

**SAC AND FOX NATION TRIBAL CODE
TITLE 20 ARTICLE 2**

**TITLE 20
JUVENILE PROCEDURE**

**ARTICLE 2
EMERGENCY CUSTODY**

Section 201. Taking a Minor into Custody

A law enforcement or juvenile probation officer may take a child into custody if:

- (a) The Juvenile Court has issued a custody order in accordance with the provisions of Section 205; or
- (b) The officer has probable cause to believe the child has committed a delinquent act;
- (c) The child is abandoned, lost, or seriously endangered in his/her surroundings, or seriously endangers others and immediate removal appears to be necessary for his/her protection or the protection of others;
- (d) The child is a runaway; or
- (e) The child has violated the conditions of probation and he/she is under the continuing jurisdiction of the Juvenile Court; or
- (f) The child is alleged to be a child-in-need-of-services and remaining in the home is contrary to the health, safety, and welfare of the child.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §201]

Section 202. Least Restrictive Alternatives

(a) When a child is detained or subject to conditional or supervised release pursuant to the provisions of this Title, the Juvenile Court shall order only the least restrictive conditions or placement consistent with:

- (1) The best interests of the child; and
- (2) The safety of the community.

(b) Whenever the Juvenile Court orders the detention of a child or enters an order imposing conditions upon the child's release, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §202]

Section 203. Grounds for detention

A child shall not be detained unless:

- (a) There is probable cause to believe that the child has committed a delinquent act;
- (b) No less restrictive alternatives will suffice; and
- (c) There is clear and convincing evidence that the child should be detained because:

(1) Such detention is necessary to avert a substantial risk to the health, welfare, person, or property of the child or others; or

(2) There is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court.

(d) The child is alleged to be a runaway, in which case the child may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his/her parent or custodian.

(e) A medical doctor, physician, or similar licensed practitioner of medicine temporarily detains without an order of the Court, a child brought before him/her for treatment whom he/she reasonably suspects to be the victim of child abuse.

(f) Any person detaining a child due to possible child abuse shall notify, without unnecessary delay, a law enforcement officer who shall assume custody of the child. The law enforcement officer assuming custody shall have the authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two (2) or more licensed medical doctors that treatment for a condition could not reasonably be delayed for a period long enough to contact a judge for an emergency medical treatment order shall create a presumption that the law enforcement officer properly gave his/her consent to treatment of the child.

(g) No child shall be detained pursuant to subsection (b) for a period exceeding seventy-two (72) hours, exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.

(h) In all other cases, a child may be taken into custody only upon order of the Juvenile Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §203]

Section 204. Notification of Parents

(a) Whenever a child taken into custody or temporary custody, pursuant to the provisions of this Title is not immediately released to the child's parent, guardian, or custodian, the law enforcement officer taking the child into custody or temporary custody shall immediately notify the child's parent, guardian or custodian of:

(1) The reason why the child was taken into custody or temporary custody;

(2) The location where the child has been placed;

(3) And if the child is placed in detention, that all parties have a right to a prompt hearing to determine whether the child is to be detained further.

(b) This Section shall be construed to require:

(1) All reasonable efforts to notify the child's parent, guardian or custodian in accordance with the provisions of subsection (a); and

(2) If the child's parent, guardian, or custodian cannot be notified, all reasonable efforts to notify an adult member of the child's extended family.

(c) For the purposes of this Section, “reasonable efforts” shall include telephone and personal contacts at the home, place of employment, or other locations the person to be notified is known to frequent.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §204]

Section 205. Temporary Protective Custody—Allegations that a child is a Child-in-Need-of-Services

(a) Social Services may request a temporary protective custody order from the Juvenile Court pursuant to the following procedures

(1) Social Services receives a report of child abuse or neglect.
(2) Social Services shall investigate the claim with the assistance of law enforcement.

(3) Upon determining whether evidence supports the report, Social Services prepares an affidavit detailing the facts that lead to the belief that child has been abused, neglected, or otherwise in need of services and that continuing the child in his/her place of residence or in the care and custody of the person responsible for his/her care and custody would present an imminent danger to that child’s life or health.

(4) Services submits the affidavit to the Presenting Officer.

(b) The Presenting Officer, upon receiving the affidavit and report of abuse or neglect, may, according to Section 114, petition the Court for an order requesting the child be taken into temporary or emergency protective custody.

(c) Temporary custody under this section shall not exceed seventy-two (72) hours notwithstanding any provision of law to the contrary.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §205]

Section 206. Notification of Court Officers and Social Services

Whenever a child is taken into custody or temporary custody pursuant to the provisions of this Title, the law enforcement officer taking the child into custody or temporary custody shall, within twenty-four (24) hours, notify the Presenting Officer and Social Services with a written report containing the following:

(a) The date, time, and circumstances of the law enforcement officer’s contact with the child;

(b) The reason the child was taken into custody;

(c) If the child was released, and to whom the child was released, or where the child was placed; and

(d) Any services or resources to which the law enforcement officer referred the child’s parent, guardian or custodian in accordance 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 §206]

Section 207. Release of Detained Child to Parent, Guardian, or Custodian

(a) Except as provided in subsection (b) of this Section, a child shall not be detained by law enforcement officials any longer than is reasonably necessary to obtain his/her name, age, residence and other necessary information and to contact his/her parents, guardian, or custodian. The child shall be given the warnings listed in section 4-129 to any minor taken into custody.

(b) The child shall be released to the care of his/her parents or other responsible adult, unless his/her immediate welfare or the protection of the community requires that he/she be detained. The parent or other person to whom the child is released may be required to sign a written promise, on forms supplied by the Court, to bring the child to the Court at a time set or to be set by the Court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §207]

Section 208. Special Release Rule for Major Offenses

(a) No child taken to a detention or shelter facility without a court order as the result of an allegedly delinquent act which would constitute a major crime if committed by an adult shall be released from such facility unless, in writing, a law enforcement agency has requested that a detention hearing be held to determine whether the child's immediate welfare or the protection of the community requires that he/she be detained. No such child shall thereafter be released from detention except for a hearing, reasonable advanced notice of which has been given to the Tribal Presenting Officer alleging new circumstances concerning the further detention of the child.

(b) When, following a detention hearing as provided by subsection (a) of this Section, the Court orders further detention of a child, a petition alleging the child to be a delinquent shall be filed with the Court without unnecessary delay if one has not been previously filed, and the child shall be held in detention pending a hearing on the petition.

(c) Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §208]

Section 209. Conditions of Release

(a) Conditions of release imposed by the Juvenile Court in accordance with the provisions of this section may include:

- (1) bail;
- (2) a court-imposed curfew;
- (3) an order requiring the child to remain at home at all times when the child

is not:

- (A) in the presence of the child's parent, guardian or custodian;
- (B) attending school or participating in other activities approved by the

Juvenile Court; or

- (C) legally required to be elsewhere;
- (4) electronic home monitoring or similar means of monitoring the child's whereabouts;
- (5) law-abiding behavior, including refraining from using or possessing alcohol or non-prescribed drugs;
- (6) regular school attendance or continuation in a course of study designed to lead to achieving a high school diploma or the equivalent;
- (7) compliance with orders prohibiting or restricting contact between the child and the alleged victim or other persons or locations connected with the alleged delinquent act; or
- (8) other reasonable conditions calculated to ensure the child's appearance at future hearings and to protect the safety of the child and the community.

(b) At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Juvenile Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or custodian to bring the child to the Juvenile Court at a time set by the same Court.

(c) No Contact Orders: an order prohibiting or restricting contact between a child and a member of the child's family shall be narrowly tailored and the scope and terms of the order shall be appropriately limited to protect the safety of the child and the child's family.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §209]

Section 210. Violations of Conditional Release Orders

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated conditions of release, the Juvenile Court may:

- (a) Issue a custody order in accordance with the provisions of Section 205;
- (b) Following a hearing on the matter, impose additional or modified conditions of release in accordance with the provisions in Section 209; and
- (c) Conduct a hearing to review the need for detention in accordance with the provisions of Section 203.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §210]

Section 211. Extension of Detention Period

For good cause shown, the Court may extend the time period during which a child may be detained without a petition and Court order for a period not exceeding five (5) business days. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four (24) hours.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §211]

Section 212. Detention and Shelter

(a) A child who must be taken from his/her home pursuant to a delinquency petition but does not require physical restriction shall be given temporary care in a shelter facility approved by the Department and designated by the Court and shall not be placed in detention.

(b) No child under the age of fourteen (14) shall be detained in a jail, lockup, or other place used for the confinement of adult offenders or persons charged with a crime.

(c) A child over the age of fourteen (14) and under the age of eighteen (18) years of age may be detained in a jail, lockup, or other place used for the confinement of adult offenders or persons charged with a crime only by order of the Court if:

(1) No other suitable place of confinement is available; and

(2) They are detained separately from adult offenders or persons charged with a crime, including any child ordered by the Court to be held for criminal proceedings.

(d) The official in charge of the jail or other facility for the detention of adult offenders or persons charged with a crime shall immediately inform the Court and Tribal Presenting Officer when a child who is or appears to be under the age of eighteen (18) is received at the facility, except where a child is ordered by the Court 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 §212]

Section 213. Court Ordered Medical Treatment

(a) At any time after a child is taken into custody, with or without a Court order and prior to adjudication on the merits;

(1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal Custody, it may authorize such treatment or care if the parents, guardian, or custodian are not immediately available to give their consent to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical custody of the child pursuant to either this Title or Court order.

(2) After making a reasonable effort to obtain the consent of the parent, guardian, or custodian, and after a hearing on notice, the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.

(b) After a child has been adjudicated a ward of the Court, the Court may consent to any necessary emergency, preventative, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §213]

Section 214. Court Ordered Commitment for Observation

If it appears that any child being held in detention or shelter may be mentally ill, developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility approved by the Court for

a seventy-two (72) hour treatment and evaluation. Upon the advice of a physician, the treatment and evaluation period may be extended for a period not exceeding ten (10) days.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §214]

Section 215. Search Warrants for the Protection of Children

(a) A search warrant may be issued by the Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a child-in-need-of-services.

(b) Such warrant shall be issued only on the conditions that the application for the warrant shall:

(1) Be in writing and supported by affidavit sworn to or affirmed before the Court;

(2) Name or describe with particularity the child sought;

(3) State that the child is believed to be a child-in-need-of-services and the reasons upon which such belief is based;

(4) State the address or legal description of the place to be searched;

(5) State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by petition or summons.

(c) If the Court is satisfied that grounds for the application exists or that there is probable cause to believe that grounds exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched.

(d) The search warrant shall be directed to any officer authorized by law to execute it wherein the place to be searched is located.

(e) The warrant shall state the grounds for probable cause and the names of the persons whose affidavits have been taken in support thereof.

(f) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some time, in which case the Court may so direct.

(g) A copy of the warrant, the application, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought.

(h) If the child is found, the child may be taken into custody in conformance with the provisions of Section 201.

(i) The warrant shall be returned to the issuing court.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §215]

Section 216. Initial Appearance—Requirement and Time Limit

(a) Whenever a child is taken into custody, the Initial Appearance shall be held as follows:

(1) If the child is detained and is not released to the child's parent, guardian, or custodian, the Juvenile Court shall conduct an Initial Appearance within seventy-two (72) hours.

(2) If the child is detained and released to the custody of his/her parent, guardian, or custodian, the Juvenile Court shall conduct an Initial Appearance within ten (10) days of the detention.

(3) Notwithstanding the provisions of Section 211, the Initial Appearance shall not be continued so as to fall outside the time limit imposed by this Section, unless requested by the child or his/her parents, guardian, or custodian.

(b) If the Initial Appearance is not held within the time limit imposed by this Section, the child shall immediately be released to the child's parent, guardian, or custodian.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20: PUBLIC LAW # T 20 §216]

Section 217. Preliminary Inquiry; Criteria for Detention or Shelter Care

If a minor is placed in detention or shelter care pursuant to Section 201, the Court shall conduct a preliminary inquiry within seventy-two (72) hours for the purpose of determining if criteria for detention or shelter care exists.

(a) Criteria for detention or shelter care for an alleged juvenile offender exists if the Court finds:

(1) Probable cause exists to believe the minor committed the alleged delinquent act; and

(2) The act is serious enough to warrant continued detention or shelter care; and

(3) There is reasonable cause to believe the minor will run away so that he/she will be unavailable for further proceedings; or

(4) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(b) Criteria for removal from the parental home of an alleged child-in-need-of-care or supervision exists if the Court finds:

(1) Probable cause exists to believe that the minor is a child-in-need-of-care or supervision;

(2) The minor is suffering from an illness or injury and no parent, guardian, custodian, or other person is providing adequate care for him/her;

(3) The minor is in immediate danger from his/her surroundings, and removal is necessary for his/her safety or well-being;

(4) The minor will be subject to injury by others if not placed in the custody of the Court;

(5) The minor will be subject to inquiry by him/herself if not placed in the custody of the Court;

(6) No parent, guardian, custodian or other person is able or willing to provide adequate supervision and care for the minor; or

(7) The minor will run away so that he/she will be unavailable for further proceedings.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §217]

Section 218. Place of Detention or Shelter Care

(a) A minor alleged to be a child-in-need-of-care or supervision may be detained, pending a Court hearing, in the following places, approved by the Tribe:

- (1) A licensed foster care facility;
- (2) A private family home; or
- (3) A shelter care facility.

(b) A minor alleged to be a juvenile offender may be detained, pending a Court hearing, in the following placed:

- (1) A foster care facility licensed or approved by the Tribe;
- (2) A detention home approved by the Tribe; or
- (3) A private family home approved by the Tribe.

(c) An alleged juvenile offender who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

- (1) A facility in subsection (a) of this Section is not available or would not assure adequate supervision of the minor;
- (2) Detention is in a cell separate but not removed from sight and sound of adult prisoners whenever possible.
- (3) Adequate supervision is provided twenty-four (24) hours a day.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §218]

Section 219. Standards for Shelter Care and Detention Facilities

(a) The Chief Judge of the Tribal Court shall adopt written rules and regulations governing the operation of detention and shelter care facilities. The Chief Judge of the Tribal Court may assign the responsibility to another qualified tribal agency.

(b) The rules and regulations shall include, but are not limited to the following:

- (1) Cleanliness standards;
- (2) Heat, water, and light standards;
- (3) Personnel standards;
- (4) Visiting privileges;
- (5) Occupancy standards;
- (6) Provisions for medical and dental care;
- (7) Provisions for food, clothing, and other personal items;

(c) The Chief Judge of the Tribal Court shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities.

(d) Such policies and procedures shall include, but are not limited, to the following:

- (1) A minor shall not be punished, ridiculed, or criticized for expressing through speech, custom, or dress, the minor's Indian or Tribal heritage;

(2) A minor shall be allowed to wear his/her hair according to his/her personal taste. The minor shall not be punished, ridiculed, or criticized for the hairstyle he/she selects;

(3) A minor may wear his/her own clothes, rather than clothes supplied by the detention facility so long as they comply with the minimum standards of cleanliness and do not contain inappropriate or vulgar designs;

(4) Incoming and outgoing mail may be inspected for contraband, but shall not be read;

(5) Whenever possible, the minor shall be allowed to attend the school in which he/she is enrolled. School work and educational assistance at the minor's level of development shall be provided for the minor in detention facilities;

(6) A minor shall be allowed to attend traditional ceremonies provided that he/she is

(A) accompanied by a parent, guardian, or custodian;

(B) has received consent to do so by the Court judge; and

(C) returns immediately to the detention or shelter care facility;

(7) A minor shall be allowed to attend the funeral and any related activities of his/her extended family, whether they be natural or adopted, provided that he/she:

(A) received consent to do so by the Court Judge;

(B) is accompanied by a parent/guardian; and

(C) returns immediately to the detention or shelter care facility.

(8) A minor shall be given the opportunity to engage in physical exercise every day;

(9) A minor shall not be locked alone in a room unless there is reasonable belief that he/she may cause physical injury to him/herself or others if not locked alone. While the minor is locked alone in a room, he/she must be visited at least once every thirty (30) minutes. The confinement shall not continue unnecessarily;

(10) A minor shall not be punished by physical force, solitary confinement, or deprivation of meals or family visits.

(11) A minor shall not be required to perform unreasonable work duties not commensurate with his/her age, physical or mental abilities; and

(12) A minor shall be required to perform reasonable work duties such as maintenance of his/her bunk and personal property.

[History: L. 1992, May 2; R-30-92: Amend. 2020, Jun. 16; R-21-20:
PUBLIC LAW # T 20 §219]