

## **TITLE 3 - CHILDREN**

### **CHAPTER 1 - CHILDREN'S CIVIL**

*Legislative History: The "[Children's Code of the Papago Tribe](#)" was enacted by the Papago Council on February 13, 1979 and approved by the Papago Agency Superintendent on February 13, 1979. Resolution No. 13-166 enacts and codifies the "Children's Code of the Tohono O'odham Nation" as 3 Tohono O'odham Code Chapters 1-3 and repeals "Children's Code of the Papago Tribe," subject to the savings provisions of Section 3303 of the "Children's Code of the Tohono O'odham Nation," effective May 23, 2013.*

**TITLE 3 – CHILDREN**

**CHAPTER 1 – CHILDREN’S CODE**

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## **TITLE 3 - CHILDREN**

### **CHAPTER 1 - CHILDREN'S CIVIL**

#### **ARTICLE 1 – ADMINISTRATIVE PROVISIONS**

##### **Section 1101            Purpose**

- (A) Title 3, Chapters 1-3 of the Tohono O’odham Code shall be known as the “Children’s Code of the Tohono O’odham Nation.”
- (B) This chapter of the Children’s Code shall be interpreted and construed to carry out the following purposes:
  - (1) To ensure the health and welfare of all children and families within the jurisdiction of the Tohono O’odham Nation;
  - (2) To preserve the unity of the family through the provision of services to children and families that emphasize, to the extent possible and in the best interest, welfare, and safety of the child, removal prevention, early intervention, and other solutions based on the honored customs and traditions of the Tohono O’odham;
  - (3) To provide for the care, protection, and mental and physical development of children who come within the provisions of the Children’s Code;
  - (4) To give full and just consideration to the religious and traditional preferences and practices of parties appearing before the Children’s Court;
  - (5) To ensure that a program of supervision, care, and rehabilitation is available to those children who come within the provisions of the Children’s Code;
  - (6) To provide judicial and other procedures through which the provisions of this Code are executed and enforced and by which the parties are assured a fair hearing and the recognition and enforcement of their legal rights.
- (C) The foregoing purposes shall be achieved in the family environment whenever possible. Safe reunification of the child with his or her family shall be a primary objective. Nothing in this Chapter shall be interpreted to disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting.

**Section 1102 Use of Tohono O’odham Customs and Traditions**

The Children’s Code shall be liberally interpreted in accordance with the customs and traditions of the Tohono O’odham. Evidence may be offered by any party regarding customs and traditions of the Tohono O’odham in any proceeding conducted pursuant to this Chapter. Evidence regarding Tohono O’odham customs and traditions may be admitted by the Court, and such customs and traditions may be used as governing law for purposes of proceedings conducted pursuant to this Chapter.

**Section 1103 Immunity of Officers, Employees, and Participants**

- (A) Officers and employees of the Tohono O’odham Nation shall be immune from suit for liability arising from the performance of their official duties in administering and enforcing this Code.
- (B) Any person making a complaint or report alleging abuse, neglect, abandonment, or other grounds for action pursuant to this Code shall be immune from any civil or criminal liability for making the complaint or report unless:
  - (1) Such person made the allegation or report while knowing it was false and for the purpose of harming another person; or
  - (2) Such person has been charged with or is suspected of allowing or causing a child to be considered a Child in Need of Care as defined by Section 1202.

**Section 1104 Computation of Time**

In computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period of time begins to run, as well as any intermediate Saturdays, Sundays, and holidays, shall not be included unless otherwise stated. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or holiday. Where specified as “calendar days,” the time period shall include Saturdays, Sundays, and holidays.

**Section 1105 Continuances**

- (A) Upon written motion of the parent, guardian, custodian, child, or petitioner, or upon its own motion, and for good cause, the Court may continue any hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held.
- (B) If no party objects, the Court may, upon a determination that good cause exists, grant the motion to continue. The Court’s order shall reflect its reasons for granting the continuance.

- (C) If there is objection from any party to the motion to continue, the Court shall weigh the objection against the reasonableness of the requested continuance and shall grant the motion to continue if the Court deems it necessary and prudent in the interest of justice, and in keeping with the purposes set forth in Section 1101(B).
- (D) Notwithstanding any other provision of law, if a child has been removed from the custody of a parent, guardian, or custodian, no continuance shall be granted that would result in the disposition hearing conducted pursuant to Section 1514 of this Chapter being held more than 60 days after the hearing at which the child was ordered removed unless the Court finds that there are exceptional circumstances requiring such a continuance. The Court's written order shall reflect its reasons for granting the continuance.

## **ARTICLE 2 – DEFINITIONS**

### **Section 1201 Interpretation**

Terms defined or used in this Chapter are to be interpreted broadly to exercise the jurisdiction of the Nation and the Children's Court to the maximum extent permitted by law and to facilitate the authority of the Nation and Children's Court to protect the interests of children and families.

### **Section 1202 Definitions**

As used in this Chapter:

“Abandon” means the failure of a parent, guardian, or custodian to provide reasonable support or to maintain regular contact with a child in his or her care for more than twenty-four hours without any indication of willingness to assume parental or custodial responsibility. “Abandon” shall not be construed to include situations where a parent, guardian, or custodian has arranged for the provision of necessary custodial care for the child and such care has been satisfactorily provided and maintained by a suitable caretaker.

“Abandoned infant” means a child three months of age or younger and of unknown identity and parentage, who is left alone or with another person by his or her parent(s), guardian(s), or custodian(s) without indication by word, act, or omission of an intent to return.

“Abuse” means the infliction or allowing of physical, emotional, or mental injury to a child. Abuse shall include the infliction or allowing of Sexual Assault, Sexual Abuse, Incest, Child Molestation, Causing or Taking a Child for Purposes of Prostitution, or Furnishing Obscene Materials to Minors, as those terms are defined in Chapter 9 of the Tohono O'odham Criminal Code; and shall also include the failure to maintain reasonable care and provision of treatment or the exploitation or overworking of a child to an extent that the child's health or emotional well-being is endangered. Nothing in this Chapter shall be interpreted to mean that a child has been

abused for the sole reason that the parent, guardian, or custodian relies on traditional healing practices or other recognized religious method, obtained in accordance with the parent, guardian, or custodian's beliefs, in addition to or in lieu of other medical treatment for the child.

"Advocate" means a person who is not an attorney, who is permitted to practice pursuant to the rules governing admission to practice in the Court and recognized by the Children's Court as authorized to represent parties in proceedings before the Court.

"Aggravated Circumstances" means abandonment, torture, chronic abuse, sexual abuse, or other circumstances relating to child abuse and neglect in which the court determines that it would not be in the best interest of the child for the Child Welfare Division to provide reasonable efforts to prevent removal or reunify.

"Attorney" means a person who has graduated from an accredited law school, is a member in good standing with an approved state bar association, and is licensed pursuant to the rules governing admission to practice in the Court.

"Child" means any unmarried person who is under the age of 18 years and is subject to the jurisdiction of the Children's Court.

"Children's Court" or "Court" means the Tohono O'odham Children's Court, a division of the Tohono O'odham Judicial Court.

"Child Custody Proceeding" means a Child in Need of Care, Guardianship, Voluntary Relinquishment, or Adoption proceeding commenced pursuant to this Chapter, or other proceeding as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(1). Child custody matters arising from divorce, dissolution of marriage, or legal separation and not involving the aforementioned proceedings are not child custody proceedings for the purposes of this Chapter.

"Child in Need of Care" means a child:

- (1) Who has no parent, guardian, or custodian willing and able to provide control of, and care for, the child;
- (2) Who is without adequate food, shelter, clothing, medical care, or education necessary for his or her health and well-being;
- (3) Who is habitually truant from school;
- (4) Whose parent, guardian, or custodian has subjected the child to abuse or neglect;  
or
- (5) Who has been adjudicated a "juvenile or child offender" as defined in Chapter 2 of this Code.



“Child Welfare Worker” means a person employed by the Tohono O’odham Nation Department of Health and Human Services, with the responsibility for investigating Child in Need of Care referrals and providing services to families of a child alleged or adjudicated to be a Child in Need of Care.

“Council” or “Legislative Council” means the Legislative Council of the Tohono O’odham Nation.

“Division” means the Tohono O’odham Department of Health and Human Services, Child Welfare Services Division.

“Extended Family” means any person who is 18 years of age or older and is related to the child through blood, marriage, or adoption including, but not limited to, the child’s grandparent, aunt, uncle, sister, brother, sister-in-law, brother-in-law, niece, nephew, first cousin, second cousin, step-parent, godparent, or any other person defined as family by the customs and traditions of the Tohono O’odham.

“Foster Home” means a home licensed, for the temporary placement of children taken into custody, pursuant to the foster home licensing standards of the Tohono O’odham Nation Department of Health and Human Services, Child Welfare Services Division, or other home approved in accordance with the laws of the Nation.

“Guardian” means a person or entity, other than a parent or legal custodian, who has been appointed by the Court to care for the child through a guardianship granted in accordance with Article 6 of this Chapter. The Child Welfare Division shall not be made or considered to be the guardian of a minor in the ordinary course of a Child in Need of Care proceeding, regardless of whether the Court awards care, custody, and control of the minor to the Division.

“Guardian ad Litem” means a person appointed by the Court to represent the interests of a child in a Child in Need of Care proceeding before the Court.

“Guardianship” or “legal guardianship” is the legal status created under this Code, ordered by the Court, or voluntarily entered into, which vests in a person the rights and responsibilities set forth in Section 1604 of this Chapter.

“Judge” means a judge of the Children’s Court appointed pursuant to the Constitution of the Tohono O’odham Nation.

“Legal Custodian” means a person or entity, other than a parent or legal guardian, to whom legal custody of a child has been awarded by an order of the Court.

“Legal Custody” may be sole or joint and means the legal status created under this Code and ordered by the Court which vests in a person, persons, or agency the following rights and responsibilities:

- (1) Physical custody of the child;
- (2) A duty to provide the child with food, shelter, education, and ordinary medical care;
- (3) A duty to protect and discipline the child; and
- (4) Decision-making authority concerning the child.

“Neglect” means the failure of the parent, guardian, or custodian to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child’s health and well-being. Neglect shall include abandonment of a child as defined in this Section. Nothing in this Chapter shall be interpreted to mean that a child has been neglected for the sole reason that the parent, guardian, or custodian relies on traditional healing practices or other recognized religious method, obtained in accordance with the parent, guardian, or custodian’s beliefs, in addition to or in lieu of contemporary medical treatment for the child.

“Parent” means the natural or adoptive parent of a child whose parental rights have not been terminated. “Parent” does not include a putative father whose paternity has not been legally acknowledged or established.

“Police Officer” means a law enforcement officer vested by Tohono O’odham law with a duty to maintain public order.

“Police Department” means the Tohono O’odham Nation Police Department.

“Social History” means information compiled by a Child Welfare Worker about factors affecting a family’s past and present level of functioning for use in making a decision concerning the adoption of a child, including, but not limited to, past involvement of the child or family with the Division or other child protection agencies.

“Territorial jurisdiction of the Tohono O’odham Nation” is that jurisdiction defined by Article I, Section I, of the Constitution of the Tohono O’odham Nation.

“Traditional custodian” means a person or entity with whom physical custody has been vested by the parent or legal guardian in accordance with the customs and traditions of the Tohono O’odham Nation.

### **ARTICLE 3 – CHILDREN’S COURT**

#### **Section 1301            Jurisdiction**

The Children’s Court shall have exclusive jurisdiction over any Child Custody Proceeding

involving a child who resides or is domiciled within the reservation of the Tohono O’odham Nation; or a child who is a ward of the Children’s Court, notwithstanding the residence or domicile of the child. The Children’s Court shall also have concurrent jurisdiction with any other court of competent jurisdiction over a Child Custody Proceeding concerning a Tohono O’odham child who is neither domiciled within the Reservation of the Tohono O’odham Nation nor is a ward of the Children’s Court. Where the Children’s Court asserts jurisdiction over a child pursuant to this Chapter, the Court shall also have jurisdiction over the child’s guardian(s) and any adult residing in the child’s home to the extent necessary to issue any orders protecting the best interests of the child. For the purposes of entering an order of adoption pursuant to Article 11 of this Chapter, the Court may retain jurisdiction over an adult who was the subject of a petition for adoption filed prior to that person having reached the age of 18.

**Section 1302            Orders**

The Children’s Court shall have the authority to issue all orders necessary to ensure the safety of children within the jurisdiction of the Nation, including the issuance of subpoenas, orders of restriction, warrants for protective custody, and such other orders as may be appropriate. All actions brought under this Chapter shall be decided by the Court in accordance with the Nation’s laws, customs, and traditions.

**Section 1303            Transfer of Jurisdiction; Other Tribal Courts**

The Children’s Court may, upon the petition of either parent, the guardian or custodian of the child, or the Nation, accept a transfer of jurisdiction from any tribal court of competent jurisdiction involving a Child Custody Proceeding of an O’odham child not domiciled or residing in the Nation’s territorial jurisdiction; provided, however, that the Children’s Court may decline to accept jurisdiction over a Child Custody Proceeding when there is good cause to decline such jurisdiction. The Children’s Court may transfer a Child Custody Proceeding to an appropriate tribal court of competent jurisdiction when the transfer is in the best interests of the child, subject to the acceptance of jurisdiction by that tribal court.

**Section 1304            Court-Appointed Advocates, Attorneys, and Guardians ad Litem**

In any proceeding held pursuant to this Chapter, the Children’s Court may, in its discretion, appoint an Advocate or Attorney to represent the child, or a Guardian ad Litem to represent the interests of the child, subject to the availability of such persons to undertake representation.

**Section 1305            Comity**

Notwithstanding any other provision of law, the Children’s Court shall give comity or full faith and credit to the public acts, records, and judicial decrees applicable to child custody proceedings of any court of competent jurisdiction to the same extent that such court gives reciprocal recognition to the public acts, records, and judicial decrees of the Children’s Court.

**Section 1306                      Closed Proceedings**

The Children's Court shall be closed to the general public; however, the child's placement shall be permitted to attend the hearing, the child's relatives shall be allowed to attend the hearing unless the Court determines that the attendance of a relative would not be in the child's best interest; and a member of the public may be present at any proceeding conducted pursuant to the Children's Code absent objection by any party and subject to the approval of the Court. Such person shall be subject to the restrictions of Article 12 of this Chapter.

**ARTICLE 4 – INVESTIGATION OF CHILD ABUSE REPORTS; TEMPORARY CUSTODY**

**Section 1401                      Purpose**

Notwithstanding any other provision of law, the purpose of this Article is to provide maximum safety and protection for a child who is abused, neglected, or abandoned; and to ensure the safety, protection, and physical and emotional well-being of a child who is at risk of such harm. Court-ordered social and health services may be necessary in order to protect the child's safety and physical and emotional well-being and to prevent additional abuse of the child.

**Section 1402                      Notification of the Receipt of Child Abuse Reports**

- (A) Whenever the Police Department or Child Welfare Services Division receives from any person an initial report or referral containing information indicating that a child may be a Child in Need of Care, the receiving agency shall:
  - (1) Notify, within eight hours, the appropriate officials of the other agency of such report and information, and
  - (2) Submit, within 24 hours, a copy of a written preliminary report to such agency and office.
  
- (B) Upon receipt of a report or referral containing information that a child may be a Child in Need of Care, the Division shall:
  - (1) Investigate the allegations contained in the report or referral;
  - (2) Take immediate and appropriate steps to secure the safety and well-being of the child involved, including, if necessary, taking the child into temporary custody pursuant to Section 1404 of this Chapter;
  - (3) Offer and, if accepted, provide appropriate services to the family.
  
- (C) If the investigation produces evidence that a child has been neglected or abused by a

person other than the parent or guardian/custodian, the Police Department or Child Welfare Services Division shall immediately notify the child's parent or other person responsible for the child's care, and any other appropriate law enforcement authority having jurisdiction over the suspected neglect or abuse.

### **Section 1403                      Interviews and Examinations**

In any case where the Police Department or Division reasonably believes that the child has been subjected to neglect or abuse, officials of those agencies shall be permitted, without first obtaining the consent of the parent or guardian/custodian, to take photographs and/or other documentation and refer, transport, or otherwise arrange for appropriate licensed medical practitioners to conduct medical and psychological examinations of the child as may be indicated, including examinations of the sex organs, and interview the child. All examinations and interviews of a child who may have been subjected to neglect or abuse shall be conducted in a manner that minimizes additional trauma to the child.

### **Section 1404                      Temporary Custody**

- (A) A Child Welfare Worker may, without a court order, take a child into temporary custody if the Child Welfare Worker has a reasonable belief that the child is a Child in Need of Care.
  
- (B) Before taking a child into temporary custody, the Child Welfare Worker shall attempt to maintain the child in the home of the parent, guardian, or legal custodian unless one or more of the following conditions exist:
  - (1) The child has no parent, guardian, or legal custodian willing and able to provide care, custody, and control for the child.
  
  - (2) Continued custody of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home. Factors to be considered in determining whether there are reasonable means by which the child can be protected in his or her home include, but are not be limited to, the following:
    - (a) Whether there are any services reasonably available to the Division, including referral to public assistance, which, if provided to the child and/or the child's parent, guardian, or legal custodian, would eliminate the need to remove the child from the custody of the parent, guardian, or legal custodian;
  
    - (b) Whether a parent, guardian, or legal custodian can and will provide for and protect the child from abuse and neglect; and

- (c) Whether the alleged perpetrator of abuse voluntarily agrees to withdraw from the home, does withdraw from the home, and is likely to remain withdrawn from the home.
- (3) There is substantial evidence that a parent, guardian, or legal custodian of the child is likely to flee the jurisdiction of the Court, or remove the child from the Court's jurisdiction.
- (C) The Child Welfare Worker shall offer to the family services designed to correct unresolved problems that are believed to contribute to the need to take the child into temporary custody. The Child Welfare Worker shall make clear that he or she has no legal authority to compel the family to receive such services but may inform the family of his or her authority to file a Child in Need of Care petition.
- (D) No child taken into temporary custody pursuant to this Section, who has not otherwise been arrested, charged, or adjudicated as a juvenile offender, shall be confined in any jail, adult lockup, or adult or juvenile detention facility. No such child shall be transported or detained in a secure facility in association with delinquent, criminal, or vicious persons or those accused of being such.
- (E) A child shall not remain in temporary custody for more than 72 hours, excluding intermediate Saturdays, Sundays, and holidays, unless a petition has been filed pursuant to Article 5 of this Chapter.

**Section 1405                      Notification of Temporary Custody**

- (A) In all situations where the Division takes a child into temporary custody, the Division shall make reasonable efforts to locate and notify the parent, guardian, or legal custodian, and shall provide written notice to the parent, guardian, or custodian of the child within eight hours of taking or assuming temporary custody, excluding intervening Saturdays, Sundays, and holidays, unless:
  - (1) The parent, guardian, or legal custodian is present when the child is taken into custody; in such circumstances written notice shall be provided immediately.
  - (2) The residence of the parent, guardian, or legal custodian is outside the territorial jurisdiction of the Nation and notice cannot be provided within eight hours; in such circumstances, the Division shall make every effort to provide notice to the parent, guardian, or legal custodian within 24 hours, excluding intervening Saturdays, Sundays, and holidays. Notice shall be provided in person, where reasonable, and by mail. If notice is not effected, the Division shall continue reasonable attempts to locate and provide notice to the parent, guardian, or legal custodian.
  - (3) The identity and/or residence of the parent, guardian, or legal custodian is not

ascertainable.

- (B) The written notice shall contain the name of the person and agency taking the child into custody, the location from which the child was taken, and the following information:
  - (1) The date and time custody was taken;
  - (2) The name and birth date of the child;
  - (3) The name(s) and address(es) of the parent(s)/guardian(s);
  - (4) The name and telephone number of the agency taking custody of the child;
  - (5) A statement of the reasons temporary custody was believed to be necessary;
  - (6) A statement that the child shall not remain in temporary custody for more than 72 hours, excluding intervening Saturdays, Sundays, and holidays, unless a Child in Need of Care petition is filed;
  - (7) A statement of the right of parent(s)/guardian(s)/custodian(s) to counsel at their own expense;
  - (8) The date and time of the preliminary hearing for review of the temporary custody of the child set pursuant to Subsection E of this Section;
  - (9) A statement that failure to appear without good cause may result in the child remaining in the custody of the Division; and
  - (10) The name and address of the court having jurisdiction over this matter.
- (C) The Division shall file a verified copy of the notice of temporary custody with the Court.
- (D) If a good-faith attempt was made at notification, the failure on the part of the Child Welfare Worker to notify the parent, guardian, or custodian shall be considered to be due to circumstances beyond the control of the Child Welfare Worker and shall not be available to the parent or guardian/custodian as a defense to any judicial proceeding, nor shall it interfere with any rights, procedures, or investigation accorded under any other applicable law.
- (E) The chief judge shall set a schedule for conducting preliminary hearings for review of the temporary custody of the child and shall notify the Division and the Office of the Attorney General of the schedule and any changes.

**Section 1406                    Preferential Placement of Child with Extended Family**

Children who are taken into temporary custody and who come before the Children’s Court shall be placed with the child’s extended family whenever possible, subject to the ability and willingness, as defined herein, of such family member to serve as a temporary placement of the child pending the temporary custody hearing. The child welfare worker shall make reasonable efforts to identify possible family placements and, once a possible such placement is identified, shall initiate an immediate assessment of the extended family member’s suitability to care for the child, which assessment shall be reduced to writing.

**Section 1407                    Development of Protocol**

The Division, in conjunction with the Police Department, shall develop protocols for the reporting, screening, investigation, and documentation of the above reports and referrals, including specific procedures for responding to cases believed to involve child neglect and abuse, and to clarify roles and responsibilities of the Nation’s departments and programs involved in child welfare matters.

**ARTICLE 5 –CHILD IN NEED OF CARE PROCEEDINGS**

**Section 1501                    Commencement of Proceedings; Petition**

- (A) A proceeding in the Children’s Court to declare a child to be a Child in Need of Care is commenced by the filing of a petition in accordance with this Section.
- (B) A petition to commence proceedings in the Children’s Court to declare the child a Child in Need of Care shall be verified and shall contain all the following:
  - (1) The basis for the Court’s jurisdiction;
  - (2) Citation to the specific subsection of the “Child in Need of Care” definition under which the proceeding is initiated;
  - (3) The name, birth date, sex, and residence of the child upon whose behalf the petition is brought;
  - (4) The names and residence and mailing addresses or last known addresses, if known to the petitioner, of both parents and any guardian or custodian of the child;
  - (5) A plain and concise statement of facts upon which the allegations are based;
  - (6) The facts necessitating out-of-home placement;



- (7) The date and time of the placement, and where and with whom the child was placed if disclosure of such information will not jeopardize the safety of the child; and
  - (8) A certificate of service stating the date and method of service of the petition to all parties and to the Division.
- (C) At each hearing, the party petitioning the Children’s Court to place the child out of the home shall demonstrate to the Court that, prior to the commencement of the proceedings, reasonable efforts have been made to prevent the removal of the child from his or her parents, guardians, legal custodians, or extended relatives. A judicial determination to the effect that continuation of residence in the home from which the child was removed would be contrary to the health, safety, and welfare of the child will be made at the first ruling sanctioning (even temporarily) the child’s removal from the home.
- (D) At each hearing, if the parent(s), guardian(s), legal custodian(s), or extended relatives from whom the child was removed are present, they shall acknowledge having notice of the time and date of the next hearing and that the hearing can proceed without them if they do not appear. If any parent, guardian, legal custodian, or extended relatives from whom the child was removed is absent, a summons shall issue for the next hearing.
- (E) Foster parents, pre-adoptive parents, or relative guardian providing care for the child shall be given timely notice of and permitted to attend hearings and given the opportunity to address the court at proceedings under this Chapter. Notice of and a right to be heard does not require the Nation to make the caregiver a party to the proceeding.
- (F) Upon the filing of a petition by any individual or Nation’s department or office other than the Division, the Division shall be given 5 business days from the date of service to investigate the allegations contained within the petition.
- (1) The Division shall prepare a written report regarding its investigation and disclose a copy to the petitioner and the court 24 hours prior to initial hearing.
  - (2) The Division shall be given an opportunity to be heard in court at the preliminary hearing or initial hearing, depending on the date of service of the petition to the Division, and give its recommendation:
    - (a) to request to substitute in for the petitioner and be awarded temporary custody of the minor(s); or
    - (b) that the petitioner proceed without the Division being awarded temporary custody of the minor(s), with the Division being relieved of providing any services to the parent(s) and/or legal guardian(s).

**Section 1502                      Notice of Hearing and Temporary Orders**

- (A) Upon receipt of a verified petition which sets forth allegations to invoke the Court’s jurisdiction, or a verified copy of the notice of temporary custody, and upon probable cause shown, the Court shall issue temporary orders awarding care, custody, and control of the child to the Division. Under no circumstances shall the Division take care, custody, or control of a child under this Section, or to provide services to such child or to the child’s family unless the requirements of this Code have been satisfied.
  
- (B) Upon the filing of the petition or the notice of temporary custody, the clerk of the Children’s Court shall:
  - (1) Set the matter for a preliminary hearing for review of the temporary custody of the child no sooner than three, but no later than seven, days, excepting weekends and holidays, or on the date designated on the notice of temporary custody if the child has been removed by the Division. A verified petition shall be filed by the Division prior to the preliminary hearing and served upon the opposing party(ies).
  
  - (2) Immediately issue a notice of hearing, to which shall be attached a copy of the petition, if filed. The filing party shall cause the same to be served upon the Division, if the Division is not the filing party, and each of the persons, or their advocate or attorney, described in Section 1501(B)(4) of this Chapter whose addresses are set forth in the petition, and thereafter upon all such persons whose addresses become known to the filing party prior to the hearing on the matter.
  
- (C) The notice of hearing shall contain all of the following:
  - (1) The name and address of the person to whom the notice is directed;
  
  - (2) The name of the child upon whose behalf the petition has been brought;
  
  - (3) The date, time, and place of the preliminary hearing on the petition;
  
  - (4) A citation to the section and subsections under which the proceeding has been instituted;
  
  - (5) A statement that parent, guardian, or custodian to whom notice is required to be given are entitled to have an attorney present at the hearing on the petition at their own expense;
  
  - (6) A statement that parent, guardian, or custodian may be liable for the costs of the child’s support while the child is in custody; and
  
  - (7) A statement that the potential consequences of the failure of the parent, guardian,

or custodian to appear at the initial or adjudicatory hearings without good cause shown may result in a finding by the Children's Court that the parent, guardian, or custodian has waived legal rights and is deemed to have admitted to the petition; and that such hearings may go forward in the absence of the parent, guardian, or custodian.

**Section 1503                    Personal Service; Service by Mail**

- (A) The filing party shall cause the notice and copy of the petition to be served on all persons required to receive such notice and copy of the petition either personally or by Certified First Class mail at least five days prior to the time set for the preliminary hearing, and at least ten days prior to the time set for the initial hearing.
- (B) Any person may waive service of notice by a voluntary appearance entered in the minutes of the Court or by a written waiver of service filed with the clerk of the Children's Court at or prior to the hearing.

**Section 1504                    Notice by Publication**

- (A) If a party to be served notice cannot be identified or found, or an address cannot be determined after a diligent effort to search for the party, upon written motion, the Court may order service of notice by publication. An affidavit of due diligence search shall be on file with the Court. Service of notice by publication is not sufficient if the address or the whereabouts of a party required to receive notice is known or brought to the attention of the Court. Publishing the summons and a statement on how to obtain a copy of the pleading shall constitute service of notice by publication.
- (B) The notice shall be published at least once a month for two successive months in a newspaper published on the Tohono O'odham Nation; and at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to whom the notice is directed.
- (C) Service is complete 60 days after the first publication.
- (D) In addition to service of notice as provided in (A) and (B) of this Section, the publishing party shall:
  - (1) Cause the Notice to be posted once in the following locations:
    - (a) The post office, community store, law enforcement office, district office for the person sought, or other commonly used public place in the community, or in the community where the person to whom notice is required to be given resides or is last known to have resided; and

- (b) In any other place ordered by the Court where such posting is reasonably likely to give notice to the person to whom notice is required to be given. Such posting shall be posted not less than five days prior to the day of hearing on the petition.

- (E) The name of the child shall not appear in any notice of hearing served by publication or by posting.

**Section 1505            Subpoenas**

Upon request of the petitioner; the child; the child's parent, guardian, or custodian; or on the Court's own motion, the Court or the clerk of the Court shall issue subpoenas, to be served by the requesting party, requiring attendance and testimony of witnesses and production of papers at any hearing.

**Section 1506            Separate Proceedings, Procedure**

- (A) All proceedings under this Article shall be heard at a session of the Court separate from any other matter unrelated to the minor child at issue.
- (B) Except where there is a contested issue of fact or law, the proceedings pursuant to this Article shall be conducted in an informal, non-adversarial manner with a view to obtaining the maximum benefit for the child upon whose behalf the petition is brought.

**Section 1507            Admissibility of Evidence**

- (A) Except as provided by this Code, the admissibility of evidence shall be governed by the Tohono O'odham Rules of Court, and in all circumstances shall be construed to protect children, provide for the rights of parties, secure fairness, eliminate unjustifiable expense and delay, to discover the truth, and to the allow issues to be justly decided.
- (B) Prior to any hearing in a Child in Need of Care proceeding, the Court may review any reports, prepared by a Child Welfare Worker, Tohono O'odham Police Officer, school personnel, or person who provided the information indicating a child in need of care, and shall admit the reports into evidence if the person who prepared the report is available at the hearing for cross-examination and the report was disclosed to the parties no later than:
  - (1) The day of the preliminary hearing;
  - (2) Three calendar days prior to the initial hearing; or
  - (3) Five calendar days prior to any other hearing.
- (C) Evidence of the out-of-court statements or non-verbal conduct of a child alleged to be a

child in need of care regarding acts of abuse or neglect perpetrated on the child is admissible for all purposes in any hearing subject to this Chapter if the time, content, and circumstances of such statement or conduct provide sufficient indicators of reliability.

**Section 1508 Preliminary Hearing**

- (A) At the preliminary hearing the Court shall advise the parent, guardian, or custodian of their rights as defined in this Article.
- (B) Upon request of any parent, guardian, or custodian, the Court shall explain any term of allegation contained in the petition and the nature of the hearing, its procedures, and possible consequences. The Court shall determine whether the parent, guardian, or custodian has been informed of his or her right to be represented by counsel, and if not, the judge shall advise those persons, if present, of the right to counsel; and that counsel may be able to discover defenses or mitigating circumstances not apparent to them. The Court shall also inform such persons that engagement of counsel would be at their own expense.
- (C) The Court shall provide an opportunity for the child welfare worker and the child's parent, guardian, or custodian, if present, to provide relevant testimony. The Court may limit testimony and evidence that is beyond the scope of the removal of the child or the child's need for continued protection, placement, visitation, and/or services to be provided to the child and family.
- (D) The Court may take into consideration the availability of reasonable services to the parent, guardian, or custodian to prevent or eliminate the need for the child's continued removal, and the effort of the parent, guardian, or custodian to obtain and participate in these services. The Court shall solicit and take into consideration the child welfare worker's recommendations, based on the results of the worker's investigation.
- (E) The petitioner has the burden of presenting evidence to show that probable cause exists to believe that continued temporary custody is necessary to prevent abuse or neglect pending the hearing on the petition.
- (F) If the Court determines that continued custody of the child is necessary, the Court shall state and include in its written order the facts on which the decision is based and shall specify why the initial removal was necessary. The Court order shall include a judicial determination to the effect that continuation of residence in the home from which the child was removed would be contrary to the child's welfare, or that the removal would be in the best interest of the child, and that reasonable efforts were made by the Division to provide services to prevent the child's removal from the home, or if no efforts were made, that no services could be immediately provided which would make the home safe for the child at that time.

- (G) The Court may set a date for the initial hearing on the Child in Need of Care petition or, if the petitioner and respondent are both present and consent, proceed directly to the initial hearing.
- (H) Within 60 days of the child's removal from the home, the Division shall develop a case plan for the child.

**Section 1509 Initial Hearing**

- (A) At the initial hearing, which shall occur within 10-15 days of any removal, if the preliminary hearing does not proceed directly to the initial hearing, the Court shall determine whether the parent, guardian, or custodian and, where applicable, the child, have been informed of the right to be represented by counsel. If not, the Court shall:
  - (1) Advise those persons, if present, of the right to counsel and that counsel may be able to discover defenses or mitigating circumstances not apparent to them;
  - (2) Inform such persons that engagement of counsel, if any, shall be at their own expense; and
  - (3) If requested, continue the hearing as reasonably necessary to provide reasonable opportunity for the parent, guardian, or custodian to engage counsel and for counsel to prepare for the hearing; provided that an initial hearing shall not be continued for more than 20 days.
- (B) At the initial hearing the parent, guardian, or custodian against whom the allegations are made will be asked to enter a response to the Child in Need of Care petition. A response can be an admission, a denial, or an admission to the jurisdiction of the Court without contesting or admitting the allegations ("no contest"). Before accepting an admission or a statement of no contest to a petition, the Court shall:
  - (1) Determine whether the admission or statement is informed and voluntary; and
  - (2) Establish whether any promises or threats were made to obtain the admission or statement; and
  - (3) Determine that the respondents understand their rights and that the respondents knowingly, intelligently, and voluntarily waive those rights; and
  - (4) Advise the parent, guardian, or custodian of the potential consequences of an admission or statement; and
  - (5) Obtain from the parent, guardian, or custodian a factual basis for the admission or statement, which the Court shall include in its written order.

- (C) If the respondent admits or pleads no contest to the allegations, the Court shall set a Dispositional Hearing within 15 days pursuant to this Article or, if the petitioner and respondent consent, the Court may proceed directly to the Dispositional Hearing.
- (D) If the respondent denies the allegations, the Court shall set a separate fact-finding adjudicatory hearing on the petition within 30 days. The Court shall advise the parent, guardian, or custodian that the potential consequences of the failure of the parent, guardian, or custodian to appear at the adjudicatory hearing, without good cause shown, may result in a finding by the Children's Court that the parent, guardian, or custodian has waived legal rights and is deemed to have admitted to the petition, and that such hearing may go forward in the absence of the parent, guardian or custodian. If the petitioner and respondent consent, the Court may proceed directly to the adjudicatory hearing.

**Section 1510                      Presumed, Alleged, and Unwed Fathers**

- (A) At the initial hearing, the Division shall provide information on the status of the mother and the identity and address of all presumed or alleged fathers. The information may include all of the following:
  - (1) Whether a judgment of paternity already exists.
  - (2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter.
  - (3) Whether a man is identified as the father of the child on the child's birth certificate.
  - (4) Whether the mother was cohabiting with a man at the time of conception or birth of the child.
  - (5) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, and from whom.
  - (6) Whether any male has formally or informally acknowledged or declared his possible paternity of the child.
  - (7) Whether paternity tests have been administered and the results thereof, if any.
  - (8) Whether both mother and father are willing to swear by written affidavit.
- (B) If one or more men are identified as presumed or alleged father, each such man shall be provided notice pursuant to Section 1503 of this Article. The notice shall state that the child is the subject of proceedings under this Article and that the proceedings may affect the parental rights of the alleged father.

- (C) The Court may order a man, alleged to be the father in a case before the court under this chapter and properly served notice of proceedings, to undergo paternity testing. Paternity may also be established by affidavit signed by both parents or by testimony of parents in open court.

**Section 1511 Unwed Fathers and Unwed Mothers**

Unwed fathers who have legally established paternity of their children shall have the same rights and responsibilities as the natural mother to parent and financially support the children. The Nation recognizes that it is in the child's best interest to ensure that fathers are provided an opportunity to play an integral role in their children's upbringing and that a child born out of wedlock is not thereby deprived of his or her father. The Nation also recognizes that a child has a right to support and the Division shall assist the parent to establish an order of child support.

**Section 1512 Adjudicatory Hearing; Findings and Orders**

- (A) The adjudicatory hearing shall commence no later than 30 days from the initial hearing, or the preliminary hearing if the initial hearing is combined with the preliminary hearing.
- (B) At the adjudicatory hearing, the Court shall consider the allegations in the petition and the evidence produced by the petitioner and the other parties.
- (C) The petitioner must prove the allegations in the petition by clear and convincing evidence.
- (D) After hearing the evidence, the Court shall make a finding, based upon the evidence, that the child is or is not a Child in Need of Care. If the Court finds that the child is not a Child in Need of Care, it shall order that the petition be dismissed and the child be released to the parents, guardian, or custodian from whose custody the child was removed.
- (E) If the Court adjudicates a child to be a Child in Need of Care, the Court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including but not limited to:
  - (1) Orders for appropriate medical treatment;
  - (2) When the Court finds the parent or other person legally obligated and financially able to pay all or part of the costs and expenses for the support and treatment of the child, an order to pay such costs and expenses. The Court may:
    - (a) Order the manner of payment, and
    - (b) Proceed against the parent or other legally obligated person for failure to obey an Order of the Court if such person willfully fails or refuses to pay such sum. Such order may also be sued upon to obtain a civil judgment.



**Section 1513 Judgment in the Absence of a Parent, Guardian, or Custodian**

- (A) If the parent, guardian, or custodian fails to appear at an initial or adjudicatory hearing under this Article, the Court may deem the absence of the parent, guardian, or custodian to be an admission to the petition, and make appropriate findings and orders pursuant to Section 1513 of this Chapter. The court must be satisfied that service of notice upon the parent, guardian, or custodian is complete.
- (B) If judgment is made in the absence of the parent, guardian, or custodian, the Court shall specify in its written order the facts, grounds, and sections of this Article upon which it relied to make the decision.

**Section 1514 Disposition Hearing**

- (A) After adjudicating a child as a Child in Need of Care, the Court shall schedule within 15 days a disposition hearing to hear evidence on the question of the proper disposition to be made for the child and his or her parent(s), guardian(s), or custodian(s).
- (B) Before determining the appropriate disposition, the Court shall receive as part of the record the disposition report prepared by the petitioner. The disposition report shall include the child's individual case plan as well as individual case plans for the parent/s, guardian/s, or custodian/s as to whom the child has been adjudicated a Child in Need of Care. The disposition report shall present feasible options to the Court for reunification of the family. The disposition plan shall identify specific actions required of the parties to eliminate the condition(s) causing the need for placement and establish timelines for completion.
- (C) As the Court deems necessary and proper, it may direct any and all reasonable orders to the parents, guardians, or legal custodians of the child who is the subject of any proceeding under this Section to facilitate the reunification of the family, including but not limited to requirements to:
  - (1) Participate in a counseling, treatment, or education program designed to eliminate those conditions that led to the Court's finding that the child is a Child in Need of Care.
  - (2) Participate in developing and completing the disposition plan;
  - (3) Maintain contact with the Child Welfare Worker; and
  - (4) Provide documentation of program completion to the Child Welfare Worker.
- (D) The Court shall also make a finding that the disposition plan accepted by the Court is reasonable and is within each parent's, guardian's, and/or custodian's ability to complete.

- (E) At the disposition hearing and every subsequent status review hearing when a child remains in placement out of the home, the Division must show that it has made continuing reasonable efforts to reunify the child with the parents, guardian, or custodian and that, if required, these efforts have proven to be unsuccessful.
  - (1) Reasonable efforts to prevent a child's removal from the home or to reunify the family are not required when a court of competent jurisdiction has determined that:
    - (a) the parent, guardian, or custodian has subjected the child to aggravated circumstances;
    - (b) the parent, guardian, or custodian has been convicted of the murder or voluntary manslaughter of another child;
    - (c) the parent, guardian, or custodian has been convicted of aiding and abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter;
    - (d) the parent, guardian, or custodian has been convicted of assault that results in serious bodily injury to the child or another child of the parent;
    - (e) the parent, guardian, or custodian's rights to one of the child's siblings have been involuntarily terminated; or
    - (f) the parent, guardian, or custodian has been convicted of a sexual offense against a minor in any jurisdiction.

**Section 1515                      Status Review Hearings**

- (A) After the disposition hearing, the Court shall hold periodic status review hearings not less than once every six months.
- (B) At least five, but not more than ten days prior to the hearing, the Division shall file with the Court, and disclose to all parties, a review report describing:
  - (1) The services provided or offered to the parents, guardians, or custodians to enable them to regain custody, and the progress made;
  - (2) The prognosis for return of the child to the physical custody of his or her parent, guardian, or custodian;
  - (3) The quantity and quality of contacts made among the worker, the child, and the parents, guardians, or legal custodians;

- (4) The Division's recommendations for disposition. If the Division recommends against returning the child to a parent, guardian, or legal custodian, the report shall specify why the return of the child would be detrimental to the child; and
- (C) The Division's review report shall include a verification signed by the Child Welfare Worker that the information contained in the report is true and current to the best of his or her knowledge at the time of filing.
- (D) At the status review hearing, the Court shall order the return of the child to the physical custody of his or her parent, guardian, or custodian; dismiss the petition; and close the case unless the Court finds, by clear and convincing evidence, that the return of the child to the parent, guardian, or custodian would create a substantial risk or detriment to the safety, protection, or physical or emotional well-being of the child. The petitioner shall have the burden of establishing that risk or detriment. In making its determination, the Court shall review and consider the petitioner's report and recommendations as well as any testimony or other evidence of the efforts or progress demonstrated by the parents, guardians, or custodians and the extent to which they availed themselves of services provided.
- (E) Whether or not the child is returned to a parent, guardian, or custodian, the Court shall:
  - (1) Specify the factual basis for its conclusion that the return would or would not create a substantial risk or detriment to the safety, protection, or physical or emotional well-being of the child; and
  - (2) Where relevant, shall order any additional services recommended by the Division and/or a party reasonably believed to facilitate the return of the child to the custody of his or her parent, guardian, or custodian; and
  - (3) Inform the parent, guardian, or custodian that if the child cannot be returned home, a proceeding to determine a long- term plan for the child may be initiated.
- (F) If the child is not returned to his or her parent, guardian, or custodian, the Court shall:
  - (1) Determine whether the Division has shown that it has made continuing reasonable efforts to reunify the child with the parents, guardian, or custodian and, if so, that these efforts have proven to be unsuccessful.
  - (2) Make a finding that the disposition accepted by the Court continues to be an appropriate plan for reunification and that the parents, guardian, or custodian understand their responsibilities under the plan.

**Section 1516 Long-Term Permanency Plan Determination**

- (A) A long-term permanency plan shall be developed and submitted to the Court within 12 months of the child’s removal from the home. The hearing on the permanency plan shall be held promptly, but not less than six months from the date of adjudication of the child as a Child in Need of Care.
- (B) When a court determines that reasonable efforts to return the child to the home are not required, a permanency hearing shall be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are no longer required. The Court shall, by Order, set a permanency plan hearing not less than 30 days from the date of the Order and shall notify the Division of the date and time of the hearing.
- (C) At least five days prior to the hearing, the Division shall file with the Court, and disclose to all parties, a report describing:
  - (1) The services provided or offered to the family to achieve reunification;
  - (2) The participation and progress of the family in services;
  - (3) Barriers that exist to prevent reunification of the family;
  - (4) Definite recommendations for the long-term care of the child if efforts to reunify the family fail; and
  - (5) If after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the Division will document to the court the compelling reason for the alternate plan.
- (D) The Court shall review and consider the report and the efforts or progress, or both, demonstrated by the parent, guardian, or custodian, and the extent to which the parent availed himself or herself of services provided. The permanency hearing shall determine the following:
  - (1) Whether and when the child will be:
    - (a) returned to the parent;
    - (b) placed for adoption upon the Division filing a petition to terminate parental rights;
    - (c) referred to legal guardianship; or

- (d) upon the Division's documentation of a compelling reason for determining that none of the above options would be in the child's best interest, placed in another planned permanent living arrangement.
  - (2) If the child will not be returned to the parent, what in-state and out-of-state placement options are available;
  - (3) Where the child is placed in a state different from that of the parent(s)' residence, whether the out-of-state placement continues to be in the child's best interests; and
  - (4) Where the child is 16 years of age and older, the services necessary to help the child transition from foster care to independent living.
- (E) The court conducting the permanency hearing shall apply procedural safeguards to ensure that the child's opinions regarding the proposed permanency or transition plan are taken into consideration to the extent appropriate to the child's age.
- (F) Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to make reasonable efforts to provide or offer services:
- (1) The child has been placed with a foster family that is eligible to adopt a child, or the child has been placed in a pre-adoptive home.
  - (2) The case plan includes services to achieve a long-term plan for the child if efforts to reunify fail.
  - (3) Services to achieve a long-term plan for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.
- (G) After reviewing the evidence presented, the Court may:
- (1) Continue the child in out-of-home care for a specific period of time;
  - (2) Continue the child in out-of-home care on a long-term basis; or
  - (3) Return the child to the parent.
- (H) The Court shall specify the factual basis for its decision to return or not return the custody of the child to his or her parent, guardian, or custodian. If the child is not returned, the Court shall specify the factual basis for its conclusion that return of the child would be detrimental.
- (I) A trial home visit may not exceed six months in duration unless the court orders

otherwise. If an unauthorized home visit, or a visit that exceeds the court order authorizing longer visits, occurs and the child is subsequently returned to foster care, then that placement shall be considered a new placement, and the court shall again make determinations regarding whether remaining in the home would be contrary to the welfare of the child and whether reasonable efforts to prevent removal are required and, if so, have been made.

**Section 1517                      Termination of Parental Rights**

- (A) The Division shall file a petition (or, if such a petition has been filed by another party, shall seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):
  - (1) Whose child has been in foster care under the Nation’s responsibility for 15 of the most recent 22 months. The petition must be filed by the end of the child’s 15<sup>th</sup> month in foster care. To calculate when to file a petition for termination of parental rights, the Division shall:
    - (a) Calculate the 15 months out of the most recent 22-month period from the date the child was removed from the home.
    - (b) Use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22-month period.
    - (c) Not include trial home visits or runaway episodes in calculating the 15 months in foster care.
  - (2) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant, in which case the petition to terminate shall be made within 60 days of the judicial determination that the child is an abandoned infant.
  - (3) Who has been convicted of one of the offenses or who has committed one of the actions listed in subsection 1514(E). Under such circumstances, the petition to terminate parental rights shall be made within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.
- (B) The Division may elect not to file or join a petition to terminate the parental rights of a parent if:
  - (1) At the option of the Division, the child is being cared for by a relative;
  - (2) The Division has documented in the case plan, available for court review, a compelling reason for determining that such a petition would not be in the best interests of the child in question; or

- (3) The Division has not made reasonable efforts to provide to the family, consistent with the time periods specified in the case plan, services deemed necessary for the safe return of the child to the home where reasonable efforts are required.
- (C) When the Division does file or join a petition to terminate parental rights, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child according to the placement preferences contained herein.
  - (D) Grounds for filing a petition to terminate parental rights include the following:
    - (1) Terminating parental rights is in the best interest of the child.
    - (2) There is an adoptive family identified and willing to adopt the child.
    - (3) The parents of the child are willing to terminate their parental rights.
  - (E) A guardian, custodian, or extended family member may file a petition to terminate parental rights which establishes one of the following grounds:
    - (1) that the parent is not willing or able to provide for the care, custody, and control of the child;
    - (2) that the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency, or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period;
    - (3) that the parent is deprived of civil liberties due to the conviction of an offense or action listed in subsection 1514(E); or
    - (4) that the parent is deprived of civil liberties due to a conviction of a criminal offense for which the sentence is of such length that the child will be deprived of a normal home for a period of years.
  - (F) In order to terminate parental rights, the Court must find by clear and convincing evidence the existence of one of the grounds listed in subsection (E)(1)-(4) and by a preponderance of the evidence that it is in the child's best interest, safety, and welfare to terminate parental rights.
  - (G) The filing party shall properly serve the parent with a copy of the petition and notice of hearing on the petition in accordance with the Rules of Court.

## **ARTICLE 6 – GUARDIANSHIP**

### **Section 1601            Appointment**

The Court may appoint guardians of the person and/or property of children pursuant to this Code. Such appointment shall only be made on the petition of a relative or other natural person on behalf of the child. If the child is over the age of 14, the child may nominate his or her own guardian subject to the review and approval of the Court.

### **Section 1602            Commencement of Appointment Proceedings; Petition**

- (A) A proceeding in the Children’s Court for guardianship of a minor child is commenced by the filing of a petition, in conformity with the requirements of this Section. A guardian shall not be appointed unless a petition for guardianship has been filed and a hearing is held on the petition.
  
- (B) Upon petition by the proposed guardian requesting guardianship of a child within the jurisdiction of the Children's Court, the Court may appoint a guardian for a child who is without either parent or whose parents are unavailable or otherwise unable to care for the child. The Court may impose any restriction or limitation on the powers of a guardian or condition its appointment on the guardian's performance of specified duties, not inconsistent with this Article, that the Court finds will help protect the best interests of the child.
  
- (C) A petition for guardianship shall be verified and shall contain all of the following:
  - (1) The basis for the Court’s jurisdiction.
  - (2) The name, physical address, mailing address if different, and location of the petitioner.
  - (3) The relationship of the petitioner to the child.
  - (4) The names, sex, date, and place of birth of the child.
  - (5) The location of the child.
  - (6) The name, address, and location of the person having legal custody of the child.
  - (7) The grounds upon which guardianship is sought.
  
  - (8) Any other information that will aid the Court in its decision, including the names and addresses of the natural parents or any other relatives who have cared for the child, and whether the child is the subject of a Child in Need of Care proceeding.



- (D) The Court may request any additional information that it finds is relevant to deciding an action brought under the Section.

**Section 1603 Notice of Hearing**

Once the Court schedules a hearing, the petitioning party must provide notice of the hearing to any person having the care of the child and to such other relatives of the child as the Court may deem proper.

**Section 1604 Powers and Duties of Guardian**

Until further order of the Court, a guardian shall have the custody, control, and care of the child, including but not limited to authorization to consent to the education of the child and to consent to the medical care and treatment of the child; and shall have the responsibility of the care and management of the property of the child. When granting a guardianship petition and appointing a guardian, the Court shall inform the potential guardian of these responsibilities and establish to its satisfaction that the potential guardian understands and consents.

**Section 1605 Parental Challenge to Existing Guardianship**

- (A) In the event that a parent whose rights have not been relinquished or severed wishes to challenge a guardianship already in existence, the parent may petition the Court for a hearing.
- (B) A petition filed by a parent to terminate a legal guardianship shall be verified and shall contain all of the following:
- (1) The basis for the Court's jurisdiction.
  - (2) The name, physical address, mailing address if different, and location of the petitioner.
  - (3) The relationship of the petitioner to the child.
  - (4) The name, sex, birth date, and place of birth of the child.
  - (5) The location of the child.
  - (6) The name, address, and location of the person having guardianship of the child.
  - (7) The grounds upon which the petitioner seeks to have the guardianship terminated and the child returned to his or her custody.

- (8) Any other information that will aid the Court in making its decision.
- (C) The Court may request any additional information if it finds is relevant to deciding an action brought under the Section.
- (D) The Court shall set a date and time for the hearing, and the petitioner shall cause notice to be given to the Division, the respondent legal guardian, and to any other such persons as the Court may deem proper, at least 30 days prior to the hearing.
- (E) Factors which the Court may consider in deciding whether to terminate the guardianship and return full custody of the minor child to the parent include:
  - (1) The parent's involvement in the child's life, the length of time for which the parent has been actively involved in the child's life, and the strength of bonding between parent and child;
  - (2) The parent's contributions to the expenses of the minor's upbringing;
  - (3) The parent's contribution to the day-to-day care of the child;
  - (4) The parent's ability to provide a safe home for the child and meet his or her basic needs; and
  - (5) If the child is over 12 years of age, the wishes of the child.

**Section 1606                      Voluntary Guardianship Agreements**

- (A) A parent may enter into voluntary guardianship agreements with third parties age 18 and over, subject to the review and approval of the Court, if the agreement exceeds a year.
- (B) A parent may enter into a voluntary guardianship agreement by a properly executed power of attorney with third parties age 18 and over and without Court review if the agreement is under one year, and the third party is sufficiently able to provide for the reasonable care, custody, and control of the child.
- (C) Notwithstanding Section (B) of this Section, if a child is an alleged Child in Need of Care and proceedings have been initiated, the parent's authority to enter into a voluntary guardianship agreement shall be subject to review and approval by the Division and Court.

**Section 1607                      Commencement of Voluntary Guardianship Agreement Proceedings;  
Petition**

- (A) Either the parent(s) or the proposed guardian(s) may file a petition for court approval of a

guardianship agreement, which exceeds one year. A petition for approval of a guardianship agreement shall be signed by all parties, verified, and shall contain all of the following:

- (1) The basis for the Court's jurisdiction.
  - (2) The name, physical address, mailing address if different, and location of the petitioner.
  - (3) The relationship of the petitioner to the child.
  - (4) The name, sex, birth date, and place of birth of the child.
  - (5) The location of the child.
  - (6) The name, address, and location of other parties to the agreement.
  - (7) The effective duration of the agreement.
  - (8) Any other information that will aid the Court in making its decision.
- (B) The Court may request any additional information if it finds is relevant to deciding an action brought under the Section.
- (C) The Court may approve the agreement by order without a hearing if at least one proposed guardian is a member of the child's family as defined by Tohono O'odham custom and tradition.
- (D) If no proposed guardian is a member of the child's family, or if the Court determines that more information is necessary to determine whether the guardianship is consistent with the child's safety and welfare, the Court shall set a date and time for the hearing, and shall cause notice to be given to the parties, and to any other such persons as the Court may deem proper.

**Section 1608            Early Termination of Voluntary Guardianship Agreement**

- (A) If all parties to the guardianship agreement consent to termination of a court-approved agreement prior to its expiration date, any party may, by motion, request early termination of the agreement. A motion for early termination must be signed by all parties and verified.
- (B) The Court shall grant a motion for early termination which conforms with Section 1608(A) by order without a hearing.

## **ARTICLE 7 – EMANCIPATION**

### **Section 1701            Commencement of Proceedings; Petition**

- (A) A proceeding in the Children’s Court to emancipate a minor child is commenced by the filing a petition in accordance with the requirements of this Article.
- (B) A child 16 years or older, but less than 18 years of age, may petition the Court to be considered an emancipated minor. The petition shall be verified and shall state the facts which will support the declaration of emancipation.

### **Section 1702            Notice of Petition**

- (A) Before the Court may grant Emancipation to any child, the filing party shall provide notice of the proceeding to the minor’s parents, guardian, or custodian in a manner that the Court deems proper. If the child is a ward of this Court, the filing party shall also provide notice to the Division.
- (B) Any parent, guardian, or custodian, or where applicable the Division, may request a hearing on the Petition, and notice of the proceeding shall so state.

### **Section 1703            Emancipation Determination**

- (A) The Children’s Court shall determine whether to grant emancipation status to a minor based upon the petition and any other evidence the Court may require.
- (B) Such a determination shall be made by clear and convincing evidence, and may include, but is not limited to the following:
  - (1) The real or apparent assent of the parent(s) or minor;
  - (2) Proof of independence from the parent(s) in matters of economic self-sufficiency, as by earnings or in-kind compensation through employment or other legal means sufficient to provide for their own food, shelter, and other cost-of-living expenses;
  - (3) Proof of independence from the parents in matters of health and personal care, transportation, school and/or job attendance, and similar responsibilities of adult life;
  - (4) Proof of marriage;
  - (5) Proof of membership in the military; or
  - (6) Any other evidence the Court finds relevant to make an emancipation

determination.

**Section 1704            Effect of Emancipation**

- (A) An order emancipating a minor issued pursuant to this Article recognizes the minor as an adult for the following purposes:
  - (1) The right to enter into a binding contract.
  - (2) The ability to sue and be sued.
  - (3) The right to buy and sell real property.
  - (4) The right to establish a legal residence.
  - (5) The obligation to pay child support.
  - (6) The right to incur debts.
  - (7) The right to access medical treatment and records.
  - (8) The right to consent to medical, dental, and psychiatric care without parental consent, knowledge, or liability.
  - (9) The right to consent to medical, dental, and psychiatric care for the emancipated minor's child.
  - (10) Eligibility for social services.
  - (11) The right to obtain a license to operate equipment or perform a service.
  - (12) The right to apply for enrollment in any school or college.
  - (13) The ability to apply for loans.
- (B) An emancipation order issued pursuant to this article terminates all the legal rights, privileges, duties, obligations, and other legal consequences of the relationship of child and parent or legal guardian, except as otherwise explicitly provided by this Code.
- (C) No order of emancipation shall affect a child's enrollment status as a member of the Nation or a child's right of inheritance from the parent.
- (D) Any order emancipating a minor pursuant to this Article shall contain a notice of the foregoing rights and responsibilities.

## **ARTICLE 8 – DUTY TO REPORT NON-ACCIDENTAL INJURIES TO CHILDREN**

### **Section 1801            Reporting Requirement**

- (A) Any person having responsibility for the care of children; or any physician, hospital intern, resident, surgeon, dentist, or osteopath; school personnel; social worker or Child Welfare Worker; or peace officer whose observations or examination of any child discloses evidence of injury, sexual abuses, death, abuse, or physical neglect which appears to have been inflicted upon such child by any means other than accidental or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to the Tohono O’odham Police Department. Upon receipt, the Tohono O’odham Police Department shall notify the Division pursuant to Section 1402 of this Chapter. Such reports shall be made by telephone or in person, and shall be followed by a written report within 24 hours.
- (B) Any person required by Section 1801(A) of this Chapter to receive reports shall be permitted, without first obtaining the consent of the parent, guardian, or legal custodian, to take photographs and/or other documentation and refer, transport, or otherwise arrange for appropriate licensed medical practitioners to conduct medical and psychological examinations of the child as may be indicated, including examinations of the sex organs, and interview the child. All examinations and interviews of a child who may have been subjected to neglect or abuse shall be conducted in a manner that minimizes additional trauma to the child.

### **Section 1802            Privileges**

With the exception of the attorney-client privilege, no privilege shall be available in any Child in Need of Care proceeding nor in any judicial proceeding resulting from a report submitted pursuant to this Chapter. This includes the physician-patient privilege and husband-wife privilege, as well as those provided for by professions covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications.

### **Section 1803            Immunity**

Anyone participating in the making of reports required under the provisions of this Chapter, or participating in a judicial proceeding resulting from such reports, shall be immune from any civil or criminal liability by reason of such action unless such person is determined to have acted with malice or unless such person has been charged with or is suspected of abusing or neglecting the child in question.

## **ARTICLE 9 – INDIAN CHILD WELFARE ACT**

**Section 1901            Jurisdiction**

The Tohono O’odham Children’s Court shall have original jurisdiction over any matter transferred to the Nation by a state court pursuant to the Indian Child Welfare Act 25 U.S.C. §§ 1901-1963.

**Section 1902            Agent for Service**

The agent for service of notice of state court child custody proceedings under the Indian Child Welfare Act is the Attorney General for the Tohono O’odham Nation.

**Section 1903            Petition for Acceptance of Jurisdiction; Who May File**

- (A) The Child Welfare Division, in consultation with the Office of Attorney General, shall determine whether the Nation shall petition the Children’s Court for an acceptance of jurisdiction. This does not preclude the parent or any other party with standing from petitioning for acceptance of jurisdiction.
- (B) To initiate an action under this Article, the party requesting transfer shall file with the Tohono O’odham Children’s Court a petition to accept jurisdiction upon transfer from state court setting forth the jurisdiction of the Court.
- (C) A petition to accept jurisdiction filed pursuant to this Section shall include:
  - (1) The basis for the Court’s jurisdiction.
  - (2) Copies of any petitions or requests made in the state court to declare the child a ward of that court.
  - (3) Copies of any state court orders adjudicating the child dependent as to the parents(s), guardian(s), or legal custodian(s).
  - (4) A statement that the child is enrolled with the Tohono O’odham Nation or is eligible for enrollment with the Tohono O’odham Nation.
- (D) If a party petitions a state court for transfer of jurisdiction to the Children’s Court, such transfer shall not be effective until accepted by the Children’s Court. It shall be the duty of the party petitioning the state court for transfer to file a petition to accept jurisdiction with the Children’s Court as provided herein.
- (E) Upon receipt of such petition the Children’s Court shall automatically grant standing to the Child Welfare Division of the Department of Health and Human Services. The Petitioner shall provide notice of the proceedings to the Department, and to all parties in the state court proceeding.

**Section 1904                      Responses; Acceptance or Declination of Jurisdiction**

- (A) Any responses to the petition shall be filed within five days of receipt of the petition to accept jurisdiction.
  - (1) If a response is filed within the time period, the Court may in its discretion set a time period for replies and or set the matter for hearing. A hearing on the petition shall be held within 15 days of receipt of the petition by the Children’s Court.
  - (2) If there are no responses within the time period, the Court shall make its decision whether to accept jurisdiction from state court within 15 days and no hearing shall be necessary.
- (B) Upon request of the Division, the Court may issue temporary custody orders to the Division, which orders shall be served upon the Division immediately.
- (C) The Court may decline jurisdiction if it finds good cause to deny such transfer. Such a finding must be based on clear and convincing evidence that such transfer would not be in the best interest of the child, the child’s family, or the Nation.
- (D) If jurisdiction is declined, the Court shall promptly issue to the parties a written order setting forth the reasons jurisdiction is declined. The petitioner shall provide notice to the state court of the Children’s Court action.
- (E) If the Court accepts jurisdiction, the Court shall set a status hearing within 30 days of acceptance of transfer of jurisdiction.

**Section 1905                      Status Hearing**

The purpose of the status hearing is to confirm that the child has been taken into custody and placed by the Division, verify that the case has been closed in the state court, and set appropriate date(s) and time(s) for the next hearing regarding the minor’s status as a Child in Need of Care. The Division may move the Court at the status hearing to grant full faith and credit, pursuant to Section 1305 of this Chapter, to state court decisions regarding the minor’s dependency status.

**ARTICLE 10 – VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS**

**Section 11001                      Procedure; Who May Relinquish**

- (A) Any parent, guardian, or custodian, or other guardian of a child may relinquish any rights they may have to the care, custody, and control of a child subject to the terms of this Article. The person wishing to relinquish shall file a petition in the Children’s Court with notice to the Division; guardians and/or custodians, if any; and any non-petitioning parent.



- (B) Parental rights shall be relinquished voluntarily by a parent in writing, signed by the parent in the presence and with the acknowledgment of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten days after the birth of the child. The Court shall ensure that the parent or parents understand the consequences of the voluntary relinquishment, as enumerated in Section 11002 of this Chapter, prior to its approval.
- (C) The relinquishment hearing shall be conducted in the preferred language of the parent wishing to relinquish parental rights. The Court shall determine the preferred language of the parent and certify that the relinquishment was explained in the preferred language of the parent(s).
- (D) The petition may request relinquishment generally, in which case the Court shall assume jurisdiction over the child, or specifically, to a particular person for adoption consistent with Article 11 of this Chapter. Relinquishment may be made to the Child Welfare Division or any person only with the written acknowledgment of the Court.

**Section 11002            Effect of Voluntary Relinquishment**

- (A) Upon findings and order by the Court for a voluntary relinquishment, the relationship of parent and child and all the legal rights, privileges, duties, obligations, and other legal consequences of the natural relationship of child and parent shall thereafter cease to exist between the child and the natural parent, except as otherwise provided explicitly by this Code.
- (B) Upon entry of an order terminating the rights and responsibilities of a parent or parents, the Court may:
  - (1) Place the child with extended family;
  - (2) Pursuant to a Child in Need of Care petition, proceed under Article 5 of this Chapter; or
  - (3) Pursuant to an adoption petition, proceed under Article 11 of this Chapter.
- (C) The voluntary relinquishment of parental rights of one parent, guardian, or custodian shall not affect the parental rights of any other parent, guardian, custodian, or extended family.
- (D) No voluntary relinquishment of parental rights shall affect a child's enrollment status or eligibility for enrollment as a member of the Nation or a child's right of inheritance through the natural parent. A parent who relinquishes voluntarily shall lose all rights of inheritance from and through the relinquished child.

## **ARTICLE 11 – ADOPTION**

### **Section 11101            Purpose**

It shall be the policy of the Tohono O’odham Nation that O’odham children be adopted only as a matter of last resort, after voluntary parental relinquishment, or termination of parental rights under Section 1517, and alternative long-term placements shall first be considered which maintain the connection between the child and the natural parent or parents and family. Prior to considering granting an adoption, the Court shall find that alternative long-term placements have been implemented and proved unsuccessful. A decree of adoption shall not terminate the legal relationship between the child and the child’s extended family, except by order of this Court.

### **Section 11102            Who may be adopted**

- (A) A child within the jurisdiction of the Children’s Court and for whom jurisdiction has been invoked may be adopted. A child over the age of 12 years of age may not be adopted without his or her consent.
- (B) If a petition for adoption is filed prior to a child reaching 18 years of age, jurisdiction of the Children’s Court continues for purposes of entering an order of adoption of such child even if the child reaches 18 years of age prior to the final adoption hearing.

### **Section 11103            Who may adopt**

- (A) In every adoption proceeding, adoptive placement shall be made in the following order of preference, absent good cause to the contrary:
  - (1) A member of the child’s extended family;
  - (2) A member of the Tohono O’odham Nation;
  - (3) Other Indian families.
- (B) A married person not lawfully separated from his or her spouse shall not adopt a child without the consent of such spouse, if such spouse is legally capable of giving such consent.

### **Section 11104            Commencement of Proceedings; Petition**

- (A) A proceeding in the Children’s Court for adoption of a minor child is commenced by the filing of a petition in conformity with the requirements of this Section. An adoption of a child under the jurisdiction of the Court may not be ordered unless a petition for adoption has been filed.

- (B) A person wishing to adopt a child subject to the jurisdiction of the Court shall file a petition with the Court, which shall be verified under oath by the petitioning adoptive parent or parents and shall contain the following information:
- (1) The jurisdiction of the Court in these proceedings;
  - (2) The full names, addresses, and ages of the petitioners, plus the names and ages of all children living in their household;
  - (3) The full name, residence, sex, and birth date of the child to be adopted, and documentary proof of the child's date and place of birth, if known;
  - (4) A statement by the petitioners that, to their knowledge and belief, the child is eligible for adoption and parental rights have been voluntarily relinquished by or otherwise terminated by all parents to the child. In step-parent adoptions, the child's parent married to the step-parent is not required to relinquish his or her parental rights, but must consent to the adoption;
  - (5) A statement by the petitioners that it is their desire to adopt the child and to establish a parent-child relationship with the child; and
  - (6) A brief and concise statement of facts which may aid the Court in its decision.

**Section 11105            Investigative Report**

- (A) Within 30 days of the filing of the petition for adoption, the Court shall order an investigation report on the suitability of the petitioners to adopt a child.
- (1) The report shall be prepared by the Division, and the Court shall notify, by court order, the Division of the request for investigation report.
  - (2) The Division shall investigate the suitability of the petitioners to adopt a child and submit to the Court a full report of the facts discovered by its inquiry. The report shall be prepared and filed with the Court within 120 days of the filing of the petition to adopt.
  - (3) The report shall include, but not be limited to, the following information:
    - (a) A complete social history of the child to be adopted.
    - (b) A thorough description of the financial, moral, and physical and mental health; religious affiliation, if any; enrollment status and tribal affiliation, if any; community involvement; and general background and suitability of the prospective adoptive parents and the family with whom they reside.

- (c) A full description and statement of value of all property owned, possessed, or held in trust by and for the child to be adopted.
  - (d) A definite recommendation on whether the petitioners should be determined suitable to adopt.
- (B) Prior to issuing a final order granting an adoption, the Court may require additional information if it finds the welfare of the child will be better served thereby.
- (C) The Court, upon receiving an investigation report, shall within 30 days set a hearing pursuant to Section 11106 of this Chapter to determine whether the petitioners are acceptable or not acceptable to adopt.

**Section 11106          Adoption Hearings**

- (A) Hearings under this Article shall be as informal as the requirements of due process, confidentiality, and fairness permit. The Court shall exclude all persons except the officers of the Court, the parties, their witnesses, counsel, and representatives of the agencies present to perform their official duties as determined by this Code. No other persons shall be admitted to the hearing unless the Court determines they have a direct interest in the case. Any such person at the hearing shall not disclose any information obtained at the hearing.
- (B) The petitioner(s) shall appear personally at the hearing. The Court shall examine all petitioner(s) appearing as to their willingness to adopt. The Court shall also consider the voluntariness and understanding of the adoption.
- (C) The Court may also consider other evidence or testimony at the hearing to aid in its decision. Based on the evidence presented, the Court shall make findings based on clear and convincing evidence regarding the suitability of the petitioner(s) to adopt a child.
- (D) Any petitioner who has been found not acceptable to adopt may petition the Court to reconsider its findings. Notice shall be given to all interested parties and the Court shall schedule a hearing to review the matter. The Court may affirm or reverse its determination. If, upon reconsideration, a petitioner is found not acceptable to adopt, he or she may not reapply for adoption of any minor under the Court's jurisdiction for at least 1 year.

**Section 11107          Order of Adoption**

- (A) Prior to entering any final order of adoption, the Court shall find that parental rights have been voluntarily relinquished or otherwise terminated by all parents to the child.

- (B) The final order of adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption and that the adoptive home and parents are capable of providing for the proper care of the child as shown by the investigation reports and the findings of the Court upon the evidence presented at the hearings.
- (C) The Court may deny the petition for adoption if it finds that the adoption will not be in the best interest of the child. The Court may request that the Division provide services to assist in the placement and care of the child.
- (D) Children adopted by order of the Court shall:
  - (1) Assume the surname of the adoptive parents, unless the Court orders otherwise.
  - (2) Be entitled to the same rights as natural children of the adoptive parents.
  - (3) Be entitled to inherit real and personal property from and through the adoptive parents. However, if an adopted child is not a member of, nor eligible for enrollment with, the Tohono O’odham Nation, then the non-member child shall not be eligible to inherit any interest which the deceased Nation’s member’s estate may have to any tribal privilege, right, land, or property which may only be vested in an enrolled Nation’s member.
- (E) Parents adopting by order of the Court shall be entitled to inherit real and personal property from and through the adopted child. However, if an adoptive parent is not a member of, nor eligible for enrollment with, the Tohono O’odham Nation, then the non-member parent shall not be eligible to inherit any interest which the deceased Nation’s member’s estate may have to any tribal privilege, right, land, or property of any kind.
- (F) An Order of Adoption shall not:
  - (1) Confer tribal membership on adopted children who would not otherwise be eligible.
  - (2) Deprive adopted children of tribal membership for which they would otherwise be eligible.
  - (3) Terminate the rights of the natural extended family of the child except by specific order of the Court.
- (G) This Section shall not be construed to preclude appeal to the Tohono O’odham Court of Appeals of any final order, judgment, or decree of the Children’s Court.

## **ARTICLE 12 - CONFIDENTIALITY OF RECORDS, REPORTS, AND PROCEEDINGS**

### **Section 11201 Purpose**

The provisions of this Chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

### **Section 11202 Records; Method of Preservation; Contents**

- (A) A record of all hearings under this Chapter shall be made and preserved by stenographic, mechanical, or electronic recording.
- (B) The official Children's Court Record of the proceedings under this Code shall include complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, court orders, and other reports and papers filed with the Children's Court.
- (C) Official Children's Court Records, which include, but are not limited to: adoption records, termination of parental rights records, and permanent guardianship records, shall not be destroyed until a 99-year period has passed from the creation of the record.
- (D) Temporary legal guardianship records, permanent guardianship records that are dismissed or are otherwise not granted, and Child in Need of Care records that are dismissed or otherwise do not proceed shall not be destroyed for a period of 20 years.

### **Section 11203 Confidentiality of Records**

- (A) Except as provided in this Chapter, reports taken pursuant to Article 4 of this Code, and the name and address of any child, family, or informant or any other identifying information contained in such reports, shall be confidential and shall not be public information.
- (B) Upon request to the Court, the official Children's Court Record shall be open to inspection and copying by the child; the child's parent, guardian, or custodian or their counsel; the Division or its counsel; authorized personnel of the Children's Court, or such other person as the Court may, for good cause, permit.
- (C) A Court, upon its finding that access to records may be necessary for determination of an issue before such Court, may order such access, but such access shall be limited to *in camera* inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue pending before it.

### **Section 11204 Reports of Abuse and Neglect**

- (A) Disclosure of the name and address of the child and family and other identifying

information involved in reports of abuse and neglect shall be permitted only when authorized by the Court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect, the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

- (B) When reports are disclosed pursuant to Section 11204(A) of this Article, only the following persons or agencies shall be given access to child abuse or neglect records and reports:
- (1) The Nation's Police Department or the Department of Health and Human Services.
  - (2) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record of a parent, guardian, custodian, or other person who is responsible for the child's health or welfare;
  - (3) Any person named in the report or record that was alleged to be abused or neglected or, if a minor or other incompetent, at the time of the request, is named in the report, the child's advocate, attorney, or guardian ad litem, if appointed;
  - (4) A parent, guardian, custodian, or other person responsible for the health and welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
  - (5) Members of the child protection team;
  - (6) The Nation's prosecutor and attorneys for the parties with protection for the identity or reporters and other appropriate persons when necessary,
  - (7) Such other person as a Court of the Tohono O'odham Nation may determine, for good cause.
- (C) A person given access to a report shall not divulge or make public any identifying information.

### **Section 11205            Confidentiality of Proceedings**

It shall not be permitted for any person to knowingly disclose, receive or make use of, or authorize, knowingly permit, participate in or acquiesce in the use of any information involved in any proceeding under this Article directly or indirectly derived from the files, records, reports or other papers compiled pursuant to this Article, or acquired in the course of the performance of official duties.

**Section 11206            Official Use of Reports and Records**

The provisions of this Article shall not be construed to prohibit persons employed by, or representing, the Court, the Division, the Tohono O’odham Police Department, or the Tohono O’odham Prosecutor’s Office, from conducting the investigations or performing other duties pursuant to this article and done within the normal course of their employment.

**Section 11207            Adoption Records**

- (A) All adoption records, reports, proceedings, and orders of the Court pursuant to this Chapter are confidential records of the Court. They shall be sealed and shall not be available for release or inspection by the public except by order of the Court.
- (B) Upon petition by an adopted person after reaching legal age, or upon order of the Court upon a showing of good and sufficient cause by persons other than the adopted person, information contained in such record shall be released to the requesting party if:
  - (1) During the original proceedings, the natural parent or parents gave consent to release the records; or
  - (2) The natural parent or parents have been given actual and confidential notice by the Division of the petition for release of information, or where the whereabouts of the natural parent or parents are unknown, notice of intent to release such information has been published without revealing the name of the natural parent or parents, and:
    - (a) The natural parent or parents consent in writing before the Court to release information,
    - (b) The Court determines the need for information is greater than the natural parent’s right to privacy, or
    - (c) Both natural parents are deceased.
- (C) The Court may refuse to divulge the natural parent’s name but release other information so long as the information will not lead to the discovery of the parents’ name.
- (D) Notwithstanding (A)-(C) of this Section, records of parental relinquishment, adoption, or other such records necessary to trace a relinquished or adopted person’s biological ancestry for the sole purpose of establishing that person’s eligibility for enrollment in the Tohono O’odham Nation pursuant to Article II of the Constitution of the Tohono O’odham Nation adopted on January 18, 1986, and the Enrollment Ordinance of the Tohono O’odham Nation, Ordinance No. 05-81 as may be amended, shall be made available to the Enrollment Office upon petition of the person seeking enrollment.



**Section 11208                      Reports and Records of a Child Reaching the Age of Majority**

After a child has reached 18 years of age or has been ordered emancipated pursuant to this Chapter, the Court shall not permit access to any report or record prepared pursuant to this Code and concerning such child unless the person seeking access is a sibling or offspring of that child and appears before the Court after filing a written petition for the records. The petitioning party is responsible for providing notice to the subject of the records and any other interested parties.