

POTAWATOMI LAW AND ORDER CODE

**TITLE 6
JUVENILE PROCEDURE**

**CHAPTER 6-1
GENERAL PROVISIONS**

Section 6-1-1. Establishment.

There is created and established a Juvenile Court and its procedure whose powers and duties are set forth in this Title. The provisions of this Title shall be liberally exercised in all matters that will be conducive to the child's welfare and best interests.

Section 6-1-2. Purpose.

The purposes of these procedures are to:

- (A) Secure for each child, subject to this Title, such care and guidance, preferably in his own home, as well best serve his welfare and the interests of the Tribe and society in general;
- (B) Preserve and strengthen the ties between the child and its Tribe whenever possible;
- (C) Preserve and strengthen family ties whenever possible, and, to strengthen and improve the home and its environment when necessary;
- (D) Remove a child from the custody of its parents only when his welfare and safety or the protection of the public would otherwise be endangered; and
- (E) Secure for any child removed from the custody of its parents the necessary care, guidance and discipline to assist the child in becoming a responsible and productive member of its Tribe and society in general.

Section 6-1-3. Definitions.

- (A) **Adjudicatory Hearing.** "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be neglected or in need of care filed pursuant to this Title are supported by the evidence.

(B) Child. “Child” means any individual under the age of 18 years who is a member of the Tribe, is eligible for membership into the Tribe, is a natural or adopted child of a member or is a grandchild of a full or part time custodial grandparent.

(Amended by PBP TC No. 2006-141, July 20 2006)

(C) Dispositional Hearing. “Dispositional Hearing” means a hearing, in which the Juvenile 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.

(D) In Need of Care. “In need of care” shall mean any child:

- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian.
- (2) Who is willfully and voluntarily absent from his home without the consent of the parent, guardian, or legal custodian for a substantial period of time, or without intent to return.
- (3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school in violation of law.

(E) Neglected. “Neglected” shall mean a child:

- (1) That is subjected to mistreatment or abuse without intervention preventing such occurrences.
- (2) That lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian.
- (3) That is subject to an environment which is injurious to his safety and welfare.
- (4) That is denied proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being.
- (5) That is not domiciled with his parent, guardian, or legal custodian or homeless without proper care.
- (6) That is abandoned without apparent parental intent to return, or informally placed with another person.
- (7) That is denied parental support or personal contact for a period in excess of six (6) months.

(F) Protective Supervision. “Protective supervision” means a legal status created by Court Order permitting the child to remain in its own home under the supervision of the Juvenile Court or a social services agency while treatment is being provided to the family.

(G) Shelter. “Shelter” means a physically unrestricting facility for the temporary care of a child pending Juvenile Court disposition, or execution of a Court Order for emergency or temporary placement.

(H) Termination of Parental Rights. “Termination of parental rights” means the Court ordered permanent severance of all parental rights and duties but not the severance of the child’s right to parental inheritance.

(Amended by PBP TC No. 2006-141, July 20 2006)

Section 6-1-4. Jurisdiction.

The Juvenile Court shall have exclusive original jurisdiction in any proceeding concerning any child except in the determination of awarding custody in the dissolution of marriage provided that the child is not in need of care or neglected.

(A) When the court acquires jurisdiction over a child in need of care or a neglected child, jurisdiction may continue until the child has: (1) Become 18 years of age, or until June 1 of the school year during which the child became 18 years of age if the child is still attending high school.

(B) A child aged 18 or older may request that the jurisdiction of the court cease. The court shall give notice of the request to all parties and interested parties and 30 days after receipt of the request, jurisdiction shall cease.

(C) Except upon request of the child pursuant to subsection (a), the court shall not enter an order discharging a child until June 1 of the school year during which the child becomes 18 years of age if: the child is in an out-of-home placement, is still attending high school and the child has not completed the child’s high school education.

(Amended by PBP TC No. 2010-055, March 2, 2010)

Section 6-1-5. Place of Sitting

The Juvenile Court shall maintain offices in the same place as the District Court sits, provided, that the Juvenile Court, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, may sit anywhere within the territorial limits of the United States.

Section 6-1-6. Transfers Between Courts.

The Juvenile Court, in its discretion, is authorized to transfer, or accept a transfer, any juvenile case provided that such transfer would not be detrimental to the child’s best interests. Transfer from state courts shall be pursuant to the Indian Child Welfare Act, 25 U.S.C. §1911 (b). Transfers from other courts may be determined by eligibility status, domicile and residency.

Section 6-1-7. Transfer Criteria.

In making transfers, or accepting transfer, the Juvenile Court will consider:

- (A) The best interest of the child;
- (B) Any special needs and services that may be required and the availability of such resources;
- (C) Emotional, cultural and social ties;
- (D) Any matters which may adversely affect the Tribe's ability to provide treatment or necessary services; and
- (E) The likelihood that the same child and family would require future services of this Court.

Section 6-1-8. Records Transfer.

A court transferring a case shall serve a certified copy of the Order of Transfer and shall transmit the legal case file, and all social records pertaining to the case. The Court accepting a transfer shall proceed with the case as if the petition had originally been filed or adjudicated. 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.

Section 6-1-9. Notice of Legal Rights.

- (A) At the first appearance before the Court, the child and the parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:
 - (1) Their right to be represented by an attorney, at their own expense, at every stage of the proceeding.
 - (2) Their right to see, hear, and cross-examine all witnesses against them.
 - (3) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them.
- (B) If the child or the parents, guardian, or other legal custodian requests an attorney and is found to be without sufficient financial means to obtain counsel, one shall be appointed by the Court when such are available.
- (C) The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

Section 6-1-10. Procedure.

The Rules of Juvenile Procedure shall apply in all juvenile proceedings except to the extent that any procedure is not specifically addressed, then the Rules of Civil Procedure shall apply.

Section 6-1-11. Hearings.

(A) Hearings shall be held before the Juvenile Court without a jury, and may be conducted informally. The general public shall be excluded unless the Court determines that it is in the best interest of the child to allow the general public to attend. The Court shall admit only such persons having a real interest in the case.

(B) A verbatim record shall be taken of all proceedings which might result in the deprivation of custody, unless waived by the parties in the proceeding and so ordered by the Court.

(C) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings under this Title shall not be published in any public media. Publicity may be permitted only if, and only if, Court ordered. Any person who violates this provision shall be punished by a fine of not more than five hundred dollars (\$500.00).

Section 6-1-12. Social Study and Other Reports.

Unless waived by the Court, the social services agency designated by the Court shall make a social study and report in writing in all juvenile cases. The records of the social service agency concerning all juvenile cases under the provisions of this Title may not be inspected or disclosed to the public, except:

(A) By Court Order.

(B) When the disclosure is to a tribal, federal, or state officer, employee, or agency in their official capacity who show a bona fide need for the information.

Section 6-1-13. Rules of Evidence.

For determining proper disposition of a child, the General Rules of Evidence shall not apply, unless otherwise provided by law. Written reports and other subjective material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence.

Section 6-1-14. Effect of Proceedings.

No adjudication, disposition, or evidence given in proceedings brought under this Title shall be admissible against a child except in subsequent proceedings under this Title concerning the same child.

Section 6-1-15. Inspection of Court Records.

Court proceeding records shall be open to inspection by the parents or guardian, attorneys and other parties and to any agency to which legal custody of the child has been transferred. However, Court proceeding records in adoption and relinquishments shall be confidential and open to inspection only by Court Order. Social Services records and all other reports of social and clinical studies shall not be open to inspection, except by Court consent.

Section 6-1-16. Sealed Records.

In any juvenile proceeding the records shall be sealed after the juvenile reaches the age of emancipation, or no sooner than two (2) years after the Juvenile Court's jurisdiction terminates. When the records have been sealed, all proceedings shall be deemed as never to have occurred, and all index references shall be deleted. Copies of the order sealing such records shall be sent to each agency of official named in the proceedings. Future inspection of such records may be permitted thereafter only by Court order.

Section 6-1-17. Appeals.

An appeal may be taken from any order, decree, or judgment of the Juvenile Court in the same manner as other civil appeals are taken. Initials shall appear on the record on appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the Court of Appeals and shall be decided at the earliest practical time.

**CHAPTER 6-2
EMERGENCY CUSTODY**

Section 6-2-1. Emergency Custody.

In all cases, a child may be taken into custody only on a Court order, except that a child may be taken into emergency custody without a Court Order by the social service agency when there are reasonable grounds to believe that:

- (A) The child is abandoned, lost, or seriously endangered in its surroundings and immediate removal appears to be necessary for its protection; or
- (B) The child has run away; or

(C) The child is reasonably suspected to be the victim of child abuse.

In any case when a social service agency has initiated emergency custody, such temporary protective custody under this Section shall not exceed seventy-two (72) hours, provided that a court order has not been initiated.

Section 6-2-2. Notification of Parents.

When a child is taken into emergency custody, notification of a parent, guardian, or legal custodian shall be made without unnecessary delay. If the child is placed in a shelter facility, all parties have a right to a prompt hearing to determine whether temporary custody should be continued.

Section 6-2-3. Release of Detained Child.

The child shall be released to the care of the parents or other responsible adult, unless the child's immediate welfare or the protection of the community requires otherwise. 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 Court at a time set or to be set by the Court.

Section 6-2-4. Notification of Court.

Whenever a child is placed into emergency custody, the social service agency shall immediately notify the Juvenile Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This notification shall extend the emergency custody another twenty-four (24) hours. A written report which initiates a Court order shall be filed within the extended twenty-four (24) hours after the immediate notification.

Section 6-2-5. Shelter

A child who must be taken from its home shall be given emergency and temporary care in a shelter facility approved by the social service agency or designated by the Court.

Section 6-2-6. Court Ordered Medical Treatment.

(A) At any time after a child is taken into custody and prior to adjudication on the merits if the Court finds that emergency medical, surgical, or dental treatment is required for a child it may authorize such treatment or care. 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.

(B) After a child has been adjudicated a Ward of the Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental

treatment or care, or may delegate the authority to consent to the agency or person having custody of the child.

CHAPTER 6-3 ADJUDICATION

Section 6-3-1. Court Intake.

If the social service agency determines that the interests of the child or the community requires that Court action be taken, the social service agency shall submit a written request or file a petition for adjudication. The request or petition shall be delivered and accompanied by a copy of the entire case file to the Juvenile Court.

Section 6-3-2. Petition Contents

The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian or of his nearest known relative if no parent, guardian, or other legal custodian is known.

Section 6-3-3. Summons

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court clerk, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

Section 6-3-4. Service of Summons.

Summons shall be served personally, pursuant to the Rules of Civil Procedure. If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:

(A) When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

(B) When the person to be served has no residence within the Tribe's jurisdiction and his place of residence is not known or when he cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication.

Section 6-3-5. Failure to Appear.

Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of Court. If after reasonable effort the summons cannot be served or if the welfare of the child requires that it be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child. When a parent or other person who signed a written promise to appear and bring the child to Court, or who has waived or acknowledged service fails to appear with the child on the date set by the Court, a bench warrant may be issued for the parent or other person, the child, or both.

Section 6-3-6. Appointment of Guardian Ad Litem.

The Court may appoint a guardian *ad litem* to protect the interest of a child in proceedings when:

- (A) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing in the case.
- (B) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian.
- (C) The Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent, guardian, or other legal custodian is present.

Section 6-3-7. Adjudicatory Hearing.

At the adjudicatory hearing the Juvenile Court shall consider whether the allegations of the petition are supported by a preponderance of the evidence. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the child or any other party to the proceeding.

Section 6-3-8. Dismissal of Petition.

When the Court finds that the allegations of the petition are not supported by a preponderance of the evidence, the Court shall order the petition dismissed and the child discharged from any emergency care. The child's parents, guardian, or legal custodian shall also be discharged from any restriction other previous temporary order.

Section 6-3-9. Sustaining Petition.

When the Court finds that the allegations of the petition are supported by a preponderance of the evidence, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is in need of care or neglected and making the child a Ward of the Court. After making an adjudication order and finding the child a Ward, the Juvenile Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe at a hearing schedule for that purpose. Evidence that child abuse or non-accidental injury has occurred shall constitute *prima facie* evidence that such child is neglected and such evidence shall be sufficient to support an adjudication under this Section.

Section 6-3-10. Temporary Orders.

Upon sustaining a petition, the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

**CHAPTER 6-4
DISPOSITION**

Section 6-4-1. Dispositional Hearing.

The purpose of the dispositional hearing is to provide for the health, welfare and safety of the child who is a Ward of the Juvenile Court during and after a treatment period. It also assist the Court in determining, in an informal setting, which treatment should be ordered while attempting to invoke corrective measures which led to the adjudication. The Court may order, when feasible, the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

Section 6-4-2. Reports.

Any reports created by the social service agency pursuant to Section 6-1-12, shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing. Certified copies of social study report, clinical reports or any other pertinent report shall follow the child if guardianship is vested with a social service agency.

Section 6-4-3. Treatment Plan.

In every case the Court shall order the social service agency to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication. The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing. The treatment plan shall contain at a minimum:

- (A) A brief social and family history.
- (B) A brief statement of the causes of the Court exercising its jurisdiction.
- (C) The specific programs and actions the family should be required to complete, their duration, and what is expected to be accomplished.
- (D) The person or agency to be vested with legal custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be returned home under supervision and when Court supervision should cease.

Section 6-4-4. Continuance.

The Juvenile Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence. If the hearing is continued, the Court shall make an appropriate order for temporary custody of the child and any other such order or condition as the Court may find for the protection of the child during the continuance.

Section 6-4-5. Order of Protection.

The Court may make an order of protection and may set forth reasonable conditions of behavior to be observed for a specified period to any person who is party to the proceeding. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served. A person failing to comply with an order of protection without good cause may be found in contempt of Court.

Section 6-4-6. Types of Protection Order.

The order of protection may require, but is not limited to, any such person:

- (A) To stay away from a child or his residence.
- (B) To permit visitation with the child at stated periods.

- (C) To abstain from offensive conduct against a child, the parent or parents, guardian, or any other person to whom legal custody of a child has been given.
- (D) To give proper attention to the care of the home.
- (E) To cooperate in good faith with an agency
 - (1) which has been given legal custody of a child.
 - (2) which has been providing protective supervision of a child by Court order.
 - (3) which has been referred by the Court.
- (F) To refrain from acts which may tend to make a home an improper place for a child.
- (G) To perform any legal obligation of support.

Section 6-4-7. Placement Preferences.

State courts shall follow the placement preference rules outlined herein. The Juvenile Court may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences. For each possible placement, the Juvenile Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference. In making a placement or committing legal custody of a child to some person in the dispositional process whether for foster care or adoption, the Court shall place the child in the following descending order of preference:

- (A) The natural parents, adoptive parents, or step-parents as the case may be.
- (B) A member of the Tribe over eighteen (18) years of age who is the child's blood-related relative.
- (C) A member of another Indian tribe over eighteen (18) years of age who is the child's marriage-related relative.
- (D) Any other member of the Tribe and their spouse.
- (E) Any other Indian person and their spouse.
- (F) An Indian foster home licensed by the social service agency, any other licensing authority within the State or licensed by some other tribe.
- (G) An institution for children licensed or approved by the social service agency with a program suitable to meet the child's needs.

Section 6-4-8. Religious Preferences.

In placing the child's legal custody or guardianship with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of its parents whenever practicable.

Section 6-4-9. Disposition Decree.

A decree of disposition vesting legal custody and guardianship of a child shall be for an indeterminate period, not to exceed two (2) years, unless renewal by the Juvenile Court is the best interests of the child. Such decree shall be reviewed by the Juvenile Court every six (6) months after it is entered provided that no other action is required.

Upon entering a disposition decree of a Ward of the Court, the Juvenile Court shall include one or more of the following provisions which it finds appropriate:

- (A) The Court may place the child in the legal custody of a parent or guardian and under such conditions as the Court may impose which may include probation or protective supervision.
- (B) The Court may place the child in the legal custody of a relative or other suitable person, in accordance with Section 6-4-7 and under such conditions as the Court may impose which may include probation or protective supervision.
- (C) The Court may place legal custody in the social service agency for placement in accordance with Section 6-4-7.
- (D) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.
- (E) The Court may commit the child to any institution or group care facility designated by the Court.

Section 6-4-10. Legal Custody—Guardianship.

Any individual, agency, or institution vested by the Juvenile Court with legal custody and guardianship of a child shall have the duty to provide food, clothing, shelter, ordinary medical care, education and discipline, excepting the right to consent for the child's adoption unless expressly granted by the Juvenile Court. Further, such individual, agency or institution shall have the duty to provide any information concerning the child which the Juvenile Court may require at any time.

Any social service agency vested by the Juvenile Court with legal custody of a child shall have the right, subject to the approval of the Court and in accordance with Section 6-4-7, to determine where and with whom the child shall live.

No individual vested by the Court with legal custody of child shall remove the child from the state for more than thirty (30) days without Court approval.

Section 6-4-11. Probation.

(A) The terms and conditions of probation shall be specified by rules or orders of the Court. Each child placed on probation shall be given a written statement of the terms and conditions of its probation and shall have such terms and conditions fully explained.

(B) The Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six (6) months.

(C) The Court may release a child from probation or modify the terms and conditions of its probation at any time, but any child who has complied satisfactorily with the terms and conditions of its probation for a period of two (2) years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(D) The Court shall take appropriate action:

(1) When it is alleged that a child has violated the terms and conditions of its probation, the Court shall set a hearing on the alleged violation and shall give notice to the child and the parents, guardian or other legal custodian, and any other parties to the proceeding.

(2) The child, its parents, guardian, or other legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at its or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(3) The hearing on the alleged violation shall be conducted as soon as possible.

(E) If the Court finds that the child violated the terms and conditions of probation, it may modify the terms and conditions of probation, revoke probation, or take such other action permitted by this Title which is in the best interest of the child and the Tribe.

(F) If the Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

Section 6-4-12. New Hearing Authorized.

A parent, guardian, custodian, or next friend of any child adjudicated under this Title, or any person affected by a decree in a proceeding under this title, may petition the Court for a new hearing. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child. The grounds for a new hearing are:

- (A) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered.
- (B) That irregularities in the proceedings prevented a fair hearing.

Section 6-4-13. Orders for Support.

Whenever a child is removed from the custody of its 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 take other reasonable action to provide support for the child. In all cases of placement for foster care of a child, the parent's contribution shall be paid through the Court to the placement agency to prevent misuse of such funds.

Section 6-4-14. Continuing Jurisdiction.

Except as otherwise provided in this Title, the jurisdiction of the Juvenile Court shall continue until the person becomes emancipated unless terminated by Court order.

**CHAPTER 6-5
TERMINATION OF PARENTAL RIGHTS**

Section 6-5-1. Motion for Termination.

A motion for termination of the parent-child relationship may be against one or both parents. The termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the specific grounds for termination. Proceedings on the termination of a parent-child legal relationship shall be considered at a hearing separate from the juvenile proceedings. If such proceedings are against both parents, the hearing may be conducted jointly, however, termination shall be found individually. Such motion shall be filed at least thirty (30) days before such hearing.

Section 6-5-2. Appointment of Counsel.

- (A) After a motion for termination of a parent-child legal relationship is filed pursuant to this Title, the parents shall be advised of the right to counsel, at their own expense, or counsel may be appointed whenever counsel is available at no fee or

whenever the Court fund has sufficient unobligated funds to pay an attorney. If a respondent parent is a minor, a guardian *ad litem* shall be appointed and shall serve in addition to any counsel requested by the parent.

(B) An attorney, who shall be the child's previously appointed guardian *ad litem* whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated.

Section 6-5-3. Burden of Proof.

The burden of proof shall rest with the petitioner and shall be by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

Section 6-5-4. Grounds of Termination.

This Court may order a termination of the parent-child legal relationship upon the following grounds:

- (A) Abandonment.
- (B) Parental unfitness.
- (C) Voluntary termination.

Section 6-5-5. Abandonment.

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating that the identity of the child's parent or parents is unknown and has been unknown for a period of one hundred eighty (180) days and that reasonable efforts to identify and locate the parents have failed. Such affidavit shall be filed not later than ten (10) days prior to the hearing.

Section 6-5-6. Parental Unfitness.

In determining unfitness, the Court shall find that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In considering any of the factors listed below in terminating the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. In making such determination, the Court shall consider, but not be limited to, the following:

- (A) Emotional illness, mental illness, or mental deficiency of the parent as to render the parent incapable of caring for the ongoing physical, mental, and emotional needs of the child.
- (B) Conduct toward the child of a physically or sexually abusive nature.
- (C) History of violent behavior.
- (D) A single incident of life-threatening or gravely disabling injury or disfigurement of the child.
- (E) Extreme neglect of the child.
- (F) Long-term confinement of the parent.
- (G) Injury or death of a sibling due to proven parental abuse or neglect.

Section 6-5-7. Voluntary Termination.

When the parents or grandparents of a child voluntarily consent to the termination of parental rights, such consent shall not be valid unless executed before a Court of competent jurisdiction and accompanied by a Court certificate that the terms and consequences of the consent are fully explained in detail and were fully understood by the parent. Any consent to termination may be written at any time prior to the entry of a final decree of termination of parental rights and then the termination proceedings shall be dismissed.

Section 6-5-8. Review Following Determination.

The Juvenile Court shall order that a review hearing be held not later than ninety (90) days following the date of the termination of the parent-child relationship. At such hearing, the social service agency or individual vested with legal custody of the child shall report to the Juvenile Court the recommendations for permanent placement of the child. If the Juvenile Court determines that adoption is not immediately feasible or appropriate, the Court may order that provisions be made immediately for long-term foster placement of the child.

Section 6-5-9. Effect of Termination.

An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right of the child to inherit from the parent. No order or decree entered pursuant to this Title shall limit a child to any benefit due him for any third person, including, but not limited to, any Indian tribe, any agency, any state, or the United States.

Section 6-5-10. Grandparents Rights.

No dispositional order or decree, including termination of parental rights and adoption, shall divest the child's grandparents of their rights to reasonable visitation and their duty to provide instruction and training regarding tribal customs and traditions provided those rights and duties have not been extinguished in a formal proceeding.

**CHAPTER 6-6
ADOPTIONS**

Section 6-6-1. Jurisdiction Over Adoptions.

The Juvenile Court shall have exclusive jurisdiction regarding the adoption of any child who resides or is domiciled within the jurisdiction of the Court, is unmarried and less than eighteen (18) years of age.

Section 6-6-2. Purpose of Adoptions.

The purpose of an adoption is to establish a formal and legal family relationship between such persons which, after adoption, shall exist as if the parties were born into the relationship by blood. Adoptions pursuant to this Title shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

Section 6-6-3. Eligibility to Adopt.

The following persons are eligible to adopt a child pursuant to this Title, and subject to the placement preferences of Section 6-4-7:

- (A) A husband and wife jointly;
- (B) Either the husband or wife if the other spouse is a parent of the child;
- (C) An unmarried person who is at least twenty-one (21) years old;
- (D) In the case of a child born out of wedlock, its unmarried father or mother.

Section 6-6-4. Consent to Adoption.

- (A) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Court by:
 - (1) both parents, if living, or the surviving parent, provided their parental rights have not been terminated by judicial decree in a Court of competent jurisdiction.

(2) a parent less than sixteen (16) years of age may give their consent only with the written consent of that minor parent's parents, legal guardian, or a guardian *ad litem* of the minor parent appointed by the Juvenile Court.

(3) the legal custodian having physical custody of said child for the preceding six (6) months, or a social service agency having legal custody of the child by judicial decree with the specific authority, granted by the Juvenile Court, to consent to the adoption of the child.

(B) Where any parent or custodian voluntarily consents to an adoption such consent shall not be valid unless executed before a Court of competent jurisdiction and accompanied by a Court certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or custodian. The Court shall certify that the parent or custodian fully understands the explanation and its consequences.

(C) Any consent given prior to or within ten (10) days after the birth of a child shall not be valid.

(D) Any consent given for the adoption of a child may be withdrawn at any time prior to the entry of a final decree of adoption and the child shall be returned to the parent.

Section 6-6-5. Consent of Child.

Whenever a child is of a sufficient maturity and understanding the Juvenile Court may, and in every case of a child over ten (10) years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Juvenile Court should interview such child *in camera* concerning the adoption prior to approving the child's consent.

Section 6-6-6. Petition.

A Petition for adoption, shall be filed in duplicate, verified by the petitioners, and shall specifically state:

(A) The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.

(B) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.

(C) When and from whom the petitioners acquired or intend to acquire physical custody of the child.

(D) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.

(E) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.

(F) The name used for the child in the proceeding, and, if a change in name is desired, the new name.

(G) That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(H) A full description and statement of the value of all property owned or possessed by the child.

(I) Any required consents to the adoption may be attached to the petition, or filed with the Juvenile Court prior to entry of a decree of adoption.

(J) The facts which bring the child within the jurisdiction of the Juvenile Court.

Section 6-6-7. Investigation.

(A) Upon the filing of a petition for adoption, the Juvenile Court shall order an investigation to be made:

- (1) by the agency having custody or legal guardianship of the child, or
- (2) in other cases, by the State, or social services agency, or
- (3) by a person qualified by training or experience, designated by the Juvenile Court,

and shall further order that a report of such investigation shall be filed with the Juvenile Court by the designated investigator within the time fixed by the Court and in no event more than sixty (60) days from the issuance of the order for investigation, unless time therefor is extended by the Court.

(B) Such investigation shall include the conditions of the child for the purpose of determining whether it is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption and of which the Juvenile Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

(C) The Juvenile Court may order agencies named in Subsection 6-6-7(A) located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate.

(D) The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

(E) Where the adopting parent is the spouse of a parent the Juvenile Court, in its discretion, may waive the making of an investigation and the filing of a report.

(F) Upon the filing of the report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Juvenile Court, provided, that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Juvenile Court, and except to the social services agency.

Section 6-6-8. Adoption Hearing.

At any time after the written investigation report has been filed, the Juvenile Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by a member of the Bar of the Court, or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately. Upon satisfaction as to the child's adoption suitability; the adoptive parent's financial ability, moral and physical fitness, and responsibility; and that the child's best interest will be promoted by the adoption, the Juvenile Court may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption. If the Juvenile Court is not satisfied that the adoption will promote the child's best interests, the petition shall be denied. The child's guardian shall be instructed to arrange suitable care for the child, and the Court may request any agency to provide services to assist in the placement and the care of the child.

Section 6-6-9. Report and Final Decree of Adoption.

If the Juvenile Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interest of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Juvenile Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request any agency authorized to provide services to assist in the placement and the care of the child.

Section 6-6-10. Contents of Adoption Order.

The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Juvenile Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child.

Section 6-6-11. Effect of Final Decree.

(A) After a final decree of adoption, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parents.

(B) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural parents, and retain all rights to membership in a Tribe by virtue of his birth to said natural parents.

Section 6-6-12. Confidentiality.

Unless the Juvenile Court shall otherwise order:

(A) All procedural hearings held under this Title shall be confidential and shall be held in close Juvenile Court sessions without admittance of any person other than the interested parties.

(B) All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Juvenile Court and withheld from inspection. No person shall have access to such records except:

(1) Upon court order for good cause shown.

(2) Upon the adopted person reaching the age of majority. The adopted person may review the records unless the natural parents have, by affidavit, requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

(3) The natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the

names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity, by affidavit, the natural grandparents may have access to the records only by court order for good cause shown, and then only if the Juvenile Court deems such request in the best interest of the child.

(4) For the purpose of obtaining the enrollment of the child with another Indian tribe, the Juvenile Court may upon request of an enrollment officer of that tribe, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in that tribe subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other tribe for an *in camera* review only, or allow such Judge to review the record in the District Court, *in camera* for the purpose of said Judge certifying to its tribe that the child is eligible for membership in that tribe.

Section 6-6-13. Enrollment Matters.

Whenever a question arises as to the eligibility of the child for enrollment as a citizen and member of the Tribe, the Juvenile Court is authorized to receive from any source such information as may be necessary for a determination of the eligibility of such child for enrollment, to review such information *in camera*, and to enter its provisional order declaring whether or not the child is eligible for enrollment and the child's blood quantum or other necessary non-identifying enrollment eligibility criteria. In doing so, the Juvenile Court shall seal all records received to maintain their confidentiality of the parties. For purposes of its proceedings, the Juvenile Court shall determine the child's enrollment status, in accordance with the Tribal Constitution, and shall enter its provisional order. Notwithstanding any such provisional order by the Juvenile Court, the enrollment status, blood quantum and membership eligibility of every person shall be ultimately determined through the procedures and proceedings provided by the tribal Enrollment Ordinance.

(Amended by PBP TC No. 2006-141, July 20, 2006)

Section 6-6-14. Certificates of Adoption.

(A) For each adoption or annulment of adoption, the Juvenile Court shall prepare, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(B) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate, shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

CHAPTER 6-7 EMANCIPATION

Section 6-7-1. Rights of Majority.

The Court shall have the authority to confer upon minors the rights of majority, concerning contracts and real and personal property, and to authorize and empower minors to purchase, hold, possess and control in their own person and right, and without interaction or control of a guardian or trustee, any goods, chattels, rights, interests in land, tenements and effects by such minor lawfully acquired or inherited; and such minor shall have full power to hold, convey and dispose of the same, and to make contracts and be subject to all the liabilities incident thereto, sue and be sued, and in all respects to exercise and shall enjoy all rights of property and contract in the same manner and to the same extent as person at the age of majority.

Section 6-7-2. Petition Contents.

Any minor desiring to obtain the rights of majority as set forth in this chapter may, by his or her next friend, or any legal parent, guardian or custodian on behalf of the minor child, file a petition stating the name, age and residence of the child, the names and residences of the minor's parents, guardian, or other legal custodian, and the person or cause for which the rights of majority are sought.

Section 6-7-3. Notice.

The Court shall issue a summons to the minor child and the parents, guardian or other legal custodian as set forth in Section 6-3-3. and 6-3-4.

Section 6-7-4. Hearing.

Upon proof in open court of the truth of the allegations in such petition and that said petitioner is a person of sound mind and able to transact his or her own affairs and that the interest of the minor child shall be promoted thereby, the court in its may in its discretion, order and decree that the petitioner be empowered to exercise the rights of the majority for any and all purpose; and therefore such order and decree shall be entered on the records of said court; and therefore all acts by said petitioner done and performed concerning any contract, rights in action, or interests in real or personal property, shall have the same force, validity and effect as if by a person of full age.

(Enacted by PBP TC No. 96-03, January 5, 1996; amended by PBP TC No. 2006-141, July 20, 2006. amended by PBP TC No. 2010-055, March 4, 2010)

