

Commentary / Introduction

This commentary is intended to serve as a tool in understanding the tribal child/family protection Title. It is also intended to serve as a tool to use in adapting the Title to meet the needs of an individual community. Each section number of the commentary corresponds to the same section number of the tribal child/family protection Title. (Note that not all sections have a commentary.) The most efficient way to use this commentary is to read it together with the tribal child/family protection Title. This Title covers civil child abuse and neglect, child custody, foster care licensing, guardianship, termination of parental rights and adoption proceedings.

Civil/Criminal Procedures

Although this Title does not cover criminal child abuse and neglect proceedings, actual or threatened criminal child abuse and neglect actions can often impinge upon civil child abuse and neglect proceedings. These problems are sometimes increased in tribal court situations due to the fact that more than one jurisdiction may be involved in sexual abuse proceedings because federal courts have jurisdiction to prosecute alleged sex abuse offenders under the Major Crimes Act (18 U.S.C. II 53).

The following section from the American Bar Association's publication *Child Abuse and Neglect Litigation -- A Manual for Judges* sets out some of the issues involved in the discussion of whether to proceed in a criminal and/or a civil proceeding and steps to take in coordinating these actions:

Although prosecution of parents takes place outside the juvenile courts, it can impinge seriously upon cases brought there. These effects, which comprise many of the arguments against prosecuting parents, will be examined. There is a need for correlation between the prosecutor and the child protective agency in cases where prosecution is, or may be, attempted.

A. Arguments For and Against Prosecution

1. Arguments for criminal prosecution include:

The goals of criminal prosecution in general apply to abuse and neglect cases. These goals are rehabilitation of the defendant, deterrence of both the defendant and other potential child abusers, removal of the defendant from society, and retribution. Retribution is exceptionally important in view of the public perception of child abuse as a heinous act.

Criminal sanctions against parents are available to coerce them into accepting services.

Police and district attorney investigations may be helpful in ferreting out all the facts in a particularly serious and complex case of abuse.

2. Reasons against prosecution include:

Criminal prosecutions in abuse and neglect cases are difficult because of evidentiary problems, the standard of proof required (beyond a reasonable doubt), and the prohibition against self-incrimination.

Criminal prosecution may make the parent less cooperative in remedial procedures.

Prosecution is less likely to deter child abuse than other criminal acts.

Criminal courts do not have power to order treatment for family members who are not defendants (particularly the spouse and child). They also often lack of the necessary support services to implement effective supervision and treatment.

3. Most professionals in the child abuse and neglect field advise against prosecution except in unusual circumstances.

Prosecution is more likely in cases of sexual abuse, severe injury or death, and abuse by non-parents.

B. Effects of Prosecution on the Juvenile Court

1. Juvenile court proceedings are often suspended when there is criminal prosecution. The resulting delay can be considerable.

2. The possibility of prosecution may affect parents' testimony in the child protective hearing.

Parents may be less candid with the court.

If prosecution is actually threatened, the parents can remain silent under the self incrimination privilege. Courts, however, can grant "use immunity" to the parents so that their testimony cannot be used against them in a criminal prosecution.

3. Fear of prosecution may lead parents to coerce their children not to testify about the parents' acts.

4. Prosecution and a resulting jail sentence can hinder attempts to improve the child's care and to provide better family life.

C. Steps Toward Coordination of Civil and Criminal Functions

- D. Various means to coordinate activities of child protective agencies, police and prosecutors are:
1. Establishing guidelines for when child abuse and neglect reports should be referred for police investigation and possible prosecution.

Coordinating remedial efforts by the prosecutor and child protective agencies in cases where criminal prosecution is or may be initiated.
 2. Suggestions for coordination between juvenile and criminal courts are:

Permitting prosecution only upon request of the juvenile court once a petition has been filed. (The juvenile court should request prosecution only if it believes prosecution will not harm the child nor hinder remedial actions.)

Appointing a guardian ad litem to monitor and represent the child in criminal court actions.

Chapter 2-1 Short Title, Purpose and Definitions

A. Short Title

This section sets out the official title of the Title: "The Child/Family Protection Title."

B. Purpose

This section sets out the purpose and philosophy of this child/family protection Title. Note that Purpose #1 and Purpose #7 need to be completed based upon the tribe(s) and reservation covered.

C. Definitions

The definitions are set out in alphabetical order and most of these definitions are self-explanatory with the following exceptions:

The definition for "extended family" needs to be filled out according to the tribal customs and traditions. Two possible definitions are as follows:

1. "A person who has reached the age of eighteen (I 8) and who is the child's parent, grandparent, aunt or uncle, brother or sister, brother-in-law, or sister-in-law, niece or nephew, first or second cousin, or stepparent."
2. "Mother, father, aunt, uncle, cousin, grandparent, great aunt, great uncle, great grandparent, and relatives by marriage."

The definitions for "Court" or "Children's Court," "Juvenile Officer," "Reservation," "Tribal Council," "Tribal Court" and "Tribe" need to be completed with the appropriate information.

Chapter 2-2 Jurisdiction

This chapter sets forth a broad range of children's court jurisdictions. Note that this chapter provides for jurisdiction over the child and the extended family including any non-Indians. Some tribes may be restricted by the tribal Title and/or constitution with regard to civil jurisdiction over non-Indians.

Chapter 2-3 Transfer of Jurisdiction

This chapter provides for transfer of jurisdiction to other courts and from other courts. Section 2-3A provides that the policies of the Indian Child Welfare Act (ICWA) may be applied by the children's court as long as they do not conflict with the provisions of this Title. Further, the section provides that the ICWA procedures for state courts are not binding unless specifically provided for in the Title. Section 2-3B allows for transfer to an appropriate state or tribal court as long as the transfer would be in the best interests of the child. Section 2-3C allows the court to accept or decline transfers. Section 2-3D sets out procedures for transfers from state courts under ICWA (note that a department other than social services can be designated for receipt of notice and other provisions as appropriate). Section 2-3E sets forth guidelines for full faith and credit (the enforcement of another court's order) and conflicts of law. Different procedures are established for state and tribal court orders and the vital tribal interest in tribal members is established.

Chapter 2-4 Procedures and Authorizations

This chapter establishes the rules of procedure for the children's court. It also provides authority for the court to utilize social services agencies and enter into cooperative agreements, grants and contracts. The flexibility set forth in this chapter is necessary for the court to be able to use all possible resources to meet the needs of the children and families who appear before the children's court. (In addition, if the children's court is to be considered a tribal organization under P.L. 93-638, it could be set out in this chapter.)

As currently drafted, the Title makes this authority subject to the approval of the tribal council if it involves an expenditure of tribal funds. This restriction may not be necessary if the administrative structure of the tribe provides for children's court control over their budget.

Chapter 2-5 Children's Court Personnel

A. Children's Court Judge

This subsection establishes that children's court judges shall be treated in the same manner as tribal court judges with regard to appointment, qualifications, powers and duties, and disqualification or disability. Rather than include separate sections in this Title with regard to the contempt power, the power to issue arrest or custody orders and the power to issue search warrants, the Title simply provides that judges of the children's court shall have the same duties and powers as tribal court judges with regard to these and other duties and powers.

(Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

B. Juvenile Counselor/Juvenile Probation Officer

This Title uses the title "juvenile counselor" for the person who performs the duties and responsibilities set forth in this section. However, it is made clear both in this section and in the definitions section that the persons carrying out these duties and responsibilities may be labeled "juvenile counselor," "juvenile probation officer," or any other title which the court finds appropriate.

This subsection establishes that "the court" shall appoint the juvenile counselor(s) and that the Court Administrator of the tribal court shall certify annually to the tribal council the number of qualified juvenile counselor(s) needed. If the appointment and reporting procedures are handled differently for a specific tribe, these provisions should be modified accordingly. Additionally, a provision requiring budgetary primacy for the children's court could be inserted here.

(Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

C. Juvenile Presenter

This Title uses the title "juvenile presenter" for the person who performs the duties and responsibilities set forth in this section. The title "juvenile presenter" is used to avoid confusing juvenile proceedings and child/family protection proceedings with adult criminal proceedings. However, it is made clear both in this section and in the definitions section that the person carrying out these duties and responsibilities may be labeled "juvenile presenter" or "juvenile presenting officer" or "juvenile petitioner" or any other title the court finds appropriate.

This section establishes that "the court" shall appoint the juvenile presenter(s) and that the **court administrator** of the tribal court shall certify annually to the tribal council the number of qualified juvenile presenters needed." If the appointment and

reporting procedures are handled differently for a specific tribe, these provisions should be modified accordingly.

(Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

D. Guardian Ad Litem

This section authorizes the court to appoint a guardian ad litem. A tribe should consider the possibility of mandating guardians ad litem at least in certain proceedings such as termination of parental rights proceedings.

(More specific provisions concerning guardians ad litem could be set out in this section.)

E. Additional Court Personnel

This section gives the Court wide latitude in appointing additional court personnel whenever the court decides that it is appropriate to do so.

(More specific provisions concerning these positions could be set out in this section.)

Although the Indian Civil Rights Act only provides that a defendant is entitled to counsel "at their own expense," a number of tribes provide defense advocates without charge, at least for persons who cannot afford council. If the tribe provides defense advocates or juvenile advocates, the Title should probably be modified to also include a section setting forth the provisions for the appointment, qualifications, and duties of juvenile advocates.

Chapter 2-6 Protective Services Workers

This chapter sets out the powers and duties and limitations upon protective services workers. A protective services worker can be employed by a social services agency, a law enforcement agency or a hybrid of the two agencies. If a specific title or department is responsible for these duties in a specific tribe, that agency should be identified in this chapter. (This chapter has been adopted from the Navajo Nation Children's Title.)

Chapter 2-7 Child Protection Team

This chapter is taken directly from the Bureau of Indian Affairs (BIA) Child Protection Team guidelines. Child protection teams are so vital that it is important to include guidelines in the tribal Title.

According to the BIA guidelines, each local CPT should be composed of, but not limited to, members from the following agencies:

BIA	IHS
Social Services Law Enforcement Judicial Services Education	Social Services Mental Health Rep. And/or Physician Community Health Nurse
TRIBAL	OTHER
Tribal Judicial Services Tribal Education Tribal Police Tribal Social Service Programs	State/County Social Services

However, in order to assure effective group interaction, it is suggested in the memo that membership should be limited to eight or less. Other agency representatives may serve as resources for the CPT. Confidentiality is a vitally important issue to address at the onset of the CPT's development. Confidentiality shall be maintained and the tribal Title or relevant federal law will be the basis for any legal action required in response to a child abuse/neglect referral.

Chapter 2-8 Duty to Report Child Abuse and Neglect

This chapter sets forth a mandatory reporting law. It establishes a duty to report suspected abuse or neglect, specifies persons required to report, allows anonymous reports, establishes immunity for good faith reports, provides a civil cause of action against specified persons who fail to report (civil rather than criminal penalty so that the court can exercise jurisdiction over non-Indians due to Oliphant prohibition against criminal penalties for non-Indians), sets forth written report requirements, and provides for a central registry.

The Federal Child Abuse Prevention and Treatment Act, P.L. 93-247 (amended in P.L. 95-266), contains specific requirements that states must fulfill to receive federal money under the Act. Two of these requirements are that they have a mandatory reporting law and that there is immunity for good faith reporting. Tribes do not have to follow the

requirements of the Act but if reporting is to be mandated it is necessary that the Tribe have a mandatory reporting law.

The BIA child protection team guidelines set forth the following requirements for reporting child abuse and neglect:

Mandatory Reporting: All IHS, Bureau and Tribal contract employees shall report any known or suspected instances of child abuse and neglect to the designated law enforcement/social services staff in their respective communities. This is necessary in order to prevent child abuse and neglect referrals from "falling through the cracks" due to insufficient coordination between IHS, Bureau provided services, tribally contracted programs, or if applicable, state programs.

Note that sections 2-8A and 2-8G provide that the report shall be made to the tribal social services department and/or tribal law enforcement department and that one of these departments is responsible for maintaining the central registry. Before enacting a child protection Title, the tribe should determine which agency is the primary agency for reporting and registry purposes. The resulting policy should be clearly explained to the appropriate agencies and the community. It should also be clearly set out in this Title.

Chapter 2-9 Investigation and Removal

This chapter sets forth requirements for investigation and removal, including investigation, authority to remove, grounds for emergency removal, and power to remove.

The BIA child protection team guidelines set forth the following requirements concerning investigation:

Timeframes for Investigation: All child abuse and neglect (CA/N) investigations referred to the BIA shall be initiated within 24 hours of referral. All investigations shall be jointly referred to the Division of Law Enforcement and the Division of Social Services. Primary responsibility will be assigned to one of the offices with the concurrence of the Superintendent. If BIA Social Services staff are not available, IHS Social Services staff may be asked to investigate or assist with the investigation of a CA/N referral with the concurrence of the IHS Service Unit Director. The attached CPT Intake form will be completed on all referrals by Bureau personnel (see BIA guidelines). Prior to initiating a joint investigation, the assigned Bureau Law Enforcement Officer (LEO) and Social Service Worker (SSW) shall coordinate with each other, and request from the other, any additional information that may be available.

Within 72 hours of initiating an investigation, the investigating LEO or SSW should review their findings with the other Division and/or the Child Protection Team.

Chapter 2-10 Notice of Removal

This chapter establishes requirements for notice of removal to the children's court and the parents, guardian, or custodian.

Chapter 2-11 Restrictions on Placement of Children

This chapter establishes restrictions on the placement of children. In particular, it provides that, a child, alleged to be neglected or abused, shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders." This provision is necessary to comply with the requirements of the Juvenile Justice and Delinquency Prevention Act.

The Juvenile Justice and Delinquency Prevention Act of 1974 as amended (P.L. 96-509) provided that (1) juvenile status offenders and non-offenders are not to be placed in secure detention facilities; (2) suspected or adjudicated juvenile delinquents are not to be detained or confined in facilities allowing regular contact with incarcerated adults; and (3) that no juvenile is to be detained or confined in any jail or lock-up for adults by 1985 except in low population density areas or where appropriate facilities are unavailable. Many tribal juvenile justice systems have had difficulty meeting the requirements of this Act.

The specific provisions of the Juvenile Justice Delinquency Prevention Act are as follows:

Section 223 (a) (12)(A) providing that juveniles who are status offenders or non-offenders such as dependent or neglected children "shall not be placed in secure detention facilities or secure correctional facilities";

Section 223 (a)(I 3) providing that juveniles suspected or judged to be delinquent according to Section 223(a)(12)(A) "shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges"; and

Section 223(a)(14) providing that within five years of the Juvenile Justice Amendments of 1980 becoming law, that "no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (1 3), where no existing acceptable alternative placement is available."

Chapter 2-12 Filing Child/Family Protection Petition

This chapter establishes authorization, time limitations and contents for child/family protection petitions.

Chapter 2-13 Initial Hearing

This chapter sets out the procedures for the initial hearing, including hearing date, purpose, advise of rights, nature of hearing, possible outcomes of initial hearing, notice of initial hearing and unresolved issues.

Chapter 2-14 Notification of Rights

This chapter establishes certain rights of which parties must be notified in all hearings under this Title.

Chapter 2-15 Thirty (30) Day Hearing

This chapter establishes purpose and hearing procedures for a hearing within thirty (30) days of the initial hearing to reassess whether continuing court intervention is necessary to protect the well-being of the child.

Chapter 2-16 Formal Trial on the Issues

This chapter establishes the procedures for the formal trial on the issues, including time limitation, admissibility, closed hearing, advise of rights, child witnesses, burden of proof, outcome of hearing, return to home, grounds for continuing removal from the home, court order for continuing removal, return of child to parent, out of home placement and written order.

Section 2-16E allows the court to establish special procedures for child witnesses such as testimony videotaped depositions or closed circuit television. These procedures have been suggested in order to protect the child from further trauma as a result of the courtroom process. This goal, however, must be balanced with the right of the accused to full due process under the Indian Civil Rights Act. If the court decides to utilize any of these special procedures, it is recommended that the court set out in the record the individual circumstances of the case which require the use of these special procedures. Moreover, the court should take a close look at the U.S. Supreme Court's 1988 decision in *Coy v. Iowa*, 56 U.S.L.W. 493 1.

Chapter 2-17 Notice of Formal Trial on the Issues

This chapter establishes procedures for notice of the formal trial on the issues, including summons, attachments to summons, personal service, mail service, notice to extended family, service of summons, publication and contempt warning.

Chapter 2-18 Default Judgment

This chapter establishes procedures for default, judgments, including when appropriate, notice determination, and written order.

Chapter 2-19 Six (6) Month Review

This chapter sets forth the requirement for a review every six (6) months and procedures for the hearing.

Chapter 2-20 Social Services Report

This chapter sets out the requirement of a social study or studies and the contents of the study. The social study should be prepared before all review hearings, including initial hearing, thirty (30) day hearing, formal trial on the issues, and sixty (60) day review hearings.

Chapter 2-21 Placement Preferences

This chapter requires that the child shall be placed in the least restrictive setting and establishes a listing of preferences. These preferences are provided only as a guide for the court. The court is not strictly bound to follow them if a strict following of the preferences would be inappropriate.

Chapter 2-22 Emancipation

This chapter provides that a child over the age of sixteen (16) may be granted emancipation status if the court finds that the child is capable of functioning as an independent and responsible member of the community.

Chapter 2-23 Authorization of Medical Treatment

This chapter establishes procedures for medical treatment authorization if the parent is unavailable or the child's life is endangered.

Chapter 2-24 Foster Home Licensing Procedures

This chapter establishes foster home licensing procedures, including inspection and licensing, foster home requirements, the foster family and the foster child.

Under the placement priorities established in the Indian Child Welfare Act, 25 U.S.C. 1915(b)(ii), a state court must place an Indian child in a tribally-licensed foster home if no extended family placement can be found. As long as the state court judge made the placement, the county would be obliged to pay the foster care stipend.

The specific ICWA provision is as follows:

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In my foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with - (i) a member of the Indian child's extended family-, (ii) a foster home licensed, approved, or specified by the Indian child's tribe;...

Since the county would be relieving the financial burden caused by the child, such an arrangement would benefit the foster parent. More importantly, it would strengthen tribal sovereignty because the tribe, rather than the state, would dictate where its own children were placed.

Since the authority of the tribe to adopt these licensing standards is grounded upon its own inherent sovereignty and not upon a grant of authority from the state, the tribe's licensing standards would not have to conform to state standards. The tribe could develop independent standards which reflected tribal concerns and values. The primary concerns of the state and the tribe will both revolve around the needs of the child but the tribe will be able to define for itself how those concerns should be met.

The Indian Child Welfare Act provides that tribes and states can enter into mutual agreements with respect to the care and custody of Indian children and jurisdiction over child custody proceedings (see 25 U.S.C. 1919). Development of tribal foster care guidelines could serve as a firm foundation for a more comprehensive tribal/state agreement.

The important aspects are that licensing Indian foster care homes will ease the burden of child placements, will strengthen tribal sovereignty and, most importantly, will not cost tribes a significant amount of money to implement.

Chapter 2-25 Guardianship

This chapter sets out guardianship procedures for both children and incompetents, including general guidelines, types of guardianship, guardianship of property, permanent guardianship, temporary guardianship, management of property, and incompetent persons.

The concept of permanent guardianship (section 2-25D) should be particularly noted as an alternative to termination of parental rights and adoption. Permanent guardianship is being tried by a number of tribes throughout the country. It provides permanent custody of a child to someone other than the birth parents, although there is no termination of the birth parents' parental rights.

The terms of the permanent guardianship should be spelled out in a formal contract signed in court. The contract specifies what responsibilities the guardians will undertake and those that the parent(s) will retain. Responsibility for physically caring for the child becomes that of the permanent guardian. Assignment of other responsibilities will vary case by case and state by state. The child, however, legally remains the child of its birth parents.

How easily a permanent guardianship contract can be terminated is not clear. Section 2-25D deals with the issue of termination as follows: "There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s)."

The tribe may also decide to establish guardianship preferences (see sections 2-2 1 B and 2-27I of this Title, and section 1915 of the Indian Child Welfare Act.)

Chapter 2-26 Termination of Parental Rights

This chapter establishes procedures for termination of parental rights, including purpose, grounds for involuntary termination, prefiling requirements, who may file termination petition, relinquishment of parental rights, contents of termination petition, notice, pretermination report, hearing procedures, burden of proof, findings of fact and conclusions of law, result of termination order, child's continued rights to benefits, custody after termination order, and future review hearings.

When legal custody is allowed to someone other than the parent, the parent still has some rights including the right of visitation, the right to consent to adoption, and the duty to support. However, termination of parental rights automatically cancels all legal ties between the parent and child.

The court is not concerned with the acts of the child but, rather, with the acts or failure to act by the parent. Because of this and the severe consequences of termination, the court

must insure that all legal rights of the parents are protected. The court cannot allow itself to be overly persuaded by the desire to "rescue" every child or "punish" every parent simply because it is the judge's personal opinion that the parents are less than desirable. The court must balance the best interests of the child with the legal and cultural rights of a parent to the care and custody of the child.

These proceedings should not be confused with adoption proceedings. Termination of parental rights must be completed prior to adoption, but the adoption itself must be a separate proceeding or separate portion of the hearing.

The legal concept of termination of parental rights may come into conflict with tribal customs and traditions. Consequently, it may be necessary for an individual tribe to modify or even totally eliminate this chapter.

The Indian Child Welfare Act established strict procedures with regard to state court termination of parental rights proceedings as follows:

1912(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

1913. Parental rights, voluntary termination -- Consent; record; certification matters; invalid consents

(a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid....

Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody.

(b) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

Although this Title includes many of the ICWA procedures, we did not include all of the procedures because it is assumed that a tribal court would generally be more protective of the parents' rights and tribal customs and traditions. A specific tribe, however, may choose to incorporate more of the ICWA protections (such as proof beyond a reasonable doubt and withdrawal of consent procedures) into this chapter.

Chapter 2-27 Adoptions

This chapter establishes adoption procedures, including open adoptions, consent to adoption, execution of consent to adopt, who may file adoption petition, contents of adoption petition, notice, homestudies, withdrawal of consents, adoption preference, hearing procedures, and adoption decree.

Adoption is a social and legal process creating new relationships while the legal relationship between the child and the biological parents is severed. Society's policy is that adoption should be a positive process which makes family life possible for the child whose parents cannot or choose not to rear him. A child needs a sense of permanency, especially after the child's parents have had their parental rights terminated. A policy expressing commitment to serve all children for successful adoptions including those of older children, minority children, handicapped (physical, emotional and mental) children and children who need to be with siblings should be the basis of all adoptions.

A positive attitude toward addressing all the needs of all adopted children has been developed in the Model State Adoption Act and Model State Adoption Procedures. The Model State Adoption Act and Model State Adoption Procedures were drafted, pursuant to the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, P.L. 95-266. This Model Act and Procedures recognize Tribes and the Indian Child Welfare Act. A tribe may wish to look at this Model Act when adding a tribal adoption section to their children's Title.

The concept of open adoption set forth in section 2-27A is being used for a high percentage of Indian children being placed in adoptive homes. In an open adoption, a child is legally placed in an adoptive home, but the adoptive agreement through which the child is relinquished includes a provision that the birth family has the right to retain contact with the child. The type and extent of contact is often spelled out. It may be limited to an exchange of letters or it may provide for periodic, or even more ongoing, visitation.

Indian families are generally more comfortable in consenting to adoption if they can be assured that they may maintain contact with the child. This is helpful in situations where extended family members don't want to lose a child but are, at the same time, unable to parent the child themselves.

A serious problem is being encountered with some open adoptions, however. The adoption laws of most states do not provide a means for enforcing the contact terms of an

open adoption. Even though a contact agreement may be signed, if the adoptive family changes its mind, in many states there is no legal means to make the family keep its agreement except possibly contempt of court for violation of court order.

Section 2-171 establishes general adoption procedures, but a tribe should carefully examine these references to determine if they correspond with the tribe's customs and traditions. (Also, refer to section 2-21B of this Title and section 1915 of the Indian Child Welfare Act.)

Chapter 2-28 Modification, Revocation or Extension of Court Order

This chapter establishes procedures for modification, revocation or extension of court orders.

Chapter 2-29 Child/Family Protection Records

This section sets forth provisions with regard to children's court records, law enforcement records, and social services records. The primary objective of this chapter is to ensure confidentiality of all children's court, law enforcement, and social services records concerning child/family protection proceedings. The free access given to the child; the child's parent, guardian or custodian; and the child's counsel is necessary to ensure that the parent, guardian or custodian can prepare an adequate defense, correct false information, and prepare alternative recommendations. Access to these records is limited to those children's court, law enforcement, and social services personnel who are "directly involved in the handling of the case". (The tribe may also decide to include provisions concerning the destruction of some child abuse and neglect records when the child reaches the age of eighteen (18) years old.)

Chapter 2-30 Children's Court Appeals

This chapter sets out procedures for children's court appeals, including who can appeal, time limit for appeal, record, stay of appeal, and conduct of proceedings.

