Authorization.
- DSS will have the following authority for purposes of this Juvenile Code:
- 1. DSS is authorized to provide case management services to assist Minors-In-Need-Of-Care and their families in carrying out court ordered plans;

2. Develop case plans and reports concerning a Child-In-Need-Of-Care to the Juvenile Court and other court systems having an interest or service role concerning the child;
  3. DSS is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purpose of this Juvenile Code;
  4. DSS is authorized to utilize such human services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense and meets the standards stated in this Code; and
  5. DSS may assist, with the approval of Tribal Council, in establishing agreements and contracts with public and private entities to delegate investigative and other responsibilities when necessary, for the care and placement of children who are wards of the Juvenile Court, and to achieve other purposes of this Juvenile Code or the Tribe regarding child welfare.
- C. Any DSS employee having one of the following family relationships, by blood or by law, with any party receiving services from DSS, or involved in a court proceeding, shall not participate in those services or the court proceeding: Great-grandparent; Great-grandchild; Grandparent; Grandchild; Aunt or Uncle; Parent; Stepparent; Child; Stepchild; Spouse; or Sibling.

#### **§6.2.5. ICWA Department**

##### **A. Duties.**

The main duty of the ICWA Department is to prevent the permanent removal of Quechan children from the custody of their parents, family, and Tribe. In carrying out this duty, the ICWA Department may:

1. Conduct regular and frequent home visits with tribally identified at-risk families in order to complete a family assessment, determine treatment goals, provide referrals and on-going support, and monitor families and their progress.
2. Provide case management services to assist Minors-In-Need-Of-Care and their families in carrying out court ordered plans;
3. Develop case plans and reports concerning a Child-In-Need-Of-Care to the Juvenile Court and other court systems having an interest or service role concerning the child;
4. Maintain confidential records as required by this Code;
5. Collaborate with DSS in the filing of petitions and conducting investigations or case studies;
6. Provide in-court testimony to child protection cases off the Quechan Reservation; and
7. Perform other duties in connection with the care or custody of children and the rehabilitation of families as the Juvenile Court may require.

### **§6.2.6. Rules of the Juvenile Court**

#### **A. Orders of the Court.**

1. The Juvenile Court may issue orders providing for the protection, support, or medical treatment of any child for whom a petition has been filed, prior to the adjudication or disposition of the child's case, if the Court determines that such orders are in the best interest of the child.
2. The Juvenile Court, with good cause, may modify, revoke, or extend an order at any time upon the motion of any party or on the Court's own motion.
3. The Juvenile Court and its officers in exercise of its duties may contract with and/or utilize such social services as may be furnished by the Federal, Tribal, or State governments to avoid unnecessary duplication of expense.
4. The Juvenile Court may utilize, but is not limited to, its contempt powers to enforce any orders it issues.

#### **B. Orders of Foreign Courts.**

The Juvenile Court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity, as provided in the Indian Child Welfare Act.

#### **C. Juvenile Court Hearings Generally.**

##### **1. General.**

Child protection and child welfare proceedings in the Juvenile Court are civil proceedings arising under this Code pursuant to the jurisdiction of the Tribe to adjudicate matters pertaining to the health, welfare, and safety of the Tribe and its members. Child protection and child welfare proceedings are intended to further the best interests of the children who are the subject of the proceedings and the best interests of the Tribe or other Indian tribes with whom such children are affiliated.

##### **2. Closed Proceedings.**

- a. All Juvenile Court hearings shall be closed to the public unless the Court orders a hearing to be open to the public.
- b. The Juvenile Court may order a hearing to be closed to the public on the motion of any party or on the Court's own motion.
- c. If the Juvenile Court orders a hearing to be closed to the public, the order shall not prohibit the presence of law enforcement officers, any victim, or other persons essential to the determination of the matter before the Court unless their presence is prohibited by the Court.
- d. If the Juvenile Court finds that it is in the best interest of the child, the child may be temporarily excluded from the hearings, except while allegations of delinquency or need of supervision are being heard.
- e. Any party may request that a child's foster care provider(s) or custodian(s), or any other person, be excluded from all or any part of a hearing in which confidential or sensitive information is being presented.
- f. Juvenile Court proceedings shall be recorded by the Court clerk through electronic or mechanical means. If such methods are not used, the Juvenile

Court shall keep full minutes of the proceedings. No other cameras or video recording devices may be used during Juvenile Court hearings, except by order of the Court.

3. Jury.

Juvenile Court hearings shall be held before the Juvenile Court Judge without a jury, and apart from other judicial proceedings.

4. Manner.

- a. All Juvenile Court hearings shall be conducted in a dignified and respectful manner, but may be conducted in an informal manner. All persons participating in Juvenile Court hearings shall speak in a clear and courteous manner.
- b. The Judge may appoint a person to keep order in the courtroom. All persons who attend Juvenile Court hearings as parties, witnesses, or spectators shall be quiet and orderly while Court is in session. No spectator shall make loud noises or speak out during a Court session unless called as a witness. Persons who disrupt the Court proceedings or are disrespectful of the Court may be ordered to leave the courtroom. Persons who violate this section or any Court order intended to maintain order in the courtroom may be found in contempt of court.

D. Ex Parte Communications.

1. No witness or party to any case shall under any circumstances, either before or during a Juvenile Court proceeding, attempt to discuss any case pending before the Court with any of the Juvenile Court Judges, except in open Court.
2. There shall be no Ex Parte communication between any Juvenile Court Judge and any counsel of record in regards to any pending case.

E. Consolidation.

Proceedings involving two (2) or more children, or two (2) or more proceedings involving the same child, may be consolidated when the factual basis for jurisdiction is the same or similar, or for the convenience of all parties. Separate dispositional and review hearings may be held, if it is reasonable to do so.

F. Juvenile Parents.

The mother or father of a child shall be deemed to have attained the age of majority for Juvenile Court purposes and, regardless of age, may enter into agreements and provide authorizations, releases, and/or waivers in Juvenile Court proceedings concerning the care or custody of the child.

G. Parties.

1. The following may be parties to Juvenile Court actions under this Code:
  - a. The petitioner, including the Attorney Representing the Tribe or DSS;
  - b. The child;
  - c. The child's parent(s), Guardian(s), and/or custodian(s); and
  - d. Any person the Juvenile Court deems necessary for the proper adjudication of the matter.
2. If the Juvenile Court finds, at a hearing, that additional parties are necessary for the proper adjudication of the matter at hand, the Court may continue the hearing to allow those parties to be notified.

H. Intervention of a Party.

1. Any adult member of a child's extended family, permanent Guardian or current long-term foster care provider of a child within the jurisdiction of the Juvenile Court may file a motion to intervene in any Juvenile Court proceeding involving the custody, placement, or Guardianship of the child.
2. The Juvenile Court shall allow the motion for intervention if the Court determines that the proposed intervenor has a significant relationship with the child and that intervention is in the best interest of the child. The Juvenile Court shall determine what rights, similar to those of a party, shall be extended to an intervenor, in the best interest of the child.

I. Amendment of Petitions.

1. Timing.

- a. A party may amend a petition once before the opposing party has replied or if no reply is required, not less than twenty (20) days before a scheduled hearing.
- b. The opposing party may respond upon a showing of good cause and the hearing date be delayed only to the extent necessary. Other amendments shall be allowed only upon motion and order of the Juvenile Court.

2. Material Facts Not Alleged.

- a. When it appears during the course of any proceeding in a child's case that evidence presented points to material facts not alleged in the petition, the Juvenile Court may proceed to consider forthwith the additional or different matters raised by the evidence.
- b. When issues or evidence not raised in the petition are heard at a hearing, the judgment may conform to such issues or evidence without the necessity of amending the petition.

J. Continuances.

1. At any stage of a Juvenile Court proceeding, the Court may grant a reasonable continuance upon its own motion or the motion of a party after a showing of good cause.
2. Continuances shall be granted by the Court only for so long as is reasonably necessary.
3. The Juvenile Court shall consider the objections of any party to a continuance.

K. Service of Process.

1. Summons; Content.

- a. Except as provided otherwise in this Code or by an order of the Juvenile Court, every summons must:
  - (1). Identify the nature of proceeding;
  - (2). Direct the parents, Guardians, or custodian to appear or to produce records at the proceeding;
  - (3). Notify the parents, Guardians, or custodian of their rights and provide a prominent notice if the proceeding could result in the termination of their parental rights;
  - (4). Set forth the time, date, and place of the hearing; and



- (5). Have attached to it a copy of the petition, report, notice of hearing, and any other documents filed or to be filed with the Juvenile Court along with the Summons in the proceeding.
2. Time for Service of Summons.
  - a. Unless a shorter period of time is required under this Code, the Summons must be served upon the child's parent, Guardian, or custodian:
    - (1). At least fourteen (14) days prior to the date of any hearing on a petition for child protection, except for a preliminary hearing, termination of parental rights hearing, or adoption hearing; and
    - (2). At least seven (7) days prior to all other hearings.
3. Manner of Serving Summons.
  - a. Except as provided below or elsewhere in this Code, a Summons will be served personally on the named party.
  - b. If personal service of the Summons is impractical or cannot be achieved within the required time, the Juvenile Court may authorize service by certified mail addressed to the last known address of the summoned party.
  - c. A person who delivers a summons to a witness shall promptly file with the Clerk a copy of the summons and a written signed statement describing where, when, and how delivery was made.
4. Substituted Service.

The Juvenile Court may authorize any manner of substituted service, including publication, if service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort has been made.
5. Subpoenas; Content.

Except as provided elsewhere in this Code, every Subpoena must be in writing and:

  - a. Identify the nature of proceeding;
  - b. Direct the witness, parents, Guardians, or custodian to appear or to produce records at the proceeding; and
  - c. Set forth the time, date, and place of the hearing.
6. Time for Service of Subpoenas.

Unless a shorter period of time is required under this Code or by an order of the Juvenile Court, the Subpoena must be served upon the named person at least seven (7) days prior to the hearing.
7. Manner of Serving Subpoena.

A Subpoena must be served as follows:

  - a. Except as provided below, or elsewhere in the Code, a Subpoena must be served personally on the subpoenaed person;
  - b. The Juvenile Court may authorize a Tribal Police Officer or any person over eighteen (18) years of age to personally serve the subpoenaed person.
  - c. If personal service of the Subpoena is impractical or cannot be achieved within the required time, the Court may authorize service by certified mail addressed to the last known address of the subpoenaed person.
8. Certificate of Service.

When a subpoena or summons is served by a person other than a law enforcement officer, the certificate of service shall include the name, telephone number, and address of the person who served the subpoena.

9. Failure to Appear.

A person who has been properly served with a subpoena or summons and fails to appear or produce may be deemed in contempt of court.

10. Court Appearance.

A person present in Juvenile Court may be required to testify in the same manner as if he were in attendance upon a subpoena.

L. Notice of Hearing.

1. Time for Service of Notice.

Unless a shorter period is required under this Code, a notice of any hearing held pursuant to this Code must be served on the parents, Guardians, or custodian, and on all other interested parties at least fourteen (14) days prior to the date of the hearing.

2. Persons Entitled to Notice.

The following persons or entities must be served with the Petition and Notice of any hearing prior to the date of the hearing:

- a. The parent(s) or the attorney for the parent(s), if any;
- b. The attorney Guardian *Ad Litem* for the child, if any;
- c. The legal Guardian or custodian of the child, other than the parent, if any;
- d. The department of health and human services and any state agency or state-authorized agency involved in the case;
- e. The court of the child's tribe if different from Quechan Indian Tribe; and
- f. Any other person or entity the Juvenile Court may direct to be notified.

3. Manner of Serving Notice.

A Notice of Hearing regarding the Initial Hearing must be served as follows:

- a. Except as provided below or elsewhere in this Code, a Notice of Hearing will be served personally on the named person;
- b. If personal service of the Notice of Hearing is impractical or cannot be achieved within the required time, the Juvenile Court may authorize service by certified mail addressed to the last known address of the named party only.
- c. Except as provided otherwise in the Code or by the Juvenile Court, a Notice of Hearing regarding any hearing following the Initial Hearing in a proceeding under this Code may be served either by personal service or by first class mail, postage pre-paid.

M. Other Documents and Waiver of Service.

1. Other Documents.

Except as provided otherwise in this Code or by an order of the Juvenile Court, any other document other than those specifically identified in this Section, may be served either by personal service or by first class mail, postage prepaid, at least three (3) days prior to the date of any hearing at which such document may be considered.

2. Waiver of Notice or Service.

Any person or entity entitled to service of a summons, subpoena, notice of hearing, or other Juvenile Court document may waive the time requirements for service of process provided that the waiver is in writing or is made orally on the record in the Juvenile Court.

N. Time.

1. Computation of Time.

- a. In computing any period of time under this Code, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period will be included, unless it is a Saturday, Sunday, or a Tribal holiday.
- b. If weather conditions make the Juvenile Court inaccessible on a day in which the act of a filing is to be done, the period of time runs until the end of the next day that is not a Saturday, Sunday, or Tribal holiday.
- c. When the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, and Tribal holidays will be excluded in the computation.

2. Extension of Deadline.

When an act is required or allowed to be done at or within a specified time by this Code, the Juvenile Court may in its discretion, order an extension of the deadline for good cause if a motion is made before the expiration of the specified period.

3. Motions.

A written motion and notice of hearing on the motion will be served no later than five (5) days before the time specified for the hearing, unless a different period is prescribed in the Code or by an order of the Juvenile Court.

4. Service by Mail.

Three (3) days will be added to a prescribed time period whenever a party has the right or is required to do some act within a prescribed time period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail.

**§6.2.7. Rules of Evidence Generally.**

A. Purpose.

The purpose of the rules of evidence set forth in this section is to ensure that the Juvenile Court is able to determine the truth of a matter with a minimum of delay, confusion, and uncertainty.

B. State and Federal Rules.

The rules of evidence used in state and federal courts shall not automatically apply to Juvenile Court proceedings. All relevant and material evidence that is reliable and trustworthy may be admitted into evidence during a hearing and may be relied upon by the Juvenile Court to the extent of its probative value. Where there is more than one kind of evidence about the same subject, the Juvenile Court Judge should hear the most reliable kind of evidence.

C. Admissibility; Excluded Evidence.

1. All issues regarding the admissibility of evidence shall be decided by the Juvenile Court Judge, who shall have discretion to exclude any evidence for good cause.
2. When questioned by the Judge or another party, the party who wishes to present certain evidence shall explain why he or she thinks the evidence is relevant.
3. When the relevance or reliability of evidence is challenged and the Judge decides whether or not to use the evidence, the Judge shall explain the decision and, if the evidence is admitted, state what importance the Judge assigns to the evidence.
4. The Judge may take notice of facts which are a matter of official public record, even if no party introduces them into evidence.
5. Excluded evidence may, upon request, be included in the Juvenile Court record for purposes of appeal and excluded oral testimony may be put into evidence by means of an offer of proof.

D. Physical Evidence.

1. Written documents and other physical evidence shall be received into evidence in Juvenile Court proceedings after being identified, authenticated, and shown to be relevant to the action.
2. Whenever possible, documents presented as evidence shall be the originals.
3. Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items.
4. Written Reports.
  - a. Written reports and other materials relating to the child's mental, physical, educational, and social history and condition may be required by the Juvenile Court for the purpose of establishing that a child is a Child-In-Need-Of-Care, determining proper disposition of a child, and/or periodically reviewing a child's and family's progress. These reports may be received into evidence and may be considered by the Juvenile Court along with other evidence.
  - b. The Juvenile Court may require that the person who wrote the report or prepared the material appear as a witness if that person is reasonably available.
  - c. Hearsay contained in a written investigative report shall not prevent that report from being admitted into evidence, provided that the preparer of the report is present and available to provide testimony.
  - d. The parties shall be afforded an opportunity to examine and controvert written reports received by the Juvenile Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.
5. Official Documents.

Official documents or an official law, record, or copy thereof may be admitted into evidence upon the testimony of an official having official knowledge of the document, or without such testimony if the document or record or copy thereof is accompanied by a certificate stating that the document is a true and correct representation of what it purports to be.

E. Witnesses.

1. Procedure.

- a. A party may call any person to be a witness and may examine any witness on any matter relevant to the action. A party may impeach his own witness.
- b. At all hearings, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. Before testifying in the Juvenile Court, every witness shall first state before the Judge that he or she will answer with the truth and nothing but the truth.

2. Discretion of the Judge.

- a. The Judge shall determine the order in which parties or their representatives shall be allowed to question witnesses.
- b. The Judge may call and/or question any witnesses on his or her own initiative.
- c. During the questioning of a witness, the Judge may exclude witnesses who have not yet testified from the courtroom upon request of either party or on its own.

3. Questioning.

- a. The Judge shall protect all witnesses from harassment and unnecessarily repetitive questioning.
- b. When questioning a witness, the parties or their representatives shall not ask leading questions; that is, they will not ask questions in such a way as to suggest the answer desired. This section does not apply to (1) cross-examination, (2) witnesses that are clearly hostile to the person asking questions, (3) young witnesses, or (4) witnesses that have difficulty communicating.
- c. Witnesses who testify from their personal knowledge, such as first-hand observation of or participation in the event described, shall be preferred as witnesses to persons who have second-hand knowledge of the event.
- d. A witness, including a party, may testify as to a statement made by a person not before the Juvenile Court if the witness heard the statement when it was uttered by the person alleged to have made the statement.
- e. The Juvenile Court may inquire into the circumstances surrounding the failure of the party offering the statement to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence.

F. Child Witnesses.

If the Juvenile Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow a child to testify by closed circuit television, videotaped deposition, or other suitable method outside the courtroom and the presence of any parties subject to allegations of abuse or neglect. The decision by the Juvenile Court to allow a child to testify in a proceeding through the methods described in this subsection shall be made by written order, which will set forth findings of fact and all reasons supporting the decision.

G. Electronic Communication.

The Juvenile Court, in its discretion, may allow telephone and video conferencing or other electronic communication devices to allow parties unable to appear the ability to participate at a proceeding; provided that the use of such devices does not deprive another party of any rights under Tribal law.

H. Privileged Communications.

1. The following specific privileges may protect against the disclosure of privileged communications during the adjudicatory stages of Juvenile Court proceedings. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a Court-ordered examination, interview, or course of treatment.

2. Attorneys.

An attorney or other counsel shall not, without the consent of his or her client, be examined as to any communication made by the client to counsel or counsel's advice to the client in the course of professional employment. The privilege can only be asserted by the client as the holder of the privilege.

3. Psychologists.

The confidential communication between a client and a psychologist shall be privileged against compulsory disclosure. The privilege can only be asserted by the client as the holder of the privilege. Any person reporting or testifying in a judicial proceeding concerning alleged child abuse or neglect shall be immune from liability.

4. Doctors.

A physician or surgeon shall not, without the patient's consent, be examined in a Juvenile Court proceeding as to information acquired during the treatment, diagnosis, or provision of medical advice to the patient that was necessary to enable the physician or surgeon to prescribe or act for the patient. The privilege does not extend to physicians consulted for purposes of litigation. The patient is the holder of the privilege, which may only be waived by the patient. An exception to the physician - patient privilege grants immunity from liability for reporting or testifying concerning child neglect or abuse.

5. Clergyman.

A clergyman or priest shall not be examined as to any confession made to the clergyman or priest in professional character in the course of discipline of his or her church without the consent of the person making the confession. The clergyman, as well as the penitent, is considered to be the holder of the privilege. An exception to the priest - penitent privilege grants immunity from liability for reporting or testifying concerning child neglect or abuse.

6. Self-Incrimination.

The privilege against self-incrimination may be invoked in a Juvenile Court proceeding.

**I. Burden of Proof.**

Unless this Code expressly makes a different standard of proof applicable to a particular proceeding, the party asserting allegations in a proceeding under this Code has the burden of proving such allegations by preponderance of the evidence.

**J. Discovery.**

**1. Policy.**

The truth will be revealed more readily if all parties in Juvenile Court proceedings have access to all information and evidence related to the case.

**2. Standard.**

- a. In preparation for hearings, the parties may ask each other for and shall make available to each other all information in each other's possession or control that can reasonably be expected to lead to admissible evidence.
- b. Parties may obtain discovery regarding any matter not privileged, which is relevant to the pending action, whether or not the information would be admissible at a hearing, if the discovery request appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of counsel's work product.

**3. Methods of Discovery.**

- a. Methods of discovery include, but are not limited to, written questions, oral examination, requests for witnesses' names, requests for admissions, physical inspection of property, requests to perform psychological or medical tests, and requests for documents.
- b. The party who makes a request for discovery shall be as clear and specific as possible in describing what he or she wants.

**4. A party who receives a request for information shall respond either with the information, with an indication where and when the information will be available, or with an objection within ten (10) days after receipt of the request.**

**5. Information requested through discovery shall be served upon other counsel or unrepresented parties, but shall not be filed with the Juvenile Court, unless the Court orders the materials to be filed. The party preparing and responsible for service of the discovery materials shall retain the original and become the custodian of any such non-filed materials.**

**6. A party may refuse to make requested information available:**

- a. To prevent undue annoyance, harassment, embarrassment, oppression, burden, or expense;
- b. If the release of information would violate a confidence that it is tribal policy to protect; or
- c. The information is protected by a recognized privilege in federal law;

**7. If the release of information would violate the party's right to be free from forced self-incrimination.**

**8. If the parties disagree about whether the responding party is required to release the information, the Juvenile Court Judge shall resolve the dispute. The Judge may place conditions on the release of information in order to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.**

9. If a party fails to respond or appear for discovery, the requesting party may move for an order to compel the defaulting party to perform. If the defaulting party fails to perform after being ordered to do so by the Court, the Court may, upon the requesting party's motion:
  - a. Order that a certain fact, claim, or defense be deemed established;
  - b. Strike part of a claim or defense; or
  - c. Dismiss the case or render an order by default against the defaulting party.

#### **§6.2.8. Motions for Reconsideration and Appeals**

##### **A. Motion for Consideration.**

1. No later than thirty (30) days after a Juvenile Court judgment is final and prior to filing a Notice of Appeal, a party may ask the Juvenile Court for reconsideration, rehearing, correction, vacation, or modification of the judgment by filing a Motion for Reconsideration.
2. The motion must be served on all parties in accordance with the applicable notice requirements of this Code.
3. Any written responses to the motion and replies to the responses must be filed with the Juvenile Court and served on all other parties within seven (7) days after receipt of the motion or response. Parties may include memoranda or affidavits in support of a Motion for Reconsideration, to which reply memoranda and affidavits shall be allowed if desired.
4. The Juvenile Court may stay any order pending a ruling on the Motion for Reconsideration.
5. If it appears to the Juvenile Court that the information included in a Motion for Reconsideration might affect its order or judgment, the Court may order a new hearing or may rule on the motion.

##### **B. Grounds for Reconsideration.**

1. The Juvenile Court may reconsider, rehear, correct, vacate, or modify a judgment if any of the following grounds exist:
  - a. The Court denied the aggrieved party the opportunity to file a petition in the matter;
  - b. The Court entered its order without providing the aggrieved party the opportunity to respond or to be heard in the matter;
  - c. The aggrieved party did not receive a notice of hearing or service of the petition;
  - d. The original judgment was based on or reached as a result of fraud or mistake; or
  - e. There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing in the case;
2. A rehearing shall not be granted on the basis of a harmless error or irregularity that did not affect substantial justice.
3. Clerical mistakes in judgments, order or other parts of the record or errors therein arising from oversight or omission may be corrected by the Juvenile Court at any time on its own discretion or motion of any party.



C. Hearings.

1. A hearing on a Motion for Reconsideration shall be held within twenty (20) working days after the Motion for Reconsideration is filed. The Court Clerk shall have the Motion for Reconsideration and the hearing date served upon all parties.
2. Any Motion for Reconsideration not docketed for hearing within twenty (20) working days of filing or not ruled upon within the ten (10) working days after the hearing shall be deemed denied and shall be considered a final order from which an appeal may be taken. A Notice of Appeal must then be filed within thirty (30) working days of the denial.
3. A hearing on a Motion for Reconsideration shall be conducted in accordance with this Code and the rules for dispositional hearings.
4. After the hearing, the Juvenile Court shall enter such order or judgment and make such disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.
5. The Juvenile Court may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing of the motion, whichever the Juvenile Court in its discretion finds appropriate for the case.
6. The Juvenile Court shall state the reasons for its decision on the motion on the record or in writing.

D. Appeals.

1. The Quechan Supreme Court, as established in Title 7 of the Quechan Law and Order Code, shall have jurisdiction to hear appeals of decisions from the Juvenile Court, as set forth in this Code.
2. Any party to a Juvenile Court hearing may appeal a final Juvenile Court order. A final order shall include:
  - a. Any order finding absence of jurisdiction;
  - b. Any order which in effect determined the action and prevents a judgment from which appeal might be taken;
  - c. Any order of disposition after a juvenile is found to be a juvenile offender;  
or
  - d. Any order denying the Motion for Reconsideration.

E. Notice of Appeal; Stays.

1. Any party seeking to appeal a final Juvenile Court order shall file a written Notice of Appeal with the Quechan Supreme Court within thirty (30) days of the final order. The party filing the Notice of Appeal shall be considered the appellant.
2. Within thirty (30) days of the filing of the Notice of Appeal, or within such longer time as the Supreme Court shall allow, the appellant shall file a written brief, memorandum, or statement in support of the appeal.
3. The appellant shall file an original and three copies of the brief, memorandum, or statement with the Court Clerk, and shall serve or mail one additional copy to each other party or the party's counsel, the DSS and/or the ICWA Department, and the Attorney Representing the Tribe.
4. Parties wishing to respond to the Notice of Appeal shall have twenty (20) days after receipt of the appellant's brief, memorandum, or statement within which to

file a reply, and shall file and serve the reply in the same manner as the appellant's brief, memorandum or statement.

5. Unless the Juvenile Court stays its order, the order being appealed shall not be stayed during the appeals process.

F. Supreme Court Decisions.

1. The Quechan Supreme Court shall decide all cases upon the briefs, memoranda, statements, and replies filed, plus the record of the Juvenile Court.

2. For purposes of appeal, a record of proceedings shall be made available to the child, the child's parent(s), Guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.

3. The clearly erroneous standard shall be used in reviewing the findings of the Juvenile Court on appeal.

4. The Supreme Court shall issue a written decision and all judgments on appeal shall be final.

5. If the appeal arises from a Child-in-Need-of-Care proceeding, the decision shall be issued no later than ninety (90) days from the date of the oral argument.

**§6.2.9. Enforcement**

A. Criminal Violations.

Any Indian person who intentionally violates this Code, willfully fails to comply with any provision of this Code, or willfully prevents another person from complying with any provision of this Code will be guilty of a Level B Misdemeanor and subject to a fine not to exceed \$1,000 or 180 days in jail, or both. Each day during which a violation under this Code continues will constitute a separate violation.

B. Civil Violations.

Any person who intentionally violates this Code, willfully fails to comply with any provision of this Code, or willfully prevents another person from complying with any provision of this Code will be liable for a civil fine not to exceed \$1,000. Each day during which a violation under this Code continues will constitute a separate violation. The amount of any civil fine may be recovered in a civil action in the Juvenile Court. All civil fines accruing under this Code will be cumulative and a suit for the recovery of one fine will not bar or affect the recovery of any other fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Juvenile Court to punish for contempt, nor bar any criminal prosecution.

**§6.2.10. Rights Of Parties In Juvenile Proceedings**

A. Privilege Against Self-Incrimination.

1. When a child is taken into custody pursuant to this Code, the child shall be advised of his or her rights before any questions are asked of the child, except for questions:

a. To determine the child's identity;

b. To determine the name(s) of the child's parent(s), Guardian, or custodian; and

c. To conduct a medical assessment or treatment for alcohol or substance abuse, when the child's health and well-being are in serious jeopardy.

**B. Right to Counsel.**

1. In all Juvenile Court proceedings, the child, the child's parent(s), Guardian, or custodian, and any other party to the case shall have the right to be represented by an attorney, lay advocate, or spokesperson, selected and retained at the party's own expense. Any such attorney, lay advocate or spokesperson must be admitted to the Quechan Tribal Bar or otherwise approved to appear by the Court.
2. If counsel is not retained, or if it does not appear that counsel will be retained, the Juvenile Court may appoint counsel for any party.

**C. Mandatory Appointment.**

1. In any Juvenile Court delinquency proceeding where there is a possibility that the juvenile will be subject to juvenile detention, or a hearing conducted pursuant to Section 6.5.4 to determine whether the juvenile shall be remanded to the trial division, the Court shall appoint an attorney at the expense of the Tribe after making a finding that the child, the child's parent(s), Guardian or custodian are indigent and unable to afford legal representation.
2. If the Attorney Representing the Tribe has represented on the record that the juvenile will not be subject to detention the Court may decline to appoint an attorney to represent said juvenile at the expense of the Tribe.
3. If counsel is retained or appointed, counsel may be present during any questioning conducted pursuant to this Code.

**D. Explanation of Rights.**

1. In all Juvenile Court proceedings, the Court shall inform the child, the child's parent(s), Guardian, or custodian, and any other party to the case of:
  - a. The allegations or contents of the petition before the Court;
  - b. The right to be represented by counsel at their own expense;
  - c. The child's right to have the child's parent(s), Guardian, custodian, and/or counsel present during questioning;
  - d. The right to testify or remain silent, and that any statement made may be used against them;
  - e. The right to subpoena witnesses and to introduce evidence on their own behalf;
  - f. The right to cross-examine witnesses; and
  - g. The possible consequences if the Court determines that the allegations in the petition are true or grants the request made in the petition or motion.

**Chapter 6.3**

**Children-In-Need-Of-Care**

**§6.3.1. Rights of Children**

- A. Children are individuals who have legal rights, including, but not limited to, the right to:
1. A safe family;
  2. Freedom from neglect of their basic needs; and
  3. Freedom from physical, sexual, and emotional abuse or exploitation.
- B. Duties of Parents, Guardians, and Custodians.

1. Parents, Guardians, and custodians have a duty to afford their children the rights enumerated in this section, and to remove any impediment to their ability to perform the parental duties that afford these rights to their children.
2. When a parent, Guardian, or custodian fails to fulfill these duties, the Juvenile Court may determine that it is in the best interest of the child to remove the child from the custody of the parent, Guardian, or custodian on a temporary or permanent basis in accordance with this Code.

### **§6.3.2. Protective Services**

DSS shall provide protective services in accordance with the requirements set forth below. The requirements will include:

1. Reviewing information regarding a child who may be a Child-In-Need-Of Protection;
2. Promptly initiating, or causing to be initiated, an investigation upon receipt of information regarding a Child-In-Need-Of-Care within the jurisdiction of the Tribe, to determine the nature, extent, and cause of any condition which is contrary to the child's welfare and the name, age, and condition of other children in the home;
3. Seeking the assistance of, and cooperating with, tribal, state or other law enforcement officials upon having probable cause to believe that a child has been or is being subjected to abuse or neglect and law enforcement intervention is necessary;
4. Maintaining a written record of the investigation that includes, at a minimum, specific facts, dates, witnesses, and whether there is probable cause to believe that a child is a Child-In-Need-Of-Care;
5. Assisting the Tribal Police and other law enforcement authorities in taking a child into temporary custody if necessary pursuant to Section 6.5.4;

### **§6.3.3. Child Welfare Services**

DSS will provide child welfare services within the authority and jurisdiction of the Tribe and this Code. When any child welfare services required to be performed by the DSS have been lawfully assigned to a state or state-authorized agency, the DSS will monitor those services for compliance with this Code. Child Welfare Services will include:

- A. Ascertaining the interests of the child, taking into consideration the child's wishes and cultural/religious preferences according to the competence and maturity of the child;
- B. Providing a written report of findings and recommendations as required by the Juvenile Court;
- C. Informing the Juvenile Court if the services are not being made available to the child, parents, Guardians, custodians, and members of the child's household;
- D. Informing the Juvenile Court if the child's parents, Guardians, custodians, and members of the child's household are failing to take advantage of such services or if such services are not achieving their purpose; and
- E. Serving as liaison and advocate to agencies of the Tribal or state governments on behalf of the child, parents, Guardians, custodians, and members of the child's household and facilitate access to available services.

**§6.3.4. Reporting Abuse/Neglect**

- A. Discretionary Reporters. Any person who reasonably suspects that a child has been abused or neglected may report the abuse or neglect to a Tribal Police Officer, Juvenile Probation Officer, a duly authorized law enforcement officer or the DSS.
- B. Any person reporting suspected child abuse or neglect, except a person required to report under this section, may remain anonymous.
- C. Required Reporters. The following persons are required to report suspected child abuse or neglect:
  - 1. Any physician, nurse, dentist, optometrist, psychologist, psychiatrist, therapist, or any other medical or mental health professional;
  - 2. Any school principal, teacher, coach, or other school official;
  - 3. Any social worker, counselor, child day care center worker, other child care service provider, foster care provider, or residential care or institutional personnel; and
  - 4. Any police officer or other law enforcement officer, judge, attorney, advocate, spokesperson, court clerk, or judicial system official.
- D. A person is not required to report suspected child abuse or neglect under this section if the person acquires the information related to the suspected child abuse or neglect by reason of a report made under this section or by reason of a proceeding arising out of a report made under this section, and the person reasonably believes, in good faith, that the information is already known by a duly authorized law enforcement officer or DSS.
- E. Any person required to report suspected child abuse or neglect who knowingly fails to report, or who willfully prevents someone else from reporting, shall be subject to a proceeding in either Juvenile Court or the Trial Division of the Quechan Tribal Court for violation of this Code.
- F. Privileges.
  - 1. Lawyers, together with psychiatrists and psychologists, are not required to report communicated information if the communication would otherwise be privileged.
  - 2. A lawyer is not required to report child abuse based on information communicated to the lawyer in the course of representing a client, if disclosure would be detrimental to the client.
- G. A written report of child abuse or neglect prepared pursuant to subsection B must provide the following information, if available:
  - 1. Names and addresses of the child, parents, Guardian, or custodian of such persons;
  - 2. Tribal Affiliation and enrollment numbers of the child, parents, Guardian, or custodian;
  - 3. The child's birth date and gender;
  - 4. The grade and school in which the child is currently enrolled;
  - 5. All facts and circumstances regarding the suspected abuse or neglect;
  - 6. Previous history of abuse or neglect of the child and siblings;
  - 7. The name, age, address of the person(s) alleged to have abused or neglected the child: and all information which will assist to identify the person(s) involved;
  - 8. The name and address of the person making the report; and
  - 9. All information which will assist in the identification or location of victims(s) and person(s) involved.

- H. Initiation of an Investigation. Upon receipt of a report alleging that a child is a Child-In-Need-Of-Care, the agency that received the report will initiate an investigation of the allegations and must take immediate, appropriate steps to secure the safety and well-being of the child or children involved. Upon completion of the investigation, the agency will prepare a final written report.
- I. Waiver of Parental Consent to Examinations and Interviews. If DSS or the Tribal Police have probable cause to believe a child is a Child-In-Need-Of-Care, photographs, x-rays, medical examinations, psychological examinations, and interviews of the child will be allowed without the consent of the parent, Guardian, or custodian. Such will be conducted under circumstances and with safeguards designed to minimize additional trauma to the child.
- J. Nothing in this section is intended to waive, or does waive, the sovereign immunity of the Quechan Indian Tribe.

#### **§6.3.5. Visitation of Grandparents and Other Family**

- A. Subject to all other requirements of this Code, a grandparent or other member of the Immediate or Extended Family of a child who is a Juvenile Court ward may be entitled to reasonable visitation with the child during any period that the child is not in the custody of a parent.
- B. Petition.
  - 1. Any person described in Section 6.3.5(A) who seeks an order granting visitation rights with a child who is a Juvenile Court ward will initiate such request by filing a petition for visitation accompanied by an affidavit of all supporting facts. The Juvenile Court may consolidate the proceeding on a petition for visitation with any pending proceeding involving the child.
  - 2. If the Juvenile Court finds that such visitation is not in the best interest of the child or that such visitation is likely to interfere with a Permanent Plan or other court order regarding the child, the petition for visitation will be denied.
- C. DSS or State Agency Discretion.

Absent a Juvenile Court order to the contrary, reasonable supervision or unsupervised visitation with the child by a person described in Section 6.3.5(A) may be allowed at the discretion of the DSS or any state or state-authorized agency involved in the proceeding provided that any Guardian *Ad Litem* appointed for the child concurs in the visitation.
- D. Effect of Termination.

The termination of parental rights will not affect the visitation rights of a person described in this subsection unless the Juvenile Court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of permanency planning for the child.
- E. Visitation.

Visitation may be supervised or unsupervised and, where appropriate and feasible, may take place in the home of the person allowed visitation or granted visitation rights. A person allowed visitation or granted visitation rights may be required by the authorizing agency or the Juvenile Court to pay transportation and other incidental expenses for any visitation that takes place in such person's home.
- F. Violation.

Any attempt by a person who has been allowed visitation or granted visitation rights to facilitate a meeting between the child and any other person in knowing violation of a Juvenile Court order will result in the automatic termination of such person's future visitation rights.

#### **§6.3.6. Putative Fathers**

If at the first appearance of the parties in any child dependency proceeding under this Code no father has appeared, the Tribal Court will proceed as follows:

A. Evidence of Putative Father.

1. The Juvenile Court will inquire whether a person has been identified as the child's father. If there is probable cause to believe that an identifiable person is the father and such person has not been served, the Juvenile Court will direct that notice be served on that person in the manner provided in this Section.
2. In addition to all other requirements in this Code regarding Notice of the proceeding and Summons, the notice to the putative father must include a statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any alleged parental rights.
3. If the putative father appears before the Juvenile Court at the time and place specified, the Juvenile Court will proceed to determine paternity under tribal law.

B. No Evidence of Putative Father.

After inquiry, if there is no evidence of a putative father, the Juvenile Court will direct that Notice of Hearing be published in a manner most likely to notify a person who may be the father of the child.

C. Waiver of Rights.

If the Juvenile Court may find that the putative father waives all rights to notice, including the right to notice of termination of parental rights, and the right to legal counsel if:

1. He fails to appear after proper notice; or
2. He appears, but fails to establish paternity within the time set by the Juvenile Court.

#### **§6.3.7. Placement of Children**

A. Prior to removal of a child from a home, except when an emergency exists, the DSS will make active and reasonable efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the family, to the children, parents, Guardians, custodians, and members of the child's household.

B. A child alleged to be a Child-In-Need-Of-Care will not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

C. Placement Preferences.

1. In placing a Child-In-Need-Of-Care, every effort will be made to place the child within reasonable proximity to his/her home and in the least restrictive setting which most approximates a family, and in which any special needs, if any, are best met.

2. For adoptions, preference shall be given to placements that maintain and preserve the child's connection to the Tribe and the child's Extended Family, where appropriate. Specifically, preference for adoptive placement shall be given in the following order:
  - a. A member of the child's Immediate or Extended Family or Extended Family members;
  - b. Members of the child's tribe or descendants of members of the child's tribe;
  - c. Other Indians or descendants; or
  - d. Another family that can provide a suitable home for the child and maintain the child's connection to the Tribe and the child's Extended Family.
3. For foster care or pre-adoptive placements, preference shall be given in the following order:
  - a. A member of the child's Immediate or Extended Family;
  - b. A foster home licensed, approved, or specified by the Tribe;
  - c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
  - d. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

#### **§6.3.8. Removal Orders**

In every child dependency proceeding in the Juvenile Court, the first Juvenile Court order authorizing or directing the removal of a child from his or her home, including an order on an Emergency Petition confirming a removal without a Court order, must conform with the following requirements:

1. There must be a judicial determination that "it is contrary to the welfare of the child to remain in his or her home;"
2. There must be a judicial determination that active and reasonable efforts were made to prevent the removal of the child from the home or that the lack of such efforts was justified under the circumstances, such as the existence of an imminent threat of harm to the child in the home;
3. The judicial determinations must be explicit, case specific, and must be supported by findings of fact; and
4. The order must identify all evidence supporting the determinations, which may be by reference to a petition, report, or testimony in the record of the proceeding, provided that any testimony used to support a determination must either be clearly identified in the order or a copy of a transcript of the testimony must be attached to the order.

#### **§6.3.9. Transfers of Jurisdiction**

##### **A. Agent.**

The Quechan Tribal Secretary shall be the Tribes' agent for service of notice of child dependency proceedings involving Indian children in state, tribal, or any other courts.

##### **B. Transfer to Other Courts.**

1. The Juvenile Court may transfer jurisdiction over any child dependency proceedings pending before the Court to an appropriate state, tribal, or other court.



2. Any transfer of jurisdiction from the Juvenile Court shall proceed in accordance with the following procedures:
  - a. Any person may petition the Juvenile Court to transfer jurisdiction over a proceeding to another court. The petition shall include the name, age, address, and tribal affiliation, if known, of the child who is the subject of the proceeding, and a concise statement of the reasons the transfer should be granted. The petition shall be served upon all interested persons.
  - b. Upon receipt of a petition requesting a transfer of jurisdiction, the Juvenile Court shall issue a notice of hearing informing the child, the child's parent(s), Guardian, or custodian, and the court to which the transfer of jurisdiction has been requested of the date and time for the hearing. Hearings on requests to transfer jurisdiction shall be held within thirty (30) days of the filing of the petition requesting the transfer, unless a longer time is agreed upon.
  - c. The Juvenile Court may transfer jurisdiction over the proceeding if the Court determines that the state, tribe, or other sovereign has a significant interest in the child and that the transfer is in the best interest of the child. The wishes of the child's parent(s), Guardian, or custodian and the wishes of the child if the child is over the age of fourteen (14) years shall be considered, but shall not be controlling, in the Juvenile Court's decision to accept or decline the request to transfer jurisdiction.

C. Intervention in Other Courts.

1. The Tribe may intervene in any child dependency proceeding taking place in any state, tribal, or other court, at any time in the proceeding, pursuant to the Indian Child Welfare Act.
2. Intervention shall proceed in accordance with the following procedures:
  - a. Receipt of Notice.

The Quechan Tribal Secretary, will be the agent for service of official notice of any state court proceedings involving a child of the Quechan Tribe that is subject to ICWA. Employees of DSS and other Tribal government employees or representatives who become aware that a Quechan child is involved in a court proceeding outside of the jurisdiction of the Juvenile Court that is subject to the ICWA must promptly provide the Quechan Tribal Secretary with a written notice regarding the proceeding.
  - b. Distribution of Notices.

The Tribal Secretary must provide copies of any notice involving a Quechan child to the Attorney Representing the Tribe, the DSS, or designees thereof, within three (3) days after receipt of such notice. In the case of an emergency removal hearing, the Attorney Representing the Tribe must be contacted immediately.
  - c. Certification by the Tribal Enrollment Department.

The Tribal Secretary shall issue a Request for Enrollment Certification to the Tribal Enrollment Department within three (3) days after receipt of written notice. The Tribal Enrollment Department must promptly, but not exceeding three (3) days from the date of its receipt of a Request for Enrollment Verification, certify in writing to the Tribal Secretary, the Attorney Representing the Tribe, DSS and/or the ICWA Department a determination

as to whether the child that is the subject of the request is a Quechan child. If the child is not an enrolled Quechan tribal citizen, but is eligible for enrollment, the Tribal Enrollment Department will also inform the Tribal Secretary, the Attorney Representing the Tribe, DSS, and the ICWA Program if either of the child's parents is a enrolled tribal citizen.

d. Intervention.

Intervention in all state court proceedings subject to the Indian Child Welfare Act is favored absent good cause to the contrary. The Attorney Representing the Tribe, or his designee, must, absent good cause to the contrary, file a notice to intervene with the other court as soon as possible, but not more than fourteen (14) days after receiving certification by the Tribal Enrollment Office that the child is a Quechan child.

e. Investigation and Report.

(1). The DSS and/or the ICWA Department, must promptly initiate an investigation and file a written report which relates to the specific circumstances of the case and the needs of the child and parents, custodian, or Guardian. The written report must then be filed with the Attorney Representing the Tribe. The report must include recommendations regarding the proper course of action for the Tribe in the proceeding, including whether or not transfer should be sought, and facts and analysis to support the recommendations.

(2). The recommendation shall consider, among other factors, the following:

- i. The age of the child;
- ii. The location and circumstances of the family;
- iii. Any special needs of the family, if any;
- iv. Whether a state, a tribe, or other sovereign has made any serious attempt to reunite the family; and
- v. The cost to the Tribe of legal services required to accomplish the intervention.

3. If the Attorney Representing the Tribe determines that intervention is in the best interest of the child and the Tribe, the Attorney Representing the Tribe shall promptly file a Petition for Transfer of the child dependency proceeding with the other court.

4. Upon receipt of transfer of jurisdiction from state court, the Juvenile Court will hold appropriate hearings in accordance with this Code.

D. Transfer from Other Courts.

1. Where notice is provided to the Tribe, the following procedures shall be followed:
  - a. The Tribal Secretary shall within three (3) days notify DSS, the ICWA Program, and the Attorney Representing the Tribe that the Tribe has received said notice of proceedings. The Attorney Representing the Tribe shall ask DSS to investigate the matter.
  - b. Within seven (7) days of receipt of the request, DSS shall prepare an assessment of the child and the child's family situation, and shall make a written recommendation to the Attorney Representing the Tribe regarding

whether the case should be transferred to the Juvenile Court. The recommendation shall consider, among other factors:

- (1). The age of the child;
  - (2). The location and circumstances of the family;
  - (3). Any special needs of the family, if any;
  - (4). Whether the state, tribe, or other sovereign has made any serious attempts to reunite the family;
  - (5). The availability of tribal services to address the child's needs;
  - (6). The availability of a suitable tribal home for placement of the child;
  - (7). Whether financial assistance for the care of the child will continue to be available if the transfer of jurisdiction occurs; and
  - (8). The cost to the Tribe of the legal services required to accomplish the transfer of jurisdiction.
- c. If further action is warranted, the Attorney Representing the Tribe shall petition the Juvenile Court to accept jurisdiction. The Juvenile Court may decline the transfer of jurisdiction if the Court finds clear and convincing evidence that the transfer would not be in the best interest of the child, the child's family, or the Tribe.
  - d. If the Juvenile Court issues an order indicating that the Court will accept jurisdiction over the proceedings, the Attorney Representing the Tribe shall file a petition with the state, tribal, or other court requesting the transfer. The Attorney Representing the Tribe shall provide notice to all parties that a petition to transfer jurisdiction has been filed.
  - e. If the state, tribal, or other court grants the petition to transfer jurisdiction, the Juvenile Court shall immediately issue an order accepting the transfer of jurisdiction and asking the state, tribal, or other court to forward all files concerning the proceedings to the Juvenile Court.
2. Request to Accept Jurisdiction.
- If an Indian child or the parent(s), Guardian, or custodian of an Indian child petitions a state, other tribal courts, or any other court to transfer jurisdiction over a child dependency proceeding to the Juvenile Court, the transfer shall not be effective until the Juvenile Court accepts the transfer of jurisdiction. Requests to the Juvenile Court for acceptance of a transfer of jurisdiction shall be conducted in accordance with the following procedures:
- a. It shall be the duty of the party petitioning the state, tribal, or other court for the transfer of jurisdiction to file a petition with the Juvenile Court asking the Court to accept jurisdiction.
  - b. The petition asking the Juvenile Court to accept jurisdiction must identify the basis for Court's jurisdiction over the child dependency proceeding.
  - c. Upon receipt of a petition asking the Juvenile Court to accept jurisdiction, the Juvenile Court shall determine if accepting jurisdiction over the child dependency proceeding is appropriate under the provisions of this Code within seven (7) days of receipt.
3. When jurisdiction over a child dependency proceeding is transferred to the Juvenile Court, a petition shall be filed and the case shall proceed in accordance with this Code.

**§6.3.10. Emergency Removal And Placement**

- A. The Chief of Police or a designee thereof, the Probation Officer, or any duly authorized law enforcement officer may remove a child into emergency custody if:
  - 1. It reasonably appears that the child has run away from home; or
  - 2. The officer has probable cause to believe that the child is a Child-In-Need-Of-Care, that the child is in immediate danger from the child's surroundings, and that removal of the child from the home is necessary to protect the child.
- B. Officer Duties.

Within forty eight (48) hours of taking a child into emergency shelter care pursuant to this subsection, the officer shall:

  - 1. Immediately request an emergency shelter care hearing with the Juvenile Court and file a case report.
  - 2. Immediately attempt to contact the child's parent(s), Guardian, or custodian. All reasonable efforts shall be made to advise the child's parent(s), Guardian, or custodian of the reasons for taking the child into custody and the place of continued shelter care.
- C. Court ordered Physical Examination.

When a child is taken into emergency shelter care, the Juvenile Court may authorize medical personnel to conduct a physical examination of the child for the purposes of preserving evidence if the Court determines that reasonable cause exists to believe that the child has been sexually or otherwise physically abused, that the physical evidence of the abuse exists and is likely to disappear, and that it is in the best interest of the child to have the examination. A child twelve (12) years of age or older may refuse to consent to the examination.
- D. Emergency Placement.
  - 1. Once a child has been removed pursuant to this section, the child may be placed either in emergency shelter care with a licensed foster care provider or in the physical custody of a parent, Guardian, custodian, or other responsible person.
  - 2. The officer may place the child in the physical custody of the child's parent(s), Guardian, custodian, or other responsible person if:
    - a. Safeguards are in place that make it reasonable to believe that the child is no longer in immediate danger; or
    - b. The parent, Guardian, custodian, or other responsible person is not the person from whom the child was removed and reasonable cause exists to believe that the child is not at risk of harm while in their custody.
  - 3. Emergency Foster Care Placement Preference.

Preference for emergency foster care placement shall be given in the order described in Section 6.3.7.
  - 4. If the officer places the child to the physical custody of the child's parent(s), Guardian, custodian, or other responsible person, the child shall remain in the legal custody of the Tribal Police Department pending the initial child dependency hearing.
  - 5. Placement in Detention Facility.
    - a. Every effort should be made to place a child in accordance with this Section 6.3.10 and Section 6.3.7. Placement of a child in a detention facility pursuant

to this Section should be limited to instances when such placement is absolutely necessary.

- b. If a child taken into emergency shelter care is placed in a facility that is used for the detention of juvenile offenders or alleged juvenile offenders, the child shall be placed in a room separate from juvenile offenders and alleged juvenile offenders.
- c. No child shall be detained in a jail, prison, police station, or other place where adults are detained, except that a child may be temporarily detained in a police station for up to five (5) hours when necessary to determine the child's name, age, residence, and other identifying information.

**§6.3.11. Emergency Shelter Care Hearings**

A. Pending an emergency shelter care hearing, DSS shall assist the Chief of Police, the Probation Officer, or other authorized law enforcement officer in placing a child with a licensed foster care provider consistent with the provisions of Section 6.3.7.

B. Placement Considerations.

In attempting to place the child pursuant to this section, DSS shall consider, but not be limited to, the following:

1. The ability of the placement being considered to meet the child's physical, emotional, and educational needs;
2. The ability of the placement being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and a willingness to prevent anyone from influencing the child in regard to the allegations in the case;
3. If more than one (1) placement is being considered, the person(s) that has the closest existing personal relationship with the child.

C. Placement in Shelter Facility; Hearing.

1. Timing.

If a child is placed in emergency shelter care, the Juvenile Court shall conduct an emergency shelter care hearing within forty eight (48) hours of the time the child was taken into emergency shelter care

2. Purpose.

The purpose of an emergency shelter care hearing is to determine whether continued shelter care is necessary for the protection of the child, or whether the provision of reasonable and available services could make it possible for the child to return home immediately.

3. If the child's parent(s), Guardian, or custodian is not present at the emergency shelter care hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s), Guardian, or custodian of the hearing and obtain their presence. If reasonable efforts have been made, the Juvenile Court may proceed with the hearing in their absence.

4. Court Order.

The Juvenile Court shall order the child to remain in shelter care or to return the child to the legal custody of the child's parent(s), Guardian, or custodian.

5. Continued Care.

- a. If the Juvenile Court determines that continued shelter care is warranted or that DSS services are necessary to protect a child that has been returned to the home, the Court shall make an order for the temporary placement of the child and/or requiring the necessary services.
- b. The Court's temporary custody order shall automatically expire thirty (30) days after the emergency shelter care hearing and DSS shall return the child to the child's parent(s), Guardian, or custodian unless a Child-In-Need-Of-Care petition is filed.
- c. The Court may order DSS to file a petition alleging that the child is a Child-In-Need-Of-Care within thirty (30) days.

**§6.3.12. Child-In-Need-Of-Care Petitions**

- A. Decision to File a Child-In-Need-Of-Care Petition.
  1. Promptly after the completion of the preliminary investigations regarding a possible Child-In-Need-Of-Care by tribal or state social service and law enforcement agencies, DSS and/or the ICWA Department may request that the Attorney Representing the Tribe initiate formal child dependency proceedings by filing a Child-In-Need-Of-Care Petition in the Juvenile Court on behalf of the Tribe.
  2. The Attorney Representing the Tribe may, with due consideration to any recommendations of the request or lack thereof from DSS and/or the ICWA Department prepare and file a Child Protection Petition in the Juvenile Court on behalf of the Tribe.
- B. Petition Language.

The petition shall set forth, in ordinary and concise language, the following facts that are known and indicate any facts which are not known:

  1. The name, address, date of birth, sex, and tribal affiliation of the child;
  2. The name, address, and tribal affiliation of the child's parent(s) and present Guardian(s) or custodian(s), if any;
  3. The residences at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
  4. The statutory provisions of the Juvenile Code that give the Juvenile Court jurisdiction over the matter;
  5. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  6. A brief, concise statement of facts upon which the allegation that the child is a Child-In-Need-Of-Care is based. These facts shall include the date, time, and location where the alleged events occurred, and any other information upon which the petitioner relies to form the belief that the child is a Child-In-Need-Of-Care; and
  7. If the child is in detention or emergency shelter care, the place of detention or emergency shelter care, the time the child was taken into custody, the reason the child was removed from the home, and the reasonable efforts DSS has made to prevent or eliminate the need for removal.
- C. Upon receipt of a petition alleging that a child is a Child-In-Need-Of-Care, the

Juvenile Court shall issue a notice of hearing directing the child and the child's parent(s), Guardian, or custodian to appear in Court for a hearing at the time and place specified in the notice. Service of the Child-In-Need-Of-Care Petition must be in accordance with the requirements of Section 6.2.5 of this Code.

**§6.3.13. Preliminary Hearings**

- A. A Preliminary Hearing will be conducted for the following purposes:
  - 1. To determine if probable cause exists to believe that a child is a Child-In-Need-Of-Care, unless probable cause was established previously at a hearing on an Emergency Petition;
  - 2. To advise the parents, Guardian, or custodian of the nature and purpose of the proceeding and of their rights;
  - 3. To provide the parents, Guardian, or custodian an opportunity to enter a plea; and
  - 4. If the child is in protective custody, determine if there is an adequate alternative to safeguard the child.
- B. Requirement for a Preliminary Hearing.  
A Preliminary Hearing will be conducted in all proceedings initiated by a Child-In-Need-Of-Care Petition provided however, that if a proceeding was initiated by an Emergency Petition pursuant to Section 6.3.11, a Preliminary Hearing will only be required if the hearing on the Emergency Petition was conducted on an Ex Parte basis and the parents, Guardian, or custodian file a request for a Preliminary Hearing with the Juvenile Court within five (5) days from the date of the order confirming removal.
- C. Timeframe. The Juvenile Court will conduct a Preliminary Hearing within:
  - 1. Two (2) days from the date the request for a Preliminary Hearing was filed with the Juvenile Court if the child is in protective custody and the request is in compliance with the requirements of subsection B; or
  - 2. Three (3) days from the date the Child-In-Need-Of-Care Petition was filed with the Juvenile Court if the child is not in protective custody.
- D. Service of the Petition, Notice of Preliminary Hearing, and Summons.
  - 1. Reasonable efforts must be made to serve the Child-In-Need-Of-Care Petition, Notice of the Preliminary Hearing, and Summons by personal service on the parents, Guardians, or custodian promptly after the Petition is filed with the Juvenile Court.
  - 2. If no parent, Guardian, or custodian can be located, the Petition, Notice, and Summons must be personally served on any adult residing in the same home as the child. Reasonable efforts include personal contact, telephone or written contact at the residence, place of employment, or other location where the parent, Guardian or custodian is believed to frequent.
  - 3. If no adult resident is found, the Petition, Notice and Summons must be left at the home and also served upon any known adult member of the child's Immediate Family.
- E. Parent, Guardian, or Custodian Not Present.
  - 1. Court Inquiry.
    - a. If the child's parent, Guardian, or custodian is not present at the Preliminary Hearing, the Juvenile Court will inquire into what efforts were made to notify and to obtain the presence of the parents, Guardian, or custodian.

- b. If it appears that further efforts are likely to produce the child's parent, Guardian or custodian, the Juvenile Court will recess for not more than three (3) days and direct the Attorney Representing the Tribe to continue efforts to obtain the presence of the child's parent, Guardian, or custodian.

2. Ex Parte.

Upon a showing to the satisfaction of the Juvenile Court that every reasonable effort was made to obtain service on the parents, Guardian, or custodian of the child and an inquiry as to why their attendance at the hearing could not otherwise be obtained, the Preliminary Hearing may be conducted Ex Parte if the Juvenile Court determines that continued efforts to serve the parents, Guardian, or custodian will not likely be successful within the next three (3) days.

F. Preliminary Hearing Procedure.

For all Preliminary Hearings the Juvenile Court will:

1. Read the allegations of the Petition in open court, unless the reading of the allegations is waived by the parents, Guardian, or custodian;
2. advise the parents, Guardian, or custodian of their respective rights, including the right to a hearing on the allegations in the Petition, the right to remain silent, and the right to admit or deny the allegations in the Petition;
3. appoint a *Guardian Ad Litem* for the child; and
4. appoint counsel to represent the parents, Guardian, or custodian of the child, if necessary.

G. Plea of Admission, Plea of Denial, or Remaining Silent.

1. A parent, Guardian, custodian, or other respondent may make a plea of admission or a plea of denial, or may remain silent as to the allegations contained in the Petition. The consequence of any plea of admission will be to eliminate the need for a wardship hearing. The plea may be accepted at any time after the filing of the Petition, provided that the Tribe and the *Guardian Ad Litem* for the child have notice and opportunity to object before a plea of admission is accepted.
2. Before accepting a plea of admission, the Juvenile Court must inform the respondent in the open court of the following:
  - a. That if the Juvenile Court accepts the plea of admission, the respondent will give up his or her rights to a bench trial, to have the Tribe prove the truth of the allegations by a preponderance of the evidence, to have witnesses appear and testify under oath on his or her behalf, and to cross examine the witnesses that may appear against him or her; and
  - b. That the consequences of the plea include the possibility that the plea will be used to support a petition to terminate the respondent's rights concerning the child.
3. The Juvenile Court will not accept a plea of admission until it is satisfied that the allegations contained in the Petition are supported and that the plea is knowingly and voluntarily made. Following acceptance and entry of such a plea of admission, if the Juvenile Court find that:
  - a. Supported by evidence in the record, the Juvenile Court may dispense with the probable cause determination under subsection H, may proceed to release the child to the custody of the child's parents, Guardian, or custodian; or order removal of the child from the parents, Guardian, or custodian pursuant



to subsections H(2)(a) or H(2)(b). A disposition hearing will be scheduled and held in accordance with this Section 6.3; or

- b. The allegations that the child is a Child-In-Need-Of-Care are not supported by evidence in the record, the Juvenile Court may proceed under subsection I or may schedule a wardship hearing in accordance with this Section 6.3.

H. Establishing Probable Cause.

- 1. The Juvenile Court, in determining whether probable cause exists to believe that the child is a Child-In-Need-Of-Care, will hear testimony concerning the facts upon which the Petition was initiated.
- 2. If the Juvenile Court finds that probable cause exists to believe that the child is a Child-In-Need-Of-Care, and the parent, Guardian, or custodian remains silent or denies the allegations in the Petition, the Juvenile Court will order the parent, Guardian, or custodian to appear at a wardship hearing and either:
  - a. Release the child to the custody of the child's parent, Guardian, or custodian under such reasonable terms and conditions as are necessary for the protection of the child; or
  - b. Order removal of the child from the parent, Guardian, or custodian or reaffirm a prior removal on an emergency petition if the juvenile court determines that:
    - (1). It would be contrary to the welfare of the child to remain in the home and custody of the child with a parent, Guardian, or custodian presents a substantial risk of harm to the child;
    - (2). No provision of services or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk;
    - (3). If removed pursuant to an emergency removal petition, the conditions which justified such removal still exist in the home; and
    - (4). Conditions of custody away from his or her home are adequate to safeguard the child's health and welfare.
- 3. If probable cause is not found that the child is a Child-In-Need-Of-Care, the Juvenile Court will dismiss the Petition and the child will be released to the child's parent, Guardian, or custodian.

I. Court ordered Evaluations and Assessments.

The Juvenile Court may, at any time after conducting a Preliminary Hearing at which probable cause to proceed upon a Petition is found, order an involved child, parent, Guardian, custodian, or any member of child's household to undergo a physical, mental, psychological, or substance abuse evaluation or assessment by a qualified professional.

**§6.3.14. Wardship Hearings**

- A. The purpose of the wardship hearing is to hear evidence regarding whether the child is a Child-In-Need-Of-Care as alleged in the Petition.
- B. Commencement.

The wardship hearing will commence as soon as possible but not later than thirty (30) days after the date the child was removed from his or her home or the date the Child-In-Need-Of-Care Petition was filed with the Juvenile Court, whichever occurs first.

C. Continuances.

Continuances of a wardship hearing may be granted by the Juvenile Court upon good cause shown and not more than once for a period not exceeding fourteen (14) days upon one of the following occurrences:

1. A stipulation of the parties;
2. Failure to serve the notice of hearing on the parents, Guardian, or custodian;
3. The juvenile court finds that the testimony of a presently unavailable witness is necessary; or
4. A parent, Guardian, or custodian requests an opportunity to obtain legal counsel.

D. If the Juvenile Court determines that a child is a Child-In-Need-Of-Care, the Court shall make the child a ward of the Juvenile Court. The wardship shall continue until:

1. The Court issues an order terminating the wardship;
2. The Court issues a Decree of Adoption for the child;
3. The Court issues letters of Permanent Guardianship for the child; or
4. The child reaches the age of eighteen (18) years, unless Juvenile Court jurisdiction over the child is continued by order of the Court.

**§6.3.15. Disposition Hearings**

A. The purpose of a disposition hearing is to determine what measures should be taken with respect to a child found to be a Child-In-Need-Of-Care.

B. Timing and Notice.

1. A disposition hearing may be held immediately after the adjudication if a Case Service Plan has been served on the parties. The interval, if any, between the adjudication and the disposition, is within the discretion of the Juvenile Court, provided however, that when the child is in a placement outside the home, the interval may not be more than thirty (30) days from the date of the wardship hearing except for good cause.
2. If the disposition hearing is not held immediately after the wardship hearing, a Notice of Hearing may be deemed given and received by scheduling the hearing on the record in the presence of the parties or in accordance with Section 6.2.6(L).

C. Proposed Case Plan.

1. DSS and/or the ICWA Department must prepare or must cause the responsible state or state-authorized agency to prepare a written report describing all reasonable and appropriate alternative dispositions. The Case Plan must contain:
  - a. A specific plan for the care of, and services to, the child and the child's parents, Guardian, or custodian to resolve the problems presented in the Petition;
  - b. A detailed explanation of the necessity for the proposed Case Plan and its benefits to the child; and
  - c. If the Case Plan recommends placement of the child somewhere other than with the child's parents, Guardian, or custodian, it must state with specific reasons for deviation from the Placement Preferences defined in Section 6.3.7 including all efforts undertaken to comply with those requirements.

D. Except as provided otherwise by a Juvenile Court order, the responsible agency must file the Case Plan with the Juvenile Court and must serve copies of the Case Plan on

all parties and other persons entitled to a Notice of Hearing under and in compliance with Section 6.2.6(L).

E. Disposition Orders.

1. Issuance.

- a. The Juvenile Court must issue a disposition order within seven (7) days of the date of the disposition hearing and after considering the proposed Case Plan and other evidence, testimony, and arguments offered at the hearing.
- b. The Juvenile Court will adopt a Case Plan and may enter such further orders as it considers necessary in the best interests of the child, the best interests of the Extended Family, and the best interests of the Tribe or other Indian tribe with whom such child is affiliated.

F. Placement Preferences.

The disposition order must comply with the placement preferences in Section 6.3.7 or must include findings of fact supported by evidence in the record establishing good cause for any deviation from the placement preferences.

G. The Juvenile Court shall have broad discretionary power to make Disposition orders for the care, custody, and control of a child found to be a Child-In-Need-Of-Care, including, but not limited to:

1. Permitting the child to remain in the physical custody of the child's parent(s), Guardian, or custodian;
2. Ordering DSS to place the child in appropriate out-of-home-placement in accordance with the Tribe's placement preferences as prescribed in Section 6.3.7 of this Code, if the Juvenile Court finds clear and convincing evidence that continued custody by the child's parent(s), Guardian, or custodian is likely to present a risk of serious emotional or physical harm to the child;
3. Requiring compliance with DSS's reunification plan for the family, which may include, but shall not be limited to, participation in services, programs, activities, and/or supervision;
4. Requiring the child to be examined and/or treated by a physician, psychiatrist, or psychologist, or to receive other special care or treatment at a hospital or other health care facility;
5. Recommending the initiation of proceedings for the termination of parental rights; and
6. Recommending the initiation of proceedings for full or partial emancipation of the child.

H. The Juvenile Court shall have the authority to impose conditions or limitations upon a child, the child's parent(s), Guardian, or custodian, and any other party in order to protect the best interest of the child. The conditions or limitations shall be in the best interest of the child and may include, but are not limited to:

1. Counseling, therapy, treatment, and/or classes;
2. Restrictions on visitation with the child's parent(s), Guardian, or custodian;
3. Payment of support or other necessary costs;
4. Participation in tribally-sponsored activities;
5. Restrictions on association with others;
6. Curfew restrictions; and

7. Any other conditions or dispositions that the Juvenile Court determines are necessary to protect the best interest of the child.
- I. Removal Compliance. The Disposition order must comply with the removal requirements of Section 6.3.8 to the extent applicable and must also include a judicial determination with findings of fact supported by evidence in the record that placement of the child outside his or her home continues to be necessary and appropriate, including the likely harm to the child if the child is returned to his or her parent, Guardian, or custodian.
- J. Reimbursement for Care. Parents, custodians, or Guardians may be ordered by the Juvenile Court to reimburse tribal, state agencies, or state-authorized agencies for the cost of care and placement of the child.
- K. Child Support.

Parents, custodians, or Guardians may be ordered by the Juvenile Court to make child support payments for children, who are not Title IV-E eligible, when placed with persons who are not eligible for foster care payments or when the foster care payments will not cover the reasonable cost of caring for the children.

**§6.3.16. Informal Adjustment Conferences**

- A. At any time prior to a Court hearing, the Department of Social (DSS) may hold an informal conference with the parent(s), Guardian, or custodian of a child alleged to be a Child-In-Need-Of-Care and the child where appropriate, to discuss alternatives to a wardship hearing or other formal Juvenile Court proceedings. Counsel for the child and/or the child's parent(s), Guardian, or custodian and any other persons approved by DSS who may be helpful in the resolution of the matter may participate in the conference.
- B. Informal Disposition.
  1. Any informal disposition of the matter shall be in writing, signed by the parties, and submitted to the Juvenile Court.
  2. The parties entering into an informal adjustment agreement shall admit the allegations in the petition or other facts supporting a determination that the child is a Child-In-Need-Of-Care. By these admissions the parties give up their right to a wardship hearing.
  3. If an agreement is not reached by the parties, statements made during the informal adjustment conference shall not be used against the family in Juvenile Court.
  4. The services, programs, activities, and/or supervision required in an agreement shall not exceed six (6) months in duration.
  5. An informal adjustment agreement shall include, but not limited to:
    - a. The areas in which the child and the child's parent(s), Guardian, or custodian need assistance and the services, programs, activities, and/or supervision needed by the family to receive that assistance;
    - b. The agencies, organizations, or individuals that will provide those services, programs, activities, and/or supervision to the family, and how often;
    - c. The timelines to which the family and DSS will be held for completion of the services, programs, activities, and/or supervision; and
    - d. How the family's progress will be monitored and measured.

C. Order to Continue Petition.

If the Juvenile Court approves the informal adjustment agreement, the Court shall issue an order continuing the petition and adopting the plan set forth in the agreement.

D. Review of Progress.

DSS shall, with the family whenever possible, review the family's progress every thirty (30) days. If at any time after the initial thirty (30) day period but before the end of the six (6) months DSS concludes that positive results are not being achieved, DSS shall ask the Juvenile Court to hold a formal hearing on the petition alleging that the child is a Child-In-Need-Of-Care. At the end of the initial six (6) months, DSS shall:

1. Petition the Court to dismiss the matter;
2. Petition the Court for a formal hearing on the petition; or
3. Extend the agreement for good cause, but for no longer than an additional ninety (90) days.
4. Any party who declines to enter into an informal adjustment agreement has the right to a wardship hearing, regardless of whether any other party has entered into an agreement.

**§6.3.17. Disposition Review Hearings**

A. Timing.

1. The Juvenile Court shall hold a hearing to review the status of a child found to be a Child-In-Need-Of-Care within ninety (90) days of the disposition hearing and at least every six (6) months thereafter if a child remains within the jurisdiction of the Juvenile Court and a permanent plan for the child has not been established by Court order.
2. Notwithstanding, any party may ask the Juvenile Court to hold a review hearing at any time. Upon receipt of a motion or request for a review hearing, the Juvenile Court shall examine the substance of the request and may set a date for a hearing if there appears to be a valid reason to do so.

B. At the Disposition Review Hearing, the Juvenile Court shall:

1. Assess the continuing need for and appropriateness of Juvenile Court jurisdiction over the child;
2. Assess the continuing need for and appropriateness of the child's placement;
3. Assess the extent of all parties' compliance with DSS's reunification plan and the progress the family has made toward reunification;
4. Assess whether the services provided to the family have been appropriate, accessible, and provided in a timely manner, and whether DSS is making reasonable efforts to eliminate the need for the removal of the child from the home;
5. Assess concurrent case planning, if any, and DSS's efforts to create an alternative permanent plan for the child in the event that the child's parent(s), Guardian, or custodian makes insufficient progress to restore custody; and
6. Project a likely date for the return of the child to parental care or to put an alternative permanent plan into effect.

C. Notice.

All parties, children over twelve (12) years of age, pre-adoptive parents and foster care providers shall be notified of their right to attend and be heard at each Disposition Review Hearing. Such notice shall be served according to Section 6.2.6(K).

D. DSS Report.

1. DSS and/or the ICWA Department shall prepare a report to the Juvenile Court for each Disposition Review Hearing. The report shall summarize the history of the case, the progress of the family, DSS's or its designee's efforts to offer services to the family, and the participation of the family in services since the last hearing.
2. A copy of the report(s) shall be provided to each party and counsel, if any, as soon as possible prior to the Disposition Review Hearing.

E. Modification of Case Plan.

Following the status review hearing, the Juvenile Court may issue, modify, revoke, or extend orders as appropriate for the care, custody, control, and protection of the child. The Juvenile Court may modify any part of the Case Plan including, but not limited to, the following:

1. Prescribing additional services that are necessary to rectify the conditions that caused the child to become and to remain a Child-In-Need-Of-Care.
2. Prescribing additional actions to be taken to rectify the conditions that caused the child to become and to remain a Child-In-Need-Of-Care.

**§6.3.18. Permanency Planning**

A. If reunification is not complete within twelve (12) months from the date a child is removed from the home or the date of the order making a child a ward of the Juvenile Court, whichever comes first, the Juvenile Court shall order DSS to develop a permanent placement plan for the child, except for good cause shown.

B. Hearing.

The hearing on the permanent plan shall be held within ninety (90) days of such order. The permanent plan hearing may be combined with a status review hearing.

C. Notice.

All parties, including children over twelve (12) years of age and foster care providers, shall be notified of their right to attend and be heard at the permanent plan hearing in accordance with Section 6.2.6(K).

D. Permanent Plan Report.

DSS shall prepare a report to the Juvenile Court for the permanent plan hearing and shall provide a copy of the report to each party and counsel, if any, as soon as possible prior to the hearing. The report shall include, but not be limited to:

1. A summary of the history of the case, the progress of the family, and DSS's efforts to offer services to the family and the participation of the family in services since the last hearing;
2. The specific details of DSS's permanent plan for the child and the specific reasons the plan has been chosen, including why the plan meets the child's needs and is in the child's best interest; and
3. If required by applicable federal law, the compelling reasons why the termination of parental rights is not being recommended as the permanent plan.

E. Annual Review.

1. The Juvenile Court shall annually review the permanent plan for a child found to be a Child-In-Need-Of-Care as follows:
  - a. If the child is a ward of the Juvenile Court and is in the custody of a permanent Guardian, the Guardian shall submit a report to the Court on a yearly basis. If the Juvenile Court determines that a permanent plan review hearing is necessary, the Guardian shall appear at and provide any and all information requested by the Court at the hearing;
  - b. In all other cases in which the child remains a ward of the Juvenile Court, DSS shall submit a report to the Court on a yearly basis and shall appear at and provide information for each permanent plan review hearing. The legal custodian of the child shall be responsible for immediately notifying the Juvenile Court of any changes in the child's placement or any substantial changes in the permanent plan; and
2. No permanent plan review hearing is required for any child who has been adopted.

**§6.3.19. Voluntary Relinquishment of Parental Rights**

- A. A parent may voluntarily relinquish his or her parental rights if the relinquishment of parental rights is knowing and voluntary, in writing, and signed by the parent in the presence of and with the approval of the Juvenile Court.
- B. When the Juvenile Court receives notice that a parent intends to relinquish his or her parental rights, the Court shall set a date for a hearing to accept the parent's release and surrender of parental rights. The hearing shall be held within sixty (60) days of the receipt of notice.
- C. No voluntary termination of parental rights shall be accepted by the Juvenile Court prior to ten (10) days after the birth of the child to whom the parent seeks to terminate his or her parental rights.
- D. No voluntary termination of parental rights shall occur until a written report has been submitted to the Juvenile Court by DSS indicating that social services and counseling have been offered to the parent, that the consequences of the parent's actions have been fully explained to and are understood by the parent, and that the voluntary termination of parental rights is in the best interest of the child.
- E. Consequences Must Be Understood.
  1. The Juvenile Court will not approve the request without first ensuring that the parent understands the consequences of the voluntary relinquishment.
  2. If the Juvenile Court has reasonable doubt concerning the emotional state of mind of the parent or of the parent's ability to fully understand the consequences of his or her decision to voluntarily terminate parental rights, the Court shall:
    - a. Place the child in the legal custody of DSS for an out-of-home placement for a period not to exceed thirty (30) days in order to allow the parent to consider his or her decision; and
    - b. Order legal and psychological counseling for the parent in order to educate the parent about consequences of his or her decision. A report indicating that counseling has been completed shall be made to the Juvenile Court.
  3. The Juvenile Court shall conduct a hearing at the end of the thirty (30) days period and shall:
    - a. Return custody of the child to the parent;

- b. Process the petition for voluntary termination of parental rights; or
- c. Extend the period for no more than thirty (30) additional days to allow for further counseling. Upon completion of the additional counseling, the Juvenile Court shall resume the hearing and shall proceed in accordance with this Code.

F. Withdrawal

1. A parent may withdraw a voluntary termination of parental rights for any reason at any time prior to the entry of a Decree of Adoption for the child.
2. After the entry of a Decree of Adoption, a parent may revoke a voluntary termination of parental rights upon a showing that the relinquishment of parental rights was obtained through fraud, duress, or coercion, except that no adoption in effect for more than two (2) years may be invalidated under this section. A parent showing that the relinquishment of parental rights was obtained through fraud, duress, or coercion may petition the Juvenile Court to vacate the Decree of Adoption.
3. Denial of Request for Relinquishment. The Juvenile Court may deny a request for relinquishment of parental rights if the request involves improper motivations, such as fraud, duress, or a desire to avoid financial obligations to the child.

**§6.3.20. Suspension/Termination of Parental Rights**

A. Purpose.

1. The purpose of this Section is to provide for the involuntary suspension or termination of the parent-child relationship in child protection cases and for the substitution of parental care and supervision by judicial process.
2. This Section will be construed in a manner consistent with the philosophy that the family unit has the most value to the community and the individual members of the family when that unit remains intact.
3. Suspension or termination of the parent-child relationship should be used only as a last resort when the record of the proceeding reflects that all efforts to avoid suspension or termination have been made and have failed and it is in the best interests of the child to proceed under this Section.

B. Petition.

DSS, a child, or the Attorney Representing the Tribe may file a petition with the Juvenile Court to initiate a Termination of Parental Rights Hearing. A petition to initiate a Termination of Parental Rights Hearing shall be verified under oath and shall include:

1. The name, address, date of birth, sex, and tribal affiliation of the child;
2. The name, address, and tribal affiliation of the child's parent(s) or present Guardian(s), if known;
3. at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
4. Whether the child is in a tribally-approved or relative placement and whether an adoptive resource is available;



5. The facts upon which the petition is based which, if true, would prove beyond a reasonable doubt that the termination of parental rights is warranted and in the best interest of the child; and
  6. Facts showing that every reasonable effort has been made to prevent or correct the situation that has necessitated the filing of the petition.
- C. Except as provided in this section, in all Title IV-E cases, DSS shall file a petition to terminate parental rights if:
1. A child found to be a Child-In-Need-Of-Care has been in the legal custody of DSS and in an out-of-home, non-relative placement for fifteen (15) of the last twenty-two (22) months;
  2. The Juvenile Court has determined that the child has been abandoned; or
  3. The Juvenile Court has determined that the child's parent has committed, aided, abetted, attempted, conspired, or solicited the murder or voluntary manslaughter of the child or another child of the parent, or committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent.
- D. DSS is not required to file a petition to terminate parental rights in Title IV-E cases if the Juvenile Court has made written findings that:
1. The child is being adequately cared for by a relative;
  2. DSS has not provided the services to the family that are necessary for the safe return of the child to parental care; or
  3. DSS has documented compelling reasons why the termination of parental rights would not be in the best interest of the child. Compelling reasons may include, but are not limited to, the parent(s) successfully working to complete a service agreement or the existence of another permanent plan that is better suited to meet the needs of the child.
- E. Upon receipt of a petition seeking the termination of parental rights, the Juvenile Court shall issue a notice of hearing directing the child, the child's parent(s), Guardian, and/or custodian, and DSS to appear in Court for a hearing on the petition at the time and place specified in the notice.
- F. If the child's parent(s) is not present at the termination of parental rights hearing, the Juvenile Court shall determine what efforts have been made to notify the parent(s) of the hearing and to obtain their presence. If it appears that further efforts are likely to produce the parent(s), the Juvenile Court shall recess for not more than ten (10) days and shall direct DSS to make continued efforts to obtain the presence of the parent(s).
- G. If a parent has waived his or her right to appear at the termination hearing, the waiver shall be knowing and voluntary, in writing, and signed before the Juvenile Court.
- H. The Juvenile Court may suspend or terminate the parental rights of a parent to a child who has been adjudicated to be a Child-In-Need-Of-Care if the Juvenile Court finds at a hearing beyond a reasonable doubt one (1) or more of the following:
- a. Unrectified Conditions.
    - (1). The parent was a respondent in the Child Protection Petition brought under this Code, twelve (12) or more months have elapsed since the issuance of an initial Adjudication order, and the Juvenile Court finds that:

- i. The conditions on which the adjudication was based remain substantially unchanged and there is no reasonable likelihood that the conditions will be rectified within a reasonable time reconsidering the age of the child; or
    - ii. Other conditions exist that cause the child to be a Child-In-Need-Of-Care, and there is no reasonable likelihood that such other conditions will be rectified within a reasonable time considering the age and circumstance of the child.
  - b. Abandonment, Abuse, or Neglect.
    - (1). A parent of the child has abandoned the child without provision for support or without communication with the Juvenile Court, officers of the Juvenile Court, or the DSS personnel for a period of at least six (6) months.
    - (2). The failure to provide support or to communicate for a period of at least six (6) months will be presumptive evidence of the parent's intent to abandon the child.
  - c. Child Abuse.
    - (1). A child or a sibling of a child will be deemed a victim of child abuse if the child has suffered from abuse as defined in this Code, or under either of the following circumstances:
      - i. A parent's act caused the abuse and the Juvenile Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home; or
      - ii. A parent who had the opportunity to prevent the abuse failed to do so and the Juvenile Court finds that there is a reasonable likelihood that the child will suffer abuse in the foreseeable future if placed in the parent's home.
  - d. Child Neglect.

The parent has neglected the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age and circumstances of the child.
  - e. Conviction of a Crime.

The parent is convicted of a violent or a criminal sexual crime against any person or is convicted of any other crime that proves the unfitness of the parent.
  - f. Imprisonment for More Than Two (2) Years.

The parent is imprisoned for over two (2) years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
  - g. Parental Rights Terminated as to Sibling.

The rights of the parent to one (1) or more siblings of the child have been suspended or terminated due to neglect or abuse and prior attempts to rehabilitate the parent have been unsuccessful.

h. Relinquishment.

The parent's voluntary termination (relinquishment) of parental rights has been acknowledged before the Juvenile Court.

- I. If the Juvenile Court makes the required determinations, the Court shall proceed to disposition or may take the matter under advisement and hold a disposition hearing within ten (10) days. If the Juvenile Court schedules a disposition hearing for a later date, the Court shall provide notice of the disposition hearing date to all parties.
- J. The Juvenile Court shall require DSS to prepare a written pre-disposition report outlining a specific plan for the future permanent care and custody of the child, including, but not limited to, placing the child in a temporary physical custody placement pending transfer to the adoptive resource, or placing the child in the legal custody of DSS for adoptive placement and in the physical custody of the adoptive parents. DSS shall submit the pre-disposition report to the Juvenile Court, the parties, and counsel, if any, in a timely manner prior to the disposition hearing.
- K. Effect.
  - 1. A Juvenile Court order terminating parental rights permanently terminates all rights of a parent to a child. A parent whose parental rights have been terminated shall have no standing to appear in any legal proceeding concerning the child, except a motion to revoke the relinquishment of parental rights or the appeal of an order terminating parental rights.
  - 2. An order terminating parental rights shall not affect the child's enrollment status as a member of the Tribe, the child's degree of blood quantum, or the child's rights of inheritance under tribal law from biological parents who die intestate.
  - 3. The rights of one (1) parent may be terminated without affecting the rights of the other parent.

**§6.3.22. Permanent Ward Review Hearing**

- A. A Permanent Ward Review Hearing will be conducted at least once every ninety (90) days for the first three (3) years in placement to review the status of any child who is a permanent ward of the Juvenile Court and to review the progress made to establish a permanent placement for the ward.
- B. DSS and/or the ICWA Department shall prepare a report for a Permanent Ward Review Hearing detailing the child's wardship and progress within his or her placement plan.

**§6.3.23. Permanent Guardianship for Permanent Wards**

- A. Appointment.
  - 1. In appointing a Guardian of a child, the Juvenile Court shall prefer the parents of the child, or either of them, if qualified and suitable, over all others, and shall prefer Guardianships that maintain and preserve the child's connection to the Tribe and the child's Extended Family, where appropriate.
  - 2. In accordance with the requirements of this section, the Juvenile Court shall appoint a qualified and suitable Guardian who is willing to serve, having due regard for the following factors:
    - a. Any request for the appointment of a Guardian of a child that is contained in a will or other written instrument executed by a parent of the

child;

- b. Any request for the appointment of a Guardian of a child fourteen (14) years of age or older made by the child; and
- c. Any relationship by blood or marriage of the proposed Guardian to the child.

**B. Qualifications.**

The following persons are not qualified to act, or to continue to act, as a Guardian of a child:

- 1. A child;
- 2. An incompetent person; and
- 3. Any person who has been convicted of a felony, if the Juvenile Court determines that the facts underlying the conviction create a reasonable suspicion that the person will be unfaithful to or neglectful of a Guardian's responsibilities to the child or that the appointment will not be in the best interest of the child.

**C. Letter of Guardianship.**

The Juvenile Court shall issue a Letter of Guardianship to a person accepting a Guardianship or appointed as a Guardian of a child. The Letter of Guardianship shall affirm that the named Guardian has the authority to and shall perform the duties of a Guardian of the named child as provided by law.

**D. Powers of a Guardian.**

- 1. A Guardian of a child shall exercise the powers and duties of a parent, including responsibility for the care, custody, and control of the child and the management of the child's property, except that a Guardian is not legally obligated to provide for the child from the Guardian's own funds, is not liable to a third party for the acts of the child by reason of the parental relationship, and shall not dispose of any real property or tribal member benefits of the child except by order of the Juvenile Court. Among other duties, a Guardian:
  - a. Shall facilitate the child's educational, social, and other activities;
  - b. Shall authorize medical or other professional care and treatment for the child. A Guardian is not liable by reason of this consent for an injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented to the conduct;
  - c. May receive money for the support of the child payable to the child's parent(s), Guardian, or custodian under the terms of any statutory benefit, insurance system, private contract, devise, trust, conservatorship, or custodianship;
  - d. May institute proceedings to compel the performance of a duty to support the child or to pay sums for the welfare of the child;
  - e. May prosecute the claims of the child, including those for personal injuries;
  - f. Shall take reasonable care of the child's personal effects and begin protective proceedings if necessary to protect the child's property;
  - g. Shall report to the Juvenile Court on the condition of the child and the child's estate subject to the Guardian's possession or control, on an annual basis or as ordered by the Court; and

- h. Shall file a detailed accounting with the Juvenile Court describing the money and property received on behalf of the child and the disposition of the money and property, on an annual basis or as ordered by the Court.
- E. Use of Funds.
  - 1. Any money or property received under this section shall be applied to the child's current needs for support, care, and education.
  - 2. The use of funds or property for any other purpose shall subject the Guardian to an action for contempt of court and to criminal and civil penalties, and any remedies as provided under tribal, state, and federal law.
  - 3. The Guardian shall exercise due care to conserve any excess funds or property for the child's future needs unless a conservator has been appointed for the estate of the child and excess funds are paid over at least annually to the conservator. Money or property received by the Guardian shall not be used to compensate the Guardian for services unless compensation has been approved by order of the Juvenile Court or as determined by a duly appointed conservator other than the Guardian.
- F. Jurisdiction over Guardians.

By accepting appointment as a Guardian of a child, a Guardian submits personally to the jurisdiction of the Juvenile Court in any proceeding relating to the Guardianship.

**§6.3.24. Voluntary Temporary Guardianships**

- A. A parent or Guardian of a child, by a properly executed power of attorney, may voluntarily delegate to another person, for a period not to exceed six (6) months, the temporary Guardianship of the child.
- B. A temporary Guardian shall have the legal status of a Guardian and shall perform any of the powers and duties of a Guardian regarding the care, custody, or control of the child and the management of the child's property, except the power to consent to the marriage or adoption of the child.

**§6.3.25. Child Protection Records**

- A. All records related to Child-In-Need-Of-Care proceedings kept and maintained by tribal departments shall be confidential and shall be maintained separate from other records.
- B. No person shall have access to juvenile offender or Child-In-Need-Of-Care records except:
  - 1. the child, the child's parent(s), Guardian, custodian, prospective adopting parents, counsel for the parent(s), and counsel for the child or Court-appointed Guardian *Ad Litem*;
  - 2. Juvenile Court system staff directly involved in the case, the Attorney Representing the Tribe and DSS staff directly involved in the handling of the case;
  - 3. Law enforcement officers, and then only for the purpose of preparing for a Juvenile Court hearing or as ordered by the Court;
  - 4. Any other person having a legitimate interest in a particular case or the work of the Juvenile Court, and then only by order of the Court, with good cause shown; and

5. Any outside child welfare agency upon prior approval from the Director of DSS, a DSS investigator, the child welfare program manager or appointee.
- C. The Juvenile Court may order any party to a Juvenile Court proceeding to sign a release of information authorizing treatment and service providers to release records, reports, assessments, and other relevant information to Juvenile Court system staff directly involved in the handling of the case.
- D. At the completion of a Child-In-Need-Of-Care proceeding, Juvenile Court system staff shall seal the entire file. The records of the proceedings shall be kept separate from the records and files of adults, except to the extent that the records are relevant to a criminal investigation, and not be made available for inspection by the public except by order of the Juvenile Court, with good cause shown.
- E. All DSS and/or the ICWA Department records concerning matters arising under this Code will be confidential and not open to inspection to any but the following persons:
  1. The child, the child's parents, Guardian, or custodian, the child's legal counsel or Court-appointed Guardian *Ad Litem*;
  2. Gun Lake Public Safety Department and other law enforcement personnel involved with the case;
  3. Health and Human Services Department personnel, personnel of state and state- authorized social services agencies involved with the case, and, as determined by the Director of the DSS and/or the ICWA Department on a case-by-case basis;
  4. Juvenile Court personnel directly involved in the handling of the case; and
  5. Any other person by Juvenile Court order.

## **Chapter 6.4** **General Child Welfare**

### **§6.4.1. Delegations of Parental Authority**

- A. Delegations of Parental Powers.

A parent, Guardian, or custodian may delegate to another person powers of a parent regarding the care, custody and property of a child, provided that child is not presently a ward of any court or the subject of a child dependency proceeding or investigation. The delegable powers may include consent to admission to a hospital or school, routine dental care, non-surgical medical care, emergency dental care, and medical or surgical treatment.
- B. Non-Delegable Parental Powers.

A delegation of parental power does not include the power to consent to marriage, non-emergency elective surgery, or adoption.
- C. Delegations Valid for Six (6) Months.

A delegation of parental authority will only be valid for six (6) months from the date of the execution and may be revoked in writing at any time by the person or agency delegating the power. A delegation of parental authority is renewable upon execution of a new power of attorney.
- D. Limited Guardianship.
  1. Establishment.

The Juvenile Court may, for good cause shown upon a petition of the custodial parent(s) of a child, establish a limited Guardianship over a child, provided that the child is neither a ward of any court or the subject of any child protection investigation or proceeding. The Juvenile Court may establish the limited Guardianship under such terms and conditions as set forth in the written order.

2. Visitation.

Members of the child's Immediate Family and Extended Family will be granted liberal visitation rights subject to the determination of the Juvenile Court that such visitation would be in the best interest of the child.

3. Termination.

A limited Guardianship may be terminated upon request of the petitioning parent(s) or the Guardian if the Juvenile Court determines that there is no longer a need for the Guardianship and that it is in the child's best interests to return custody of the child to the parent(s) or custodian.

4. Guardianship Applicability.

Except as may be provided otherwise by Juvenile Court order, the applicable Guardianship provisions of this Code will also apply to a limited Guardianship.

**§6.4.2. Permanent Guardianship**

A. Petition.

Any adult interested in the welfare of an Indian child within the territorial jurisdiction of the Tribes may file a petition with the Juvenile Court asking to become the permanent Guardian of the child. A petition for permanent Guardianship shall be verified under oath and shall include:

1. The name, address, date of birth, sex, and tribal affiliation of the child;
2. The name, address, and tribal affiliation of the child's parent(s) or present Guardian(s), if known;
3. Whether the juvenile is currently the subject of a Child-In-Need-Of-Care proceeding;
4. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
5. The residences at which the child has lived, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence, for the previous two (2) years;
6. The name, address, date of birth, tribal affiliation, and occupation of the petitioner(s);
7. The relationship of the petitioner(s) to the child;
8. The reasons the Guardianship is sought and the capacity of the petitioner(s) to fulfill the duties of a Guardian;
9. Whether the child's parent(s) consent to the proposed Guardianship;
10. A statement by the petitioner(s) of the desire that a relationship of Guardian and ward be established between the petitioner and the child; and
11. An agreement by the petitioner(s) to maintain ties between the child and the Tribe and the child's extended family, where appropriate.

B. DSS Investigation.

Upon receipt of a petition for permanent Guardianship, the Juvenile Court shall order the DSS to investigate the suitability of the petitioner(s) and the petitioner(s)'s home for the proposed Guardianship, and may order any other agency to investigate the petitioner(s). DSS and any other agency ordered to investigate shall submit a written report to the Juvenile Court within sixty (30) days outlining the results of the investigation and the agency's recommendation regarding whether the proposed Guardianship is in the best interest of the child.

C. Notice of Hearing.

The Juvenile Court shall issue a notice of hearing directing the petitioner(s), the child, the child's parent(s), Guardian, or custodian, and DSS to appear in Court for a hearing on the petition at the time and place specified in the notice. A hearing on a petition for Guardianship shall be held within thirty (30) days of the filing of the petition.

D. Hearing.

1. If the Juvenile Court determines that the required notices have been given, the petitioner(s) is qualified to be appointed as the child's Guardian, and the requested appointment is in the child's best interest, the Court shall make the appointment. In any other case, the Juvenile Court may dismiss the proceedings or may make any further orders as appropriate and in the best interest of the child.
2. If, at any time in the proceeding, the Juvenile Court determines that the interests of the child are or may be inadequately represented, the Court may appoint counsel to represent the child, giving consideration to the preference of the child if the child is fourteen (14) years of age or older.

E. Powers and Duties.

1. To the extent, that is not inconsistent with terms of any Juvenile Tribal Court order, a Guardian has the following powers and duties:
  - a. The Guardian has custody of the ward and will make provisions for the ward's care, comfort and maintenance. The Guardian will, as appropriate, arrange for the ward's training, education, employment, and rehabilitation. The Guardian will take reasonable care of the ward's personal possessions, and will be responsible as fiduciary regarding the ward's income and assets;
  - b. In arranging for a place of residence, the Guardian will give preference to places within the Service Area, if placement within or outside of that area would be substantially equivalent. The Guardian will also give preferences to places that are not treatment facilities. If the only available and appropriate places, are treatment facilities, the Guardian will give preference to tribal-based treatment facilities, over non-tribal-based treatment facilities; and
  - c. The Guardian will have the authority to consent to any medical, legal, psychological or other professional care, counsel, treatment or services for the ward. The Guardian may give any other consent or approval on the ward's behalf that may be required, appropriate or in the ward's best interest. The Guardian may seek the approval of the Juvenile Court for such decisions as the Guardian deems necessary or appropriate.

F. Temporary Guardian.

If necessary, the Juvenile Court may appoint a temporary Guardian of the child in accordance with section. A temporary Guardian shall have the legal status of a Guardian, but the appointment shall not exceed six (6) months.



G. Annual Reports.

All Guardians must file reports with the Juvenile Court, at least annually. They must provide complete and accurate information regarding the condition of the ward, if applicable, and a full accounting of all income, assets and property of the ward.

H. Annual Review Hearing.

Upon the filing of a report by the Guardian the Juvenile Court may conduct an Annual Review Hearing.

I. Appointment of Successors.

Upon the removal, death or resignation of a Guardian or Conservator, The Juvenile Court will, if necessary, appoint a successor. Prior to the appointment of a successor, The Juvenile Court will refer the ward to the DSS and/or the ICWA Department for a report and any recommendations.

J. Fiduciary Duty.

All persons acting under a power of attorney, as Guardian, and any person or agency appointed to act on behalf of a ward under this Code acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the ward, exercising sound judgment and avoiding conflicts of interest. Any such person or agency that breaches the fiduciary duty will be liable for any damages resulting from the breach.

K. Termination of Guardianships.

1. A Guardian's responsibility for the care, custody, and control of a child and the management of the child's property shall terminate upon the death, resignation, or removal of the Guardian or upon the death, adoption, marriage, emancipation, or eighteenth (18th) birthday of the child. The termination of a Guardianship does not affect a Guardian's liability for prior acts or the Guardian's responsibility to account for or to discharge existing obligations from the child's funds and assets.
2. A child fourteen (14) years of age or older or any person interested in the welfare of a child may petition the Juvenile Court for the removal of a Guardian on the grounds that the removal would be in the best interest of the child.
3. A Guardian may petition the Juvenile Court for permission to resign from a Guardianship. Resignation of a Guardian does not terminate the Guardianship until the resignation has been approved by the Juvenile Court.
4. A petition for the removal or resignation of a Guardian may, but need not, include a request for the appointment of a successor Guardian. Upon receipt of a petition for the removal or resignation of a Guardian, the Juvenile Court shall issue a notice of hearing directing the necessary parties to appear in Court for a hearing on the petition at the time and place specified in the notice. After hearing any objections to the petition, if any, the Juvenile Court may terminate the Guardianship or make any further orders as appropriate and in the best interest of the child.

**§6.4.3. Authorization for Medical Care**

A. Authority.

At any time, the Juvenile Court may authorize medical care, including examination and treatment, for a child that is not a ward of the Juvenile Court when:

1. No parent, legal Guardian or custodian is immediately available and cannot be found after reasonable effort in the circumstances of the case; or

2. A physician testifies under oath in the Juvenile Court or states in writing, which is dated and signed by the physician, that in the physician's professional opinion, the life of the child would be greatly endangered without certain treatment or there is probable cause to believe that the child faces an imminent risk of substantial harm if medical care is not immediately provided to the child.
- B. Procedural Requirements.
- Except as otherwise provided by Juvenile Court order, the procedural requirements for a proceeding initiated under this section will, to the greatest extent possible, conform to the relevant procedural requirements set forth in Section 6.2.6.

#### **§6.4.4. Adoption**

- A. Jurisdiction.
- When the Juvenile Court has exercised jurisdiction over a Child-In-Need-Of-Care under this Code and ordered a pre-adoptive placement under Chapter 6.3, the Juvenile Court may proceed with an adoption under this Section.
- B. Who May Be Adopted.
- A child shall be eligible for adoption if the child is within the jurisdiction of the Juvenile Court and:
1. The parent(s) are deceased,
  2. The parental rights of the child's parent(s) have been terminated, or
  3. The parent(s) have consented to adoption.
- C. Types.
1. The Tribe recognizes the following types of adoption:
    - a. Open.  
The parental rights of the parent(s) have been terminated but visitation rights of the parents and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.
    - b. Closed.  
The parental rights of the parent(s) have been terminated and visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained. All contact by the biological parent(s) and/or family will be forbidden.
    - c. Open Customary.  
Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will be maintained as outlined in the final adoption decree.
    - d. Closed Customary.  
Parental rights may be granted to an adoptive party if the parental rights to a child have been suspended. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parent(s) and/or other named members of the child's biological family will not be maintained.
- D. Petition for Adoption.

1. Any adult may file a petition with the Juvenile Court to adopt any child eligible for adoption. A petition for adoption shall be verified under oath and shall include:
    - a. The name, address, date of birth, sex, and tribal affiliation of the child;
    - b. The name, address, and tribal affiliation of the child's natural parent(s) or present Guardian(s), if known;
    - c. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
    - d. Whether the natural parents or other persons specified in this Code have given their consent to the adoption. Where required by this Code, written consents shall be attached to the petition for adoption;
    - e. Name, address, date of birth, tribal affiliation, and marital status of petitioner(s);
    - f. The relationship of the petitioner(s) to the child, the reason the adoption is sought, and the capacity of the petitioner(s) to care for the child;
    - g. A statement by the petitioner(s) of the desire that a parent-child relationship be established between the petitioner(s) and the child; and
    - h. An agreement by petitioner(s) to maintain ties between the child and the Tribe and the child's extended family, where appropriate.
  2. A petition for adoption may include a request for a change of name, if desired.
  3. A petition for adoption filed by a married petitioner shall not be granted unless the petitioner's spouse joins in the petition.
  4. Upon receipt of a petition for adoption, the Juvenile Court shall issue a notice of hearing directing the parties to the adoption to appear in Court for a hearing at the time and place specified in the notice. The hearing shall be conducted within ninety (90) days of the filing of the petition.
- E. Investigation.
1. Upon receipt of a petition for adoption, the Juvenile Court shall order DSS to investigate the suitability of the petitioner(s) and the petitioner(s)' home for the proposed adoption, and may order any other agency to investigate the petitioner(s). DSS and any other agency ordered to investigate shall submit a written report to the Juvenile Court within sixty (60) days outlining the results of the investigation and the agency's recommendation regarding whether the proposed adoption is in the best interest of the child.
  2. The Juvenile Court may forward a copy of the petition for adoption to any other appropriate agency, program, or person with instructions that the agency, program, or person provide the Court with information on the status of the child and/or the suitability of the petitioner(s) and their home for the adoption of the child.
- F. Consent of Parents
1. Written consent to an adoption is required of the following persons:
    - a. The child's biological or adoptive mother;
    - b. The child's biological, adoptive, acknowledged or adjudicated father;
    - c. The child's Guardian, if the Guardian is empowered to consent; and
    - d. The child, if the child is twelve (12) years of age or older.
  2. Written consent to an adoption is not required if:
    - a. The parent(s)'s rights have been terminated involuntarily;

- b. The parent(s)'s rights have been voluntarily terminated; or
    - c. The parent has been declared mentally incompetent by a competent tribunal.
  - 3. Any child over the age of twelve (12) years may withdraw his or her consent to the adoption for any reason at any time prior to the entry of a Decree of Adoption. After the entry of a Decree of Adoption, the child may withdraw his or her consent to the adoption upon a showing that the consent was obtained through fraud, duress, or coercion, except that no adoption in effect for more than two (2) years shall be invalidated under this section. Upon a showing that the consent was obtained through fraud, duress, or coercion, the child may petition the Juvenile Court to vacate the Decree of Adoption.
  - 4. Requirements for Consent Validity.
    - a. Written consent to an adoption shall be knowing and voluntary, and shall be signed and acknowledged before the Juvenile Court. The Juvenile Court shall have the authority to inquire as to the circumstances behind the granting of consent under this section.
    - b. Consent to the adoption of a child shall not be granted by the parents of the child until ten (10) days after the birth of the child, except by order of the Juvenile Court.
    - c. Consent to adoption must be executed either:
      - (1). In the presence of a Juvenile Court judge after the explanation that:
        - i. The consent may result immediately in a pre-adoptive placement with placement with petitioner. Once the pre-adoptive placement is ordered by the Juvenile Court, the parent will have no legally enforceable right to visit or have any contact with the child, unless otherwise ordered by the Juvenile Court;
        - ii. The consent may result in a final adoption decree;
        - iii. If for any reason prior to the entry of a final adoption decree, petitioner does not retain custody of the child, the child will be returned to the biological parent(s) unless doing so would immediately result in the child being a Child-In-Need-Of-Care.
      - (2). Without the presence of a Juvenile Court judge if on Juvenile Court forms which contain:
        - i. Notarized statement of consent by the parent(s) which has two witnesses;
        - ii. Assurances that consent was voluntarily executed; and
        - iii. An acknowledgement that the parent(s) fully understand(s) the ramifications of the consent.
  - 5. Consent conditioned on open adoption.

Consent to adoption may be expressly conditioned upon the entry of an order of the Juvenile Court approving an open adoption agreement between the parent and petitioner under Section 6.4.4.
  - G. Open Adoption Agreements.

Simultaneously with, or prior to, execution of a consent to adoptive placement, the parent and petitioner may execute an open adoption agreement that sets out post-

adoption visitation rights of the parent and/or other named members of the child's biological family. Upon accepting consent conditioned on such agreement, the Juvenile Court will enter the open adoption agreement as a fully enforceable order. If the Juvenile Court finds that such agreement would significantly threaten the safety of the child, the Juvenile Court may refuse to accept the consent or enter the open adoption order.

H. Initial Hearing.

Within seven (7) days of the receipt of the recommendation from the DSS and/or the ICWA Department, the Juvenile Court will schedule a hearing on the petition for adoption.

I. Notice.

The adoptee, adopting parent(s) and any other party of record will be given notice of the hearing.

J. Appearance Mandatory.

The adoptee and adopting parent(s) must appear in person at the initial hearing.

K. Waiver of Trial Custody Period.

If the adoptee has been in the custody of the proposed adoptive parent(s) for more than six (6) months and the DSS and/or the ICWA Department recommends adoption, the Court may waive the trial custody period and the final adoption decree may be entered at the initial hearing.

L. Trial Custody Period; Final Hearing.

Not less than ninety (90) days, or more than one hundred twenty (120) days, after the adoptee has been in the custody of the proposed adoptive parent(s), the adoptee and proposed adoptive parent(s) must appear before the Juvenile Court. They will report to the Juvenile Court about the welfare of the adoptee, the current status of their home, and the desire of the proposed adoptive parent(s) to finalize the adoption.

M. Decree of Adoption.

1. If the Juvenile Court determines that the proposed adoption is in the best interest of the child and that the necessary consent to the adoption has been provided, the Court shall issue a Decree of Adoption ordering that the child, for all legal intents and purposes, shall be the child of the petitioner(s) from the date of the Decree, as follows:

- a. In the case of a child who has lived with petitioner(s) for more than one (1) year before the petition for adoption was filed, the Juvenile Court shall immediately issue a Decree of Adoption; and
- b. In all other cases, the Juvenile Court shall issue an order placing the child in the physical custody of the petitioner(s) for a period of time not to exceed one (1) year. At the conclusion of the stated period of time, DSS shall investigate the placement and shall submit a supplemental report to the Juvenile Court. If the Juvenile Court determines that the adoption is in best interest of the child, the Court shall immediately issue a Decree of Adoption.

2. A child adopted by order of the Juvenile Court shall be entitled to the same rights as a biological child of the adoptive parent(s) including, but not limited to, inheritance rights. Nothing in this Code shall be interpreted to preclude any gift or devise to the adopted child.

3. Except for any right of appeal provided by the Tribe, a Decree of Adoption shall be binding and conclusive on all parties. After the expiration of one year from the entry of a Decree of Adoption, the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of the Decree of Adoption. After the expiration of such one-year period no one may question the validity of the adoption for any reason, except where the right of appeal is provided by law.
  4. If the petition for adoption includes a request for a change of name for the child, the Decree of Adoption may decree the change of name.
  5. If the adoption includes a signed agreement between the adoptive parent(s) and the biological parent(s), the Juvenile Court shall incorporate the agreement into the Decree of Adoption. The Juvenile Court shall issue an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.
  6. Upon request by the petitioner(s), the Juvenile Court shall submit such documentation as is necessary to modify the child's birth certificate, tribal enrollment records, Bureau of Indian Affairs records, and any other official records affecting the adopted child. Any information provided by the Juvenile Court shall be sealed or otherwise kept confidential by the receiving agency.
- N. Effect of the Final Adoption Decree.
1. Parent and Child Relationship.

After the final adoption decree is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) will thereafter exist between the adoptee and the adoptive parent(s).
  2. Tribal Status Not Affected.

The status of an adoptee as a citizen of the Tribe will not be affected by adoption. An adoptee that is eligible for citizenship in the Tribe will be enrolled as a tribal citizen prior to finalization of the adoption.
  3. Assumption of Surname.

Minors adopted through a final decree of the Juvenile Court will assume the surname of the person(s) whom they are adopted by, unless the ordered otherwise.
  4. Rights of Adoptees.
    - a. Adoptees will be entitled to the same rights of person and property as children or heirs of the adoptive parents.
    - b. Adoptees will be entitled to the society and companionship of their natural siblings consistent with the provisions of this Section.
  5. Tribal Citizenship.

Any child of Indian descent, who is legally adopted by a citizen of the Tribe, will have citizenship rights consistent with Tribal law.
- O. Confidentiality of Proceedings and Record.
- Unless the Juvenile Court orders otherwise, hearings held in proceedings under this Section will be confidential and held in closed session, without the admission of any person other than the interested parties and witnesses. Any papers, records, petitions, or files pertaining to proceedings, maintained by the DSS and/or the ICWA Department or

the Juvenile Court will be kept in locked files, and will not be released to anyone, except by order of the Juvenile Court.

**P. Rights of Adoptive Children to Biological Family Information.**

Any child adopted pursuant to this Code will have the right to obtain information regarding biological parents including but not limited to the names of their biological parents, child's place of birth, residence of parents at the time of adoption, and known siblings. The Juvenile Court will order release of this information only upon a petition after the child reaches eighteen (18) years of age, unless the child is emancipated by an order of the Gun Lake Tribal Court, or the child has a medical need for the information.

**§6.4.5. Emancipation of a Minor**

**A. The Juvenile Court may issue a Decree of Emancipation if the Court determines that:**

1. The Juvenile Court has jurisdiction over the child;
2. The child is capable of arranging for the child's own support and the management of the child's own financial affairs;
3. The child is living separate and apart from the child's parent(s), Guardian, or custodian, the child is a parent, the child has special needs, or special circumstances exist necessitating emancipation; and
4. Emancipation of the child would be in the best interest of the child.

**B. Petition.**

1. Any child who is at least sixteen (16) years of age or the parent(s), Guardian, or custodian of any child who is at least sixteen (16) years of age may petition the Juvenile Court for the emancipation of the child.
2. The petition for emancipation shall be verified under oath and shall include:
  - a. The name, address, date of birth, sex, and tribal affiliation of the child;
  - b. The name, address, and tribal affiliation of the child's living parent(s) and the child's Guardian or custodian, if any;
  - c. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  - d. The purposes for which emancipation is sought;
  - e. Facts showing that the child is capable of arranging for the child's own support and for the management of the child's own financial affairs; and
  - f. The reasons emancipation of the child would be in the best interest of the child.
3. Upon receipt of a petition for emancipation, the Juvenile Court shall issue a notice of hearing directing the child, the child's parent(s), Guardian, or custodian, and the Department of Social Services (DSS) to appear in Court for a hearing on the petition at the time and place specified in the notice.

**C. In determining whether to emancipate a child, the Juvenile Court shall consider:**

1. Whether the child's parent(s), Guardian, or custodian consents to the proposed emancipation;
2. Whether the child has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision;

3. Whether the child can demonstrate to the satisfaction of the Court that the child is sufficiently mature and knowledgeable to manage his or her affairs without parental assistance; and
  4. Any recommendation of DCFS regarding the proposed emancipation.
- D. Decree of Emancipation
1. The Juvenile Court may order a child to be emancipated for general purposes or for limited purposes as specified in the Decree of Emancipation.
  2. A Decree of Emancipation may confer the rights of majority upon the emancipated child including, but not limited to:
    - a. The termination of the parent(s) or Guardian's duty to provide for the care, custody, and control of the child, including the obligation of financial support, and any other obligation the parent(s) or Guardian or any social service agency may have to the child by virtue of the parent-child relationship or the minor status of the child;
    - b. The right to establish a separate residence or domicile;
    - c. The right to work and earn a living, subject only to health and safety regulations designed to protect children regardless of their legal status;
    - d. The right to retain his or her own earnings;
    - e. The right to act autonomously and with the power and capacity of an adult in all business relationships and property transactions;
    - f. The right to enter into non-voidable contracts and to sue or be sued in his or her own name; and
    - g. The right to give informed consent to health care services.
  3. An emancipated child shall be recognized as an adult for the purposes of the application of the Quechan Law and Order Code, except when the emancipated child is a victim and the age of the victim is an element of the offense.
  4. An emancipated child shall not be recognized as an adult for the purposes of specific constitutional and statutory age requirements regarding voting, the possession of alcoholic beverages, the possession of firearms, the requirements for obtaining a marriage license, and other health and safety regulations relevant to the child because of the child's age.
  5. Once the Juvenile Court issues a Decree of Emancipation for a child, the order of emancipation cannot be revoked.

## **Chapter 6.5** **Juvenile Justice**

### **§6.5.1. Jurisdiction**

#### **A. Original Jurisdiction.**

The Juvenile Court shall have original jurisdiction in any proceeding concerning an Indian child who is or is alleged to be a juvenile offender when the acts giving rise to the allegations that the child is a juvenile offender occur within the territorial jurisdiction of the Tribe, pursuant to Title 2 of the Quechan Law and Order Code and the Quechan Constitution.



**B. Jurisdiction over Status Offenses.**

The Juvenile Court shall have exclusive jurisdiction in any proceeding arising out of an alleged status offense concerning an Indian child residing or domiciled on the Reservation.

**C. Continuing Jurisdiction.**

1. The Juvenile Court shall retain jurisdiction over a juvenile offender until:
  - a. The Court issues an order remanding a juvenile alleged to be a juvenile offender to the Trial Division of the Quechan Tribal Court to be tried as an adult;
  - b. The Court issues an order terminating jurisdiction;
  - c. The Court dismisses the case; or
  - d. The juvenile reaches the age of twenty-five (25) years;

**D. Deferred Of Entry Of Judgement By Another Jurisdiction.**

1. In the event an allegation of juvenile delinquency or a violation of a status offense by a child is pending before a state, county, or other tribal court and the Juvenile Court would otherwise have concurrent jurisdiction over the case pursuant to this Code, and the other court has deferred entry of judgment in that case, the Quechan Juvenile Court may accept supervision of the case.
2. **Timing.**

Within fourteen (14) days of receiving notice of intention of another jurisdiction to defer entry of judgment of a case, the Quechan Juvenile Court shall conduct a hearing where the Court shall decide whether to accept supervision of the case.
3. **Effective Period.**
  - a. If the Quechan Juvenile Court accepts supervision of a case where entry of judgment has been deferred in another jurisdiction it shall be for a definite period of time pursuant to the orders of the court deferring prosecution of the case.
4. **Informal Diversion.**
  - a. When the Quechan Juvenile Court has accepted supervision of a case where entry of judgment has been deferred, the Juvenile Court shall refer the case to the Probation Officer who shall follow the provisions outlined in Section 6.5.3 of this Code for diversion.
  - b. If the Probation Officer is unable to reach an agreement with the juvenile and the parent(s), Guardian or custodian of the child regarding terms of diversion, or if the Probation officer determines the juvenile has been unsuccessful at completion of the terms of diversion, the Probation officer shall notify the clerk of the Quechan Juvenile court who shall schedule a court hearing to determine if said case shall be returned to the jurisdiction where entry of judgment has been deferred.
  - c. At any time during the pendency of the supervision of a case where entry of judgment has been deferred by another court the Probation officer or the Attorney Representing the Tribe may refer the case to the Quechan Juvenile Court to conduct a hearing.
5. **Hearing.**
  - a. At a hearing conducted pursuant to this Section the Quechan Juvenile Court may:

- i. Modify the terms of diversion;
    - ii. Return the case to the deferring court where entry of judgment has been deferred for resumption of prosecution in that jurisdiction; or
    - iii. Return the case to the court where entry of judgment has been deferred with a recommendation that the case be dismissed.
  - b. Any hearing conducted pursuant to this subsection shall follow the notice provisions of Section 6.2.6(K) of this Code.
6. Conclusion of Diversion.
  - a. No less than thirty (30) days prior to the conclusion of the definitive period of supervision the Probation Officer shall deliver to the Clerk of the court and the Prosecutor a written finding of whether the terms of diversion have been successful.
  - b. If the diversion has been successful the Quechan Tribal Prosecutor shall notify the prosecutor of the jurisdiction where entry of judgment has been deferred that diversion has been successful and shall recommend to the prosecutor of that jurisdiction that all charges be dismissed.
7. No Automatic Jurisdiction.

Acceptance of supervision of a deferred case where entry of judgment has been deferred by another court does not automatically confer jurisdiction over the case to the Quechan Juvenile Court or the Quechan Tribal Court without one of those courts affirmatively accepting said jurisdiction.

#### **§6.5.2. Juvenile Offenses**

##### **A. Generally.**

The commission of any delinquent act, traffic offense, or status offense by a juvenile shall be considered a juvenile offense actionable in the Juvenile Court, or in the Quechan Tribal Court upon remand to the Trial Division for trial as an adult.

##### **B. Status Offenses.**

A juvenile commits a status offense if the juvenile commits one of the offenses listed below:

##### **1. Curfew Violations.**

- a. Except as provided in paragraph three below, curfew for juveniles on the Fort Yuma Indian Reservation shall be as follows:
  - i. Juveniles under the age of fifteen (15) years shall not be on a public street, highway, or other place open to the public between the hours of 9:00 p.m. and 5:00 a.m.
  - ii. Juveniles fifteen (15) or older shall not be on a public street, highway, or other place open to the public between the hours of 10:00 p.m. and 5:00 a.m.
- b. Curfew shall pertain to all juveniles unless:
  - i. A juvenile is attending a tribal, school, church, or community event at which juveniles are allowed or it is within one (1) hour from the termination of the event;
  - ii. A juvenile is engaged in employment or is traveling to or from employment; or

- iii. A juvenile is accompanied by the juvenile's parent, Guardian, custodian, or a competent adult granted permission by the juvenile's parent, Guardian, or custodian.
2. Possession of Alcoholic Beverages.
  - a. No juvenile shall possess, consume, acquire, purchase, or attempt to purchase any alcoholic beverage.
  - b. It is unlawful for a juvenile to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either:
    - i. Is in possession of or close proximity to a container that has or recently had liquor in it; or
    - ii. By speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.
  - c. This section does not prohibit the acceptance or consumption of sacramental wine as part of a bona fide religious rite or service, or the possession, consumption, acquisition, purchase, or attempt to purchase any official medicinal or pharmaceutical preparations containing alcohol when prescribed by a duly authorized physician or intended solely for medicinal purposes.
3. Runaways.
  - a. No juvenile sixteen (16) years of age or younger shall, without permission or authority, leave the home of his or her parent(s), Guardian, or custodian with the apparent intention of remaining away.
  - b. Temporary Detainment.

A duly authorized law enforcement officer may detain a juvenile long enough to determine whether the juvenile is a runaway. If the juvenile is a runaway, the officer may:

    - i. Return the juvenile to the juvenile's parent(s), Guardian, or custodian;
    - ii. Take temporary custody of the juvenile in accordance with this Code; and/or
    - iii. Issue a citation alleging that the juvenile is a runaway.
4. Truancy.
  - a. Applicability.
    - i. This subsection applies to all children who are:
      1. Enrolled tribal member, or is eligible for membership; and
      2. Less than eighteen (18) years of age.
    - ii. Such children are bound to comply with this subsection, regardless of residency or school location.
  - b. Mandatory Attendance.

Except as provided in this subsection, all juveniles seven (7) to eighteen (18) years of age who have not completed the twelfth (12th) grade are required to attend each school day unless the juvenile has been excused from attendance for that day by school authorities or good cause otherwise exists for the juvenile to miss school.
  - c. School Accreditation.

The school may be a public school, charter school, alternative school, alternative course of instruction, home school, or private parochial school, as long as the source of instruction is accredited by the Tribe or a state.

- d. Juveniles sixteen (16) to eighteen (18) years of age, who are lawfully employed full- time, lawfully employed part-time and in school part-time, or engaged in equivalent activities are not required to attend school full-time.

- e. Truancy.

A juvenile shall be considered truant if the juvenile fails to attend school as required by this section for more than three (3) concurrent days or if the juvenile fails to maintain at least a ninety percent (90%) attendance rate for each month of school.

- f. Cooperation with School.

- i. Each school is encouraged and authorized to contact the Tribal Police on a daily basis and provide the names, ages, and custodial information regarding truant tribal children for that day.

- ii. Notification. Whenever any tribal child fails to report to school on a regularly scheduled day and no indication has been received by the school personnel of the tribal child's absence, a reasonable effort to notify the parent/Guardian/custodian shall be made by school personnel or volunteers organized by the school.

- iii. School personnel or volunteers organized pursuant to this section shall be immune from any civil or criminal liability in connection with the notice to parent/Guardian/custodian of a tribal child's absence or failure to give notice required by this subsection.

- g. Temporary Detainment.

A duly authorized law enforcement officer may detain a juvenile who is absent from school long enough to determine whether the juvenile has been excused from attendance or good cause otherwise exists for the juvenile to miss school. If the juvenile has not been excused from attendance and good cause does not otherwise exist for the juvenile to miss school, the officer may:

- i. Return the juvenile to school;
  - ii. Return the juvenile to the juvenile's parent(s), Guardian, or custodian; and/or

- iii. Issue a citation alleging that the juvenile has committed a truancy violation.

- 5. Contributing to the Delinquency of a Minor.

- a. The parent(s) or Guardian(s) of any student who is charged with "failure to attend school" under this Code shall be charged with contributing to the delinquency of a minor. Upon a charge of contributing to the delinquency of a minor, a citation shall be issued and the truant child's parent(s) or Guardian(s) shall be required to appear in court.

- b. Penalties and Conditions.

- i. Every charge of contributing to the delinquency of a minor, and every failure to meet conditions set by the Court pursuant to a charge of contributing to the delinquency of a minor, shall result in mandatory penalties and/or conditions. Penalties and conditions shall be progressive,

so that subsequent charges related to the truancy of one or more children, or failures to meet conditions, within any rolling two-year period shall result in penalties and/or conditions more severe than prior charges for the same period.

- ii. The Juvenile Court shall have the flexibility to assign penalties and conditions consistent with the enforcement abilities of the Tribe and the circumstances of the child, parent, and/or Guardian. These penalties include, but are not limited to, the following:
  1. Participation in the child's court ordered tutoring;
  2. Mandatory parent/Guardian conference(s) with the school;
  3. Mandatory counseling as appropriate;
  4. Provide other support for child's compliance with all court orders related to truancy as appropriate;
  5. Fines;
  6. Community service;
  7. House arrest;
  8. Electronic monitoring; or
  9. Detention;

C. Delinquent Acts.

A juvenile commits a delinquent act if the juvenile commits an act that would constitute a crime under the Law and order Code of the Quechan Indian Tribe if the act was committed by an adult.

D. Traffic Offenses.

A juvenile commits a traffic offense if the juvenile commits a traffic crime or an infraction violation of a traffic law as provided in the Law and order Code of the Quechan Indian Tribe of the Fort Yuma Indian Reservation.

**§6.5.3. Initial Report of Alleged Juvenile Offense and Deferred Judgement.**

A. Probable Cause Report.

1. A duly authorized law enforcement officer or other person with probable cause to believe that a juvenile has committed a juvenile offense may, and any law enforcement officer taking a juvenile into temporary custody, shall file a report with the Probation Officer and the Prosecutor setting forth the specific facts, incidents, or behavior by which the juvenile is alleged to be a juvenile offender. The report shall contain a sworn statement affirming the person's reasonable belief that the allegations contained in the report are true.
2. The Probation Officer shall investigate each report and shall, within two (2) working days from the date the report was filed, in consultation with the Prosecutor, determine whether the facts surrounding the alleged juvenile offense are legally sufficient to warrant further Juvenile Court involvement and whether further action should be taken.
3. If the facts surrounding the alleged juvenile offense are legally sufficient, the Probation Officer shall decide whether to:
  - a. Invite the juvenile and the juvenile's parent(s), Guardian, or custodian to attend an diversion conference;

- b. Transmit the report and a summary of the matter to the Prosecutor and ask the Prosecutor to initiate formal Juvenile Court proceedings by filing a petition alleging that the juvenile is a juvenile offender.
4. The Probation Officer shall consider the following factors in determining how to proceed:
  - a. The nature and seriousness of the alleged offense;
  - b. The juvenile's previous contacts with law enforcement, the Probation Officer, and/or the Juvenile Court;
  - c. The age and maturity of the juvenile and the juvenile's attitude toward the alleged offense;
  - d. The willingness of the juvenile to participate in a diversion program;
  - e. The position of the victim of the offense; and
  - f. The anticipated level of input and participation from the juvenile's parent(s), Guardian, or custodian.

**B. Diversion.**

1. After consultation with the Prosecutor, the Probation Officer may elect diversion as an alternative to formal proceedings if:
  - a. The alleged facts, if true, would bring the matter within the jurisdiction of the juvenile court;
  - b. An informal disposition of the matter would be in the best interest of the juvenile and the tribe, and
  - c. The juvenile and the juvenile's parent(s), Guardian, or custodian voluntarily consent to an informal disposition of the matter. If the juvenile and the juvenile's parent(s), Guardian, or custodian do not consent to an informal disposition of the matter, the juvenile probation officer shall refer the matter to the Prosecutor to initiate formal juvenile court proceedings.

**2. Admissions.**

Before the parties may agree to an informal disposition of the matter, the juvenile shall admit the allegations and explain the circumstances surrounding the offense in the juvenile's own words. Said admission may or may not be placed on the record in juvenile court at the discretion of the court. If the parties cannot reach an informal agreement or if the case is returned to any court for prosecution, statements made by the juvenile in the diversion conference shall not be used against the juvenile in juvenile court or in any other court.

**3. Diversion Agreement.**

- a. If an agreement is reached by the parties at the diversion conference, the specific details of the agreement regarding the sanctions, services, programs, or activities that will be required of the juvenile and the juvenile's parent(s), Guardian(s), or custodian(s) shall be written and signed by all parties to the agreement. Said agreement shall be submitted to the juvenile court for approval.
- b. The juvenile court may, at its discretion, schedule and conduct a hearing to review the terms of the diversion and place the terms on the record.
- c. The Probation Officer shall monitor the progress of the juvenile and the juvenile's parent(s), Guardian, or custodian, and their compliance with the terms of the diversion agreement.

**4. Diversion Compliance.**

- a. If the juvenile and the juvenile's parent(s), Guardian, or custodian comply with all of the terms of the diversion agreement, the matter shall be dropped and no further action shall be taken.
- b. If the juvenile or the juvenile's parent(s), Guardian, or custodian fail to comply with the terms of the diversion agreement, the juvenile probation officer shall:
  - i. Hold another diversion conference, or
  - ii. Refer the matter to the Prosecutor to initiate formal juvenile court proceedings, or
  - iii. Request a hearing before the juvenile court to obtain advice and assistance of the court.
5. Where the Juvenile Court has accepted supervision of a case where entry of judgment has been deferred by another jurisdiction, the diversion procedures mandated by this Section of this Code shall be followed.
6. Diversion options.
  - a. The conditions of any diversion agreement may include any of the following:
    - i. Referral of the child or the child's parent, Guardian or custodian to social, community or tribal services or resources appropriate for addressing the needs of the child and the child's parent, Guardian or custodian;
    - ii. Referral of the child to a tribal elder, a tribal elders panel, community accountability board, or other forum suitable for addressing the needs of both the child and the community;
    - iii. Assignment of the child to a suitable mentor;
    - iv. Participation in an athletic, social or artistic program suited to the child's interests and aptitude;
    - v. Participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;
    - vi. Participation in a victim impact panel;
    - vii. Participation by the child in cultural, educational, musical or other programs or activities aimed at rehabilitation, community involvement, competency development, or participation by the child in structured after-school, evening, or other court approved programs for:
      - i. Holding the child accountable for his or her actions;
      - ii. Providing for the safety and protection of the community; or
    - iii. Promoting the development of competencies which will enable the child to become a responsible and productive member of the Quechan community;
    - iv. Participation by the child or the child's parent, Guardian or custodian in an educational or counseling program designed to deter delinquent acts or other conduct or conditions which would be harmful to the child or society;
    - v. Performance by the child of appropriate community service;
    - vi. A requirement that the child maintain satisfactory school attendance, or otherwise pursue a course of study designed to lead to achieving a high school diploma or the equivalent
  - b. The conditions of a diversion agreement shall not include detention in a secure juvenile detention facility.
  - c.

**§6.5.4. Temporary Custody And Detention Of Juvenile Offenders**

**A. Warrants.**

**1. Custody Warrant.**

The Juvenile Court may issue a warrant directing a duly authorized law enforcement officer to take a juvenile into custody if the Court determines based on a filed affidavit or sworn testimony before the Juvenile Court that probable cause exists to believe that the juvenile has violated conditions of release imposed by the Juvenile Court or has committed a juvenile offense and:

- a. The conduct or condition of the juvenile pose a substantial risk to the health, welfare, person, or property of the child or others; or
- b. There is a substantial risk that the juvenile may leave or be removed from the jurisdiction of the Juvenile Court, or will not be brought before the Juvenile Court, notwithstanding the service of summons.

**2. Search Warrant.**

- a. The Juvenile Court may issue a warrant authorizing a duly authorized law enforcement officer to search for a juvenile if the Court determines based upon a filed affidavit or sworn testimony before the Juvenile Court that probable cause exists to believe that the juvenile is within the Court's jurisdiction and a custody warrant has been issued for the juvenile.
- b. The Juvenile Court may issue a warrant authorizing a duly authorized law enforcement officer to search for and seize property.

**B. Taking an Alleged Juvenile Offender into Temporary Custody.**

**1. Generally.**

- a. A duly authorized law enforcement officer may take a juvenile into temporary custody if:
  - i. The Juvenile Court has issued a custody order or warrant in accordance with Section 6.3.3 (A) directing that the juvenile be taken into custody; or
  - ii. The officer has probable cause to believe that the juvenile has committed a juvenile offense;
- b. The officer has reasonable suspicion to believe that the juvenile has run away from the juvenile's parents, Guardian or other custodian.
- c. Temporary custody of a juvenile shall not be deemed a criminal arrest.

**2. Procedure.**

- a. The law enforcement officer may issue a verbal warning or a citation ordering the juvenile to appear for a hearing on a date set by the Juvenile Court. Law enforcement officers shall send copies of all citations issued to the Attorney Representing the Tribe.
- b. The law enforcement officer shall immediately attempt to contact the juvenile's parent(s), Guardian, custodian, or other responsible adult to advise them of the reasons for taking the juvenile into custody and the place of continued custody.
- c. Except as provided in this subsection, the law enforcement officer shall release the juvenile to the juvenile's parent(s), Guardian, custodian, or other responsible adult. The officer may deliver the juvenile to a detention, shelter care, or medical facility for temporary detention or care if the officer has reasonable cause to believe that:



- i. The juvenile's parent(s), Guardian, custodian, or other responsible adult cannot be located after diligent efforts;
  - ii. The juvenile's parent(s), Guardian, custodian, or other responsible adult are unable or unwilling to allow the juvenile to return home;
  - iii. The juvenile is unwilling to return home;
  - iv. The offense(s) the juvenile is alleged to have committed are serious enough to warrant continued detention;
  - v. If released, the juvenile is likely to commit a serious act causing damage to a person or property;
  - vi. The temporary detention of the juvenile is otherwise necessary to protect the best interest of the juvenile; or
  - vii. Protective custody is necessary to secure the juvenile's appearance before the Juvenile Court.
- d. A law enforcement officer taking a juvenile into temporary custody shall keep a record of the event.
  - e. DSS or other official at the detention, shelter care, or medical facility shall, immediately upon delivery of the juvenile for temporary detention, review the need for continued custody of the juvenile and shall retain custody of the juvenile only if continued detention is warranted as provided in this section.

#### **§6.5.5. Citation in Lieu of Custody**

In lieu of taking an alleged juvenile offender into custody, a law enforcement officer may issue a citation to the juvenile that refers the juvenile to the Probation Officer and requires the juvenile to appear for a hearing on a date certain before the Juvenile Court. Law enforcement officers shall send copies of all citations issued to the Juvenile Probation Officer and the Tribal Prosecutor.

#### **§6.5.6. Juvenile Justice Proceeding**

##### **A. Petition.**

1. Upon request or referral from the Probation Officer the Prosecutor may file a petition with the Juvenile Court alleging that a juvenile is within the Court's jurisdiction as a juvenile offender. The statements in the petition may be made upon information and belief and shall be verified under oath. The petition shall set forth, in ordinary and concise language, the following facts that are known and indicate any facts which are not known:
  - a. The name, address, date of birth, sex, and tribal affiliation of the juvenile;
  - b. The name, address, and tribal affiliation of the juvenile's parent(s) and present Guardian(s) or custodian(s), if any;
  - c. Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;
  - d. The specific facts, incidents, or behavior by which the juvenile is alleged to be a juvenile offender and the source of this information;
  - e. The specific statutory provisions of the Juvenile Code that give the Juvenile Court jurisdiction over the matter.

##### **B. Notice of Hearing.**

Upon receipt of a petition alleging that a juvenile is a juvenile offender, the Juvenile Court shall issue a notice of hearing directing the juvenile and the juvenile's parent(s), Guardian, or custodian to appear for a preliminary hearing at the time and place specified in the notice. Jurisdictional hearings shall be given priority on the Juvenile Court docket and shall be conducted as soon as possible after the petition is filed.

C. Plea Agreements.

At any time after the filing of a petition alleging that a juvenile is a juvenile offender and before the entry of a judgment, the Juvenile Court may accept a plea agreement voluntarily entered into by the juvenile and the Prosecutor. If the juvenile fails to fulfill the terms of the plea agreement, the Prosecutor may petition the Juvenile Court to resume proceedings.

D. Preliminary Hearings.

1. Purpose.

The purpose of a preliminary hearing under this Section is to determine whether probable cause exists to believe that the juvenile committed the alleged juvenile offense and if so, whether continued detention is necessary pending further proceedings.

2. Timing.

a. The Juvenile Court shall give preliminary hearings priority over all other judicial proceedings

b. Any juvenile taken into temporary custody and not released to the juvenile's parent(s), Guardian, custodian, or other responsible adult shall be brought before the Juvenile Court for a preliminary hearing within one (1) working day after being taken into custody for Notice of the preliminary hearing shall be provided to the juvenile, the juvenile's parent(s), Guardian, or custodian, and counsel, if any, as soon as the time for the hearing is set.

c. If a preliminary hearing is not held within one (1) working day, the juvenile shall be released to the juvenile's parent(s), Guardian, custodian, or other responsible adult.

3. Determining Release.

The Juvenile Court shall order the juvenile to be released to the custody of the juvenile's parent(s), Guardian, custodian, or other responsible adult unless the Court determines that:

a. The juvenile's parent(s), Guardian, custodian, or other responsible adult cannot be located after diligent efforts or are unable or unwilling to allow the juvenile to return home;

b. The juvenile is unwilling to return home;

c. Probable cause exists to believe that the juvenile has committed the offense(s) alleged and the act is serious enough to warrant continued detention;

d. If released, the juvenile is likely to commit a serious act causing damage to a person or property;

e. The temporary detention of the juvenile is otherwise necessary to protect the best interest of the juvenile; or

f. Protective custody is necessary to secure the juvenile's appearance before the Juvenile Court.

4. Detention order.

- a. If the juvenile is not released to the custody of the juvenile's parent(s), Guardian, custodian, or other responsible adult, the Juvenile Court shall issue an order placing the juvenile in a detention, shelter care, or medical facility.
  - b. The Juvenile Court shall order the Prosecutor to file a petition setting forth the behavior by which the juvenile is alleged to be a juvenile offender within one (1) working day, if a petition has not yet been filed. If the Tribal Prosecutor does not file a petition within one (1) working day, the juvenile shall be released to the juvenile's parent(s), Guardian, custodian, or other responsible adult.
5. Use of Outside Detention Services.  
The Juvenile Court may use outside detention services for housing and detaining juveniles under the authority/jurisdiction of the Tribe as authorized by the Tribal Council and pursuant to an official executed agreement between the Tribal Council and such a detention center.
- E. Remand to the Trial Division of the Tribal Court.
1. A juvenile may be remanded by the Juvenile Court to the Trial Division of the Quechan Tribal Court for disposition as an adult upon the motion of the Prosecutor, the juvenile, or the Court's own motion, if the Juvenile Court, after conducting a hearing, finds clear and convincing evidence that:
    - a. The juvenile at the time of remand is sixteen (16) years of age or older;
    - b. The juvenile committed or is alleged to have committed an act that would constitute a crime if committed by an adult;
    - c. The juvenile is not amenable to rehabilitation in programs or facilities available through the Juvenile Court; and
    - d. Retaining Juvenile Court jurisdiction will not serve the best interest of the juvenile.
  2. Determination.  
The following factors shall be considered by the Juvenile Court when determining whether to remand a juvenile to the Trial Division of the Tribal Court under this section:
    - a. The nature and seriousness of the offense the juvenile is alleged to have committed;
    - b. The nature and condition of the juvenile, as evidenced by the juvenile's age and mental and physical condition;
    - c. Any past record of offenses committed by the juvenile;
    - d. The success of past efforts at rehabilitating the juvenile; and
    - e. The position of the victim of the offense.
  3. If the Juvenile Court remands a juvenile to the Tribal Court for disposition as an adult, the Juvenile Court shall issue a written order containing specific findings and the reasons for the remand. The Juvenile Court's jurisdiction over the juvenile shall terminate with respect to the juvenile offense(s) alleged in the petition.
- F. Adjudicatory Hearings.
1. The purpose of the adjudicatory hearing is to determine whether a juvenile has committed a juvenile offense, and is analogous to a trial in criminal court.
  2. Presence of Parent(s), Guardian, or Custodian.
    - a. If the parent(s), Guardian, or custodian of an alleged juvenile offender is not present at the adjudicatory hearing, the Juvenile Court shall determine what

efforts have been made to notify the parent(s), Guardian, or custodian of the hearing and to obtain their presence.

- b. If it appears that further efforts are likely to produce the juvenile's parent(s), Guardian, or custodian, the Juvenile Court shall recess for not more than ten (10) days and shall direct the tribal police officer to make continued efforts to obtain their presence.
3. Admissions.
    - a. After the parties are advised of their rights and informed of the specific allegations in the petition, the parties shall be given an opportunity to admit or deny such allegations.
    - b. If a party admits the allegations of the petition, the Juvenile Court shall proceed to the disposition stage only if the Court finds that:
      - i. The party fully understands his or her rights and fully understands the potential consequences of the admission;
      - ii. The party voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and
      - iii. The party has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
    - ii. If the party denies the allegations, the Juvenile Court shall proceed to hear evidence on the petition.
  4. Determination.

If the Juvenile Court determines, based on a preponderance of the evidence, that the juvenile has committed a juvenile offense, the Court shall proceed to or schedule a disposition hearing.
  5. Pre-Disposition Hearing Disclosures.
    - a. As soon as possible after a petition has been filed alleging that a juvenile is a juvenile offender and prior to the preliminary hearing, each party, including the Prosecutor, shall disclose to each other party the following information and material within their possession or control and upon which they intend to rely at the hearing:
      - i. The names and contact information for all persons the disclosing party intends to call as a witness at the preliminary hearing;
      - ii. Any written or recorded statements made by the juvenile that the disclosing party intends to use as evidence at the preliminary hearing;
      - iii. Any expert reports or statements made in connection with the matter, including the results of any physical or mental health examinations or alcohol and drug assessments; and
      - iv. Any books, papers, documents, or photographs that were obtained from or belong to any party that the disclosing party intends to use as evidence at the preliminary hearing.
    - b. The obligation to make the disclosures required in this section is an ongoing obligation. If a party finds, either before or during the hearing, additional information or materials that are subject to disclosure, the party shall promptly disclose the information or materials.

G. Disposition Hearings.

1. Purpose.

The purpose of the disposition hearing is to determine how to resolve a matter after it has been determined that the juvenile has committed a juvenile offense.

2. Policy.

The goal of the Juvenile Court shall be rehabilitation and guidance, not punishment. The goal of the Juvenile Court is also to make the juvenile whole and to restore harmony to the Quechan community. The Juvenile Court, in determining the appropriate disposition of each juvenile matter, shall endeavor to select the alternative that is the least restrictive upon the juvenile, consistent with the goal of rehabilitation. The Juvenile Court shall also endeavor to render dispositions that are consistent with Quechan culture and tradition.

3. Timing.

a. If the Juvenile Court determines that a juvenile has committed a juvenile offense, the disposition hearing may follow immediately after the preliminary hearing, or the Court may take the matter under advisement and hold a disposition hearing within ten (10) days.

b. If the Juvenile Court schedules a disposition hearing for a later date, the Court shall provide notice of the disposition hearing date to all parties and shall make an order for the temporary placement of the juvenile pending the disposition hearing, where appropriate.

4. Pre-Disposition Reports and Assessments.

a. When the Juvenile Probation Officer receives notice of a juvenile's intent to admit the allegations in a petition alleging that the juvenile is a juvenile offender or the Juvenile Court determines that a juvenile is a juvenile offender, the Juvenile Probation Officer shall prepare a written pre-disposition report concerning the juvenile, the juvenile's family and home environment, and any other matter relevant to the care, custody, control, and rehabilitation of the juvenile.

b. The report shall contain a specific plan for the juvenile aimed at resolving the problems presented in the petition and a detailed explanation of the need for the proposed plan and the expected benefits to the juvenile. The Probation Officer shall submit the pre-disposition report to the Juvenile Court, the parties, and counsel, if any, in a timely manner prior to the disposition hearing.

c. The Juvenile Court may order a juvenile alleged or found to be a juvenile offender to undergo a medical, mental health, and/or substance abuse assessment where necessary to determine the juvenile's mental or physical state and the appropriate steps that should be taken to protect the juvenile's health and well-being.

d. The Juvenile Court may order medical, mental health, and substance abuse assessments of a juvenile's parent(s), Guardian, or custodian who consents to the examination and whose ability to care for or supervise the juvenile is an issue before the Court. The results of any assessment ordered by the Juvenile Court shall be submitted to the Court, the parties, and counsel, if any, in a timely manner prior to the next scheduled hearing.

5. Determining Disposition.
  - a. In determining the appropriate disposition of each matter, the Juvenile Court may consider the recommendations of the Juvenile Probation Officer, the Tribal Prosecutor, the juvenile's family, the victim, Quechan tribal elders or spiritual leaders of the Tribe, and the Tribal CASA.
  - b. In determining the appropriate disposition of each matter, the Juvenile Court may adopt any condition outlined in Section 6.5.6 (G)(6) of this Code.
6. Disposition Alternatives
  - a. The Juvenile Court shall have broad discretionary power to make orders for the care, custody, control, and rehabilitation of juvenile offenders, including but not limited to, orders:
    - i. Permitting the juvenile to remain with the juvenile's parent(s), Guardian, or custodian, subject to any terms and conditions the Juvenile Court deems appropriate;
    - ii. Placing the juvenile in the physical custody of a relative or other suitable person, subject to any terms and conditions the Juvenile Court deems appropriate;
    - iii. Placing the juvenile in a juvenile or treatment facility including, but not limited to, an alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, secure juvenile detention facility, medical facility, or school;
    - iv. Placing the juvenile on probation or under protective supervision, subject to any terms and conditions the Juvenile Court deems appropriate; and/or
    - v. Any sanction, including but not limited to, suspending the juvenile offender's driving privileges, requiring the juvenile to perform community service, and/or requiring the juvenile or the juvenile's parent(s) or Guardian(s) to make restitution for an injury or damage caused by the juvenile.
  - b. Removal from Jurisdiction.

The Juvenile Court may order or permit the removal of a juvenile from the territorial jurisdiction of the Tribe by the person, facility, or school in whose custody the juvenile is placed, on the condition that the custodian shall return the juvenile on order of the Court. Placement of a juvenile with a person, facility, or school located outside the boundaries of the Reservation shall be made only in extreme cases where no other appropriate placement is available on the Reservation.

**§6.5.7. Sex Offender Registry**

Any juvenile found to have committed a sex offense, as defined under tribal, state, or federal law, shall comply with the sex offender registration requirements and limitations set forth in this Code, the Quechan Law and Order Code or other applicable laws.

**§6.5.8. Expunging Juvenile Offender Records**

**A. Petition.**

Any adult who is the subject of juvenile offender records may petition the Juvenile Court to expunge the records.

B. Notice of Petition.

The Juvenile Court shall provide the Prosecutor with notice of any petition to expunge juvenile offender records. The Prosecutor may consent to the petition or may contest the petition on the grounds that the juvenile offense was serious or violent and that the records should be maintained for the purposes of public safety. If the Prosecutor contests the motion to expunge, the Juvenile Court shall set a date for a hearing and shall provide notice of the hearing to all necessary parties.

C. Requirements.

The Juvenile Court may order the records expunged if, after a hearing when the matter is contested, the Court determines that:

1. The person who is the subject of the records is no longer a juvenile;
2. At least two (2) years have elapsed since the event(s) that is the subject of the records occurred;
3. Since the date the event(s) that is the subject of the records occurred, the person who is the subject of the records has not been convicted of any further juvenile or criminal offense; and
4. No Juvenile Court or Tribal Court proceedings are pending against the person who is the subject of the records.

D. Notice of Expungement.

If the Juvenile Court orders the records to be expunged, notice of the order shall be sent to all tribal departments that maintain records on juvenile offenders. All records and references to the juvenile offense shall be sealed and maintained rather than destroyed. Sealed juvenile offender records may be opened only by order of the Juvenile Court or Tribal Court. A person who is the subject of expunged records may assert that the records never existed and that the matter that was the subject of the records never occurred without incurring a penalty for perjury or false swearing.

## **LEGISLATIVE HISTORY**

Quechan Law and Order Code was Enacted by Tribal Council Res. R-83-96 (June 7, 1996). Sections 13-1501, 13-1504 were amended by Res. R-142-96 (Aug. 30, 1996). Subchapter 35A and Section 13-1205 added, and Sections 13-2904 and 13-4-092.1 were amended, by Res. R-187-96 (Dec. 11, 1996).

Title 6 of The Quechan Law and Order Code was repealed in its entirety and replaced with the Juvenile Code, an enactment of Tribal Council Res. **R-XXX-XX (XXX XX, 20XX)**.