

**SAC AND FOX NATION TRIBAL CODE
TITLE 20 ARTICLE 1**

**TITLE 20
JUVENILE PROCEDURE**

**ARTICLE 1
GENERAL PROVISIONS**

Section 101. Purposes

This Title shall be construed and interpreted to fulfil the following purposes:

- (a) To secure the care, protection, and mental and physical welfare of children coming within the provisions of this Title;
- (b) To preserve and retain the unity of the family and to carry out the other purposes of this Title in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or the safety and protection of the community;
- (c) To distinguish, in judicial and other processes affecting children coming within the provisions of this Title, between the child who has committed a delinquent act and the child in need of services, and to provide appropriate and distinct dispositional options for these children and their families;
- (d) To remove from children committing delinquent acts the legal consequences of criminal behavior, and to substitute therefore, programs of supervision, treatment, and rehabilitation, which:
 - (1) Hold them accountable for their actions;
 - (2) Provide for the safety and protection of the community; and
 - (3) Promote the development of competencies which will enable them to become responsible and productive members of the community;
- (e) To set forth procedures through which the provisions of this Title are to be executed and enforced, while ensuring the rights of the parties are recognized and protected; and
- (f) To coordinate services for children and their families, with an emphasis on prevention, early intervention, diversion, and community-based alternatives.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §101]

Section 102 Definitions

- (a) "Abandon" means that a parent leaves a child without adequate communication to another responsible adult or fails to support a child and there is no indication of the parent's willingness to assume his/her parental roles for a period exceeding two (2) years.
- (b) "Abuse" means the act or omission in one of the following categories, which seriously threatens the health or welfare of a child.
 - (1) Any case in which a child exhibits evidence of skin, bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue

swelling, or death, and such condition or death is not justifiably explained or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence.

(2) Any case in which the child is subject to sexual assault or molestation.

(3) Any case in which the child's parents, legal guardians, or custodians fail to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.

(4) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be reasonable exercise of parental discipline.

(c) "Adjudicatory Hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in need of supervision, in need of care, or delinquent filed pursuant to this Act are supported by evidence.

(d) "Adult" means a person who:

(1) is eighteen (18) years of age or older; and

(2) is not a "child" as defined herein.

(e) "Child" means a person who:

(1) is under eighteen (18) years of age; or

is eighteen (18) years of age or older and:

(A) is alleged, or found by the Juvenile Court, to have committed a delinquent act; and

(B) comes or remains within the jurisdiction of the Juvenile Court under the provisions of this title.

(f) or "Child-in-Need-of-Care" or "Neglected child" or "Dependent Child" means a child:

(1) Whose parent, guardian, or custodian has subjected him/her to mistreatment or abuse, or whose parent, guardian, or custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse or prevent it from recurring; or

(2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or custodian;

(3) Whose environment is injurious to his/her welfare; or

(4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his/her health, guidance, or well-being, whether because of the fault of the parent, guardian, or custodian, or because the parent, guardian, or custodian does not have the ability or resources to provide for the child; or

(5) Who is homeless, without proper care, or not domiciled with his/her parent, guardian, or custodian, due to without the fault of his/her parent, guardian, or custodian; or

(6) Whose parent, guardian, or custodian has abandoned him/her without apparent intent to return, or who has placed him/her informally with another person, and has not

contributed to the support of the child or established personal contact with the child for a period in excess of six (6) months; or

(7) Has no parent(s), guardian, or custodian available and willing to care for him/her; or

(8) Has been sexually abused; or

(9) Has committed delinquent acts as a result of parental pressure, guidance, or approval; or

(10) Has been emotionally abused or neglected.

(g) “Child-in-need-of-services” means any child under the Juvenile Court’s jurisdiction that has been adjudicated as a child-in-need-of-care, a child-in-need-of-supervision, or a delinquent child.

(h) “Child-in-need-of-supervision” means any child:

(1) who has repeatedly disobeyed reasonable and lawful commands or directives of his/her parent, legal guardian, or custodian; or

(2) who is willfully and voluntarily absent from his/her home without the consent of his/her parent, guardian, or custodian for a substantial period of time, or without intent to return; or

(3) who departs him/herself so as to injure or seriously endanger the morals or health of him/herself or others; or

(4) who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.

(5) Is a runaway as defined by Subsection (y) of this Section.

(i) “Custodian” means an adult entrusted with the temporary physical care, custody and control of a child by the child’s parent, or otherwise entrusted with the custodial, personal or financial care of a child under tribal custom.

(j) “Court” means the Sac and Fox Nation Tribal Court.

(k) “Delinquent Child” or “Juvenile Offender” means a child who has committed a Delinquent Act.

(l) “Delinquent Act” means an act committed by a child that would be a criminal violation of Sac and Fox Nation Criminal Offenses Code if committed by an adult.

(m) “Department” means the Tribal Department of Social Services.

(n) “Detention” means the placement of a minor in a restrictive facility.

(o) “Dispositional Hearing” means a hearing held after an adjudication hearing has found a child to be a child-in-need-of-services, in which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment. Such hearing may be part of the adjudication proceeding or held at a time subsequent to the adjudication hearing.

(p) “Extended Family” means a child’s grandparents, great grandparents, aunts and uncles, great aunts and great uncles, brothers and sisters, brothers-in-law and sisters-in-law, nieces and nephews, first and second cousins, and stepparents.

(q) “Grandparent” means the biological or adopted parent of the child’s adopted or biological parent.

(r) “Grandchild” means the biological or adopted child of the person’s biological or adopted child.

(s) “Guardian” means a person other than the minor’s parent who is by law responsible for that minor.

(t) “Guardian ad Litem” means an individual appointed by the Juvenile Court to represent the best interests of the child in proceedings conducted pursuant to the provisions of this title.

(u) “Juvenile Presenting Officer” (or “Juvenile Prosecutor”) means the attorney who shall represent the Tribe in all proceedings before the Juvenile Court.

(v) “Neglect” means the acts which can reasonably be construed to fall under the definitions of abuse as defined in this section.

(w) “Parent” means:

(1) subject to the provisions of subsection (2), all biological or adoptive parents of the child, whether singular or plural; and

(2) shall not include a person whose parental rights have been legally terminated, nor an unwed father whose paternity has not been acknowledged or established.

(x) Protective Supervision means a legal status created by Court order under which the child is permitted to remain in his/her own home under the supervision of the Juvenile Court through the Department of Social Services during the period during which treatment is being provided to the family by the Department of other agency designated by the Court.

(y) Runaway means a child who:

(1) has intentionally abandoned a placement ordered by the Juvenile Court or another court having jurisdiction over the child;

(2) has intentionally and repeatedly violated an order of the Juvenile Court directing the child to remain at the child’s home or legal residence at specified times or under specified circumstances; or

(3) without good cause and without the consent of his or her parent, guardian or custodian, is intentionally absent from the child’s home or legal residence:

(A) with the intent to abandon the child’s home or legal residence;

(B) for a period of more than twelve (12) hours;

(C) between the hours of 8:00pm and 5:00am; or

(D) in circumstances presenting a substantial risk to the health, welfare, person or property of the child or others.

(z) Shelter means a facility for the temporary care of a child in physically unrestricting facilities pending Court disposition, or execution of a Court order for emergency or temporary placement.

(aa) Secure Juvenile Detention Facility: Any public or private facility which includes construction fixtures designed to physically restrict the movements and activities of children detained therein.

(bb) Transfer proceeding means any proceeding in the Tribal Court to grant, accept, or decline transfer of any children’s case or to the courts of any Indian tribe or state whenever such transfer is authorized by tribal, federal, or state law.

(cc) Tribal Court means the adult court for the Sac and Fox Nation

(dd) Truant: The term “truant” as used in this title means a child who has had:

(1) three (3) unexcused absences from school within a single month; or

(2) six (6) unexcused absences from school within a single school year.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §102]

Section 103. Juvenile Court – Name

There is hereby established within the Tribal Court, a Juvenile Court whose powers and duties are set forth in this Act. The Sac and Fox Nation Juvenile Court is hereinafter referred to as the Juvenile Court. Any judge of the Court may hear cases in the Juvenile Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §103]

Section 104. Place of Sitting.

The Juvenile Court shall maintain offices and sit in the same place the Tribal Court sits.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §104]

Section 105. Juvenile Court – Jurisdiction

The Juvenile Court shall have personal, subject matter, and territorial jurisdiction, to the extent permitted under the Constitution and Laws of the Sac and Fox Nation, in all matters in which:

- (a) An Indian child is alleged to have committed a delinquent act within the external boundaries of the Sac and Fox Nation Reservation; or
- (b) An Indian child residing or domiciled on the Sac and Fox Nation Reservation is alleged to be a child in need of services or a truant.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §105]

Section 106. Juvenile Court – Relations with Other Agencies

The Juvenile Court:

- (a) Is authorized to contract and cooperate fully with any tribal, federal, state, public or private agency in order to participate in diversion, care, placement rehabilitation or training programs to carry out the purposes of this code;
- (b) May utilize such social services as may be furnished by any tribal, federal or state agency; and
- (c) May accept or decline transfers from other tribal or state courts for the purposes of adjudication or disposition of children alleged to have committed delinquent acts or to be children in need of services.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §106]

Section 107. Standard of Proof.

Wherever the Juvenile Court is required to make findings under the provisions of this Title, and the standard of proof for such finding is not specified under the provisions of this law or other applicable law, the standard of proof shall be a preponderance of the evidence.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §107]

Section 108. Scheduling of Hearings.

All hearings conducted pursuant to the provisions of this Title shall be closed to the public and shall be scheduled, to the extent possible:

- (a) On a calendar or in a location separate from hearings before the Tribal Court; and
- (b) So as to assign the highest priority to cases in which the child is detained in a secure detention facility.

Nothing in this Section prevents current members of the Tribal Council of the Sac and Fox Nation, acting in their official capacities, from attending any hearing before the Juvenile Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §108]

Section 109. Rules of Procedure.

Proceedings before the Juvenile Court shall be governed by the rules of evidence and procedure which govern the proceedings before the Tribal Court, to the extent that such rules are not in conflict with the provisions of this Title.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §109]

Section 110. Calculation of Time Limits.

(a) Subject to subsection (b) below, all time limits set forth in the provisions of this title shall be measured in calendar days, inclusive of weekends and holidays, unless otherwise specified.

(b) If, under the provisions of this Title, the time limit for any action would otherwise expire on a weekend or holiday, the time limit for such action shall be extended to the next business day.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §110]

Section 111. Parties.

- (a) Juvenile Offender/Delinquency: In proceedings on petitions alleging a minor to be a juvenile offender, the parties to the action are the minor and the Tribe.
- (b) Child-in-need-of-care, child-in-need-of-supervision: parties to the action are the parents, guardian, or custodian, the Tribe, and the child.
- (c) Termination of Parental Rights: parties to the action are the parents, guardian, or custodian, the Tribe, and the child.
- (d) Adoption: In proceedings on petitions to adopt, the parties are the prospective parents, the Tribe, if the child is a ward of the Court, and the minor.
- (e) Guardian ad Litem: In proceedings where the Court has appointed a guardian ad litem, the guardian ad litem shall become a party.
- (f) Intervention. Upon written motion, the Court may permit a person to intervene and become a party to the action as follows:
 - (1) The parent, guardian, or custodian may be permitted to intervene in juvenile offender proceedings;
 - (2) The parent, guardian, or custodian who is not alleged to have committed the offense against the minor may be permitted to intervene in a child-in-need-of-services or termination proceedings.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §111]

Section 112. Court Support Staff

- (a) Social Service Workers' duties shall include, but not be limited to:
 - (1) Identify and develop resources within the Sac and Fox Nation designed to enhance each child's potential as a viable member of the Tribal community.
 - (2) Identify any state resources available to assist in the care of children-in-need-of-services.
 - (3) Investigate, in cooperation with law enforcement, as provided in this Code or as directed by the Court.
 - (4) Prepare affidavits to assist the Presenting Officer in making petitions to the court.
 - (5) Make reports to the Court as provided in this Code or as directed by the Court.
 - (6) Coordinate with Juvenile Probation and Law Enforcement to provide resources to children-in-need-of-services.
 - (7) Perform such other duties in connection with the care, custody, or transportation of children-in-need-of-services as the Court may require.
- (b) Presenting Officer's duties shall include, but not be limited to:
 - (1) Make investigations as provided by this Code or as directed by the Court.
 - (2) File petitions with the Court as provided by this Code.
 - (3) Represent the Tribe in all proceedings under this Code;
 - (4) Perform such other duties as the Court may order.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §112]

Section 113. Expenditure of Funds.

The Chief Judge of the Court is authorized to receive and expend any funds which may become available from the Federal or state governments or any subdivisions thereof to carry out any of the purposes of this Code, and to this end, the Chief Judge may meet any lawful federal or state requirements not in conflict with this Code or contrary to the jurisdictional rights and sovereign status of the Sac and Fox Nation Tribal Court which may be conditions precedent to receiving such funds.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §113]

Section 114. Required Findings by a Court for Removal

An order removing a child from his/her parents or legal guardian under this Title, including orders for temporary emergency removal, shall only be entered upon the Court making the following determinations:

- (a) That an imminent safety threat exists and continuation in the home of the minor is contrary to the welfare of the minor; and either
- (b) Reasonable efforts have been made to prevent the removal of the minor from the parental home; or
- (c) Reasonable efforts are not required for a reason set forth in Section 115.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §114]

Section 115. Reasonable Efforts

- (a) The Department of Social Services shall make reasonable efforts to do the following:
 - (1) Maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured;
 - (2) Effect the safe reunification of the child and family if temporary out-of-home placement is necessary to ensure the immediate safety of the child; and
 - (3) Make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.
- (b) In determining reasonable efforts, the child's health and safety is the paramount concern.
- (c) If continuation of reasonable efforts is determined to be inconsistent with the permanency plan of the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(d) Reasonable efforts to prevent a child's removal from his/her home or reunify the child with his/her family are not required if the Court makes a judicial determination that such efforts are not required for any of the following reasons:

(1) A court of competent jurisdiction has determined that the child's parent, guardian, or custodian has subjected the child to abandonment, torture, chronic abuse, sexual abuse, or circumstances making it necessary for an Emergency Custody Order.

(2) A court of competent jurisdiction has determined that the child's parent, guardian, or custodian has:

(A) Committed murder of another child of that parent;

(B) Committed voluntary manslaughter of another child of that parent;

(C) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(D) Committed a felony assault that results in serious bodily injury to the child or to another child of the parent.

(3) The parental rights of the parent to a sibling of the child have been terminated involuntarily.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §115]

Section 116. Indian Child Welfare Transfers from Tribal Courts

(a) Any Tribal Court may transfer to the Juvenile Court herein any children's case concerning any child who is a member or eligible for membership in the Tribe, or whose parents or guardian reside within the jurisdiction of the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.

(b) The Juvenile Court shall determine whether the transfer to the Tribe's jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Tribe after an order of transfer is received by the clerk of the court. In making such determination, the Court may consider the following:

(1) Whether the child or his/her family will be in need of special services for physical or mental disease or defect which the Tribe and its resources are unable to adequately provide; and

(2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept jurisdiction until after the jurisdiction is completed; and

(3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.

(c) A tribal court transferring a case to the Tribe's jurisdiction under subsection (a) of this section shall transmit all documents and legal and social records, or certified copies thereof, pertaining to the case to the Juvenile Court, which shall proceed with the case as if a petition has been originally filed or the adjudication was originally made in the Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §116]

Section 117. Child Welfare Transfers to Tribal or State Courts.

(a) The Juvenile Court, in its discretion, is authorized to transfer any child's case arising within the Tribe's jurisdiction to the court of the child's Indian tribe if the child is not a member or eligible for membership in the Tribe, the courts of the state where the child is a resident or domiciled, upon the petition of the Tribal prosecutor, either parent, a custodian or guardian, the child's tribe, or an appropriate official of the child's state.

(b) In making such transfers, the Juvenile Court may consider:

- (1) The best interests of the child;
- (2) Any special needs or mental or physical disease or defects of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs;
- (3) If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;
- (4) Emotional, cultural, and social ties of the child and its family; and
- (5) The likelihood that the same child and family would return again to the Tribe's jurisdiction within reasonable time and come before the Juvenile Court again.

(c) Upon entering an order transferring a case as provided in this section, the Court shall serve a certified copy of the order of transfer, the legal case file, and any social or police reports concerning the child's case to the clerk of the court of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §117]

Section 118. Non-delinquency Proceedings

(a) No adjudication upon the status of any child coming within the jurisdiction of the Juvenile Court shall be deemed a conviction of a crime.

(b) Neither the adjudication nor disposition of any child in accordance with the provisions of this Title, nor any evidence admitted in a hearing before the Juvenile Court shall be admissible as evidence against the child in any proceeding in another court, including the Tribal Court.

(c) The admission of a parent, guardian, or custodian in an adjudication for a child-in-need-of-care before the Juvenile Court shall not be construed as an admission of guilt for a criminal proceeding for the parent, guardian, or custodian in an adult criminal proceeding, as the burden of proof in a criminal proceeding is proof beyond a reasonable doubt.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §118]

Section 119. Prosecution; Criminal Charge or Juvenile Court Petition; Determinations; Considerations.

In cases where a child may be charged, when the juvenile is under the age of sixteen (16) years, the Prosecutor shall, in making the determination whether to file a criminal charge or Juvenile Court petition, consider the following:

- (a) The type of treatment available and amenable to the juvenile;
- (b) Whether there is evidence that the alleged offense included violence or was committed in an aggrieve and premediated manner;
- (c) The motivation for the commission of the offense;
- (d) The age of the juvenile and the ages and circumstances of any others involved in the offense;
- (e) The previous history of the juvenile, including whether he/she had been convicted of any previous offenses or adjudicated in Juvenile Court, and, if so, whether such offenses were crimes against the person or relating to property, and patterns of violence;
- (f) The sophistication and maturity of the juvenile as determined by his/her home environment, school activities, emotional attitude, desire to be treated as an adult, and any previous contact with law enforcement agencies;
- (g) Whether the best interests of the juvenile and the security of the public may require that the juvenile continue in custody or under supervision for a period of time extending beyond his/her minority and if so, the available alternatives best suited to this purpose; and
- (h) Such other matters as the prosecutor deems relevant to his/her decision.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §118]

Section 120. Juveniles Charged in Criminal Court; Transfer to Juvenile Court; Procedure

(a) Before the plea is entered, or in case an offense is charged, at any time prior to or at the preliminary hearing, the Court shall advise any person who was a juvenile at the time of the commission of the alleged act charged in any court other than the Juvenile Court, that such juvenile may orally or in writing move the Court in which the charge is pending to waive jurisdiction to the Juvenile Court for further proceedings.

(b) If an offense is charged, such motion shall be filed in the Tribal Court and the hearings shall be held before commencement of trial or acceptance of a plea of guilty or no contest by the Court. The Court shall schedule a hearing on the motion within 15 days. The customary rules of evidence shall not be followed at such hearing. The prosecutor shall present the evidence and reasons why the case should be retained, and the defendant shall present evidence and reasons why the case should be transferred. The Court shall give due consideration to the criteria set forth in Section 119.

(c) In deciding the motion, the Court shall after considering the evidence and the reasons presented by the parties and the matters required to be considered by the prosecutor, transfer the case unless a sound basis exists for retaining jurisdiction.

(d) Nothing in this section shall prohibit the prosecutor from waiving any objection to such a transfer even when a complaint is filed. In such cases it shall be sufficient for the Court to sustain the motion of the juvenile without entering a finding. The Court shall set forth findings

for the reason for its decision, which shall not be a final order for the purposes of enabling an appeal. If the Court determines that the juvenile should be transferred to the Juvenile Court, the complaint may be filed in place of a petition therein. The Court making such transfer shall order the juvenile to be taken forthwith to the Juvenile Court and designate where the juvenile shall be kept pending determination of the Juvenile Court.

(e) Nothing in this section shall be construed to require more than one transfer proceeding.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §120]

Section 121. Pre-transfer Report.

Prior to the transfer hearing, a study and a report in writing shall be submitted to the Juvenile Court by the Department. Such report shall be relevant to those factors in Section 119.

(a) In any criminal case in which the offense charged is designed to protect children, the Tribal Court certifies the case to the Juvenile Court for disposition, the trial of the adult in the Juvenile Court shall be handled according to the Tribal Rules of Civil Procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interests of the Juvenile Court in any matter pending before it will be served thereby.

(b) In any case in which a child has come within the jurisdiction of the Juvenile Court, that court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed to be necessary to make proper disposition of each case, including authority to punish for contempt committed either in or out of the Court's presence.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §121]

Section 122. Exclusion of Certain Statements by an Alleged Delinquent

(a) No statements or admissions of a child made as a result of interrogation of the child by a law enforcement official concerning acts alleged to have been committed by the child which would constitute a crime if committed by an adult shall be admissible in evidence against that child unless a parent, guardian, or custodian of the child was present at such interrogation and the child and his/her parent, guardian, or custodian were advised of the child's rights to remain silent, that any statements made may be used against him/her in a court of law, the right of the presence of an attorney during such interrogation if available at no fee except that, if, to the extent such counsel is available at no fee, legal counsel representing the child is present at such interrogation, such statements or admissions may be admissible in evidence even though the child's parent, guardian, or custodian was not present.

(b) Notwithstanding the provisions of subsection (a) of this section, statements or admissions of a child shall not be inadmissible in evidence by reason of the absence of a parent, guardian, or custodian if the child is emancipated from the parent, guardian, or custodian, or if

the child is a runaway from outside the Court's jurisdiction and is of sufficient age and understanding.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §122]

Section 123. Inspection of Court Records

The following inspection rules shall apply to court records under this Title unless such inspection rights would comprise the safety and well-being of the child, parents, and family.

(a) Records of Court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of Court proceedings in formal adoptions and formal relinquishment shall be confidential and open to inspection only by Court order.

(b) With consent of the Court, records of Court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

(c) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §123]

Section 124. Law Enforcement Records

The records of law enforcement officers and the Department concerning all children's cases or children taken into temporary custody or issued a summons under the provisions of this Title shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of children taken into temporary custody or issued a summons, except:

- (a) To the victim in each case when the child is found guilty of a delinquent act;
- (b) When the child has escaped from an institution to which he/she has been committed;
- (c) By order of the Court;
- (d) When the Court orders the child be held for criminal proceedings;
- (e) When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or
- (f) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §124]

Section 125. Social Service Records

The records of Social Services concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public, including the names of children taken into custody or issued a summons, except by order of the Court when it is in the best interest of the child.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §125]

Section 126. Medical Examinations, Fingerprints, Photographs and Tissue Samples at Intake of Children Alleged to be a Child-in-Need-of-Services

- (a) Medical examination: The Court may order a medical examination for the minor.
- (b) Fingerprints:
 - (1) A child shall not be fingerprinted for purpose of identification in connection with any matter coming within the provisions of this Title, except by written order of the Juvenile Court.
 - (2) Any fingerprints authorized by the Court shall be immediately destroyed if the comparison is negative or if the minor is not referred to the Court.
- (c) Photographs: A minor may only be photographed by order of the Court and shall only be used as specified by the written Court order.
- (d) Tissue Sample: Tissue samples may only be taken by written order of the Court. Tissue samples must be immediately destroyed if the comparison is negative or if the minor is not referred to the Court.
- (e) No fingerprint, photograph, name, address, or other information concerning the identity of a child taken into temporary custody or issued a summons under the provisions of this Title may be transmitted to the FBI or any other person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the Court orders the child to be held for criminal proceedings.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §126]

Section 127. Due Process Rights

In all proceedings conducted pursuant to the provisions of this title, the parties shall have the right to due process, including:

- (a) the right to adequate notice of all proceedings, and the opportunity to be heard before an unbiased finder of fact;
- (b) the right to discovery;
- (c) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the party's own behalf;
- (d) the right to cross-examine witnesses, except in such cases as the provisions of this title expressly permit the use of hearsay testimony; and
- (e) the right to findings which are based solely upon evidence properly admitted in hearings before the Juvenile Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §127]

Section 128. Right to Counsel

(a) Neither the child nor the child's parent, guardian or custodian may waive the child's right to be represented by counsel under the delinquency provisions of this title.

(b) The Juvenile Court may appoint a public defender or other qualified and competent counsel to represent the child at the child's first appearance before the Juvenile Court in any delinquency proceedings.

(c) Prior to the child's first appearance before the Juvenile Court in a delinquency matter, the public defender may be authorized to represent the child, without formal appointment by the Juvenile Court, in any proceedings in which the child has a right to counsel under the provisions of this title.

(d) Upon presentation by counsel for the child of an order of appointment or a court order specifically allowing such access, any tribal agency, department, authority, institution, school, or health care provider shall permit counsel for the child to inspect and copy, without the consent of the child or the child's parent, guardian, or custodian, any records relating to the child involved in the case.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §128]

Section 129. Notice of Legal Rights

(a) At his/her first appearance before the Court, the child and his/her parents, guardian, or other custodian shall be fully advised by the Court of their legal rights, including the rights to:

(1) Be represented by an attorney at every stage of the proceeding;

(A) In a delinquency petition or a petition to terminate parental rights, the Court may appoint counsel to represent the minor if the child, parents, guardian, or custodian is found to be without sufficient means.

(B) In all other matters before the Juvenile Court, legal representation shall be at the party's own expense.

(2) See, hear, and cross examine all witnesses against them;

(3) Call witnesses on their own behalf and to have court process compel the attendance of witnesses for them;

(4) In juvenile delinquency proceedings, the right of the child to not be compelled to testify against him/herself.

(5) The right to appeal any final order of the Court.

(b) If the child or his/her parents, guardian, or custodian requests an attorney and is found to be without sufficient means, counsel, to the extent such are available at no fee, shall be appointed by the Court in proceedings

(c) There is no right to a jury trial in juvenile proceedings.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §129]

Section 130. Basic Rights

(a) Custody: At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following advisements;

- (1) The minor has a right to remain silent;
- (2) Anything the minor says can be used against the minor in Court;
- (3) The minor has a right to the presence of an attorney during questioning;

and

(4) If the minor cannot afford an attorney, the Court is not required to provide free legal services.

(b) Detention and Shelter Care: A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except in the presence of his/her parent(s), guardian, custodian, or attorney, except to determine identity.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §130]

Section 131. Privilege Against Self-Incrimination

(a) Every child coming within jurisdiction of the Juvenile Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this title.

(b) No statement, admission or confession made by, nor incriminating information obtained from, a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this title, including but not limited to that which is court-ordered, shall be admitted into evidence in any proceedings before the Juvenile Court or the Tribal Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §131]

Section 132. Grandparent and Traditional Custodian Rights

(a) A grandparent shall be notified without unnecessary delay when any of the following occur:

- (1) Any custody petition involving the grandchild is filed;
- (2) The grandchild is taken into temporary custody pursuant to Section 201 and the Court has been notified; or

(3) An adjudicatory hearing involving the grandchild is scheduled to determine if the grandchild is a child-in-need-of-care.

(4) A dispositional hearing involving the grandchild is scheduled pursuant to Section 401.

(b) Grandparent Visitation: A grandparent may petition the Court for reasonable visitation rights with respect to his/her grandchild.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §132]

Section 133. Warrants

(a) Children-in-need-of-care/supervision:

(1) Emergency Custody Order (Ex Parte Custody Order): The Court may issue an emergency custody order upon a sworn written statement of facts and showing that probable cause exists to believe that the minor is a child-in-need-of-services; or

(2) Search Warrant: The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the court's jurisdiction and an emergency custody order has been issued for the alleged child-in-need-of-care.

(3) Bench Warrant: The Court may issue a warrant for a person's arrest for contempt of court immediately upon the failure to appear in Court as directed, either in person or by counsel.

(b) Delinquent Minors:

(1) Custodial Warrant: The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe that the minor has committed the acts alleged in a delinquency complaint.

(2) Search Warrant:

(A) The Court may issue a warrant authorizing a police officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender; or

(B) The Court may issue a warrant authorizing a police officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use or which is or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile proceeding.

(3) Bench Warrant: The Court may issue a warrant for a person's arrest for contempt of court immediately upon the failure to appear in Court as directed, either in person or by counsel.

(4) Arrest Warrant: The Court may issue an arrest warrant directing that the minor be taken into custody if the Court finds probable cause to believe the minor has violated the terms of his/her probation.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §133]

Section 134. Orders for support

(a) Whenever a child is removed from the custody of his/her parent, guardian, or other custodian the parent or other person shall be ordered by the Court to contribute a

reasonable amount within their means, or to do labor for the Tribe, or take other reasonable action to provide support for the child.

(b) In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodian's means after a hearing, whether the child has been placed in his/her own home or elsewhere.

(c) When the Tribe or some other agency is paying for foster care for such child, the contribution of the parent shall be paid to the Clerk of the Court and dispensed by Court order to that agency or the Tribe as may be necessary by law or appropriate in the circumstances. In any cases of placement with particular family, the contribution shall be paid to that family by the Clerk of the Court subject to the supervision of the Court to prevent waste or misuse of such funds.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §134]

Section 135. Voluntary Foster Care Authorized.

In order to provide better treatment for a family's problems and to better protect children, the Department is authorized to accept a child for foster care when:

(a) The parent, guardian, or custodian has consented to such foster care in writing before a judge of a court of competent jurisdiction by the judge's certificate that the terms and conditions, and consequences of such consent were fully explained in detail and fully understood in the language primarily used by the parent, guardian, or other physical custodian.

(b) A consent to foster care placement may be withdrawn by the person giving same, the parent or other legal guardian having legal custody, or a traditional custodian at any time and the child shall be returned to the person requesting the child's release within forty-eight (48) hours.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §135]

Section 136. Full faith and credit.

The Court shall give fair faith and credit to state and other Tribes' child custody court orders, as defined by the Indian Child Welfare Act 25 U.S.C. §191(d).

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §136]

Section 137. Contempt of court.

(a) Definition: Contempt of court is any willful disobedience or interference with any order of the Court.

(b) Punishment: The court may punish an adult for contempt of court in accordance with the Tribal Code.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §137]

Section 138. Expungement.

When a minor, who has been the subject of any proceeding before the Court attains his/her twenty-first (21st) birthday, the Chief Judge of the Court shall order the Clerk of the Court to destroy both Court and Law Enforcement records.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §138]

Section 139. Persons Required to Report Child Abuse or Neglect.

(a) “Required Person” means any person that is required to report abuse or neglect as defined by this Article or circumstances or conditions which would reasonably result in abuse or neglect.

(b) Any person who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Department or appropriate law enforcement agency.

(c) Required persons shall include medical and school professionals that have reason to believe a child is being abused or neglected.

(d) Any person who willfully violates the provisions of this Section;

(1) Shall be subject to a civil penalty no to exceed five-hundred dollars (\$500.00); and

(2) Shall be liable for damages approximately caused thereby; and

(3) May be prosecuted criminally pursuant to the criminal code of this Tribe.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §139]

Section 140. Required Report of Postmortem Investigation.

(a) Any person required to report abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency.

(b) The law enforcement agency shall report such fact immediately to the appropriate coroner’s office or medical examiner to include in the medical examiner’s or investigator’s report.

(c) The report shall be forwarded to the law enforcement agency and the Department of Social Services.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §140]

Section 141. Evidence of Abuse.

(a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or law enforcement officer who

has before him/her a child that he/she reasonably believes has been abused or neglected may take or cause to be taken color photographs or X-rays of the child.

(b) Any photographs or X-rays which show evidence of child abuse shall be immediately forwarded to law enforcement and Social Services.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §141]

Section 142. Procedures for Reporting Abuse.

(a) Report of known or suspected child abuse or neglect made pursuant to this Article shall be made immediately to the Department or law enforcement Agency and shall be followed promptly by a written report prepared by those persons required to report.

(b) Such reports, when possible, shall include the following information:

- (1) The name, address, age, gender, and race of the child;
- (2) The name and address of the responsible person;
- (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
- (4) The names and addresses of the persons responsible for the suspected abuse and neglect, if known;
- (5) The family composition;
- (6) The source of the report and the name, address, and occupation of the person making the report;
- (7) Any action taken by the reporting source;
- (8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

(c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the Department to the Tribal Presenting Officer and to the Tribal law enforcement agency.

(d) A written report from the reporting person shall be admissible as evidence in any proceeding related to the suspected child abuse.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §142]

Section 143. Action Upon Receipt of Report of Abuse

(a) Social Services shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

(b) The investigation, to the extent that is reasonably possible, shall include:

- (1) The nature, extent, and cause of the abuse or neglect;
- (2) The identity of the person responsible for such abuse or neglect;
- (3) The names and conditions of any other children living in the same place;
- (4) The environment and relationship of any children therein to the person responsible for the suspected abuse or neglect;

(5) All other data deemed pertinent.

(c) The investigation shall, at a minimum, include a visit to the child's place of residence and to the location of the alleged abuse or neglect and an interview with or an observation of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Court, upon good cause, shall order the responsible person to allow the interview, examination, and investigation.

(d) Social Services shall be responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. Social Services shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill. The Department shall provide for persons to be continuously available to respond to such reports. Tribal and state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Department or to have such arrangements made through agreements with local law enforcement agencies.

(e) Upon receipt of a report, if the Department reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child who is the subject of the report and his/her family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the tribal law enforcement agency and the Tribal Presenting Officer shall be notified. If immediate removal is necessary to protect the child or other children under the same case from further abuse, the child or children may be placed in protective custody in accordance with Tribal Law.

(f) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Department, it shall make a complete investigation and may request the Presenting Officer to institute appropriate legal proceedings on behalf of the subject child or other children under the same care. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Department.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §143]

Section 144. Immunity from Liability for Reporting Abuse

Any person participating in good faith in the making of the report or in a judicial proceeding held pursuant to this Title, the taking of color photographs or x-rays, or the placing in temporary custody of a child pursuant to this Article or otherwise performing his/her duties or acting pursuant to this Title shall be immune from liability, civil, or criminal that might result by reason of such reporting. Good faith is presumed.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §144]

Section 145. Evidence of Abuse Not Privileged.

The privileged communication between patient and physician and between husband and wife shall not be grounds for excluding evidence in any judicial proceeding resulting from a report of abuse or neglect pursuant to this Article.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §118]