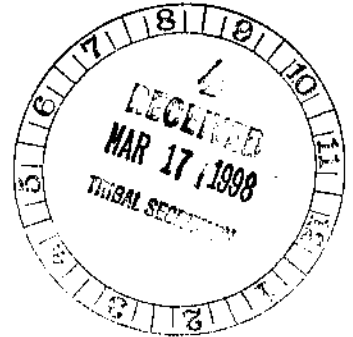


Ordinance No. 35. – Resolution H-097-97 approves 16 attachments to Ordinance 35 to be effective 180 days after Tribal Council approval of Resolution.

THIS RESOLUTION SUPERSEDES ORDINANCE NO. 16 AND ORDINANCE NO. 21 SECTION 3.3.16)



MEMORANDUM

TO: Mary A. Felter, Tribal Secretary
The Hopi Tribal Council

FROM: *Franklin Hoover*
Franklin Hoover, Assistant General Counsel/Legislative Counsel
Office of General Counsel

DATE: March 6, 1998

SUBJECT: Amendments to Hopi Tribal Ordinance #35, The Hopi Children's Code

Following the Tribal Council's adoption of amendments to Ordinance #35, The Hopi Children's Code, through Resolution H-97-97, you asked this Office to incorporate those amendments into the existing Code and provide your Office with a clean copy. Please find attached one original (unbound) and one bound copy of the Children's Code prepared by the Office of General Counsel. I have also enclosed a copy of the computer file for the Code in the WordPerfect 6.1 (Windows) format, labeled as "ORD#35.WPD." This version of the Code compiles all of the amendments made to the Code since its adoption and will, hopefully, provide a useful and accurate replacement for the various versions of the Code that are currently used throughout the Tribe. Bound copies of the Code will be provided to various programs and offices at a meeting tomorrow. Additional copies will be made available to the Tribal Court and to the Villages. Please contact me at ext. 145 if you have any questions, or if this Office can be of further assistance.

xc. Scott Canty, General Counsel
File

Copies: HTC 3/17/98

HOPI TRIBAL COUNCIL
RESOLUTION
H-097-97

WHEREAS, Hopi Tribal Ordinance No. 35, the Hopi Children's Code, was enacted through Resolution H-21-81 and subsequently amended through Resolution H-91-81 and H-11-85; and

WHEREAS, the Hopi Tribal Council recognizes that, in order to more effectively implement and enforce the provisions of the Ordinance, a separate Child Protective Services Program should be established within the Tribal Government structure but outside of the court system; and

WHEREAS, amendments to this Ordinance have been recommended in order to create a Child Protective Services division within the Social Services Program;


NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby enacts the attached "AMENDMENTS TO HOPI TRIBAL ORDINANCE NO. 35 -- THE HOPI CHILDREN'S CODE";

BE IT FINALLY RESOLVED that said amendments shall become effective One Hundred and Eighty (180) days after the date of the Tribal Council's adoption of this Resolution.


HOPI TRIBAL COUNCIL
RESOLUTION
H-097-97

CERTIFICATION

The foregoing resolution was duly adopted by the Hopi Tribal Council on September 22, 1997, at a meeting at which a quorum was present with a vote of 12 in favor, 2 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by ARTICLE IV - POWERS OF THE TRIBAL COUNCIL, SECTION 1 (a) of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does not require Secretarial approval.


Ferrell Secakuku, Chairman
Hopi Tribal Council

ATTEST:


Mary A. Felter, Tribal Secretary
Hopi Tribal Council

Hopi Tribal Ordinance #35

The Hopi Children's Code

Legislative History

The Hopi Children's Code (Hopi Tribal Ordinance #35) was enacted by the Hopi Tribal Council on March 12, 1981, through Resolution H-21-81. The Hopi Children's Code superseded Hopi Tribal Ordinance #16 ("Curfew Violations"), the "Juvenile Manual" adopted by the Hopi Tribal Council through Resolution H-71-76, and §3.3.16 ("Curfew Violation") of Hopi Tribal Ordinance #21 (The Hopi Criminal Code).

Through Resolution H-91-81, the Hopi Tribal Council amended the "Civil Violation" section of Chapter VII.

Resolution H-11-85, adopted by the Hopi Tribal Council on January 11, 1985, amended the "Juvenile Offender" provisions of Chapter VI.

In Resolution H-97-97, adopted September 22, 1997, the Hopi Tribal Council added Chapter III-a -- Child Protective Services, replaced references to the "Children's Court Counselor" with "Child Protective Services" throughout the Code, revised the Minor in Need of Care provisions of Chapter V, and made minor changes to the court records and law enforcement records provisions found in Chapter III.

The Hopi Children's Code
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CHAPTER I DEFINITIONS

When used in this Code, the following words and phrases shall have the meanings given below:

1. ***Abandon:*** When a parent leaves a child without communication and fails to support a child and there is no indication of the parent's willingness to assume his parental responsibilities for a period exceeding one (1) year.
2. ***Abused Minor:*** A minor who has been inflicted with physical injury, sexual or mental harm; and/or who is exploited and overworked to such an extent that his health, morals and/or emotional well-being are endangered.
3. ***Actual Hours:*** The number of hours including the hours of Saturdays, Sundays and holidays. See Chapter II.D.
4. ***Adjudication:*** A finding by the Children's Court on the facts alleged in the petition or complaint and incorporated in a decree.
5. ***Adult:*** Any person eighteen (18) years of age or older.
6. ***Agent for Notice:*** A person designated by the Tribe to receive notice from a state on minor-in-need-of-care cases.
7. ***Aggrieved Party:*** Includes the minor and his parent(s), guardian, custodian or family member whose rights or interests have been affected by an adjudication.
8. ***Calendar Days:*** The number of days including Saturday, Sundays and holidays. See Chapter II.D.
9. ***Child:*** Any person who has not yet reached his or her eighteenth (18) birthday.
10. ***Child Placement Agency:*** An agency receiving minors for placement or adoption that is licensed or approved where such license or approval is required by law.
11. ***Child Protective Services:*** The program within Hopi Tribal Social Services which, in cases of child abuse or neglect and in other minor-in-need-of-care situations, makes initial assessments, conducts investigations with assistance from law enforcement as necessary, provides social services to abused or neglected children and their families, and performs other related duties.
12. ***Commit:*** To transfer legal custody.
13. ***Delinquent Act:*** Any act which would be a crime under Hopi Tribal law if committed by an adult, or any act which is defined as an offense if committed by a child.
14. ***Deprivation of Custody:*** Transfer of legal custody by the Children's Court from a parent or previous legal custodian to another person, agency or institution.
15. ***Detention:*** Temporary care in physically restricting facilities.
16. ***Extended Family:*** Ascending blood relationship to the child. Clan relationship may be considered should blood relationship be exhausted prior to placement.
17. ***Guardian:*** Means a guardian of the person and not a guardian of the property or estate.

18. **Hopi:** A member of the Hopi Tribe.
19. **Indian:** For purposes of this Code shall include a member of the Hopi Tribe or any other federally recognized Indian Tribe, band, group or community or the natural child of any Indian, regardless of age; and any person of Indian descent on the Reservation.
20. **Juvenile Offender:** A minor who commits a delinquent act.
21. **Juvenile Intake Officer:** The court official who screen minors subsequent to arrest.
22. **Kikmongwi:** The recognized leader of a village who exercises authorities and responsibilities as reserved to the villages by the Constitution and By-Laws of the Hopi Tribe.
23. **Minor:** Any person who has not yet reached his or her eighteenth (18) birthday.
24. **Parent:** A natural or adoptive parent but not a person whose parental rights have been terminated.
25. **Presenting Officer:** A court official who represents the Hopi Tribe in minor-in-need-of-care proceedings under this Code. The duties and responsibilities of the presenting officer may be delegated to the tribal prosecutor.
26. **Probable Cause:** Circumstances that are sufficient to convince a reasonable person that a juvenile has committed or is committing delinquent act or is a minor-in-need-of-care.
27. **Probation:** A legal status created by court order. When on probation, a minor is permitted to remain in his home under prescribed conditions under supervision by a probation officer designated by the court. The minor is subject to return to the Court for further proceedings if he violates the conditions of his probation.
28. **Protective Supervision:** A legal status created by court order in a proceedings not involving a delinquent act by the minor whereby the minor is permitted to remain in his home, and supervision and assistance to correct the need of supervision or need of care is provided by a Child Protective Services or other person designated by the Children's Court.
29. **Reservation:** The Hopi Indian Reservation including: Land Management District No. 6; the lands in the former Joint Use Area of the 1882 Executive Order Reservation partitioned to the Hopi Tribe; the village of Moenkopi and the surrounding range and farm lands used or occupied by the Hopi Indians; plus all lands in the reservation created by the Act of June 14, (48 Stat. 960) in which the Hopi Tribe is determined to have any joint or exclusive interest and all lands in said reservation area which may be partitioned to the Hopi Tribe.
30. **Shelter Care:** Temporary care in physically unrestrictive facilities.
31. **Support:** Adequate shelter, food, clothing, medical care and provision of appropriate religious and Hopi cultural training.
32. **Termination of Parental Rights:** Permanent elimination of all parental rights and duties of a person including residual parental right and duties by court order.
33. **Village Governor:** An elected leader of a village who exercises authorities and responsibilities as reserved to the village through the village government and the Constitution and By-Laws of the Hopi Tribe.

CHAPTER II GENERAL

A. Purpose

It is the purpose of the Hopi Children's Code to:

1. preserve the unity of the family;
2. provide for the full consideration of religious and traditional preferences and practices of families during the disposition of a matter;
3. provide for the care, protection, mental and physical development of the children of the Hopi Tribe;
4. ensure that a program of supervision, care and rehabilitation will be available to those children who come within the provisions of the Code;
5. achieve the foregoing purposes in a family environment whenever possible separating the minor from his parent(s) only when no alternative disposition is suitable to the child's welfare or in the tribal interest of public safety; and
6. provide fair procedures for enforcing this Code that recognize and protect the rights of the parties.

This Code shall be interpreted and construed to carry out the above purposes.

B. Rights

This subsection shall apply to the minor, his parent(s), guardian or custodian, and any adult appearing as a defendant.

1. Right to Counsel:

- a. **Statement of Rights:** The Children's Court shall inform the individual of their right to retain counsel by telling them: "you have the right to have a lawyer or another person represent you at this hearing. However, you or your family must pay any fees for such representation."
 - b. **Appearance Without Counsel:** If the individual appears at the hearing without counsel, the children's court judge shall continue the proceedings if they need additional time to seek counsel.
 - c. **Inability to Pay Counsel :** If the individual is unable to pay for counsel, the Children's Court shall inform them of any available services that provide representation.
2. **Self-incrimination:** The individual need not be witness against nor otherwise incriminate himself.
 3. **Cross Examination, Evidence:** The Children's Court shall give the individual, his counsel or person he has selected to represent him the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

C. Hearing Notices and Summonses

1. **Information:** In addition to other relevant information, hearing notices and summonses shall include:
 - a. the name of the court;

- b. the title of the proceedings; and
 - c. the date, time and place of the proceedings.
2. **Service:** Hearing notices and summonses shall be delivered in person by a law enforcement officer, an appointee of the Children's Court, or by registered mail return receipt requested, if time allows.

D. Time Periods

Unless otherwise noted, time periods are excluding Saturdays, Sundays and holidays, and/or hours thereof.

CHAPTER III
THE CHILDREN'S COURT

A. Purpose

The Children's Court is established to carry out court proceedings related to minors.

B. Officers

The following persons are officers of the Children's Court:

1. **Judges:** The chief judge of the Hopi Tribal Court shall assign one or more judges to hear cases in the Children's Court. In carrying out responsibilities identified in this Code, judges of the Children's Court shall have the same powers and duties as judges of the Hopi Tribal Court
2. **Juvenile Intake Officer:** The intake officer shall have the duty to:
 - a. screen minors after an arrest to determine eligibility for diversion or the necessity for detention based upon developed intake criteria;
 - b. submit intake reports to the presenting officer, juvenile probation officer and police department;
 - c. follow up on notification of the minor's parent(s), guardian or custodian;
 - d. keep written records of all reports, investigations and recommendations;
 - e. work in conjunction with the probation officer to provide for the diversion of a juvenile offender if the offense does not warrant formal adjudication;
 - f. make reports to the Children's Court as provided in this Code; and
 - g. perform such other duties as the Children's Court may require.
3. **Juvenile Probation Officer:** The probation officer shall have the following duties in all juvenile offender proceedings:
 - a. make preliminary inquiries, social summaries and such other investigations as the Children's Court may direct;
 - b. keep written records of all investigations or studies;
 - c. make reports to the Children's Court as provided in this Code or as directed by the Children's Court;
 - d. explain to the minor and his parent(s), guardian or custodian the meaning and conditions of probation and protective supervision upon placing of the minor on probation or under protective supervision;
 - e. monitor the conduct and condition of each minor on probation or under protective supervision and report to the Children's Court; and
 - f. perform such other duties in connection with the care, custody or transportation of minors as the Children's Court may require.

Probation Officers shall have the powers of law enforcement officers for the purpose of arrest for violations of probation or parole.

4. **Presenting Officer:** The presenting officer shall have the duty to:

- a. represent the Hopi Tribe in all minor-in-need-of-care proceedings and juvenile offender proceedings;
 - b. process, sign, file and present petitions, subpoenas, affidavits, motions and papers of any kind to the Children's Court;
 - c. keep written records of all investigations and studies;
 - d. make reports to the Children's Court as provided in this Code or as directed by the Children's Court; and
 - e. perform such other duties as the Children's Court may direct.
5. **Law Enforcement Officers:** Law enforcement officers shall be officers of the Children's Court.
 6. **Other Personnel:** The Children's Court shall have a clerk, bailiff, agent for notice and an assistant judicial administrator.

C. Jurisdiction

1. **General:** The Children's Court shall exercise jurisdiction over:
 - a. all children's matters arising off the Hopi Reservation which are referred to under the Indian Child Welfare Act (25 U.S.C. 1901 et. seq.);
 - b. all minor-in-need-of-care matters arising on the Reservation which are not handled by the respective villages;
 - c. all juvenile offender cases arising on the Reservation;
 - d. all other matters specified in this Code involving children on the Reservation and placement made by the Children's Court off the Reservation.
2. **Jurisdiction Over Juvenile Offenders:** The Children's Court shall have exclusive and original jurisdiction over proceedings in which an Indian minor is alleged to be a juvenile offender unless the Children's Court transfers jurisdiction to the Hopi Tribal Court pursuant to Chapter III.C.6 of this Code.
3. **Jurisdiction Over Adults:** The Children's Court shall exercise jurisdiction over adults as follows:
 - a. In any criminal case occurring on the Reservation in which the victim is under eighteen (18) years of age and the person accused of the offense is an Indian eighteen (18) years of age or older, the Trial Court may assign the case for trial and disposition by the Children's Court following the rules, procedures and penalties applicable to the Trial Court.
 - b. In any case before the Children's Court, the Children's Court may exercise the jurisdiction over any adult, Indian or non-Indian within the Reservation to facilitate the handling of children's cases. Such jurisdiction includes but is not limited to the power to compel attendance at court or other proceedings related to the disposition of a child's case, or impose restrictions, conditions and requirements relating to the care, guardianship, custody and/or control of a child, and/or to punish the adult for contempt of court.
 - c. Any off-reservation person or agency, whether Indian or non-Indian, as a precondition of obtaining or retaining the custody or guardianship of a child pursuant to this Code shall execute a consent form consenting to the jurisdiction of the Children's Court. Consent shall be approved by the chief judge of the Hopi Tribal Court for all matters arising from its relationship of the child during the time the matter is within the

jurisdiction of or subject to an order of the Children's Court. It shall include consent to the personal jurisdiction of the Children's Court and shall be subject to written notices, summonses or other documents of the Children's Court mailed to the person or agency off the Reservation.

- d. A non-Indian residing or traveling upon the Hopi Reservation who disobeys a lawful order of the Children's Court may be subject to removal and exclusion from the Reservation in addition to any other penalties.
4. **Village Jurisdiction:** Article III, Section 2, of the Constitution and By-Laws of the Hopi Tribe reserve jurisdiction to the villages:
- to appoint guardians for orphan children and incompetent members; and
 - to adjust family disputes and regulate family relations of members to the villages.

To facilitate the exercise of village jurisdiction, the procedures set forth below will be followed by the agent for notice and the Children's Court:

- a. **Notice From a State Court:** When the Hopi Tribe receives notice of a case pending in a state court which involves a Hopi child, the agent for notice shall:
 - (1) request a time extension of twenty (20) days from the state court;
 - (2) notify the child's respective village governor, kikmongwi or his delegate that the agent for notice has received notice from a state court regarding the child.
- b. **Content of Notice to Village:** The notice to the village shall contain the name of the child, parent(s), the state court sending notice, the nature of case, the deadline for response to the agent for notice, and the deadline for response to the state court. The notice to the village shall also contain the following statement:

"The Hopi Children's Court does not have original jurisdiction over this matter pursuant to Article III, Section 2, of the Hopi Constitution. Your village may choose to handle this matter in the way traditional to your village; request the services and facilities of the Hopi Children's Court to assist you in your processing of this matter; or waive jurisdiction. The deadline for your reply stating the village decision is _____."

- c. **If Village Assumes Jurisdiction:** If the child's village assumes jurisdiction, the Children's Court personnel will cooperate with the village representative to extend court services including information concerning legal representation and processing of court documents.

The agent for notice shall file the village response in the state court, the Children's Court and in the village records.

If requested, the Children's Court shall prepare the village's response to the state court.

- d. **Membership in Village Not Clear:** In the event that a minor's membership rights in a specific village are not clear, or two or more villages claim jurisdiction over the minor, the agent for notice shall request the Children's Court to assume temporary and/or concurrent jurisdiction and proceed pending resolution of the jurisdictional questions.
- e. **Village Does Not Assume Jurisdiction:** If the child's village does not assume jurisdiction or does not respond to the agent for notice by the given deadline, the agent for notice shall request the Children's Court to assume the right of concurrent jurisdiction and accept or refuse the case on its merits and shall respond to the state court accordingly.

- f. **Minor-In-Need-Of-Care and Adoption Matters:** For all Indian minor-in-need-of-care and adoption matters arising within the jurisdiction of the Hopi Children's Court, the Children's Court shall notify the child's respective village to determine if the village wishes to exercise jurisdiction. If the Children's Court has reason to believe that the minor is in immediate danger from his surroundings, the Children's Court may assume temporary and/or concurrent jurisdiction on the basis of the emergency.
5. **Termination of Jurisdiction:** Jurisdiction obtained by the Children's Court over a minor is retained by the Children's Court until terminated by court order.

Jurisdiction over the subject matter and the minor is automatically terminated when the child reaches eighteen (18) years of age unless the Children's Court has ordered jurisdiction thereafter to continue until some other time not to exceed the child's twenty-first (21) birthday.

6. **Transfer to Hopi Trial Court:**

- a. **Petition:** The presenting officer or the minor may file a petition requesting the Children's Court to transfer the minor to the Trial Court if the minor is sixteen (16) years of age or older and is alleged to have committed an act that would be a crime if committed by an adult.
- b. **Hearings:** The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Trial Court. The transfer hearing shall be held not more than ten (10) days after the petition is filed.

Written notice of the transfer hearing shall be given to the minor and the minor's parent(s), guardian or custodian at least five (5) days prior to the hearing.

- c. **Study and Report:** Prior to the hearing, a study and report in writing shall be submitted to the Children's Court by the juvenile intake officer.
- d. **Criteria:** In considering whether to transfer jurisdiction to the Hopi Trial Court, the Children's Court shall consider:
 - (1) the nature and seriousness of the offense with which the minor is charged; and
 - (2) the nature and condition of the minor as evidenced by his age, mental and physical condition, past record of offenses, and responses to the past Children's Court efforts of rehabilitation.

The Children's Court may transfer jurisdiction of the minor to Hopi Trial Court if the Children's Court finds clear and convincing evidence that:

- (1) there are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and
 - (2) the offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.
- e. **Court Order:** To transfer jurisdiction over a minor to the Hopi Trial Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.
 - f. **Presiding Judge:** When a minor is not transferred to the Hopi Trial Court, the judge who presided at the transfer hearing may preside at the adjudicatory hearing unless a motion has been filed to disqualify the judge and sustained by the Children's Court.

D. Procedures and Authorities

- 1. **Court of Record:** The Hopi Children's Court shall have a seal and shall be a court of

record as provided below. All proceedings before the Children's Court, except criminal matters involving offenses against children by adults, shall be considered to be civil in nature. Juvenile offender proceedings shall provide appropriate procedural safeguards to the accused minor consistent with the handling of a criminal offense by an adult

2. **Due Process:** All proceedings before the Children's Court shall be conducted with due process of law, giving affected persons reasonable notice and an opportunity to be heard before the court. No technical defect in any proceeding, including the times for giving notice, shall invalidate any action of the court unless there is a showing of actual prejudice and timely objection to the alleged defect.
3. **Judge Sits Without Jury:** All proceedings before the Children's Court shall be heard by the judge of the Children's Court sitting without a jury, except that for criminal cases involving offenses by an adult against a child, the adult may request and receive a jury trial under the same conditions that prevail in the Trial Court
4. **Closed Hearing:** All hearings under this Code shall be closed hearings unless the Children's Court finds that an open hearing is preferred.
5. **Authority to Utilize Social Services:** The Children's Court is authorized to cooperate fully with any tribal, federal, state, public or private agency to participate in any diversion, rehabilitation or training programs or other programs including contracts and grants which will improve the court system and carry out the purpose of this Code.
6. **Contempt of Court:** Any willful disobedience or interference with any order of the Children's Court constitutes contempt of court. The Children's Court may punish any person under its jurisdiction for contempt of court in accordance with Hopi Tribal Court procedures and tribal ordinances.

E. Records

1. Court Records:

- a. **Clerk Duties:** A record of all hearings and other proceedings under this Code shall be made and preserved by the clerk of the court who shall have authority to make copies thereof and attest to their genuineness under the seal of the Children's Court, and to provide such copies to authorized persons.
- b. **Authorized Persons:** All Children's Court records shall be confidential and shall not be open to inspection by anyone except the following:
 - (1) the minor and/or his counsel;
 - (2) the minor's parent(s), guardian or custodian(s), and/or their counsel;
 - (3) the juvenile probation officer;
 - (4) the presenting officer;
 - (5) the law enforcement officer;
 - (6) Child Protective Services;
 - (7) the Children's Court judge;
 - (8) the guardian ad litem;
 - (9) the Hopi Behavioral Health Service Therapist providing treatment to the minor;
 - (10) the Hopi Tribal Social Services Worker providing case management to the minor;

- (11) the Kikmongwi/Village Governor, or such person's authorized representative, of a Village that has assumed jurisdiction of a case pursuant to Chapter III, Section C, subsection 4; and
 - (12) a person authorized to inspect the records by order of the Children's Court issued for good cause shown.
- c. **Record of Appeal:** For purposes of appeal, if requested, a record of the proceedings shall be made available to the minor, his parent(s), guardian or custodian or their counsel. Cost of obtaining this record shall be paid by the party seeking appeal.
2. **Law Enforcement Records:** Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
- a. **Authorized Persons:** All law enforcement records and files concerning a minor shall be confidential and shall not be open to inspection to anyone except the following:
- (1) the minor and/or his counsel;
 - (2) the minor's parent(s), guardian(s) or custodian(s) and/or their counsel;
 - (3) the juvenile probation officer;
 - (4) the presenting officer;
 - (5) the law enforcement officer;
 - (6) Child Protective Services;
 - (7) the children's court judge;
 - (8) the guardian ad litem;
 - (9) the Hopi Behavioral Health Services Therapist providing treatment to the minor;
 - (10) the Hopi Tribal Social Services Worker providing case management to the minor;
 - (11) the Kikmongwi/Village Governor, or such person's authorized representative, of a Village that has assumed jurisdiction over a case pursuant to Chapter III, Section C, subsection 4; and
 - (12) a person authorized to inspect the records by order of the Children's Court issued for good cause shown.
3. **Expungement:** When a minor who has been the subject of any proceedings before the Children's Court reaches his eighteenth (18) birthday or at such time after the minor's eighteenth (18) birthday as the Children's Court terminates its jurisdiction over that person, the chief judge of the Tribal Court shall order the clerk of the court to destroy both the court records and the law enforcement records.

F. Appeals

1. **Notice:** Any aggrieved party to the adjudication by the Children's Court, including the Hopi Tribe, may appeal said judgment or order to the Tribal Appellate Court by filing a notice of appeal with the Children's Court within twenty (20) calendar days of the final adjudication.
2. **Adjudications "Final":** An adjudication shall be considered final notwithstanding the fact that the matter remains subject to the continuing jurisdiction of the Children's Court.

3. **Initials Used:** An appeal from a decision of the Children's Court shall be handled by the Tribal Appellate Court in the same manner as appeals from the Trial Court, except that the child's initials shall be substituted for his or her name in full proceedings before Tribal Appellate Court.

CHAPTER III - a
CHILD PROTECTIVE SERVICES

A. Establishment and Purpose

Child Protective Services is established within Hopi Tribal Social Services for the purpose of protecting all children on the Hopi Reservation from abuse, neglect and other serious threats to physical and mental well-being.

B. Duties and Responsibilities

In cases of child abuse and/or neglect, and in other minor-in-need-of-care situations falling within the provisions of this Code, Child Protective Services shall have the duty and responsibility to:

1. Assess the case upon receipt of the initial referral by interviewing alleged victims, family members, witnesses and other persons involved and by considering relevant social, cultural and physical factors;
2. Take appropriate actions after determining the risk to the child, including the development of informal agreements with the parties or initiating appropriate court actions;
3. Conduct investigations with such law enforcement assistance as he or she deems necessary;
4. Direct the short-term emergency placement of the child in accordance with the provision of the Code;
5. Make reports to the Children's Court as provided in this Code;
6. Explain to the minor and his parent(s), guardian or custodian the meaning and condition of protective supervision upon the placing of the minor under supervision; and
7. Perform other related duties as specified in this Code.

C. Child Protection Registry

1. **Registry:** Child Protective Service shall maintain a Child Protection Registry which shall contain a copy of the report of each investigation conducted by Child Protective Services made in response to a complaint of child abuse or neglect or of other conditions indicating that a child is a minor-in-need-of-care. Reports that are referred to the Presenting Officer for petitioning shall be filed separately from all other reports and shall be supplemented by documents showing the subsequent dispositions of the cases.
2. **Confidentiality:** Except as provided in subsection 3 of this Section, all records contained in the Child Protection Registry shall be confidential and shall not be disclosed except pursuant to an order of the Children's Court issued upon a showing that the petitioner has a valid need for information contained in the record, or a part thereof, and that the release of the record, or a part thereof, is necessary to meet that need. In making this determination, the Children's Court Judge shall have access to the Child Protection Registry.
3. **Limited Disclosure:** Upon receipt of a written request from a person working in a field involving the care, education or protection of children, stating the person's name, occupation, address and the reason for the request, Child Protective Services may disclose the identity of a person named in a report of an investigation that has been referred to the Presenting Officer, if that person was found by the Court to have abused a child, neglected a child, or otherwise contributed to conditions indicating that a child is a minor-in-need-of-care.

CHAPTER IV

PARENTAL RIGHTS AND DUTIES, CUSTODY, GUARDIANSHIP, AND THE COURT

A. Purpose

The purpose of this chapter is to set out the rights and duties of the parents, the provisions of guardianship and legal custody, and certain powers of the Children's Court with respect to compelling the support of children and terminating parental rights.

B. Parental Rights and Duties, Custody, and Guardianship

1. **Natural Parental Rights and Duties:** The rights and duties of a natural parent include the rights and duties of legal custody and of guardianship.
2. **Residual Parental Rights and Duties:** Residual parental rights and duties are those rights and duties remaining with the natural parent(s) after legal custody or guardianship of the person, or both, have been vested in another person or agency, including but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the minor's religious affiliation, and the right of reasonable visitation unless restricted by the Children's Court.

If no guardian has been appointed, residual parental rights and duties also include the right to consent to marriage, enlistment in the armed forces, and major medical, surgical, psychological and psychiatric treatment.

3. **Legal Custody:** Legal custody means a relationship embodying the following rights and duties:
 - a. the right to physical custody of a child;
 - b. the right and duty to protect, train and discipline him;
 - c. the duty to provide him with food, clothing, shelter, education and necessary medical care;
 - d. the right to determine where and with whom he shall live; and
 - e. the right, in an emergency, to authorize surgery or other extraordinary care.

Legal custody shall only be obtained by court order. In the event that the child is temporarily left in the care and custody of an extended family member with the consent of that family member, the extended family member may exercise custody of approval of necessary medical care

4. **Guardianship of the Person:** Guardianship includes, among other things, the authority to consent to marriage, to enlistment in the armed forces, and to consent to major medical surgical, psychological or psychiatric treatment. Guardianship of the person also includes legal custody if legal custody is not vested in another person, agency or institution. Guardianship shall only be obtained by court order.
5. **Voluntary, Temporary Transfer of Legal Custody:**
 - a. **Authority:** The Children's Court may, upon petition, enter an order temporarily transferring legal custody from a parent to another member of a child's extended family.
 - b. **Voluntary Consent:** Such an order may be entered upon the appearance in court and voluntary consent of both the parent or parents having custody of the child and family

member to whom custody is to be temporarily transferred. An affidavit of the family member consenting to the temporary transfer of custody may be accepted by the Children's Court in lieu of a personal appearance by reason of parental health, employment, education or other adequate reason.

- c. **Time Limit:** No order temporarily transferring custody shall be entered for a period of more than one (1) year. Temporary custody may be renewed pursuant to Chapter IV. 5.a and b, above.
- d. **No Harm:** No order temporarily transferring custody shall be made unless it appear substantially certain to the Children's Court that such an order will not cause harm to the child involved and that the child will be adequately and lovingly cared for during the period of temporary custody.
- e. **Meets Need:** No order temporarily transferring custody shall be made except to meet manifest family needs caused by conditions of parental health, employment, education or other adequate reason.
- f. **Support:** A parent may be required by the Children's Court to contribute to the financial support of a child as a condition to a temporary transfer of custody.
- g. **Evaluation:** The Children's Court may require that an evaluation of the situation be prepared and submitted to the Children's Court by the Child Protective Services prior to acting on any petition to temporarily transfer custody.

C. Support of Children

- 1. **Foster Care Placement:** Payment for child support may be made directly to a nongovernmental agency or home in which the Children's Court vests legal custody provided that:
 - a. the placement agency shall make periodic reports to the Children's Court concerning the care and treatment the child is receiving and his response to such treatment;
 - b. the reports shall be made at such intervals as the Children's Court may direct and shall be made with respect to each child at least every six (6) months; and
 - c. the placement agency or home shall afford an opportunity for a representative of the Children's Court to visit the child as frequently as the Children's Court deem necessary.
- 2. **Requiring Child Support:**
 - a. **Authority:** When legal custody of a child is vested by the Children's Court in an individual or agency other than his parent(s), or a school, the Children's Court may, in the same or any subsequent proceeding, inquire into the ability of the parent(s) or any other person, hereafter "obligated person(s)", who may be obligated to support the child including the expense of any medical, psychological or psychiatric examination or treatment provided under the order of the Children's Court.

After due notice and a hearing on the matter, the Children's Court may require the obligated person(s) to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds.

- b. **Summons and Petition:** If a child support hearing is to be held subsequent to, or in connection with other proceedings, a summons and petition setting forth the nature and basis for the claim shall be sent to the obligated person(s) and their counsel at least ten (10) days prior to the hearing. The summons shall include a statement that the hearing is to determine child support.

No court order issued under this section against an obligated person shall be entered,

unless a summons has been served on the Reservation or a voluntary appearance made or waiver of service given.

- c. ***Procedure and Method for Payment:*** Payments shall be made at intervals determined by the Children's Court. Unless otherwise ordered, payment shall be made to the clerk of the court for transmittal to the person(s) or agency having legal custody of the child or to whom compensation is due. The clerk of the court shall have authority to receive periodic payments towards the care and maintenance of the child such as social security payments made in the name of or the benefit of the child.
- d. ***Enforcement of Support Order:*** An order under Chapter V.B.2.a of this Code against a parent or other person may be enforced by contempt proceedings and shall have the effect of a civil judgement at law. To collect such monies, in addition to other remedies, the Children's Court may issue an order to an employer, trustee, financial agency, or other person, firm or corporation on the Reservation indebted to obligated person(s) to withhold and pay over to the clerk of the court not in excess of one-fourth and/or one-fourth of the amount becoming due to the obligated person(s) at each regular and usual payday or day of disbursement.
- e. ***Copy Served:*** A copy of such order shall, if possible, be served on the obligated person(s) and either the obligated person(s) or the indebted party may request a hearing to determine the propriety of the order and or the extent of the indebtedness.
- f. ***Property Not Exempt:*** No property of the obligated person(s) shall be exempt from execution to enforce collection of the amounts ordered to be paid by the Children's Court under this section, provided that property held in trust by the United States shall be subject to the conditions of the trust.

D. Termination of Parental Rights

Before depriving any parent of his parental rights, the Children's Court shall give due consideration to the preferred right of parents to their children and shall not terminate the relationship unless the Children's Court finds, from all the circumstances in the case, that the welfare of the child or the Tribe requires that the child be taken from his parents.

1. **Authority:** Parental rights to a child may be permanently terminated by the Children's Court according to the procedures in this section.
2. **Petition:** Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the Tribe or legal guardian of the child or a voluntary petition may be filed by one or both parents. The petition shall include:
 - a. the name, birthdate, and residence of the minor;
 - b. the names and residence of the minor's parent(s), legal guardian or custodian;
 - c. a brief statement of the circumstances that gave rise to the petition; and
 - d. if the child is in detention or shelter care, the place, the detention or shelter care and the time he was taken into custody.
3. **Hearing Date:** Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which shall be not more than fifteen (15) calendar days from receipt of the petition. The hearing may be continued:
 - a. upon motion of the minor's parent(s), guardian or custodian, or other representative of the minor; or
 - b. upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds that the presenting officer has exercised due diligence to obtain the evidence or witnesses and reasonable grounds

exist to believe that the evidence or witnesses will become available.

4. Pre-termination report:

- a. **Report Ordered:** Within two (2) days of receiving the petition, the children's court judge shall order the preparation of a pre-termination report by Child Protective Services.
- b. **Consultations:** Child Protective Services shall consult with the minor, and the minor's parent(s) and all social services, health, education and other personnel who have had prior professional contacts with the minor and/or his parent(s), guardian(s) or custodian(s) to determine whether termination of parental rights is consistent with the best interest of the minor. Child Protection Services should also, when feasible, consult with the minor's significant relatives, such as grandparents, aunts and uncles. Child Protective Services may also review any of the minor's previous children's court records.
- c. **Report:** Child Protective Services shall prepare a written report containing both its own opinions and the professional opinions of all personnel with whom it has consulted. The reports shall be presented to the Children's Court and all other parties at least seven (7) days before the termination hearing.

5. Summons:

- a. **Recipients:** At least five (5) calendar days prior to the termination hearing, the Children's Court shall issue summons to:
 - (1) the minor;
 - (2) the minor's parent(s), guardian or custodian;
 - (3) any person the Children's Court believes necessary for the proper adjudication of the hearing; and
 - (4) any person the minor or the minor's parent(s), guardian or custodian believes necessary for the proper adjudication of the hearing.
- b. **Petition Attached:** A copy of the petition shall be attached to the summons.
- c. **Publication:** If the summons cannot be delivered personally or by certified mail, the summons may be served by publication.

6. Hearing:

- a. **Purpose:** The Children's Court shall conduct the termination hearing for the purpose of determining whether parental rights shall be permanently terminated. The hearing shall be private and closed.
- b. **Testimony:** The Children's Court shall hear testimony concerning:
 - (1) the circumstances that gave rise to the petition;
 - (2) the need for termination of parental rights.

The child shall be present in the courtroom only during his testimony, if any.

7. Criteria: The Children's Court may terminate parental rights if it finds clear and convincing evidence of one or more of the following conditions:

- a. **Unfit:** The parent(s) is unfit and incompetent by reason of conduct or condition seriously detrimental to the child.

- b. **Abandonment:** The parent(s) has abandoned his child
 - c. **Abuse:** The minor has suffered physical injuries willfully and repeatedly inflicted by this parent(s) upon him which creates a substantial risk of death, disfigurement, or impairment or bodily functions.
 - d. **Sexual Abuse:** The parent(s) has subjected the minor to any act(s) of sexual abuse.
 - e. **Voluntary:** One or both parents have given their voluntary written consent to such termination before the Children's Court, or by instrument duly acknowledged before a notary public, clerk of the court or record, or other person authorized to acknowledge signatures, oaths or affirmations.
8. **Disposition:** If parental rights to a child are terminated, the Children's Court may treat the child as a minor-in-need-of-care, and/or the Children's Court may accept a petition for adoption. The child must first be found to be in the need of care.
 9. **Appeal:** A termination order may be appealed anytime within six (6) months from the date the termination order becomes final.
 10. **Tribal Membership:** No adjudication of termination of parental rights shall affect the child's enrollment status or eligibility for membership in the Hopi Tribe.

CHAPTER V
MINOR IN NEED OF CARE

A. Purpose

The purpose of this chapter is to set out rules and proceedings for the protection of minors who are abused, neglected and/or otherwise in need of care.

B. Abuse, Neglect, Minor in Need of Care

For the purposes of this Chapter:

1. **“Abused child”** means a minor who has been inflicted with physical injury, sexual or mental harm; and/or who is exploited and overworked to such an extent that his health, morals and/or emotional well-being are endangered.
2. **“Neglected Child”** means a minor who:
 - a. is without proper subsistence, education, medical and other care or control necessary for his well-being because of the faults or habits of his parent(s), guardian(s) or custodian(s) or their neglect or refusal to provide such care or control when able to do so;
 - b. has suffered or is under substantial risk of imminently suffering physical and/or emotional injury as a result of conditions created by his parent(s), guardian(s) or custodian(s) being unable to discharge their responsibilities to and for the minor because of their incarceration, hospitalization or other physical or mental incapacity; or
 - c. has been placed for care or adoption in violation of tribal law.

A child shall not be presumed to be neglected by a parent who temporarily leaves the child in the care and custody of an extended family member with the consent of that family member if the child received adequate care and supervision from that family member, and if the parents maintain reasonable contact with the child and contributes to the child's support when needed.

3. **“Minor in Need of Care”** means a minor who:
 - a. has been abandoned, neglected or abused by his parent(s), guardian(s) or custodian(s);
 - b. has no parent(s), guardian(s) or custodian(s) willing or able to support or care for him;
 - c. habitually disobeys the reasonable and lawful demands of his parent(s), guardian(s) or custodian(s) and is ungovernable and beyond their control;
 - d. is repeatedly absent from home after 10:00 p.m. without permission of a parent, guardian or custodian;
 - e. has run away from his parent(s), guardian(s) or custodian(s);
 - f. is suffering serious emotional damage evidenced by severe anxiety, depression or unmanageable aggressive behavior toward self or others;
 - g. is mentally deficient and the minor's parent(s), guardian(s) or custodian(s) are not willing to seek treatment for him; or
 - h. is committing delinquent acts as a result of parental encouragement, guidance or approval.

4. **Hopi Ceremonial and Traditional Practices:** A minor shall not be found to be an "Abuse Child", "Neglected child" or a "Minor-in-need-of-care" solely on the basis of conditions resulting from participation in Hopi religious ceremonies and other traditional Hopi practices.

C. Reporting of Abuse or Neglect; Written Complaint

1. Persons Mandated to File a Written Complaint

- a. The following persons are mandated to file with Child Protective Services a written complaint of suspected abuse, neglect or other conditions indicating that a child is a minor-in-need-of-care when they have knowledge of facts indicating that such conditions probably exist:
 - i. physicians, nurses, dentists, optometrists and any other medical, health or mental health worker;
 - ii. school principals, school teachers and other school officials;
 - iii. social workers, child day care center workers and other child care staff including Head Start employees, foster parents, residential care personnel and institutional personnel;
 - iv. law enforcement officers, judges or other officers of the Children's Court.
- b. The written complaint shall contain, at a minimum:
 - i. the name, birthdate and residence of the minor, if known;
 - ii. the grade and school in which the minor is enrolled, if known;
 - iii. the name(s), address(es) and residence(s) of the minor's parent(s), guardian(s) or custodian(s), if known;
 - iv. a statement of the facts which indicate probable abuse, neglect or other conditions indicating that the minor is a minor-in-need-of-care, including the date(s), time(s) and location(s) at which the alleged facts occurred;
 - v. the name, title or position, and signature of the person filing the report; and
 - vi. the date on which the complaint is filed.

2. **Reporting by Other Persons:** Persons not mentioned above who have reasonable cause to suspect that a minor has been abused or neglected, or otherwise is a minor-in-need-of-care, are encouraged to report their complaint of abuse or neglect to a responsible member of the child's immediate or extended family or the appropriate village leaders. If the appropriate village leaders are unable or unwilling to act upon such information, the complaint may be reported to Child Protective Services. Those persons complaining to Child Protective Services under this paragraph may remain anonymous.

3. **Processing of Reports:** Within 48 hours of the receipt of a report of suspected abuse, neglect or other conditions indicating that a minor is a minor-in-need-of-care, except where the child is taken into emergency custody, Child Protective Services shall begin an investigation, with such law enforcement assistance as it may request. No later than 12 days after the receipt of the report, Child Protective Services shall file a report in the Child Protection Registry, and, if the report includes a recommendation that a petition be filed pursuant to Section H of this Chapter, then Child Protective Services shall submit a copy of the report to the Presenting Officer. If the child is taken into custody, then Child Protective Services shall conduct an investigation pursuant to Section F of this Chapter.

4. **Immunity from Liability:** Any person or agency filing a written complaint or otherwise

reporting in good faith under this section shall be immune from civil liability and criminal prosecution arising from the filing of the written complaint or the making of the report.

5. **Privileged Communications:** The communications between a husband and wife, physician and patient, or social worker and client shall not be privileged when such communication involves information about the abuse or neglect of a minor. Communications about the abuse or neglect of a minor made between an attorney and client shall be privileged only if the attorney is representing the client in a matter involving the alleged abuse or neglect of a minor by the client.
6. **Photographs and X-rays:** Any person mandated by this section to file a written complaint may take or cause to be taken, without the permission of the minor's parent(s), guardian(s) or custodian(s), photographs of any trauma on a minor who is suspected of being abused; and, if medically indicated, such person may authorize a radiological examination of the minor. All such photographs and/or images made pursuant to this subsection shall be destroyed or delivered to the person having legal custody of the minor if the written complaint is determined to be unfounded by Child Protective Services through an investigation or by the Children's Court at a hearing.
7. **Penalty for Not Reporting or Interfering with Reports:** Any person mandated by this section to file a written complaint who knowingly fails or refuses to file such a complaint, within a reasonable time, concerning a known or suspected case of abuse or neglect, or who knowingly prevents another person from doing so shall be subject to a civil penalty not to exceed five hundred and fifty dollars (\$550.00).

D. Emergency Custody

1. Taking Emergency Custody

- a. **Warrant:** The Children's Court may issue a warrant directing that a minor be taken into custody if the Children's Court finds that there is probable cause to believe that the minor is a minor-in-need-of-care and that immediate custody is necessary for the protection of the minor. Such warrant shall be issued pursuant to Hopi Tribal Court procedures.
- b. **Law Enforcement Personnel and Child Protective Services:**
 - i. A minor shall be taken into custody by a law enforcement officer or Child Protection Services if there is probable cause to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his surroundings; or
 - ii. A minor shall be taken into custody by a law enforcement officer if the Children's Court has issued a warrant directing that the minor be taken into custody.
- c. **Other than Law Enforcement Personnel and Child Protective Services:** If probable cause exists to believe that emergency custody of a minor is necessary to prevent the minor's imminent death or serious bodily injury, and the minor's parent(s), guardian(s) or custodian(s) is unable or unwilling to protect the minor from such imminent death or injury, any physician, probation officer, social service worker, school administrator, or, if none of the above-listed persons are available, any person, shall have the authority to take physical custody of the minor, notwithstanding the wishes of the minor's parent(s), guardian(s) or custodian(s) and immediately deliver the minor to the custody of a law enforcement officer. Any person acting in good faith in accordance with this paragraph shall be immune from all liability.

2. Responsibilities Pursuant to Taking Emergency Custody:

- a. **Law Enforcement Officer's Duties:** A law enforcement officer who takes a minor into custody or otherwise receives custody of a minor shall immediately consult Child Protection Services regarding a temporary disposition for the child. After such

consultation with Child Protective Services, the law enforcement officer may release the minor to the minor's parent(s), guardian or custodian and issue verbal counsel or warning as may be appropriate, unless temporary placement with someone other than the minor's immediate family is necessary to protect the health and safety of the minor.

If the minor is not released, the officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian that the minor has been taken into custody and to inform them of the reasons for taking the minor into custody and of their rights to be present with the minor until an investigation to determine the need for shelter care is made by Child Protective Services. If the minor is not released, the minor shall be delivered to the custody of the Child Protective Services by the officer as soon as possible.

- b. ***Child Protective Services:*** Child Protective Services shall not place the minor in shelter care unless:
- i. a written complaint or other report has been made pursuant to Section C of this Chapter and a subsequent investigation indicates that shelter care is necessary to protect the health and safety of the minor;
 - ii. the minor is taken into emergency custody pursuant to this Section; or
 - iii. the minor's parent(s), guardian or custodian cannot be found to receive the minor.

If the minor's parent(s), guardian or custodian have not been contacted, Child Protective Services shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent(s), guardian or custodian, unless shelter care is immediately necessary.

If the minor is not released to his parent(s), guardian or custodian, Child Protective Services shall place the minor in shelter care pending the custody hearing.

Child Protective Services shall explore available preadjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

- c. ***Other than Law Enforcement Personnel and Child Protective Services:*** A person other than a Law Enforcement Officer or Child Protective Services taking emergency custody of a minor pursuant to this Section shall immediately contact a Law Enforcement Officer and arrange to transfer emergency custody of the minor to that Officer. After such a transfer has been made, the duties of the Law Enforcement Officer shall be provided for in this subsection.

3. Custody Hearing

- a. ***Immediate Hearing:*** When a minor has been taken into custody and not released to his parent(s), guardian or custodian, the Children's Court shall hold a custody hearing within twenty-four (24) hours to determine where the minor should be placed to reasonably assure his safety and well-being pending further court actions, if any;
- b. ***Notice:*** The Children's Court shall make reasonable efforts to give written notice of the custody hearing to the minor and his parent(s), guardian(s) or custodian(s), counsel, and the person who took emergency custody of the minor as soon as the time for the hearing is established. The notice of the hearing shall state the time and place where the hearing shall be held in the absence of the child's parent(s), guardian(s) or custodian(s) if reasonable efforts have been made to notify them of the hearing.
- c. ***Criteria:*** At the hearing, the Children's Court shall determine whether probable cause exists to believe that the minor is a minor-in-need-of-care. If the Children's Court determines that such probable cause does not exist, then the Children's Court shall

dismiss the case without prejudice and release the minor to the custody of his parent(s), guardian(s) or custodian(s). If the Children's Court determines that such probable cause does exist, then the Children's Court shall continue its jurisdiction over the case and either place the child in shelter care or release the minor to the custody of his parent(s), guardian(s) or custodian(s) upon such conditions (including removal of the alleged perpetrator from the household by protective order or other lawful process) as will reasonably assure the safety and well-being of the minor, based upon a consideration of the following factors:

- i. whether the minor is suffering from an illness or injury and whether his parent(s), guardian(s) or custodian(s) are providing adequate care;
- ii. whether the minor is in immediate danger from his surroundings and whether removal from those surroundings is necessary for his safety or well-being;
- iii. whether the minor will be subject to injury by others if not placed in the custody or supervision of a social services agency;
- iv. whether the minor's parent(s), guardian(s) or custodian(s) is willing and able to provide adequate supervision and care for the minor;
- v. whether there is a likelihood that the minor will run away and be unavailable for further proceedings; and
- vi. the recommendation of Child Protective Services as to the appropriate placement for the minor.

Regardless of the placement option chosen, the Children's Court may order any person alleged to have abused and/or neglected the minor to undergo appropriate diagnostics examinations, evaluations or counseling.

- d. A parent, guardian or custodian of a minor who did not receive actual notice of the emergency custody hearing prior to the time when the hearing was held shall, upon making a request to the Children's Court, have the right to be heard before the Children's Court within (48) hours of receiving actual notice of the emergency custody hearing. The Children's Court shall notify the Presenting Officer, Child Protective Services, and the minor's counsel of the time and place when the parent, guardian or custodian will be heard.

E. Shelter Care

1. Shelter care may be:
 - a. a home of an extended family member;
 - b. a private family home on the Reservation approved by the Children's Court;
 - c. a foster care facility on the Reservation approved by the Tribe; or
 - d. a shelter care facility of the Reservation approved by the Tribe.
2. A minor alleged to be abused, neglected or otherwise a minor-in-need-of-care shall not be detained or placed in a jail or other facility used for the detention of adults or juvenile offenders.

F. Investigation

Child Protective Services shall commence an investigation within twenty-four (24) hours of the custody hearing. The investigation shall be to determine whether the interests of the minor and the Tribe require that further action be taken. The investigation shall be completed within 10 days of its commencement, and a copy of the report of the investigation shall be filed in the

Child Protective Registry. Upon the basis of this investigation, Child Protective Services may:

1. recommend that no further action be taken;
2. recommend to the minor and the minor's parent(s), guardian or custodian that they appear for an informal hearing; or
3. recommend that the presenting officer file a petition in the Children's Court pursuant to Section H of this Chapter.

G. Informal Conference

1. **Authority:** Child Protective Services shall hold an informal conference with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:
 - a. the alleged facts bring the case within the jurisdiction of the Children's Court;
 - b. the informal adjustment of the matter would be in the best interests of the minor and the Tribe; and
 - c. the minor and the minor's parent(s), guardian or custodian voluntarily consent to an informal adjustment.

This section does not authorize Child Protective Services to compel any person to appear at any such informal conference, produce any papers or visit any place.

Any disposition reached at an informal conference must be agreed to by all parties responsible for carrying out the disposition.

2. **Notice:** Notice of the informal conference shall be given to the minor and his parent(s), guardian(s) or custodian(s) and their counsel as soon as the time for the conference has been established. The notice shall contain a brief statement of the alleged circumstances upon which the minor-in-need-of-care allegation is based.
3. **Confidentiality:** No statement made during the informal conference may be admitted into evidence at an adjudicatory hearing or at any proceedings against the minor.
4. **Disposition:** At the informal conference, Child Protective Services may:
 - a. refer the minor and the minor's parent(s), guardian or custodian to an available program or service provider for needed assistance;
 - b. arrange terms of supervision, calculated to assist and benefit the minor, which regulate the minor's activities and which are within the ability of the minor to perform; or
 - c. recommend that the presenting officer file a petition pursuant to Section H of this Chapter.

Child Protective Services shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by the parties for remedying the situation.

Any informal adjustment period shall not exceed six (6) months.

5. **Monitoring:** Child Protective Services shall review the minor's progress every fifteen (15) to thirty (30) days. If, at any time after the initial thirty (30) day period Child Protective Services concludes that positive results are not being achieved, Child Protective Services may recommend that the Presenting Officer file a petition pursuant to Section H of this Chapter.

H. Adjudicatory Hearing - Court Disposition

1. **Petition:** Minor-in-need-of-care proceedings shall be instituted by a petition filed by the Presenting Officer on behalf of the Hopi Tribe and in the interest of the minor. Upon receipt of the recommendations from Child Protective Services made pursuant to Sections F or G of this Chapter, the Presenting Officer shall have seventy-two (72) hours if the minor has been placed in shelter care, or ten (10) days if the minor has not been placed in shelter care, within which to file such a petition. The Presenting Officer may, for good cause, request the Children's Court to extend the time within which to file the petition.
2. **Contents of the Petition:** The petition shall, at a minimum, contain:
 - a. a citation of the provision of this Code that give the Children's Court jurisdiction over the proceedings;
 - b. the name, birthdate and residence of the minor, if known;
 - c. the names, addresses and residences of the minor's parent(s), guardian(s) or custodian(s), if known;
 - d. a statement of the facts upon which the allegations are based including the date(s), time(s) and specific location(s) at which the alleged facts occurred; and
 - e. the name and signature of the Presenting Officer.
3. **Summons:** Upon the filing of a petition by the Presenting Officer, the children's Court shall issue a summons(es) to the parent(s), guardian(s) or custodian(s) named in the petition, the minor, and any person who is necessary for the proper adjudication of the petition, requiring the person summonsed to appear at a preliminary hearing on the petition. A copy of the petition shall be attached to the summons. The date, time and place of the preliminary hearing shall appear on the summons.
4. **Service of Summons:** A summons and a copy of the petition shall be served personally or, if service cannot be completed personally, by certified mail. If a summons cannot be served in either manner, the Presenting Officer or the minor may request the Children's Court to allow service by publication. The failure to serve the parent(s), guardian(s) or custodian(s) personally, by certified mail, or by publication shall not be preclude the Children's Court from conducting any hearing required under this Chapter, except an adjudicatory hearing.
5. **Preliminary Hearing:** Within fifteen (15) days of the filing of a petition by the Presenting Officer, the Children's Court shall hold a preliminary hearing. If the preliminary hearing is not held within fifteen (15) days, the petition shall be dismissed without prejudice. At the preliminary hearing the Children's Court shall:
 - a. advise the minor's parent(s), guardian(s) or custodian(s) of the contents of the petition and ask them how they answer to the allegation in the petition;
 - b. review the minor's placement and make any modifications to the placement that are necessary for the minor's welfare;
 - c. impose a schedule for filing any pretrial motions;
 - d. hear any pretrial motions that have been filed prior to the preliminary hearing;
 - e. at the discretion of the court, appoint a guardian ad litem to represent the minor during subsequent proceedings; and
 - f. schedule an adjudicatory hearing within thirty (30) days of the preliminary hearing.

6. Adjudicatory Hearing:

- a. The Children's Court shall conduct an adjudicatory hearing to determine whether the minor is a minor-in-need-of-care. The adjudicatory hearing shall be private and closed. If the Children's Court finds by a preponderance of the evidence that the minor is a minor-in-need-of-care, then the matter shall proceed to a dispositional hearing. If the Children's Court does not find, then the case shall be dismissed. The Children's Court shall reduce its findings and conclusions to writing within a reasonable time after the close of the hearing.
- b. The Children's Court may, upon a showing of good cause, grant continuances of an adjudicatory hearing:
 - i. upon the motion of the minor;
 - ii. upon the motion of the minor's parent(s), guardian(s) or custodian(s); or
 - iii. upon the motion of the Presenting Officer by reason of the unavailability of material evidence or witnesses where the Children's Court finds that the Presenting Officer has exercised due diligence to attempt to obtain such evidence or witnesses and that such evidence or witnesses will like become available within the time for which the continuance is requested.

7. Predispositional Report: If the case is not dismissed, Child Protective Services, shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition.

The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.

If the recommendation is that the minor not be placed with his parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the minor with his parent(s), guardian or custodian.

Child Protective Services shall present the dispositional report to the Children's Court, the minor, the guardian ad litem, the minor's parent(s), guardian(s) or custodian(s) and the presenting officer at least three (3) days before the dispositional hearing.

8. Dispositional Hearing:

- a. **Time:** A dispositional hearing shall take place not more than thirty (30) calendar days after the adjudicatory hearing.
- b. **Evidence:** At the dispositional hearing, the Children's Court shall hear all relevant and material evidence offered on the question of proper disposition.
- c. **Notice:** Written notice of the dispositional hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.
- d. **Reports:** At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by Child Protective Services and afford the parties an opportunity to object to the contents and conclusions of the reports. The Children's Court shall also consider any predisposition report prepared by the minor and/or his counsel.

9. Disposition:

- a. In making any decisions to place a minor in out-of-home placement, the Children's Court shall, in case in which such action would not obviously be contrary to the

minor's best interest, determine whether or not there are any relatives, friends or other persons living on the reservation who would be willing and able to provide a suitable temporary or permanent living environment for the minor. The Children's Court shall give due consideration and regard to tribal or family customs relative to the raising of children and shall endeavor to place the minor in a home with a cultural background similar to that which the minor would have enjoyed if properly raised by his natural parents.

Preference shall be given to the disposition which is the least restrictive of the minor's freedom and which is consistent with the best interest of the minor.

Preference shall also be given to the dispositional options which are listed in paragraph b. below

- b. ***Preferred Options:*** If a minor has been adjudged a minor-in-need-of-care, the Children's Court may order one of the following dispositions:
- i. permit the minor to remain with his parent(s), guardian(s) or custodian(s) in under-protective supervision monitored by a Hopi Tribal Social Services Program Social Worker pursuant to such conditions as the Children's Court may prescribe;
 - ii. place the minor with an extended family member within the external boundaries of the reservation;
 - iii. place the minor in a foster home within the external boundaries of the reservation which has been approved by the Tribe;
 - iv. place the minor with an extended family member outside the external boundaries of the reservation approved by the Tribe;
 - v. place the minor in a foster home outside the external boundaries of the reservation approved by the Tribe;
 - vi. place the minor in a shelter care facility or an off-reservation treatment and care facility approved by the Tribe;
 - vii. recommend that termination of parental right proceedings begin.

Such disposition shall be subject to limitations and conditions as the Children's Court may prescribe.

- c. ***Off-Reservation Jurisdiction:*** Whenever a minor is placed in a home or facility located outside of the boundaries of the Reservation, the Children's Court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the Children's Court upon order of the Children's Court.
- d. ***Time Limit:*** Dispositional orders shall be in effect for the time limit set by the Children's Court. No dispositional order shall continue in effect after the minor reaches the age of eighteen (18) years unless the Children's Court continues its jurisdiction pending the minor's graduation from high school or attainment of a GED, or until some other time prior to the minor's twenty-first (21st) birthday.
- e. ***Periodic Review:*** Every dispositional order under which the Children's Court retains jurisdiction shall be subject to periodic review by the Children's Court at least every six (6) months or at more frequent intervals as the Children's Court may direct.
- f. ***Final Order:*** A dispositional order constitutes a final order for purposes of appeal.
10. ***Modification of Dispositional Order:*** A dispositional order of the Children's Court may be modified upon motion and a showing of a change of circumstances made by the minor, the minor's parent(s), guardian(s) or custodian(s), or the Presenting Officer.

CHAPTER VI
JUVENILE OFFENDER

A. Flow Chart

The attached flow chart illustrates the major juvenile offender proceedings under this Code.

B. Purpose

To set out the procedures for reaching disposition of juvenile offender cases.

C. Written Complaint, Warrant

1. **Written Complaint:** A complaint may be filed by a person who has knowledge. The complaint shall be signed by the complainant. The complaint shall contain:
 - a. a citation to the specific statutory provision(s) that give the Children's Court jurisdiction over the proceedings;
 - b. a citation of the provision(s) of Hopi Tribal law which the minor is alleged to have violated;
 - c. the name, age and address of the minor who is the subject of the complaint, if known;
 - d. the name, address of the minor's parent(s), or guardian, if known; and
 - e. a plain and concise statement of the facts upon which the allegations are based, including the date(s), time(s) and specific location(s) at which the alleged facts occurred.
2. **Warrant:** After receiving a written complaint the Children's Court may enter an order called a warrant directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe that the minor committed a delinquent act and that taking custody is justified by the circumstances.

D. Taking Custody

1. **Custody:** A minor may be taken into custody by a law enforcement officer if:
 - a. the officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
 - b. a warrant pursuant to Chapter VI.C.2 of this Code has been issued for the minor.
 - c. Anytime a minor has been taken into custody by a law enforcement officer without a warrant, a verified complaint shall be filed with the appropriate juvenile authorities within two (2) hours charging the minor with a violation of the law.
2. **Rights Warning:** An arresting officer shall give the following warnings to any minor he takes into custody prior to any questioning.
 - a. The minor has the right to remain silent.
 - b. Anything the minor says can be used against the minor in court.
 - c. The minor has the right, at his own expense to have the assistance of counsel and to have his parent(s), guardian or custodian present during questioning.
 - d. If the minor states that he cannot afford an attorney or counsel, the officer shall inform him of available services.

3. **Arresting Officer's Options:** The arresting officer shall either release the minor directly to his parent(s), guardian or custodian and give verbal counsel or warning as may be appropriate, or present the minor to the juvenile intake officer.

E. Intake Custody Decision

When a minor is presented to the juvenile intake officer by the arresting officer, the intake officer may, after an evaluation of the circumstances, place a minor in detention or shelter care if taken into custody pursuant to Chapter VI.D.1 of this Code, or direct that the minor be returned to his parent(s), guardian or custodian. The intake officer may further direct the minor, his parent(s)/ guardian or custodian to return for an informal hearing with the juvenile probation officer.

F. Custody Retained

If the minor is not released, the following provisions shall apply:

1. **Notification of Parents:** The intake officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian that the minor has been taken into custody and to inform them of their right to be present with the minor until the intake custody decision has been made.
2. **Notification of Probation Department:** The intake officer shall inform the Probation Department or its designee within twenty-four (24) actual hours of taking the minor into custody.
3. **Custody Options:** The juvenile intake officer shall immediately explore available pre-adjudication custody arrangements, and prepare recommendations for temporary care and custody for presentation at the detention hearing.
4. **Detention Pending Court Hearing:** A minor alleged to be a juvenile offender may be detained pending a court hearing, in the following places:
 - a. a shelter care facility on the Reservation approved by the Tribe and/or Bureau of Indian Affairs;
 - b. a detention facility on the Reservation approved by the Tribe and/or the Bureau of Indian Affairs; or
 - c. a foster home on the Reservation approved by the Court and/or the Bureau of Indian Affairs.

A minor 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:

- a. a facility as noted above is not available or would not assure adequate supervision of the minor;
 - b. detention is in a cell separate and removed from sight and sound of adults;
 - c. adequate supervision is provided twenty-four (24) hours a day.
5. **Detention Criteria:** A minor taken into custody shall not be placed in detention prior to the court's disposition unless:
 - a. the act is serious enough to warrant continued detention or shelter care;
 - b. there is reasonable cause to believe that the minor will run away and that he will be unavailable for further proceedings and/or commit a serious act causing damage to persons or property;

- c. there is reasonable cause to believe that the minor will commit injury to persons or property of others or commit injury to himself or be subject to injury by others; or
 - d. there is reasonable cause to believe the minor has no parent(s), guardian or custodian able or willing to provide adequate supervision and care for him.
6. **Detention Hearing:** If a minor is detained or placed in shelter care, the Court shall hold a detention hearing within twenty-four (24) hours (excluding holidays and weekends) after the minor has been taken into custody and has not been previously released pursuant to Chapter VI.E of this Code.
- a. Request for a detention hearing shall be instituted by a motion filed by the juvenile intake officer on behalf of the Tribe.
 - b. **Notice:** Notice of the detention hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been established.
 - c. **Presence of Parents:** If the minor's parent(s), guardian or custodian is not present at the detention hearing, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent(s), guardian or custodian. The Children's Court shall recess for not more than twenty-four (24) actual hours and direct the juvenile intake officer to make continued efforts to obtain the presence of the parent(s), guardian or custodian.
 - d. If for good cause, the parent(s), guardian or custodian are unable to appear, the Children's Court judge shall designate an extended family member or other responsible adult to represent the parent(s), guardian or custodian.
 - e. Before proceeding with a detention hearing the Court shall:
 - i. Inform the minor of the purpose of the hearing and determine that the person understands the nature of the charge against him and the potential consequence of the hearing;
 - ii. Explain the right to counsel substantially as follows:

"You have the right to have legal counsel represent you at your own expense or at the expense of your parent(s), guardian or custodian.";
 - iii. Explain to the juvenile and his parent(s) the availability of legal services.
 - f. **Testimony:** The Children's Court shall hear testimony concerning:
 - i. the circumstances that gave rise to taking the minor into custody; and
 - ii. the need for detention or shelter care
 - g. **Finding and Temporary Disposition:** The minor shall be released to his parent(s), guardian or custodian and ordered to appear for further proceedings, unless:
 - i. the act is serious enough to warrant continued detention or shelter care;
 - ii. there is reasonable cause to believe that the minor will run away and that he will be unavailable for further proceedings; and/or, commit a serious act causing damage to person or property.
 - iii. there is reasonable cause to believe that the minor will commit injury to persons or property of others or cause injury to himself or be subject to injury by others;
 - iv. there is reasonable cause to believe the minor has no parent(s), guardian or

custodian able or willing to provide adequate supervision and care for him.

- h. The Children's Court may release a minor to an extended family member or other responsible adult if the parent(s), guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older the Children's Court may take the minor's wishes into consideration.
- i. An order specified in this section may at any time be amended to impose additional or different conditions of release or to return the minor to custody or detention for failure to conform to the conditions originally imposed.

G. Investigation and Informal Hearing

1. **Investigation:** The juvenile probation officer shall make an investigation upon arrest of a minor within forty-eight (48) hours if the minor is in detention or shelter care or within seventy-two (72) hours if the minor has been released to his parent(s), guardian or custodian or within ten (10) days upon receipt of a complaint without an arrest pursuant to Chapter VI.C.1 to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the juvenile probation officer may:

- a. recommend that no further action be taken;
- b. direct the minor, his parent(s), guardian or custodian to appear for an informal hearing;
- c. request the presenting officer to begin transfer of the case to Hopi Tribal Court; or
- d. recommend that the presenting officer file a petition to adjudicate.

2. Informal Hearing:

- a. **Authority:** The juvenile probation officer may hold an informal hearing with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:
 - i. the facts of the case bring it within the jurisdiction of the Children's Court;
 - ii. an informal adjustment of the matter would be in the best interest of the Tribe; and
 - iii. the minor and his parent(s), guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

This section does not authorize the juvenile probation officer to compel any person to appear at any conference, produce any papers, or visit any place.

- b. **Notice:** Notice of the informal hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been established. The notice shall include a brief statement of the substance of the allegations against the minor.
- c. **Confidentiality:** No statement or admission made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this Code.
- d. **Disposition:** At the informal hearing the juvenile probation officer shall take one of the following actions:
 - i. refer the minor and the parent(s), guardian or custodian to a community and/or village program for needed assistance.
 - ii. arrange terms of supervision calculated to assist and benefit the minor which

regulate the minor's activities and which are within the ability of the minor to perform.

- iii. accept an officer of restitution if voluntarily made by the minor.
- iv. recommend that the Presenting Officer file a petition pursuant to Chapter VI.H.1 of this Code.

Any informal adjustment period shall not exceed six (6) months.

The Juvenile Probation Officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation within five (5) days of the hearing.

- e. **Monitoring:** The Juvenile Probation Officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the juvenile probation officer concludes that positive results are not being achieved, he shall recommend that the presenting officer file a petition pursuant to Chapter VI.H.1.

H. Adjudication

1. **Petition for Adjudication:** Juvenile offender proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe. If the minor is in detention or shelter care, he shall be arraigned within ten (10) calendar days. If a petition to adjudicate is instituted on a complaint without an arrest, he shall be arraigned within ten (10) calendar days from the date the summons is served. The petition shall include the information required for a written complaint, and if the minor is in detention or shelter care, the time he was taken into custody.
2. **Arraignment.** Hearings on petitions shall be conducted in accordance with the practice of the Hopi Tribal Courts pursuant to Ordinance #21, except where it otherwise conflicts with the rights of individuals guaranteed by the Indian Civil Rights Act. The Court shall advise minors before the court of their basic rights under the Children's Code at each separate appearance.
 - a. After giving the minor an opportunity to consult with counsel the court shall give the minor an opportunity to plead to the allegations.
 - b. **Admission of guilt:** If the minor admits to the allegations of the petition, the Children's Court shall consider such admission only if the Children's Court finds that the minor has been advised of his rights as set forth in Chapter VI.D.2 and he fully understands the potential consequences of his admissions and:
 - i. the minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for the Children's Court action under this Code;
 - ii. the minor has not, in his purported admission to the allegation(s), set forth facts that, if found to be true, constitute a defense to the allegation.
3. **Adjudicatory Hearing Date:** Upon receiving a not guilty plea at the arraignment or if the minor alleged to be a juvenile offender does not admit the allegations of the petition, the Children's Court shall set a date for a hearing which shall not be more than fifteen (15) calendar days after the minor pleads. If the adjudicatory hearing is not held within twenty (20) calendar days after receipt of the petition, the petition shall be dismissed and cannot be filed again unless:
 - a. the hearing is continued upon motion of the minor;
 - b. the hearing is continued upon motion of presenting officer by reason of the unavailability of material evidence or witnesses, and the Children's Court finds that the presenting officer has exercised due diligence to obtain the evidence or witnesses, and

reasonable grounds exist to believe that the material or evidence or witnesses will become available;

- c. the minor is attending school off the Reservation, and therefore is not available to appear at the hearing; or
 - d. the minor was not available to receive a summons or any party listed in the next section (VI.H.4.) is not available to receive a summons.
4. **Summons:** At least five (5) calendar days prior to the adjudicatory hearing the Children's Court shall issue summonses to:
- a. the minor;
 - b. the minor's parent(s), guardian or custodian;
 - c. any person the Children's Court believes necessary for the proper adjudication of the case; and
 - d. any person the minor believes necessary for the proper adjudication of the case.

A copy of the petition shall be attached to each summons.

5. **Adjudicatory Hearing:**

- a. **Purpose:** The purpose of the adjudicatory hearing shall be to determine whether there is sufficient evidence to substantiate the facts alleged in the petition beyond a reasonable doubt.
- b. **Testimony:** The Children's Court shall hear testimony concerning the circumstances which gave rise to the petition.

The Children's Court may order a psychological and/or psychiatric evaluation and/or medical examination for a minor who is alleged to be a juvenile offender.

If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable ground to believe that the fingerprints are those of a minor in custody upon petition to the court he may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints. Copies of the fingerprint shall be immediately destroyed if the comparison is negative.

- c. **Allegations sustained:** If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

I. **Disposition**

1. **Pre-dispositional Report:**

- a. **Report Ordered:** Upon an order from the Children's Court, the juvenile probation officer shall prepare a written report describing reasonable and appropriate alternative dispositions.
- b. **Plan:** The report shall contain a specified plan for the care of and assistance to the minor calculated to resolve the problems established at the adjudicatory hearing.
- c. **Explanation:** The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
- d. **Specific Reasons for Placement:** If the recommendation is that the minor not be

placed with his parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the minor with his parent(s), guardian or custodian.

2. **Dispositional Hearing:** A dispositional hearing shall take place not more than ten (10) calendar days after the adjudicatory hearing unless otherwise waived by the minor with the concurrence of his parent(s), guardian or custodian or counsel.

a. **Notice:** Notice of the dispositional hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

The notice shall include a statement that the hearing is to determine the disposition of the case.

b. **Hearing Topic:** At the dispositional hearing, the Children's Court shall consider the pre-dispositional report submitted by the juvenile probation officer and afford the parties an opportunity to object to the factual contents and conclusions of the report. The Children's Court shall also consider alternative pre-dispositional reports prepared by the minor and his counsel, if any.

3. **Disposition Options:**

a. **General:** If the minor has been adjudged a juvenile offender the Court shall give consideration to the due regard for tribal or family customs relative to the discipline of children. Of the available options, the Court shall select that which is the least restrictive of the minor's freedom and is in the best interest of the minor and the Tribe.

b. **Preferred Options:** The following options are preferred although the Court may also adopt other dispositions.

i. place the minor on probation subject to conditions set by the Children's Court;

ii. place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision;

iii. commit the minor to an authorized industrial school, training school, or other training or corrective institution authorized to receive Indian children;

iv. commit the minor to an institution or other facility for short-term confinement, study and/or evaluation that meets accepted standards for care and treatment of delinquent children;

v. place the minor on an approved ranch, forestry camp, or other camp or a similar facility, for care and for work, if possible, provided that the person, agency or association operating that facility has been approved by the Tribal Council, or has otherwise complied with all applicable tribal, state and local laws. The minor placed in forestry camp or similar facility may be required to work on fire prevention, forestation, and reforestation, recreational works, forest roads, and on other works on or off the grounds of such facility and may be paid wages, all subject to the approval of, and under conditions set by the Children's Court;

vi. if the Children's Court has assurance that the responsibility to make payments will rest on the minor, and not his parent(s), guardian or custodian, order that the minor make restitution for damages or loss caused by his wrongful act, and impose fines not to exceed five-hundred dollars (\$500);

vii. arrange for employment or work programs to enable children to fulfill court imposed obligation and for other purposes when deemed desirable by the Children's Court;

- viii. in cases of violation of traffic laws or ordinances the Children's Court may, in addition to any other disposition, restrain the minor from driving for such period of time as the Children's Court deems necessary, if necessary, take possession of the minor's driver's license; and/or require that the minor attend driver education training, and/or;
 - ix. order that the minor be examined or treated by a physician, surgeon, psychiatrist, medicine man, or psychologist, or that he receive other special care, and for such purposes if necessary, place the minor in a hospital or other suitable facility.
4. **Time Limit:** Dispositional orders are in effect for the time limit set by the Children's Court, but no order shall continue after the minor reaches the age of eighteen (18) years, unless the Children's Court continues its jurisdiction over the minor until a time not to exceed the minor's twenty-first (21) birthday.
 5. **Periodic Review:** The dispositional orders shall be reviewed at the discretion of the Children's Court, but at least once every six (6) months.
 6. **Final Order:** The dispositional order constitutes a final order for purposes of appeal.
 7. **Modification of Dispositional Order:**
 - a. **Reason:** A dispositional order of the Children's Court may be modified upon a showing of change in circumstances
 - b. **Motion:** The Children's Court may modify a dispositional order at any time upon the motion of the following:
 - i. the minor;
 - ii. the minor's parent(s), guardian or custodian;
 - iii. the juvenile probation officer; and/or
 - iv. the presenting officer.
 - c. **Hearing:** If the modification involves a change of custody the Children's Court shall conduct a hearing to review its dispositional order.
 - d. **Notice:** Notice in writing of the hearing shall be given to the minor, the minor's parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.
The notice shall include a statement that the hearing is to review the disposition.
 - e. **Review:** The Children's Court shall review the performance of the minor, the minor's parent(s), guardian or custodian and the juvenile probation officer and other persons providing assistance to the minor and the minor's family.
 - f. **Code Application:** In determining modification of a disposition, the procedures prescribed in Chapter VI.I.1 and VI.I.2 shall apply.
 - g. **Violation of court order:** If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its disposition unless it finds clear and convincing evidence of the violation.
 - h. **Revocation of Probation or Parole:** If the modification of a disposition involves revocation of probation or parole, the Children's Court shall follow Hopi Tribal Court revocation procedures.

**CHAPTER VII
VIOLATIONS**

A. Civil Violation

1. Any person found to have violated any provision of this section shall be assessed a civil penalty in an amount not to exceed five hundred fifty dollars (\$550.00).

B. Specific Violations

1. **Abandonment:** Any parent(s), guardian or custodian who has been entrusted with or who has assumed the care of a minor under the age of eighteen (18) years of age who abandons a minor as these terms are defined in this Code, shall be deemed in violation of this Section.
2. **Failure to Support Dependent Children:** Any parent(s), guardian or temporary custodian who shall refuse, fail or neglect to furnish food, shelter, or care to those dependent upon him shall be deemed in violation of this Section and the court may order continual reasonable support payments until the minor reaches majority.
3. **Neglect:** Any parent(s), guardian or temporary custodian who has been entrusted with or who has assumed the care of the minor under the age of eighteen (18) years of age who neglects a minor as these terms are defined in this Code shall be deemed in violation of this Section.

FOOTNOTE:

Reference to Related Codes:

- A. Incorporated by reference into this Code is Ordinance #13 and the following sections of the Hopi Criminal Code (ORDINANCE #21):
 - 3.3.2 Abductions
 - 3.3.11 Sexual Conduct with a Minor
 - 3.3.13 Child Molesting
 - 3.3.14 Contributing to the Delinquency of a Minor
 - 3.3.86 Incest
 - 3.3.87 Abuse of a Minor
 - 3.3.30 Failure to send Children to School

CHAPTER VIII
MISCELLANEOUS MATTERS

A. Severability

If any portion of this Code shall be ruled invalid by any Hopi Tribal court or federal court of competent jurisdiction, that portion shall cease to be operative but the remainder of this Code shall continue in full force and effect.

B. Amendments

This Hopi Children's Code may be amended by resolution of the Hopi Tribal Council. Amendments are subject to confirmation by the Secretary of Interior.

Ordinance No. 35 – Approves the Hopi Children’s Code.

NOT IN EFFECT - This Ordinance and its Amendments are incorporated into the amended Ordinance approved by H-097-97.

HOPI TRIBE
RESOLUTION
H- 21 -81

WHEREAS, pursuant to Article VI, Section 1(G) of the Constitution & By-Laws of the Hopi Tribe, a Hopi Children's Code has been developed; and

WHEREAS, the Children's Code establishes the Hopi Children's Court and includes provisions for children who are in need of care and children who have broken tribal law, the method of reporting abuse and neglect, and procedures for situations involving termination of parental rights; and

WHEREAS, said Code was developed under the guidance of the Law & Order Committee, a standing Committee of the Hopi Tribal Council; and

WHEREAS, during the preparation of said Code, meetings were held with village governing authorities, village and public hearings were conducted for review of the Code; and

WHEREAS, preparation, review and proposed adoption of the Hopi Children's Code has been hereto performed in accordance with the rules and procedures of the Hopi Tribal Council.

HOPI TRIBE
RESOLUTION
H-21-81

NOW THEREFORE BE IT RESOLVED by the Hopi Tribal Council, that
the Hopi Children's Code, attached hereto and by
reference made a part hereof, be and it is hereby
adopted as Hopi Tribal Ordinance #35.

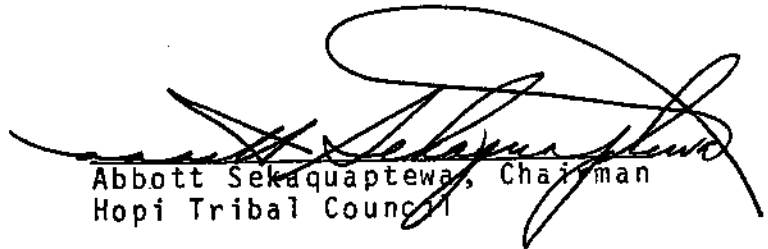
BE IT FURTHER RESOLVED that any Ordinances or Resolutions which
are in conflict with this Code shall be superceded.

BE IT FINALLY RESOLVED that Section 3.3.16 of Ordinance #21,
enacted on July 10, 1972; Ordinance #16, enacted on
July 31, 1967 and Hopi Tribal Resolution H-71-76 are
hereby superceded.

HOPI TRIBE
RESOLUTION
H- 21 -81


C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Hopi Tribal Council on March 12, 1981, at a meeting at which a quorum was present with a vote of 10 in favor, 0 opposed, 1 abstaining, (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by Section 1 (g) of Article VI of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, ratified by the Hopi Tribal Council on October 24, 1936 and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does require Secretarial approval.



Abbott Sekaquaptewa, Chairman
Hopi Tribal Council

ATTEST:



Kedric L. Outah, Secretary
Hopi Tribal Council

HOPI CHILDREN'S CODE

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I. DEFINITIONS

When used in this Code, the following words and phrases shall have the meanings given below:

1. Abandon - When a parent leaves a child without communication and fails to support a child and there is no indication of the parent(s) willingness to assume his parental responsibilities for a period exceeding one (1) year.
2. Abused Minor - A minor who has been inflicted with physical injury, sexual or mental harm; and/or who is exploited and overworked to such an extent that his health, morals and/or emotional well-being are endangered.
3. Actual Hours - The number of hours including the hours of Saturdays, Sundays, and holidays. See Chapter II. 4.
4. Adjudication - A finding by the Children's Court on the facts alleged in the petition or complaint and incorporated in a decree.
5. Adult - Any person eighteen (18) years of age or older.
6. Agent For Notice - A person designated by the Tribe to receive notice from a state on minor-in-need-of-care cases.
7. Aggrieved Party - Includes the minor and his parent(s), guardian, custodian or family member whose rights or interests have been affected by an adjudication.
8. Calendar Days - The number of days including Saturdays, Sundays, and holidays. See Chapter II. 4.
9. Child - Any person who has not yet reached his or her eighteenth (18) birthday.
10. Children's Court Counselor - The court official who represents the Hopi Children's Court in minor-in-need-of-care procedures under this code. The Judicial Administrator may delegate duties and responsibilities of the children's court counselor to the juvenile probation officer.
11. Child Placement Agency - An agency receiving minors for placement or adoption that is licensed or approved where such license or approval is required by law.
12. Commit - To transfer legal custody.

I. DEFINITIONS

13. Delinquent Act - Any act which would be a crime under Hopi Tribal law if committed by an adult, or any act which is defined as an offense if committed by a child.
14. Deprivation of Custody - Transfer of legal custody by the Children's Court from a parent or previous legal custodian to another person, agency or institution.
15. Detention - Temporary care in physically restricting facilities.
16. Extended Family - Ascending blood relationship to the child. Clan relationships may be considered should blood relationship be exhausted prior to placement.
17. Guardian - Means a guardian of the person and not a guardian of the property or estate.
18. Hopi - A member of the Hopi Tribe.
19. Indian - For purposes of this Code shall include member of the Hopi Tribe or other federally recognized Indian Tribe, band, group or community or the natural child of any Indian, regardless of age; and any person of Indian descent on the Reservation.
20. Juvenile Offender - A minor who commits a delinquent act.
21. Juvenile Intake Officer - The court official who screen minors subsequent to arrest.
22. Kikmongwi - The recognized leader of a village who exercises authorities and responsibilities as reserved to the villages by the Constitution and By-Laws of the Hopi Tribe.
23. Minor - Any person who has not yet reached his or her eighteenth (18) birthday.
24. Parent - A natural or adoptive parent but not a person whose parental rights have been terminated.
25. Presenting Officer - A court official who represents the Hopi Tribe in minor-in-need-of-care proceedings under this Code. The duties and responsibilities of the presenting officer may be delegated to the tribal prosecutor.
26. Probable Cause - Circumstances that are sufficient to convince a reasonable person that a juvenile has committed or is committing a delinquent act or is a minor-in-need-of-care.

I. DEFINITIONS

27. Probation - A legal status created by court order. When on probation, a minor is permitted to remain in his home under prescribed conditions under supervision by a probation officer designated by the court. The minor is subject to return to the Court for further proceedings if he violates the conditions of his probation.
28. Protective Supervision - A legal status created by court order in a proceeding not involving a delinquent act by the minor whereby the minor is permitted to remain in his home, and supervision and assistance to correct the need of supervision or need of care is provided by a children's court counselor or other person designated by the Children's Court.
29. Reservation - The Hopi Indian Reservation including: Land Management District No. 6; the lands in the former Joint Use Area of the 1882 Executive Order Reservation partitioned to the Hopi Tribe; the village of Moenkopi and the surrounding range and farm lands used or occupied by the Hopi Indians; plus all lands in the reservation created by the Act of June 14, (48 Stat. 960) in which the Hopi Tribe is determined to have any joint or exclusive interest and all lands in said reservation area which may be partitioned to the Hopi Tribe.
30. Shelter Care - Temporary care in physically unrestrictive facilities.
31. Support - Adequate shelter, food, clothing, medical care and provision of appropriate religious and Hopi cultural training.
32. Termination of Parental Rights - Permanent elimination of all parental rights and duties of a person including residual parental right and duties by court order.
33. Village Governor - An elected leader of a village who exercises authorities and responsibilities as reserved to the village through the village government and the Constitution and By-Laws of the Hopi Tribe.

II. GENERAL

A. PURPOSE:

It is the purpose of the Hopi Children's Code to:

1. preserve the unity of the family;
2. provide for the full consideration of religious and traditional preferences and practices of families during the disposition of a matter;
3. provide for the care, protection, mental and physical development of the children of the Hopi Tribe;
4. ensure that a program of supervision, care and rehabilitation will be available to those children who come within the provisions of the Code;
5. achieve the foregoing purposes in a family environment whenever possible separating the minor from his parent(s) only when no alternative disposition is suitable to the child's welfare or in the tribal interest of public safety; and
6. provide fair procedures for enforcing this Code that recognize and protect the rights of the parties.

This Code shall be interpreted and construed to carry out the above purposes.

B. RIGHTS:

This subsection shall apply to the minor, his parent(s), guardian or custodian, and any adult appearing as a defendant.

1. Right to Counsel:

- a. Statement of Rights: The Children's Court shall inform the individual of their right to retain counsel by telling them: "you have the right to have a lawyer or another person represent you at this hearing. However, you or your family must pay any fees for such representation".
- b. Appearance Without Counsel: If the individual appears at the hearing without counsel, the children's court

II. GENERAL
B. RIGHTS

b. Appearance Without Counsel

judge shall continue the proceedings if they need additional time to seek counsel.

c. Inability to Pay Counsel: If the individual is unable to pay for counsel, the Children's Court shall inform them of any available services that provide representation.

2. Self-incrimination: The individual need not be witness against nor otherwise incriminate himself.

3. Cross Examination, Evidence: The Children's Court shall give the individual, his counsel or person he has selected to represent him the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

C. HEARING NOTICES AND SUMMONSES:

1. Information: In addition to other relevant information, hearing notices and summonses shall include:

a. the name of the court;

b. the title of the proceedings; and

c. the date, time and place of the proceedings.

2. Service: Hearing notices and summonses shall be delivered in person by a law enforcement officer, an appointee of the Children's Court, or by registered mail return receipt requested, if time allows.

D. TIME PERIODS:

Unless otherwise noted, time periods are excluding Saturdays, Sundays, and holidays, and/or the hours thereof.

III. THE CHILDREN'S COURT

A. PURPOSE

The Children's Court is established to carry out court proceedings related to minors.

B. OFFICERS:

The following persons are officers of the Children's Court:

1. **Judges:** The chief judge of the Hopi Tribal Court shall assign one or more judges to hear cases in the Children's Court. In carrying out responsibilities identified in this Code, judges of the Children's Court shall have the same powers and duties as judges of the Hopi Tribal Court.
2. **Children's Court Counselor:** The children's court counselor shall have the following duties in minor-in-need-of-care proceedings:
 - a. make preliminary inquiries, social summaries and such other investigations as the Children's Court may direct;
 - b. make reports to the Children's Court as provided in this Code or as directed by the Children's Court;
 - c. explain to the minor and his parent(s), guardian or custodian the meaning and conditions of protective supervision upon the placing of the minor under supervision;
 - d. keep informed concerning the conduct and conditions of each minor under protective supervision and report to the Children's Court;
 - e. use all suitable methods to bring about improvement in the conduct or conditions of minors under protective supervision;
 - f. perform such other duties in connection with the care, custody or transportation of minors as the Children's Court may require.
3. **Juvenile Intake Officer:** The intake officer shall have the duty to:
 - a. screen minors after an arrest to determine eligibility

III. THE CHILDREN'S CODE

B. OFFICERS

3. Juvenile Intake Officer

for diversion or the necessity for detention based upon developed intake criteria;

- b. submit intake reports to the presenting officer, juvenile probation officer and police department;
- c. follow up an notification of the minor's parent(s), guardian or custodian;
- d. keep written records of all reports, investigations and recommendations;
- e. work in conjunction with the probation officer to provide for the diversion of a juvenile offender if the offense does not warrant formal adjudication;
- f. make reports to the Children's Court as provided in this Code; and
- g. perform such other duties as the Children's Court may require.

4. Juvenile Probation Officer: The probation officer shall have the following duties in all juvenile offender proceedings:

- a. make preliminary inquiries, social summaries and such other investigations as the Children's Court may direct;
- b. keep written records of all investigations or studies;
- c. make reports to the Children's Court as provided in this Code or as directed by the Children's Court;
- d. explain to the minor and his parent(s), guardian or custodian the meaning and conditions of probation and protective supervision upon the placing of the minor on probation or under protective supervision;
- e. monitor the conduct and condition of each minor on probation or under protective supervision and report to the Children's Court; and
- f. perform such other duties in connection with the care, custody or transportation of minors as the Children's Court may require.

III. THE CHILDREN'S COURT

B. OFFICERS

4. Juvenile Probation Officer

Probation Officers shall have the powers of law enforcement officers for the purpose of arrest for violations of probation or parole.

5. Presenting Officer: The presenting officer shall have the duty to:
 - a. represent the Hopi Tribe in all minor-in-need-of-care proceedings and juvenile offender proceedings;
 - b. process, sign, file and present petitions, subpoenas, affidavits, motions and papers of any kind to the Children's Court;
 - c. keep written records of all investigations and studies;
 - d. make reports to the Children's Court as provided in this Code or as directed by the Children's Court; and
 - e. perform such other duties as the Children's Court may direct.
6. Law Enforcement Officers: Law enforcement officers shall be officers of the Children's Court.
7. Other Personnel: The Children's Court shall have a clerk, bailiff, agent for notice and an assistant judicial administrator.

C. JURISDICTION:

1. General: The Children's Court shall exercise jurisdiction over:
 - a. all children's matters arising off the Hopi Reservation which are referred to under the Indian Child Welfare Act (25. U.S.C.s 1901 et seq.);
 - b. all minor-in-need-of-care matters arising on the Reservation which are not handled by the respective villages;
 - c. all juvenile offender cases arising on the Reservation;
 - d. all other matters specified in this Code involving chil-

III. THE CHILDREN'S COURT
C. JURISDICTION
1. General

dren on the Reservation and placement made by the Children's Court off the Reservation.

2. Jurisdiction Over Juvenile Offenders: The Children's Court shall have exclusive and original jurisdiction over proceedings in which an Indian minor is alleged to be a juvenile offender unless the Children's Court transfers jurisdiction to the Hopi Tribal Court pursuant to Chapter III.C.6 of this Code.
3. Jurisdiction Over Adults: The Children's Court shall exercise jurisdiction over adults as follows:
 - a. In any criminal case occurring on the Reservation in which the victim is under eighteen (18) years of age and the person accused of the offense is an Indian eighteen (18) years of age or older, the Trial Court may assign the case for trial and disposition by the Children's Court following the rules, procedures and penalties applicable to the Trial Court.
 - b. In any case before the Children's Court, the Children's Court may exercise jurisdiction over any adult, Indian or non-Indian within the Reservation to facilitate the handling of children's cases. Such jurisdiction includes but is not limited to the power to compel attendance at court or other proceedings related to the disposition of a child's case, to impose restrictions, conditions and requirements relating to the care, guardianship, custody and/or control of a child, and/or to punish the adult for contempt of court.
 - c. Any off-reservation person or agency, whether Indian or non-Indian, as a precondition of obtaining or retaining the custody or guardianship of a child pursuant to this Code shall execute a consent form consenting to the jurisdiction of the Children's Court. Consent shall be approved by the chief judge of the Hopi Tribal Court for all matters arising from its relationship of the child during the time the matter is within the jurisdiction of or subject to an order of the Children's Court. It shall include consent to the personal jurisdiction of the Children's Court and shall be subject to written notices, summonses or other documents of the Children's Court mailed to the person or agency off the Reservation.
 - d. A non-Indian residing or traveling upon the Hopi Reservation who disobeys a lawful order of the Children's Court

III. THE CHILDREN'S COURT
C. JURISDICTION
3. Jurisdiction Over Adults

may be subject to removal and exclusion from the Reservation in addition to any other penalties.

4. Village Jurisdiction: Article III, Section 2, of the Constitution and By-Laws of the Hopi Tribe reserves jurisdiction to the villages:

- to appoint guardians for orphan children and incompetent members; and
- to adjust family disputes and regulate family relations of members to the villages.

To facilitate the exercise of village jurisdiction, the procedures set forth below will be followed by the agent for notice and the Children's Court:

- a. Notice From a State Court: When the Hopi Tribe receives notice of a case pending in a state court which involves a Hopi child, the agent for notice shall:
 - (1) request a time extension of twenty (20) days from the state court;
 - (2) notify the child's respective village governor, kikmongwi or his delegate that the agent for notice has received notice from a state court regarding the child.
- b. Content of Notice to Village: The notice to the village shall contain the name of the child, parent(s), the state court sending notice, the nature of case, the deadline for response to the agent for notice, and the deadline for response to the state court.

The notice to the village shall also contain the following statement:

"The Hopi Children's Court does not have original jurisdiction over this matter pursuant to Article III, Section 2, of the Hopi Constitution. Your village may choose to handle this matter in the way traditional to your village; request the services and facilities of the Hopi Children's Court to assist you in your processing of this matter; or waive jurisdiction. The deadline for your reply stating the village decision is _____."

III. THE CHILDREN'S COURT

C. JURISDICTION

4. Village Jurisdiction

- c. **If Village Assumes Jurisdiction:** If the child's village assumes jurisdiction, the Children's Court personnel will cooperate with the village representative to extend court services including information concerning legal representation and processing of court documents.

The agent for notice shall file the village response in the state court, the Children's Court and in the village records.

If requested, the Children's Court shall prepare the village's response to the state court.

- d. **Membership in Village Not Clear:** In the event that a minor's membership rights in a specific village are not clear, or two or more villages claim jurisdiction over the minor, the agent for notice shall request the Children's Court to assume temporary and/or concurrent jurisdiction and proceed pending resolution of the jurisdictional question.
 - e. **Village Does Not Assume Jurisdiction:** If the child's village does not assume jurisdiction or does not respond to the agent for notice by the given deadline, the agent for notice shall request the Children's Court to assume the right of concurrent jurisdiction and accept or refuse the case on its merits and shall respond to the state court accordingly.
 - f. **Minor-in-need-of-care and Adoption Matters:** For all Indian minor-in-need-of-care and adoption matters arising within the jurisdiction of the Hopi Children's Court, the Children's Court shall notify the child's respective village to determine if the village wishes to exercise jurisdiction. If the Children's Court has reason to believe that the minor is in immediate danger from his surroundings, the Children's Court may assume temporary and/or concurrent jurisdiction on the basis of the emergency.
5. **Termination of Jurisdiction:** Jurisdiction obtained by the Children's Court over a minor is retained by the Children's Court until terminated by court order.

Jurisdiction over the subject matter and the minor is automatically terminated when the child reaches eighteen (18)

III. THE CHILDREN'S COURT
C. JURISDICTION

5. Termination of jurisdiction

years of age unless the Children's Court has ordered jurisdiction thereafter to continue until some other time not to exceed the child's twenty-first (21) birthday.

6. Transfer to Hopi Trial Court:

- a. Petition: The presenting officer or the minor may file a petition requesting the Children's Court to transfer the minor to the Trial Court if the minor is sixteen (16) years of age or older and is alleged to have committed an act that would be a crime if committed by an adult.
- b. Hearings: The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Trial Court. The transfer hearing shall be held not more than ten (10) days after the petition is filed.

Written notice of the transfer hearing shall be given to the minor and the minor's parent(s), guardian or custodian at least five (5) days prior to the hearing.

- c. Study and Report: Prior to the hearing, a study and a report in writing shall be submitted to the Children's Court by the juvenile intake officer.
- d. Criteria: In considering whether to transfer jurisdiction to the Hopi Trial Court, the Children's Court shall consider:
 - (1) the nature and seriousness of the offense with which the minor is charged; and
 - (2) the nature and condition of the minor as evidenced by his age, mental and physical condition, past record of offenses, and responses to the past Children's Court efforts at rehabilitation.

The Children's Court may transfer jurisdiction of the minor to Hopi Trial Court if the Children's Court finds clear and convincing evidence that:

- (1) there are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and

III. THE CHILDREN'S COURT

C. JURISDICTION

6. Transfer to Hopi Trial Court

- (2) the offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.
- e. Court Order: To transfer jurisdiction over a minor to the Hopi Trial Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.
- f. Presiding Judge: When a minor is not transferred to the Hopi Trial Court, the judge who presided at the transfer hearing may preside at the adjudicatory hearing unless a motion has been filed to disqualify the judge and sustained by the Children's Court.

D. PROCEDURES AND AUTHORITIES

1. Court of Record: The Hopi Children's Court shall have a seal and shall be a court of record as provided below. All proceedings before the Children's Court, except criminal matters involving offenses against children by adults, shall be considered to be civil in nature. Juvenile offender proceedings shall provide appropriate procedural safeguards to the accused minor consistent with the handling of a criminal offense by an adult.
2. Due Process: All proceedings before the Children's Court shall be conducted with due process of law, giving affected persons reasonable notice and an opportunity to be heard before the court. No technical defect in any proceeding, including the times for giving notice, shall invalidate any action of the court unless there is a showing of actual prejudice and timely objection to the alleged defect.
3. Judge Sits Without Jury: All proceedings before the Children's Court shall be heard by the judge of the Children's Court sitting without a jury, except that for criminal cases involving offenses by an adult against a child, the adult may request and receive a jury trial under the same conditions that prevail in the Trial Court.
4. Closed Hearings: All hearings under this Code shall be closed hearings unless the Children's Court finds that an open hearing is preferred.

III. THE CHILDREN'S COURT

D. PROCEDURES AND AUTHORITIES

5. Authority to Utilize Social Services

5. Authority to Utilize Social Services: The Children's Court is authorized to cooperate fully with any tribal, federal, state, public or private agency to participate in any diversion, rehabilitation or training programs or other programs including contracts and grants which will improve the court system and carry out the purpose of this Code.
6. Contempt of Court: Any willful disobedience or interference with any order of the Children's Court constitutes contempt of court. The Children's Court may punish any person under its jurisdiction for contempt of court in accordance with Hopi Tribal Court procedures and tribal ordinances.

E. RECORDS

1. Court Records:

- a. Clerk Duties: A record of all hearings and other proceedings under this Code shall be made and preserved by the clerk of the court who shall have authority to make copies thereof and attest to their genuineness under the seal of the Children's Court, and to provide such copies to authorized persons.
- b. Authorized Persons: All Children's Court records shall be confidential and shall not be open to inspection by anyone but the following:
 - (1) the minor and/or his counsel;
 - (2) the minor's parent(s), guardian or custodian;
 - (3) the juvenile probation officer and the juvenile intake officer;
 - (4) the presenting officer; and
 - (5) the children's court judge.
- c. Record of Appeal: For purposes of appeal, if requested, a record of the proceedings shall be made available to the minor, his parent(s), guardian or custodian or their counsel. Cost of obtaining this record shall be paid by the party seeking appeal.

III. THE CHILDREN'S COURT

E. RECORDS

2. Law Enforcement Records

2. Law Enforcement Records: Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
 - a. Authorized Persons: All law enforcement records and files shall be confidential and shall not be open to inspection to anyone but the following:
 - (1) the minor and/or his counsel;
 - (2) the minor's parent(s), guardian or custodian;
 - (3) the juvenile probation officer;
 - (4) the presenting officer;
 - (5) the law enforcement officer; and
 - (6) the children's court judge.
3. Expungement: When a minor who has been the subject of any proceedings before the Children's Court reaches his eighteenth (18) birthday or at such time after the minor's eighteenth (18) birthday as the Children's Court terminates its jurisdiction over that person, the chief judge of the Tribal Court shall order the clerk of the court to destroy both the court records and the law enforcement records.

F. APPEALS

1. Notice: Any aggrieved party to the adjudication by the Children's Court, including the Hopi Tribe, may appeal said judgment or order to the Tribal Appellate Court by filing a notice of appeal with the Children's Court within twenty (20) calendar days of the final adjudication.
2. Adjudications "Final": An adjudication shall be considered final notwithstanding the fact that the matter remains subject to the continuing jurisdiction of the Children's Court.
3. Initials Used: An appeal from a decision of the Children's Court shall be handled by the Tribal Appellate Court in the same manner as appeals from the Trial Court, except that the child's initials shall be substituted for his or her name in full proceedings before the Tribal Appellate Court.

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY, GUARDIANSHIP, AND THE COURT

A. PURPOSE

The purpose of this chapter is to set out the rights and duties of the parents, the provisions of guardianship and legal custody, and certain powers of the Children's Court with respect to compelling the support of children and terminating parental rights.

B. PARENTAL RIGHTS AND DUTIES, CUSTODY, AND GUARDIANSHIP

1. **Natural Parental Rights and Duties:** The rights and duties of a natural parent include the rights and duties of legal custody and of guardianship.
2. **Residual Parental Rights and Duties:** Residual parental rights and duties are those rights and duties remaining with the natural parent(s) after legal custody or guardianship of the person, or both, have been vested in another person or agency, including but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the minor's religious affiliation, and the right to reasonable visitation unless restricted by the Children's Court.

If no guardian has been appointed, residual parental rights and duties also include the right to consent to marriage, enlistment in the armed forces, and major medical, surgical, psychological and psychiatric treatment.

3. **Legal Custody:** Legal custody means a relationship embodying the following rights and duties:

- a. the right to physical custody of a child;
- b. the right and duty to protect, train and discipline him;
- c. the duty to provide him with food, clothing, shelter, education and necessary medical care;
- d. the right to determine where and with whom he shall live; and
- e. the right, in an emergency, to authorize surgery or other extraordinary care.

Legal custody shall only be obtained by court order.

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
GUARDIANSHIP, AND THE COURT

B. PARENTAL RIGHTS AND DUTIES, CUSTODY AND GUARDIANSHIP
3. Legal Custody

In the event that the child is temporarily left in the care and custody of an extended family member with the consent of that family member, the extended family member may exercise custody for approval of necessary medical care.

4. Guardianship of the Person: Guardianship includes, among other things, the authority to consent to marriage, to enlistment in the armed forces, and to consent to major medical surgical, psychological or psychiatric treatment. Guardianship of the person also includes legal custody if legal custody is not vested in another person, agency or institution. Guardianship shall only be obtained by court order.
5. Voluntary, Temporary Transfer of Legal Custody:
 - a. Authority: The Children's Court may, upon petition, enter an order temporarily transferring legal custody from a parent to another member of a child's extended family.
 - b. Voluntary Consent: Such an order may be entered upon the appearance in court and voluntary consent of both the parent or parents having custody of the child and the family member to whom custody is to be temporarily transferred. An affidavit of the family member consenting to the temporary transfer of custody may be accepted by the Children's Court in lieu of a personal appearance by reason of parental health, employment, education, or other adequate reason.
 - c. Time Limit: No order temporarily transferring custody shall be entered for a period of more than one (1) year. Temporary custody may be renewed pursuant to Chapter IV. 5.a. and b. above.
 - d. No Harm: No order temporarily transferring custody shall be made unless it appears substantially certain to the Children's Court that such an order will not cause harm to the child involved and that the child will be adequately and lovingly cared for during the period of temporary custody.
 - e. Meets Need: No order temporarily transferring custody shall be made except to meet manifest family needs caused

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
GUARDIANSHIP, AND THE COURT

B. PARENTAL RIGHTS AND DUTIES, CUSTODY AND GUARDIANSHIP
5. Voluntary, Temporary Transfer of Legal Custody

by conditions of parental health, employment, education or other adequate reason.

- f. Support: A parent may be required by the Children's Court to contribute to the financial support of a child as a condition to a temporary transfer of custody.
- g. Evaluation: The Children's Court may require that an evaluation of the situation be prepared and submitted to the Children's Court by the children's court counselor prior to acting on any petition to temporarily transfer custody.

C. SUPPORT OF CHILDREN

- 1. Foster Care Placement: Payment for child support may be made directly to a nongovernmental agency or home in which the Children's Court vests legal custody provided that:
 - a. the placement agency shall make periodic reports to the Children's Court concerning the care and treatment the child is receiving and his response to such treatment;
 - b. the reports shall be made at such intervals as the Children's Court may direct and shall be made with respect to each child at least every six (6) months; and
 - c. the placement agency or home shall afford an opportunity for a representative of the Children's Court to visit the child as frequently as the Children's Court deems necessary.
- 2. Requiring Child Support:
 - a. Authority: When legal custody of a child is vested by the Children's Court in an individual or agency other than his parent(s), or a school, the Children's Court may, in the same or any subsequent proceeding, inquire into the ability of the parent(s) or any other person, hereafter "obligated person(s)", who may be obligated to support the child including the expense of any medical, psychological or psychiatric examination or treatment provided under the order of the Children's Court.

After due notice and a hearing on the matter, the Chil-

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
GUARDIANSHIP, AND THE COURT
C. SUPPORT OF CHILDREN
2. Requiring Child Support

dren's Court may require the obligated person(s) to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their funds.

- b. **Summons and Petition:** If a child support hearing is to be held subsequent to, or in connection with other proceedings, a summons and petition setting forth the nature and basis for the claim shall be sent to the obligated person(s) and their counsel at least ten (10) days prior to the hearing. The summons shall include a statement that the hearing is to determine child support.

No court order issued under this section against an obligated person shall be entered, unless a summons has been served on the Reservation or a voluntary appearance made or a waiver of service given.

- c. **Procedure and Method for Payment:** Payments shall be made at intervals determined by the Children's Court. Unless otherwise ordered, payment shall be made to the clerk of the court for transmittal to the person(s) or agency having legal custody of the child or to whom compensation is due. The clerk of the court shall have authority to receive periodic payments towards the care and maintenance of the child such as social security payments made in the name of or the benefit of the child.
- d. **Enforcement of Support Order:** An order under Chapter V. B.2.a. of this Code against a parent or other person may be enforced by contempt proceedings and shall have the effect of a civil judgement at law. To collect such monies, in addition to other remedies, the Children's Court may issue an order to any employer, trustee, financial agency, or other person, firm or corporation on the Reservation indebted to obligated person(s) to withhold and pay over to the clerk of the court not in excess of one-fourth of the amount due the obligated person(s) and/or one-fourth of the amount becoming due to the obligated person(s) at each regular or usual payday or day of disbursement.
- e. **Copy Served:** A copy of such order shall, if possible, be served on the obligated person(s) and either the obligated person(s) or the indebted party may request a hearing to

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
GUARDIANSHIP, AND THE COURT
C. SUPPORT OF CHILDREN
2. Requiring Child Support

determine the propriety of the order and or the extent of the indebtedness.

- f. Property Not Exempt: No property of the obligated person(s) shall be exempt from execution to enforce collection of the amounts ordered to be paid by the Children's Court under this section, provided that property held in trust by the United States shall be subject to the conditions of the trust.

D. TERMINATION OF PARENTAL RIGHTS

Before depriving any parent of his parental rights, the Children's Court shall give due consideration to the preferred right of parents to their children and shall not terminate the relationship unless the Children's Court finds, from all the circumstances in the case, that the welfare of the child or the Tribe requires that the child be taken from his parents.

1. Authority: Parental rights to a child may be permanently terminated by the Children's Court according to the procedures in this section.
2. Petition: Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the Tribe or legal guardian of the child or a voluntary petition may be filed by one or both parents. The petition shall include:
 - a. the name, birthdate, and residence of the minor;
 - b. the names and residence of the minor's parent(s), legal guardian or custodian;
 - c. a brief statement of the circumstances that gave rise to the petition; and
 - d. if the child is in detention or shelter care, the place, detention or shelter care and the time he was taken into custody.
3. Hearing Date: Upon receipt of the petition, the Children's Court shall set a date for the termination hearing which

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
GUARDIANSHIP, AND THE COURT
D. TERMINATION OF PARENTAL RIGHTS
3. Hearing Date

shall be not more than fifteen (15) calendar days from receipt of the petition. The hearing may be continued:

- a. upon motion of the minor's parent(s), guardian or custodian, or other representative of the minor; or
- b. upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds that the presenting officer has exercised due diligence to obtain the evidence or witnesses and reasonable grounds exist to believe that the evidence or witnesses will become available.

4. Pre-termination Report:

- a. Report Ordered: Within two (2) days of receiving the petition, the children's court judge shall order the preparation of a pre-termination report by the children's court counselor.
- b. Consultations: The children's court counselor shall consult with the minor and the minor's parent(s) and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parent(s), guardian or custodian to determine whether termination of parental rights is consistent with the best interests of the child. The counselor may also review any of the minor's previous children's court records.
- c. Report: The children's court counselor shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The reports shall be presented to the Children's Court and all other parties at least two (2) days before the termination hearing.

5. Summons:

- a. Recipients: At least five (5) calendar days prior to the termination hearing, the Children's Court shall issue summonses to:
 - (1) the minor;

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
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D. TERMINATION OF PARENTAL RIGHTS
5. Summons

- (2) the minor's parent(s), guardian or custodian;
 - (3) any person the Children's Court believes necessary for the proper adjudication of the hearing; and
 - (4) any person the minor or the minor's parent(s), guardian or custodian believes necessary for the proper adjudication of the hearing.
- b. Petition Attached: A copy of the petition shall be attached to the summons.
- c. Publication: If the summons cannot be delivered personally or by certified mail, the summons may be by publication.

6. Hearing:

- a. Purpose: The Children's Court shall conduct the termination hearing for the purpose of determining whether parental rights shall be permanently terminated. The hearing shall be private and closed.
- b. Testimony: The Children's Court shall hear testimony concerning:
 - (1) the circumstances that gave rise to the petition; and
 - (2) the need for termination of parental rights.

The child shall be present in the courtroom only during his testimony, if any.

7. Criteria: The Children's Court may terminate parental rights if it finds clear and convincing evidence of one or more of the following conditions:

- a. Unfit: The parent(s) is unfit and incompetent by reason of conduct or condition seriously detrimental to the child.
- b. Abandonment: The parent(s) has abandoned his child.
- c. Abuse: The minor has suffered physical injuries willfully

IV. PARENTAL RIGHTS AND DUTIES, CUSTODY,
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D. TERMINATION OF PARENTAL RIGHTS
7. Criteria

and repeatedly inflicted by his parent(s) upon him which creates a substantial risk of death, disfigurement, or impairment of bodily functions.

- d. Sexual Abuse: The parent(s) has subjected the minor to any act(s) of sexual abuse.
 - e. Voluntary: One or both parents have given their voluntary written consent to such termination before the Children's Court, or by instrument duly acknowledged before a notary public, clerk of the court or record, or other person authorized to acknowledge signatures, oaths or affirmations.
8. Disposition: If parental rights to a child are terminated, the Children's Court may treat the child as a minor-in-need-of-care, and/or the Children's Court may accept a petition for adoption. The child must first be found to be in need of care.
9. Appeal: A termination order may be appealed anytime within six (6) months from the date the termination order becomes final.
10. Tribal Membership: No adjudication of termination of parental rights shall affect the child's enrollment status or eligibility for membership in the Hopi Tribe.

V. MINOR IN NEED OF CARE

A. FLOW CHART

The attached flow chart illustrates the major elements of minor-in-need-of-care proceedings under this Code.

B. PURPOSE

The purpose of this chapter is to set out rules and proceedings for the protection of minors who are abused, neglected, and/or otherwise in need of care.

C. ABUSE, NEGLECT, MINOR IN NEED OF CARE

1. **Abused Child:** Means a minor who is receiving physical or psychological maltreatment.
2. **Neglected Child:** Means a minor who:
 - a. is without proper parental care and control or subsistence, education, medical and other care or control necessary for his well-being because of the faults or habits of his parent(s), guardian or custodian or their neglect or refusal, when able to do so, to provide for him;
 - b. has suffered or is under substantial risk of imminently suffering physical and/or emotional injury as a result of conditions created by his parent(s), guardian or custodian being unable to discharge their responsibilities to and for the minor because of their incarceration, hospitalization or other physical or mental incapacity; and
 - c. has been placed for care or adoption in violation of tribal law.

A child shall not be presumed to be neglected by a parent who temporarily leaves the child in the care and custody of an extended family member with the consent of that family member if the child receives adequate care and supervision from that family member, and if the parent maintains reasonable contact with the child and contributes to the child's support when needed.

V. MINOR IN NEED OR CARE

C. ABUSE, NEGLECT, MINOR IN NEED OF CARE

2. Neglected Child

3. Minor in Need of Care: Means a minor who:

- a. has been abandoned, neglected or abused by his parent(s), guardian or custodian;
- b. has no parent(s), guardian or custodian willing or able to support or care for him;
- c. habitually disobeys the reasonable and lawful demands of his parent(s), guardian or custodian and is ungovernable and beyond their control;
- d. is repeatedly absent from home after 10:00 p.m. without permission of a parent, guardian or custodian;
- e. has run away from his parent(s), guardian or custodian;
- f. is suffering serious emotional damage evidenced by severe anxiety, depression, or unmanageable aggressive behavior toward self or others;
- g. is mentally deficient and the minor's parent(s), guardian or custodian are not willing to seek treatment for him; or
- h. is committing delinquent act(s) as a result of parental encouragement, guidance or approval.

D. REPORTING OF ABUSE OR NEGLECT; WRITTEN COMPLAINT

1. Reporting Required: Any person with reasonable cause to believe that a child is an abused or neglected child or otherwise a minor-in-need-of-care shall report the situation.
2. Persons Mandated to Report by Written Complaint: The following persons are mandated to make a report of suspected abuse; neglect, or other conditions indicating that a child is a minor in need of care by written complaint to the Children's Court as provided in Chapter V.D.9:
 - a. physicians, nurses, dentists, optometrists, and any other medical, health or mental health worker;
 - b. school principals, school teachers, and other school officials;

V. MINOR IN NEED OF CARE

D. REPORTING OF ABUSE OR NEGLECT: WRITTEN COMPLAINT

2. Persons Mandated to Report by Written Complaint

c. social workers, child day care center workers and other child care staff including foster parents, residential care or institutional personnel;

d. law enforcement officers, judges, or other officers of the Children's Court.

3. Reporting by Other Persons: Persons not mentioned above who have reasonable cause to suspect that a minor has been abused or neglected, or otherwise is a minor-in-need-of-care, shall report the abuse or neglect to a responsible member of the child's immediate or extended family or the appropriate village leaders. If family members are believed to be the cause of the abuse or neglect or are unavailable, or if the appropriate village leaders are unwilling to act upon such information, it shall be reported to an officer of the Children's Court. Those persons reporting to the Children's Court under this paragraph may remain anonymous.
4. Processing of Reports Other Than Written Complaints: Upon receipt of a report of suspected abuse or neglect other than a written complaint, the children's court counselor, or other court officer shall conduct an investigation to determine whether a written complaint should be filed with the Children's Court. If the children's court counselor or other officer has reason to believe that the child is a minor-in-need-of-care, he shall file such complaint.
5. Immunity from Liability: All persons or agencies reporting good faith under this section shall be immune from civil liability and criminal prosecution arising from the making of such report.
6. Privileged Communications: The communication between a husband and wife, physician and patient, or social worker and client shall not be privileged when such communication involves information about abuse or neglect. Communications about abuse or neglect between an attorney and client shall be privileged only when an attorney is representing a client who is alleged to have abused or neglected a minor.
7. Photographs and X-rays: Any person mandated to report suspected abuse or neglect may take, or cause to be taken, without the parent's permission, photographs of any trauma on a minor who is suspected of being abused; and, if medically

V. MINOR IN NEED OF CARE

D. REPORTING OF ABUSE OR NEGLECT: WRITTEN COMPLAINT

7. Photographs and X-rays

indicated, such person may authorize a radiological examination of the child. Photographs and x-rays shall be destroyed or delivered to the person having legal custody of the child if the report of suspected abuse or neglect is determined to be unfounded by the Children's Court either through an investigation or at a hearing.

8. Penalty for Not Reporting, Interfering with Reports: Any person who willfully fails or refuses to report a known or suspected case of abuse or neglect, or willfully prevents another person from doing so shall be subject to a civil penalty not to exceed ~~five-hundred-dollars-(\$500)~~. five hundred fifty dollars (\$550.00) (AMENDED BY RESOLUTION H-91-81)
9. Written Complaint: A written complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall contain:
- a. a citation of the statutory provisions of this Code which gives the Children's Court jurisdiction over the proceedings;
 - b. the name, birthdate and residence of the minor, if known;
 - c. the name and addresses and residences of the minor's parent(s), guardian or custodian, if known;
 - d. a statement of the facts upon which the allegations are based including the date(s), time(s) and specific location(s) at which the alleged facts occurred; and
 - e. the name and signature of the ~~complainant~~. complaint. (AMENDED BY RESOLUTION H-91-81)

E. EMERGENCY CUSTODY

1. Taking Emergency Custody:

- a. Warrant: The Children's Court may enter an order pursuant to Chapter V.D.9 of this Code called a warrant directing that a minor be taken into custody if the Children's Court finds that there is probable cause to believe the minor is a minor-in-need-of-care and that immediate custody of the child is needed. Warrants shall be issued pursuant to Hopi Tribal Court procedures.
- b. Law Enforcement Personnel: A minor may be taken into custody by a law enforcement officer if:

V. MINOR IN NEED OF CARE

E. EMERGENCY CUSTODY

1. Taking Emergency Custody

- (1) the officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his surroundings and that his removal is necessary; or
- (2) a warrant has been issued for the minor.

c. Other than Law Enforcement Personnel: If probable cause exists to believe that emergency custody of a minor is necessary to prevent the minor's imminent death or serious bodily injury, and that the minor's parent(s), guardian or custodian is unable or unwilling to protect the minor from such imminent death or injury, any physician, probation officer, social service worker, school administrator or if none of the above listed persons are available, any person shall have authority to take physical custody of a minor notwithstanding the wishes of the minor's parent(s), guardian or custodian. Any person acting in good faith shall be immune from all liability.

2. Responsibilities Pursuant to Taking Emergency Custody:

a. Law Enforcement Officer's Duties: A law enforcement officer who takes a minor into custody may release the minor to the minor's parent(s), guardian or custodian and issue verbal counsel or warning as may be appropriate, unless temporary placement with someone other than the minor's immediate family is necessary.

If the minor is not released, the officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian to inform them that the minor has been taken into custody and to inform them of their rights to be present with the minor until an investigation to determine the need for shelter care is made by the children's court counselor. If the minor is not released, the minor shall be referred to the children's court counselor by the officer as soon as possible.

b. Children's Court Counselor: The children's court counselor shall place the minor in shelter care unless:

- (1) a complaint is filed in accordance with Chapter V.D.9. and a subsequent investigation indicates that shelter care is necessary.

V. MINOR IN NEED OF CARE
E. EMERGENCY CUSTODY
b. Children's Court Counselor

- (2) a minor is taken into custody pursuant to Chapter V.E.1.; or
- (3) no responsible parent(s), guardian or custodian can be found to receive the child.

If the minor's parent(s), guardian or custodian have not been contacted, the children's court counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent(s), guardian or custodian, unless shelter care is immediately necessary.

If a minor is not released to his parent(s), guardian or custodian, the children's court counselor shall place the minor in shelter care pending the custody hearing.

The children's court counselor shall explore available preadjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

3. Custody Hearing:

- a. Immediate Hearing: If a minor has been taken into custody pursuant to Chapter V.E.1., a custody hearing shall be held within twenty-four (24) actual hours to determine where the minor shall be placed to reasonably assure his safety and well-being pending further court action if any;
- b. Notice: Notice of the custody hearing shall be given to the minor and his parent(s), guardian or custodian, counsel and the person who took custody of the minor as soon as the time for the hearing has been established.

The notice shall contain a brief statement of the circumstances in which the custody was taken.

- c. Criteria: At the hearing, the Children's Court shall release the minor to his parent(s), guardian or custodian unless probable cause exists to believe that:
 - (1) the minor is suffering from an illness or injury and no parent(s), guardian or custodian or other person is providing adequate care for him;

V. MINOR IN NEED OF CARE
E. EMERGENCY CUSTODY
3. Custody Hearing

- (2) a minor is in immediate danger from his surroundings and removal from those surroundings is necessary for his safety or well-being;
 - (3) the minor will be subject to injury by others if not placed in the custody of social services;
 - (4) no parent(s), guardian or custodian is able or willing to provide adequate supervision and care for the minor; or
 - (5) the minor will run away and will be unavailable for further proceedings.
- d. Continued Custody Required: At the conclusion of the hearing, if the Children's Court determines that custody pending adjudication is appropriate, the Children's Court may:
- (1) award custody or supervision of the minor to a social service agency with or without rights of visitation for the parent(s), guardian or custodian of the minor; or
 - (2) return the minor to his parent(s), guardian or custodian upon such conditions as will reasonably assure the safety and well-being of the minor.

In either event, the Children's Court may order any person alleged to have abused and/or neglected the minor to undergo appropriate diagnostic examinations, evaluations or counseling.

F. SHELTER CARE

1. Shelter care may be:

- a. a home of an extended family member;
- b. a private family home on the Reservation approved by the Children's Court;
- c. a foster care facility on the Reservation approved by the Tribe and/or Bureau of Indian Affairs; or

V. MINOR IN NEED OF CARE
F. SHELTER CARE
1. Shelter Care May Be

- d. a shelter care facility on the Reservation approved by the Tribe and/or the Bureau of Indian Affairs.

A minor alleged to be a minor-in-need-of-care may not be detained in a jail or other facility used for the detention of adults. If such minor is placed in a facility used for the detention of juvenile offenders, he must be placed in a room and not a cell, separate from juvenile offenders.

G. INVESTIGATION

The children's court counselor shall make an investigation within seventy-two (72) hours of the custody hearing, or the release of the minor to his parent(s), guardian or custodian, or receipt by the Children's Court of a written complaint. The investigation shall be to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the children's court counselor may:

1. recommend that no further action be taken;
2. suggest to the minor, his parent(s), guardian or custodian that they appear for an informal hearing; or
3. recommend that the presenting officer file a petition in the Children's Court pursuant to Chapter V.I.1.

H. INFORMAL HEARING

1. Authority: The children's court counselor may hold an informal conference with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition of:
 - a. the alleged facts that bring the case within the jurisdiction of the Children's Court.
 - b. the informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
 - c. the minor and his parent(s), guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

V. MINOR IN NEED OF CARE

H. INFORMAL HEARING

1. Authority

This section does not authorize the children's court counselor to compel any person to appear at any such conference, produce any papers or visit any place.

Any disposition reached at an informal hearing must be agreed to by all parties responsible for carrying out the disposition.

2. Notice: Notice of the informal hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been established.

The notice shall include a brief statement of the alleged circumstances upon which the minor-in-need-of-care allegation is based.

3. Hearing Confidential: No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or at any proceedings against the minor.

4. Disposition: At the informal hearing, the children's court counselor may:

- a. refer the minor and his parent(s), guardian or custodian to a community and/or village program for needed assistance;
- b. arrange terms of supervision, calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform; or
- c. recommend that the presenting officer file a petition pursuant to Chapter V.I.1.

The children's court counselor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

Any informal adjustment period shall not exceed six (6) months.

5. Monitoring: The children's court counselor shall review the minor's progress every fifteen (15) to thirty (30) days. If, at any time after the initial thirty (30) day period the children's court counselor concludes that positive results

V. MINOR IN NEED OF CARE
H. INFORMAL HEARING
5. Monitoring

are not achieved, the children's court counselor may recommend that the presenting officer file a petition pursuant to Chapter V.I.1.

I. ADJUDICATORY HEARING - COURT DISPOSITION

1. Petition: Minor-in-need-of-care proceedings shall be instituted by a petition filed by the presenting officer on behalf of the Hopi Tribe and in the interest of the minor. The petition shall be filed within seventy-two (72) hours if the minor is in shelter care. If the minor has been previously released to his parent(s), guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days. The petition shall include the information required for a written complaint, and if the minor is in shelter care and the time he was taken into custody.
2. Hearing date: Upon receipt of the petition from the presenting officer, the Children's Court shall set a date for the hearing which shall not be more than ten (10) days from such receipt. If the adjudicatory hearing is not held within the ten (10) day limit, the petition shall be dismissed without prejudice unless:
 - a. the hearing is continued upon motion of the minor; or
 - b. the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses, and the Children's Court determines that the presenting officer has exercised due diligence to obtain evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.
3. Summons: A copy of the petition shall be attached to the summons. If the summons cannot be delivered personally or by certified mail, the summons may be by publication. If a person who has been issued a summons fails to appear at the hearing, that person may be held in contempt of court.

At least five days prior to the adjudicatory hearing the Children's Court shall issue summonses to:

- a. the minor;

V. MINOR IN NEED OF CARE

I. ADJUDICATORY HEARING - COURT DISPOSITION

3. Summons

- b. the minor's parent(s), guardian or custodian;
- c. any person the Children's Court believes necessary for the proper adjudication of the hearing; and
- d. any person the minor believes necessary for the proper adjudication of the hearing.

4. Adjudicatory Hearing: The Children's Court shall conduct the adjudicatory hearing for the purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

The Children's Court shall hear testimony concerning the circumstances which gave rise to the petition.

If the Children's Court finds that the minor is a minor-in-need-of-care, the matter shall proceed to a dispositional hearing, otherwise, the case shall be dismissed.

5. Predispositional Report: If the case is not dismissed, the children's court counselor shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition.

The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.

If the recommendation is that the minor not be placed with his parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the minor with his parent(s), guardian or custodian.

The children's court counselor shall present the dispositional report to the Children's Court, the minor's counsel and the presenting officer at least one (1) day before the dispositional hearing.

6. Dispositional Hearing:

- a. Time: A dispositional hearing shall take place not more than ten (10) calendar days after the adjudicatory hearing.

V. MINOR IN NEED OF CARE

I. ADJUDICATORY HEARING - COURT DISPOSITION

6. Dispositional Hearing

- b. Evidence: At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.
- c. Notice: Notice of the dispositional hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

The notice shall contain a statement that the hearing is to determine the disposition of the case.

- d. Reports: At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the children's court counselor and afford the parties an opportunity to object to contents and conclusions of the reports. The Children's Court shall also consider any predisposition report prepared by the minor and/or his counsel.

- 7. Disposition: The Children's Court may find that the child is not a minor-in-need-of-care and dismiss the case, or may enter a court order giving the disposition of the case.

- a. General Disposition Criteria: In making any decisions to place children in homes or institutions other than with one or both of the natural parents of the child, the Children's Court shall, in all cases in which such action would not obviously be contrary to the child's best interest, determine whether or not there are relatives, friends or other persons living on the Reservation who would be willing and able to provide a suitable temporary or permanent living environment for the child. The Children's Court shall give consideration to and due regard for tribal or family customs relative to the raising of children and shall endeavor to place all children requiring placement in homes with cultural backgrounds similar to that which the child would have enjoyed if properly raised by his natural parents.

Preference shall be given to the disposition which is the least restrictive of the minor's freedom and which is consistent with the best interest of the minor.

Preference shall be given to the dispositional alternatives which are listed in paragraph b. below.

V. MINOR IN NEED OF CARE

I. ADJUDICATORY HEARING - COURT DISPOSITION

7. Disposition

- b. Preferred Options: If a minor has been adjudged a minor-in-need-of-care, the Children's Court may:
- (1) permit the minor to remain with his parent(s), guardian or custodian in protective supervision;
 - (2) place the minor with an extended family member within the external boundaries of the Reservation;
 - (3) place the minor in a foster home within the external boundaries of the Reservation which has been approved by the Tribe and/or Bureau of Indian Affairs;
 - (4) place the minor with an extended family member outside the external boundaries of the Reservation;
 - (5) place the minor in a foster home outside the external boundaries of the Reservation approved by the Tribe and/or Bureau of Indian Affairs;
 - (6) place the minor in shelter care facilities approved by the Tribe and/or Bureau of Indian Affairs; or
 - (7) recommend that termination of parental right proceedings begin.
- Such disposition shall be subject to limitations and conditions as the Children's Court may prescribe.
- c. Off-Reservation Jurisdiction: Whenever a minor is placed in a home or facility located outside the boundaries of the Reservation, the Children's Court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the Children's Court upon order of the Children's Court.
- d. Time Limit: The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the minor reaches the age of eighteen (18) years, unless the Children's Court continues its jurisdiction.
- e. Periodic Review: Every dispositional order under which the Children's Court retains jurisdiction shall be subject to periodic review by the Children's Court at such times

V. MINOR IN NEED OF CARE
I. ADJUDICATORY HEARING - COURT DISPOSITION
7. Disposition

as it may direct, and at least every six (6) months.

f. Final Order: The dispositional order constitutes a final order for purposes of appeal.

8. Modification of Dispositional Order:

- a. Reason: A dispositional order of the Children's Court may be modified upon motion and a showing of a change of circumstances.
- b. Motion: The Children's Court may modify a dispositional order at any time upon the motion of the following:
- (1) the minor;
 - (2) the minor's parent(s), guardian or custodian; or
 - (3) the children's court counselor or presenting officer.
- c. Hearing: The Children's Court shall conduct a hearing to review its dispositional order.
- d. Review of Performance: The Children's Court shall review the performance of the minor, the minor's parent(s), guardian or custodian and the children's court counselor and other parties to the disposition.
- e. Code Application: In modification of a disposition, the proceedings prescribed in Chapter V.I.7. shall apply.
- f. Violations of Court Orders: If the request for review of a disposition is based upon the alleged violation of a court order, the Children's Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

VI. JUVENILE OFFENDER

A. FLOW CHART

The attached flow chart illustrates the major juvenile offender proceedings under this Code.

B. PURPOSE

To set out the procedures for reaching disposition of juvenile offender cases.

C. WRITTEN COMPLAINT, WARRANT

1. Written Complaint: A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:
 - a. a citation to the specific statutory provision(s) that give the Children's Court jurisdiction over the proceedings.
 - b. a citation to the provision(s) of Hopi Tribal law which the minor is alleged to have violated.
 - c. the name, age and address of the minor who is the subject of the complaint, if known.
 - d. the name, address of the minor's parent(s) or guardian, if known; and
 - e. a plain and concise statement of the facts upon which the allegations are based, including the date(s), time(s) and specific location(s) at which the alleged facts occurred.
2. Warrant: After receiving a written complaint the Children's Court may enter an order called a warrant directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe that the minor committed a delinquent act and that taking custody is justified by the circumstances.

D. TAKING CUSTODY

1. Custody: A minor may be taken into custody by a law enforce-

VI. JUVENILE OFFENDER
D. TAKING CUSTODY
1. Custody

*This section Amended
by Res. H-11-85*

ment officer if;

- a. the officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
 - b. a warrant pursuant to Chapter VI.C.2 of this Code has been issued for the minor.
2. Rights Warning: An arresting officer shall give the following warnings to any minor he takes into custody prior to any questioning.
- a. The minor has the right to remain silent.
 - b. Anything the minor says can be used against the minor in court.
 - c. The minor has the right, at his own expense to have the assistance of counsel and to have his parent(s), guardian or custodian present during questioning.
 - d. If the minor states that he cannot afford an attorney or counsel, the officer shall inform him of available services.
3. Arresting Officer's Options: The arresting officer shall either release the minor directly to his parent(s), or guardian or custodian and give verbal counsel or warning as may be appropriate, or present the minor to the juvenile intake officer.

E. INTAKE CUSTODY DECISION

When a minor is presented to the juvenile intake officer by the arresting officer, the arresting officer may, after an evaluation of the circumstances place a minor in detention or shelter care if taken into custody pursuant to Chapter VI.D.1 of this Code, or direct that the minor be returned to his parent(s), guardian or custodian.

F. CUSTODY RETAINED

If the minor is not released, the following provisions shall apply.

VI. JUVENILE OFFENDER

F. CUSTODY RETAINED

1. Notification of Parents

1. Notification of Parents: The arresting officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian that the minor has been taken into custody and to inform them of their right to be present with the minor until the intake custody decision has been made.
2. Notification of Probation Department: The arresting officer shall inform the Probation Department or its designee within twenty-four (24) actual hours of taking the minor into custody.
3. Custody Options: The juvenile intake officer shall immediately explore available preadjudication custody arrangements, and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.
4. Detention Pending Court Hearing: A minor alleged to be a juvenile offender may be detained pending a court hearing, in the following places:
 - a. a shelter care facility on the Reservation approved by the Tribe and/or Bureau of Indian Affairs;
 - b. a detention facility on the Reservation approved by the Tribe and/or the Bureau of Indian Affairs; or,
 - c. a foster home on the Reservation approved by the Court and/or the Bureau of Indian Affairs.

A minor 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:

- a. a facility as noted above is not available or would not assure adequate supervision of the minor;
 - b. detention is in a cell separate and removed from sight and sound of adults;
 - c. adequate supervision is provided twenty-four (24) hours a day.
5. Preliminary Inquiry:
- a. Scheduling: The Children's Court shall conduct a preliminary inquiry within twenty-four (24) hours of the decision not to release a child to his parent(s),

VI. JUVENILE OFFENDER
F. CUSTODY RETAINED
5. Preliminary Inquiry

guardian or custodian.

A. b. Purpose: The preliminary inquiry shall be for the purpose of determining:

- (1) whether probable cause exists to believe that the minor committed the alleged delinquent act; and,
- (2) whether continued detention or shelter care is necessary pending further proceedings.

B. c. Notice: Notice of the preliminary inquiry shall be given to the minor and his parent(s), guardian, or custodian and their counsel as soon as the time for the inquiry has been established.

d. Presence of Parents: If the minor's parent(s), guardian or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent(s), guardian or custodian. If it appears that further efforts are likely to produce the parent(s), guardian or custodian, the Children's Court shall recess for not more than twenty-four (24) actual hours and direct the juvenile intake officer to make continued efforts to obtain the presence of the parent(s), guardian or custodian.

3. e. If with good cause, the parent(s), guardian or custodian are unable to appear, the Children's Court judge shall designate an extended family member or other responsible adult to represent the parent(s), guardian or custodian.

f. Testimony: The Children's Court shall hear testimony concerning:

- (1) the circumstances that gave rise to taking the minor into custody; and
- (2) the need for detention or shelter care.

g. Finding and Temporary Disposition: If the Children's Court finds probable cause to believe that the minor performed the delinquent act, the minor shall be released to his parent(s), guardian or custodian and ordered to appear at the adjudicatory hearing, unless:

VI. JUVENILE OFFENDER

F. CUSTODY RETAINED

f. Findings and Temporary Disposition

- (1) the act is serious enough to warrant continued detention or shelter care;
- (2) there is reasonable cause to believe that the minor will run away and that he will be unavailable for further proceedings; and/or, commit a serious act causing damage to person or property.

The Children's Court may release a minor to an extended family member or other responsible adult if the parent(s), guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the Children's Court may take the minor's wishes into consideration.

Upon a finding that probable cause exists to believe that there is a need for detention or shelter care, the minor's detention or shelter care shall be continued. The Court shall consider the juvenile probation officer's recommendation prepared pursuant to Chapter VI.F.3.

G. INVESTIGATION AND INFORMAL HEARING

1. Investigation: The juvenile probation officer shall make an investigation within twenty-four (24) hours of the preliminary inquiry or the release of the minor to his parent(s), guardian or custodian or within seventy-two (72) hours if the Court has received a written complaint pursuant to Chapter VI.C.1 to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the juvenile probation officer may:
 - a. recommend that no further action be taken;
 - b. suggest to the minor, his parent(s), guardian or custodian that they appear for an informal hearing;
 - c. request the presenting officer to begin transfer to Hopi Tribal Court proceedings; or,
 - d. recommend that the presenting officer file a petition to initiate further proceedings.

VI. JUVENILE OFFENDER
G. INVESTIGATION AND INFORMAL HEARING
2. Informal Hearing

2. Informal Hearing:

a. Authority: The juvenile probation officer may hold an informal hearing with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition of:

- (1) the facts of the case brings it within the jurisdiction of the Children's Court;
- (2) an informal adjustment of the matter would be in the best interest of the Tribe; and,
- (3) the minor and his parent(s), guardian or custodian consent to an informal adjustment with knowledge the the consent is voluntary.

This section does not authorize the juvenile probation officer to compel any person to appear at any conference, produce any papers, or visit any place.

b. Notice: Notice of informal hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been established.

The notice shall include a brief statement of the substances of the allegations against the minor.

c. Confidentiality: No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this Code.

d. Disposition: At the informal hearing the juvenile probation officer may take one of the following actions:

- (1) refer the minor and the parent(s), guardian or custodian to a community and/or village program for needed assistance.
- (2) arrange terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.

VI. JUVENILE OFFENDER

G. INVESTIGATION AND INFORMAL HEARING

d. Disposition

- (3) accept an offer of restitution is voluntarily made by the minor.
- (4) recommend that the Presenting Officer file a petition pursuant to Chapter VI.H.1 of this Code.

Any informal adjustment period shall not exceed six (6) months.

The Juvenile Probation Officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation within five (5) days of the hearing.

- e. Monitoring: The Juvenile Probation Officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the juvenile probation officer concludes that positive results are not being achieved, he shall recommend that the presenting officer file a petition pursuant to Chapter VI. H.1.

H. ADJUDICATION

1. Petition for Adjudication: Juvenile offender proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe. If the minor is in detention or shelter care the petition shall be filed within forty-eight (48) hours. If the minor has been previously released to his parent(s), guardian or custodian, extended family member or responsible adult, the petition shall be filed within ten (10) calendar days. The petition shall include the information required for a written complaint, and if the minor is in detention or shelter care, the time he was taken into custody.
2. Adjudicatory Hearing Date: Upon receipt of the petition, the Children's Court shall set a date for the hearing which shall not be more than ten (10) calendar days after the Children's Court receives the petition from the presenting officer. If the adjudicatory hearing is not held within fifteen (15) calendar days after receipt of the petition, the petition shall be dismissed and cannot be filed again unless:
 - a. the hearing is continued upon motion of the minor;

VI. JUVENILE OFFENDER

H. ADJUDICATION

2. Adjudicatory Hearing Date

- b. the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses, and the Children's Court finds that the presenting officer has exercised due diligence to obtain the evidence or witnesses, and reasonable grounds exist to believe that the material or evidence or witnesses will become available; or,
- c. the minor is attending school off the Reservation, and therefore is not available to appear at the hearing.

3. Summons: At least eight (8) calendar days prior to the adjudicatory hearing the Children's Court shall issue summonses to:

- a. the minor;
- b. the minor's parent(s), guardian or custodian;
- c. any person the Children's Court believes necessary for the proper adjudication of the case; and
- d. any person the minor believes necessary for the proper adjudication of the case.

A copy of the petition shall be attached to each summons.

4. Adjudicatory Hearing:

- a. Purpose: The purpose of the adjudicatory hearing shall be to determine whether there is sufficient evidence to substantiate the facts alleged in the petition beyond a reasonable doubt.
- b. Testimony: The Children's Court shall hear testimony concerning the circumstances which gave rise to the petition.

The Children's Court may order a psychological and/or psychiatric evaluation and/or medical examination for a minor who is alleged to be a juvenile offender.

If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable ground to believe that the fingerprints are those of a minor in custody upon petition to the court he may finger-

VI. JUVENILE OFFENDER

H. ADJUDICATION

4. Adjudicatory Hearing

print the minor for the purpose of immediate comparison with the latent fingerprints. Copies of the fingerprint shall be immediately destroyed if the comparison is negative.

- c. Admission of guilt: If the minor admits to the allegations of the petition the Children's Court shall consider such admission only if the Children's Court finds that the minor has been advised of this rights as set forth in Chapter VI.D.2 and he fully understands the potential consequences of his admission.
- d. Allegations sustained: If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

I. DISPOSITION

1. Predispositional Report:

- a. Report Ordered: Upon an order from the Children's Court, the juvenile probation officer shall prepare a written report describing reasonable and appropriate alternative dispositions.
- b. Plan: The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems established at the adjudicatory hearing.
- c. Explanation: The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
- d. Specific Reasons for Placement: If the recommendation is that the minor not be placed with his parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the minor with his parent(s), guardian or custodian.

- 2. Dispositional Hearing: A dispositional hearing shall take place not more than ten (10) calendar days after the adjudicatory hearing unless other waived by the minor with the

VI. JUVENILE OFFENDER

I. DISPOSITION

2. Dispositional Hearing

concurrence of his parent(s), guardian or custodian or counsel.

- a. Notice: Notice of the dispositional hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

The notice shall include a statement that the hearing is to determine the disposition of the case.

- b. Hearing Topic: At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the juvenile probation officer and afford the parties an opportunity to object to the factual contents and conclusions of the report. The Children's Court shall also consider alternative predispositional reports prepared by the minor and his counsel, if any.

3. Disposition Options:

- a. General: If the minor has been adjudged a juvenile offender the Court shall give consideration to the due regard for tribal or family customs relative to the discipline of children. Of the available options, the Court shall select that which is the least restrictive of the minor's freedom and is in the best interest of the minor and the Tribe.

- b. Preferred Options: The following options are preferred although the Court may also adopt other dispositions.

- (1) place the minor on probation subject to conditions set by the Children's Court;
- (2) place the minor in the legal custody of a relative or other suitable person, with or without probation or protective supervision;
- (3) commit the minor to an authorized industrial school, training school, or other training or corrective institution authorized to receive Indian children;
- (4) commit the minor to an institution or other facility for short-term confinement, study and/or evaluation

VI. JUVENILE OFFENDER

I. DISPOSITION

3. Disposition Options:

that meets accepted standards for care and treatment of delinquent children;

- (5) place the minor on an approved ranch, forestry camp, or other camp or a similar facility, for care and for work, if possible, provided that the person, agency or association operating that facility has been approved by the Tribal Council, or has otherwise complied with all applicable tribal, state and local laws. The minor placed in forestry camp or similar facility may be required to work on fire prevention, forestation, and reforestation, recreational works, forest roads, and on other works on or off the grounds of such facility and may be paid wages, all subject to the approval of, and under conditions set by the Children's Court;
- (6) if the Children's Court has assurance that the responsibility to make payments will rest on the minor, and not his parent(s), guardian, or custodian, order that the minor make restitution for damaged or loss caused by his wrongful acts, and impose fines not to exceed five-hundred dollars (\$500);
- (7) arrange for employment or work programs to enable children to fulfill court imposed obligation and for other purposes when deemed desirable by the Children's Court.;
- (8) in cases of violation of traffic laws or ordinances the Children's Court may, in addition to any other disposition, restrain the minor from driving for such period of time as the Children's Court deems necessary, if necessary, take possession of the minor's driver's license; and/or require that the minor attend driver education training, and/or;
- (9) order that the minor be examined or treated by a physician, surgeon, psychiatrist, medicine man, or psychologist, or that he receive other special care, and for such purposes if necessary, place the minor in a hospital or other suitable facility.

4. Time Limit: Dispositional orders are in effect for the

VI. JUVENILE OFFENDER

I. DISPOSITION

4. Time Limit:

time limit set by the Children's Court, but no order shall continue after the minor reaches the age of eighteen (18) years, unless the Children's Court continues its jurisdiction over the minor until a time not to exceed the minor's twenty-first (21) birthday.

5. Periodic Review: The dispositional orders shall be reviewed at the discretion of the Children's Court, but at least once every six (6) months.
6. Final Order: The dispositional order constitutes a final order for purposes of appeal.
7. Modification of Dispositional Order:
 - a. Reason: A dispositional order of the Children's Court may be modified upon a showing of a change in circumstances.
 - b. Motion: The Children's Court may modify a dispositional order at any time upon the motion of the following:
 - (1) the minor;
 - (2) the minor's parent(s), guardian or custodian;
 - (3) the juvenile probation officer; and/or,
 - (4) the presenting officer.
 - c. Hearing: If the modification involves a change of custody the Children's Court shall conduct a hearing to review its dispositional order.
 - d. Notice: Notice in writing of the hearing shall be given to the minor, the minor's parent(s), guardian or custodian and their counsel at least forty-eighty (48) hours before the hearing.

The notice shall include a statement that the hearing is to review the disposition.
 - e. Review: The Children's Court shall review the performance of the minor, the minor's parent(s), guardian or custodian and the juvenile probation officer and other persons providing assistance to the minor and the minor's family.

VI. JUVENILE OFFENDER

I. DISPOSITION

7. Modification of Dispositional Order:

- f. Code Application: In determining modification of disposition, the procedures prescribed in Chapter VI.I.1 and VI.I.2 shall apply.
- g. Violation of court order: If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its disposition unless it finds clear and convincing evidence of the violation.
- h. Revocation of Probation or Parole: If the modification of a disposition involves revocation of probation or parole, the Children's Court shall follow Hopi Tribal Court revocation procedures.

VII. OFFENSES

Incorporated by reference into this Code are the following sections of Ordinance 21, enacted July 10, 1972:

- 3.3.1 - Abandonment of Child
- 3.3.11 - Carnal Relations with Female Minors
- 3.3.13 - Child Molesting
- 3.3.14 - Contributing to the Delinquency of a Minor
- 3.3.30 - Failure to Send Children to School
- 3.3.31 - Failure to Support Dependent Children

and Ordinance 13, enacted September 11, 1963:

ABOVE PORTION HAS BEEN AMENDED BY RESOLUTION H-91-81. SEE ATTACHED CORRECTED VII. VIOLATIONS

VIII. MISCELLANEOUS MATTERS

A. SEVERABILITY

If any portion of this Code shall be ruled invalid by any Hopi Tribal court or federal court of competent jurisdiction, that portion shall cease to be operative but the remainder of this Code shall continue in full force and effect.

B. AMENDMENTS

This Hopi Children's Code may be amended by resolution of the Hopi Tribal Council. Amendments are subject to confirmation by the Secretary of the Interior.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P. O. Box 7007
Phoenix, Arizona 85011



recd 5/24/81

IN REPLY REFER TO:

Tribal Operations
(602) 241-2314
FTS 261-2314

18 MAY 1981

Randy Sells

Through: Superintendent, Hopi Agency

Mr. Abbott Sekaquaptewa

Chairman, Hopi Tribal Council

Dear Mr. Sekaquaptewa:

Pursuant to authority delegated to me by the Commissioner of Indian Affairs, the Superintendent's March 30 approval of Ordinance No. 35, Hopi Children's Code, is hereby affirmed.

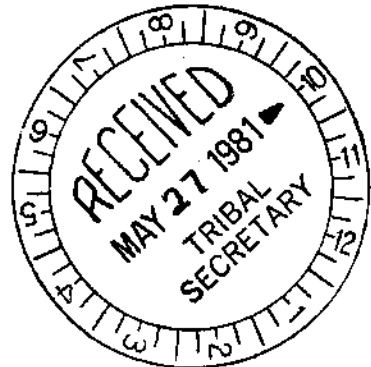
Said ordinance was enacted by the Hopi Tribal Council on March 12, 1981, and establishes the Hopi Children's Court to carry out court proceedings related to minors on the Hopi Reservation.

Sincerely yours,

[Handwritten signature]

Acting Asst. Area Director

Attachment



Resolution H-91-81 amends Ordinances 35 by replacing page V-4(V. Minor In Need or Care) & page VII-1. (VII Violations).

HOPI TRIBE
RESOLUTION
H-91-81

WHEREAS, THE HOPI CHILDREN'S CODE (ORDINANCE #35) WAS ENACTED BY HOPI TRIBAL RESOLUTION H-21-81 AT WHICH TIME AMENDMENTS TO THE OFFENSE SECTION OF THE HOPI CRIMINAL CODE (ORDINANCE #21) WERE PROPOSED; AND

WHEREAS, THE LAW & ORDER COMMITTEE, A STANDING COMMITTEE OF THE HOPI TRIBAL COUNCIL HAS REVIEWED SAID AMENDMENTS.

NOW THEREFORE BE IT RESOLVED BY THE HOPI TRIBAL COUNCIL THAT IT HEREBY ENACTS IN THEIR ENTIRETY AS THE CIVIL VIOLATION SECTION, CHAPTER VII OF THE HOPI CHILDREN'S CODE, THE AMENDMENTS ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

BE IT FURTHER RESOLVED THAT ANY PRIOR RESOLUTIONS OR ORDINANCES IN CONFLICT WITH THIS RESOLUTION ARE HEREBY SUPERCEDED.

C E R T I F I C A T I O N

THE FOREGOING RESOLUTION WAS DULY ADOPTED BY THE HOPI TRIBAL COUNCIL ON NOVEMBER 05, 1981, AT A MEETING AT WHICH A QUORUM WAS PRESENT WITH A VOTE OF 11 IN FAVOR, 0 OPPOSED, 0 ABSTAINING (CHAIRMAN PRESIDING AND NOT VOTING) PURSUANT TO THE AUTHORITY VESTED IN THE HOPI TRIBAL COUNCIL BY SECTION 1(A) (G) OF ARTICLE VI OF THE HOPI TRIBAL CONSTITUTION AND BY-LAWS OF THE HOPI TRIBE OF ARIZONA, RATIFIED BY THE HOPI TRIBAL COUNCIL ON OCTOBER 24, 1936 AND APPROVED BY THE SECRETARY OF THE INTERIOR ON DECEMBER 19, 1936, PURSUANT TO SECTION 16 OF THE ACT OF JUNE 18, 1934. SAID RESOLUTION IS EFFECTIVE AS OF THE DATE OF ADOPTION AND DOES REQUIRE SECRETARIAL APPROVAL.

V. MINOR IN NEED OR CARE

D. REPORTING OF ABUSE OR NEGLECT: WRITTEN COMPLAINT

7. Photographs and X-Rays

indicated, such person may authorize a radiological examination of the child. Photographs and x-rays shall be destroyed or delivered to the person having legal custody of the child if the report of suspected abuse or neglect is determined to be unfounded by the Children's Court either through an investigation or at a hearing.

8. Penalty for Not Reporting, Interfering with Reports: Any person who willfully fails or refuses to report a known or suspected case of abuse or neglect, or willfully prevents another person from doing so shall be subject to a civil penalty not to exceed five-hundred fifty dollars (\$550.00).

9. Written Complaint: A written complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall contain:

- a. A citation of the statutory provisions of this Code which gives the Children's Court jurisdiction over the proceedings;
- b. the name, birthdate and residence of the minor, if known;
- c. the name and addresses and residences of the minor's parent(s), guardian or custodian, if known;
- d. a statement of the facts upon which the allegations are based including the date(s), time(s) and specific location(s) at which the alleged facts occurred; and
- e. the name and signature of the complainant.

E. EMERGENCY CUSTODY

1. Taking Emergency Custody:

- a. Warrant: The Children's Court may enter an order pursuant to Chapter V.D.9 of this Code called a warrant directing that a minor be taken into custody if the Children's Court finds that there is probable cause to believe the minor is a minor-in-need-of-care and that immediate custody of the child is needed. Warrants shall be issued pursuant to Hopi Tribal Court procedures.
- b. Law Enforcement Personnel: A minor shall be taken into custody by a law enforcement officer, if:

VII. VIOLATIONS

(1) Civil Violation

- A. Any person found to have violated any provision of this section shall be assessed a civil penalty in an amount not to exceed five hundred fifty dollars (\$550.00).

(2) Specific Violation

- A. Abandonment - Any parent(s), guardian, or temporary custodian who has been entrusted with or who has assumed the care of a minor under the age of eighteen (18) years of age who abandons a minor as these terms are defined in this Code, shall be deemed in violation of this Section.
- B. Failure to Support Dependent Children - Any parent(s), guardian or temporary custodian who shall refuse, fail or neglect to furnish food, shelter, or care to those dependent upon him shall be deemed in violation of this Section and the court may order continual reasonable support payments until the minor reaches majority.
- C. Neglect - Any parent(s), guardian, or temporary custodian who has been entrusted with or who has assumed the care of a minor under the age of eighteen (18) years of age who neglects a minor as these terms are defined in this Code shall be deemed in violation of this Section.

FOOTNOTE:

Reference to Related Codes:

- A. Incorporated by reference into this Code is Ordinance #13 and the following sections of the Hopi Criminal Code (#21).

13.3.2 Abductions

23.3.11 Sexual Conduct with a Minor

33.3.13 Child Molesting

43.3.14 Contributing to the Delinquency of a Minor

53.3.86 Incest

63.3.87 Abuse of a Minor

73.3.30 Failure to send Children to School

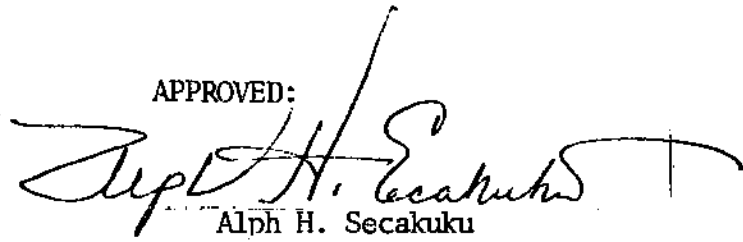
HOPI TRIBE
RESOLUTION
H-91-81


ABBOTT SEKAQUAPTEWA, CHAIRMAN
HOPI TRIBAL COUNCIL

ATTEST:


KEDRIC L. OUTAH, SECRETARY
HOPI TRIBAL COUNCIL

APPROVED:


Alph H. Secakuku

November 18, 1981





United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P. O. Box 7007
Phoenix, Arizona 85011

IN REPLY REFER TO:

Tribal Operations
(602) 241-2314
FTS 261-2314

04 DEC 1981

Through: Superintendent, Hopi Agency

Randy S. Sells, Acting

Mr. Ivan Sidney

Chairman, Hopi Tribal Council

Dear Mr. Sidney:

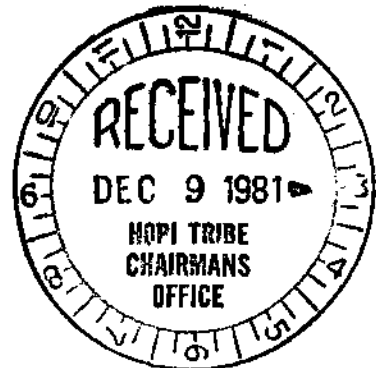
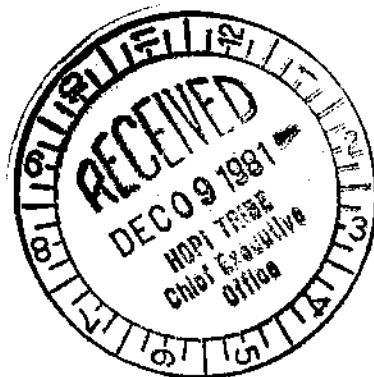
Resolution No. H-91-81, enacted by the Hopi Tribal Council on November 5, amends Ordinance No. 35, Hopi Children's Code, by replacing pages V-4 and VII-1.

In our review, we find no legal objection to its passage. I hereby concur with the Superintendent's November 18 approval, and Resolution No. H-91-81 remains in full force and effect as of the date of approval.

Sincerely yours,

William G. Fernald
Area Director

Attachment



Resolution H-11-85 amends Ordinance 35 to set procedures for disposition for juvenile offender cases.

HOPI TRIBAL COUNCIL
RESOLUTION
H- 11 -85

WHEREAS, the Hopi Childrens Code was enacted through Resolution H-21-81 with subsequent amendments made to the same; and

WHEREAS, amendments to Codes and Ordinances are necessary for further refinement and change that occurs within the legal system; and

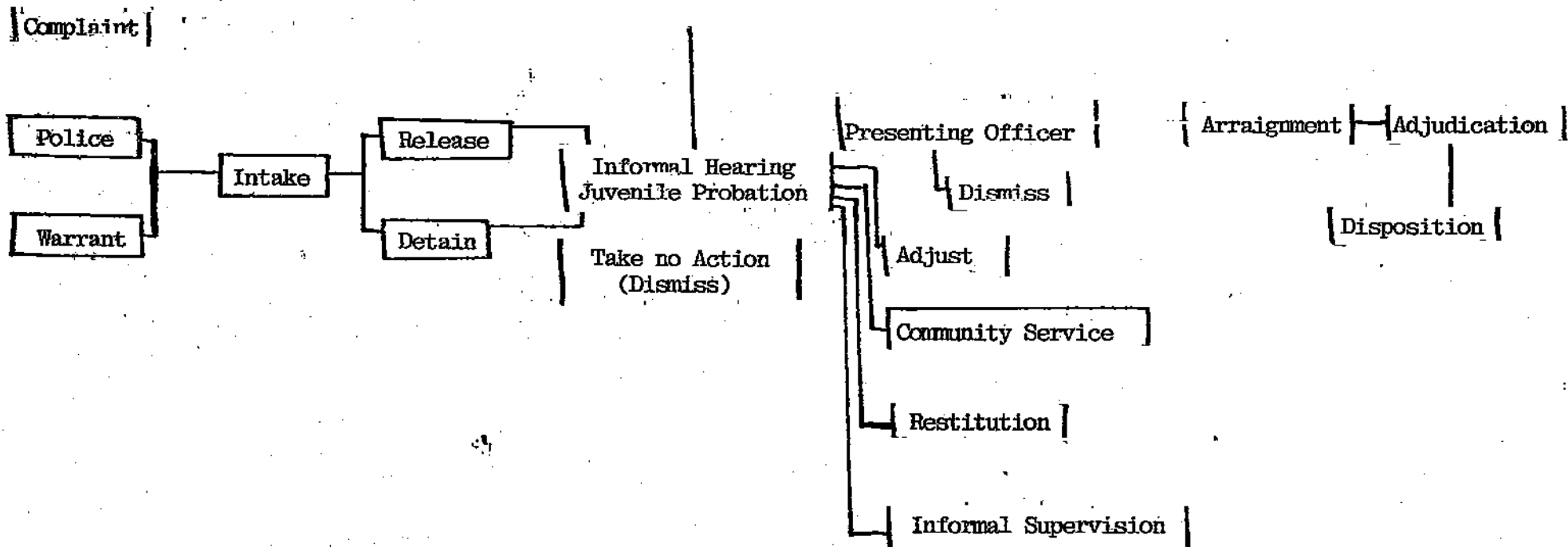
WHEREAS, the Law & Order Committee, a Standing Committee of Council, has reviewed the Childrens Code and is recommending changes to the "Juvenile Offender" Chapter of said Code; and

WHEREAS, the recommended Amendments have been discussed in open session of Council.

NOW THEREFORE BE IT RESOLVED by the Hopi Tribal Council that it hereby enacts the Amendments to the Hopi Childrens Code known as Ordinance #35 attached hereto and by reference made a part hereof.

BE IT FINALLY RESOLVED that any ordinance or section thereof in conflict with said Amendment is hereby superceded.

JUVENILE OFFENDER FLOW CHART



VI. JUVENILE OFFENDER

A. FLOW CHART

The attached flow chart illustrates the major juvenile offender proceedings under this Code.

B. PURPOSE

To set out the procedures for reaching disposition of juvenile offender cases.

C. WRITTEN COMPLAINT, WARRANT

1. Written Complaint: A complaint may be filed by a person who has knowledge. The complaint shall be signed by the complainant. The complaint shall contain:
 - a. a citation to the specific statutory provision(s) that give the Children's Code jurisdiction over the proceedings.
 - b. a citation to the provision(s) of Hopi Tribal law which the minor is alleged to have violated.
 - c. the name, age and address of the minor who is the subject of the complaint, if known.
 - d. the name, address of the minor's parent(s) or guardian, if known; and
 - e. a plain and concise statement of the facts upon which the allegations are based, including the date(s), time(s), and specific location(s) at which the alleged facts occurred.
2. Warrant: After receiving a written complaint the Children's Court may enter an order called a warrant directing that a minor be taken into custody if the Children's Court finds there is probable cause to believe that the minor committed a delinquent act and that taking custody is justified by the circumstances.

D. TAKING CUSTODY

1. Custody: A minor may be taken into custody by a law enforcement officer if:
 - a. the officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
 - b. a warrant pursuant to Chapter VI.C.2. of this Code has been issued for the minor.

2. ANYTIME A MINOR HAS BEEN TAKEN INTO CUSTODY BY A LAW ENFORCEMENT OFFICER WITHOUT A WARRANT, A VERIFIED COMPLAINT SHALL BE FILED WITH THE APPROPRIATE JUVENILE AUTHORITIES WITHIN TWO (2) HOURS CHARGING THE MINOR WITH A VIOLATION OF THE LAW.
3. Rights Warning: An arresting officer shall give the following warnings to any minor he takes into custody prior to any questioning:
 - a. The minor has the right to remain silent.
 - b. Anything the minor says can be used against the minor in Court.
 - c. The minor has the right, at this own expense, to have the assistance of counsel and to have his parent(s), guardian or custodian present during questioning.
 - d. If the minor states that he cannot afford an attorney or counsel, the officer shall inform him of available services.
4. Arresting Officer's Options: The arresting officer shall either release the minor directly to his parent(s), or guardian or custody and give verbal counsel or warning as may be appropriate, or present the minor to the juvenile intake officer.

E. INTAKE CUSTODY DECISION

When a minor is presented to the Juvenile Intake Officer by the arresting officer, the INTAKE officer may, after an evaluation of the circumstances place a minor in detention or shelter care if taken into custody pursuant to Chapter VI.D.1. of this Code, or direct that the minor be returned to his parent(s), guardian or custodian. THE INTAKE OFFICER MAY FURTHER DIRECT THE CHILD, HIS PARENT(S), GUARDIAN OR CUSTODIAN TO RETURN FOR AN INFORMAL HEARING WITH THE JUVENILE PROBATION OFFICER.

F. CUSTODY RETAINED

If the minor is not released, the following provisions shall apply:

1. Notification of Parents: The INTAKE officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian that the minor has been taken into custody and to inform them of their right to be present with the minor until the intake custody decision has been made.
2. Notification of Probation Department: The INTAKE officer shall inform the Probation Department or its designee within twenty-four (24) actual hours of taking the minor into custody.
3. Custody Options: The juvenile intake officer shall immediately explore available preadjudication custody arrangements, and prepare recommendations for temporary care and custody for PRESENTATION AT THE DETENTION HEARING.

4. Detention Pending Court Hearing: A minor alleged to be a juvenile offender may be detained pending a Court hearing, in the following places:

- a. a shelter care facility on the Reservation approved by the Tribe and/or Bureau of Indian Affairs.
- b. a detention facility on the Reservation approved by the Tribe and/or the Bureau of Indian Affairs; or
- c. a foster home on the Reservation approved by the Court and/or the Bureau of Indian Affairs.

A minor 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:

- a. a facility as noted above is not available or would not assure adequate supervision of the minor;
- b. detention is in a cell separate and removed from sight and sound of adults;
- c. adequate supervision is provided twenty-four (24) hours a day.

5. DETENTION CRITERIA: A MINOR TAKEN INTO CUSTODY SHALL NOT BE PLACED IN DETENTION PRIOR TO THE COURT'S DISPOSITION UNLESS:

- a. THE ACT IS SERIOUS ENOUGH TO WARRANT CONTINUED DETENTION OR SHELTER CARE:
- b. THERE IS REASONABLE CAUSE TO BELIEVE THAT THE MINOR WILL RUN AWAY AND THAT HE WILL BE UNAVAILABLE FOR FURTHER PROCEEDINGS AND/OR COMMIT A SERIOUS ACT CAUSING DAMAGE TO PERSONS OR PROPERTY:
- c. THERE IS REASONABLE CAUSE TO BELIEVE THAT THE MINOR WILL COMMIT INJURY TO PERSONS OR PROPERTY OF OTHERS OR COMMIT INJURY TO HIMSELF OR BE SUBJECT TO INJURY BY OTHERS: OR,
- d. THERE IS REASONABLE CAUSE TO BELIEVE THE CHILD HAS NO PARENT(S), GUARDIAN OR CUSTODIAN ABLE OR WILLING TO PROVIDE ADEQUATE SUPERVISION AND CARE FOR HIM.

6. DETENTION HEARING: IF A CHILD IS DETAINED OR PLACED IN SHELTER CARE, THE COURT SHALL HOLD A DETENTION HEARING WITHIN TWENTY-FOUR (24) HOURS (EXCLUDING HOLIDAYS AND WEEKENDS) AFTER THE MINOR HAS BEEN TAKEN INTO CUSTODY AND HAS NOT BEEN PREVIOUSLY RELEASED PURSUANT TO CHAPTER VI.E. OF THIS CODE.

- a. REQUEST FOR A DETENTION HEARING SHALL BE INSTITUTED BY A MOTION FILED BY THE JUVENILE INTAKE OFFICER ON BEHALF OF THE TRIBE.

- b. NOTICE: NOTICE OF THE DETENTION HEARING SHALL BE GIVEN TO THE MINOR AND HIS PARENT(S), GUARDIAN OR CUSTODIAN AND THEIR COUNSEL AS SOON AS THE TIME FOR THE HEARING HAS BEEN ESTABLISHED.
- c. PRESENCE OF PARENTS: IF THE MINOR'S PARENT(S), GUARDIAN OR CUSTODIAN IS NOT PRESENT AT THE DETENTION HEARING, THE CHILDREN'S COURT SHALL DETERMINE WHAT EFFORTS HAVE BEEN MADE TO NOTIFY AND OBTAIN THE PRESENCE OF THE PARENT(S), GUARDIAN OR CUSTODIAN, THE CHILDREN'S COURT SHALL RECESS FOR NOT MORE THAN TWENTY-FOUR (24) ACTUAL HOURS AND DIRECT THE JUVENILE INTAKE OFFICER TO MAKE CONTINUED EFFORTS TO OBTAIN THE PRESENCE OF THE PARENT(S), GUARDIAN OR CUSTODIAN.
- d. IF THE GOOD CAUSE, THE PARENT(S), GUARDIAN OR CUSTODIAN ARE UNABLE TO APPEAR, THE CHILDREN'S COURT SHALL DESIGNATE AN EXTENDED FAMILY MEMBER OR OTHER RESPONSIBLE ADULT TO REPRESENT THE PARENT(S), GUARDIAN OR CUSTODIAN.
- e. BEFORE PROCEEDING WITH A DETENTION HEARING THE COURT SHALL:
- 1) INFORM THE MINOR OF THE PURPOSE OF THE HEARING AND DETERMINE THAT THE PERSON UNDERSTANDS THE NATURE OF THE CHARGE AGAINST HIM AND THE POTENTIAL CONSEQUENCE OF THE HEARING.
 - 2) EXPLAIN THE RIGHT TO COUNSEL SUBSTANTIALLY AS FOLLOWS:
"YOU HAVE THE RIGHT TO HAVE LEGAL COUNSEL REPRESENT YOU AT YOUR OWN EXPENSE OR AT THE EXPENSE OF YOUR PARENT(S), GUARDIAN OR CUSTODIAN.
 - 3) EXPLAIN TO THE JUVENILE AND HIS PARENT(S) THE AVAILABILITY OF LEGAL SERVICES.
- f. TESTIMONY: THE CHILDREN'S COURT SHALL HEAR TESTIMONY CONCERNING:
- 1) THE CIRCUMSTANCES THAT GAVE RISE TO TAKING THE MINOR INTO CUSTODY: AND,
 - 2) THE NEED FOR DETENTION OR SHELTER CARE:
- g. FIND AND TEMPORARY DISPOSITION: THE MINOR SHALL BE RELEASED TO HIS PARENT(S), GUARDIAN OR CUSTODIAN AND ORDERED TO APPEAR FOR FURTHER PROCEEDINGS UNLESS:
- 1) THE ACT IS SERIOUS ENOUGH TO WARRANT CONTINUED DETENTION OR SHELTER CARE:
 - 2) THERE IS REASONABLE CAUSE TO BELIEVE THAT THE MINOR WILL RUN AWAY AND THAT HE WILL BE UNAVAILABLE FOR FURTHER PROCEEDINGS AND/OR COMMIT A SERIOUS ACT CAUSING DAMAGE TO PERSONS OR PROPERTY:

- 3) THERE IS REASONABLE CAUSE TO BELIEVE THAT THE MINOR WILL COMMIT INJURY TO PERSONS OR PROPERTY OF OTHERS OR CAUSE INJURY TO HIMSELF OR BE SUBJECT TO INJURY BY OTHERS;
 - 4) THERE IS REASONABLE CAUSE TO BELIEVE THE MINOR HAS NO PARENT(S), GUARDIAN OR CUSTODIAN ABLE OR WILLING TO PROVIDE ADEQUATE SUPERVISION AND CARE FOR HIM.
- h. THE CHILDREN'S COURT MAY RELEASE A MINOR TO AN EXTENDED FAMILY MEMBER OR OTHER RESPONSIBLE ADULT IF THE PARENT(S), GUARDIAN OR CUSTODIAN OF THE MINOR CONSENTS TO THE RELEASE. IF THE MINOR IS TEN (10) YEARS OF AGE OR OLDER THE CHILDREN'S COURT MAY TAKE THE MINOR'S WISHES INTO CONSIDERATION.
 - i. AN ORDER SPECIFIED IN THIS SECTION MAY AT ANY TIME BE AMENDED TO IMPOSE ADDITIONAL OR DIFFERENT CONDITIONS OF RELEASE OR TO RETURN THE MINOR TO CUSTODY OR DETENTION FOR FAILURE TO CONFORM TO THE CONDITIONS ORIGINALLY IMPOSED.

G. INVESTIGATION AND INFORMAL HEARINGS

1. INVESTIGATION: THE JUVENILE PROBATION OFFICER SHALL MAKE INVESTIGATION UPON ARREST OF A MINOR WITHIN FORTY-EIGHT (48) HOURS IF THE MINOR IS IN DETENTION OR SHELTER CARE OR WITHIN SEVENTY-TWO (72) HOURS IF THE MINOR HAS BEEN RELEASED TO HIS PARENT(S), GUARDIAN OR CUSTODIAN OR WITHIN TEN (10) DAYS UPON RECEIPT OF A COMPLAINT WITHOUT AN ARREST PURSUANT TO CHAPTER VI.C.1. TO DETERMINE WHETHER THE INTERESTS OF THE MINOR AND THE PUBLIC REQUIRE THAT FURTHER ACTION BE TAKEN. UPON THE BASIS OF HIS INVESTIGATION, THE JUVENILE PROBATION OFFICER MAY:
 - a. recommend that no further action be taken;
 - b. DIRECT the minor, his parent(s), guardian or custodian TO appear for an informal hearing.
 - c. request the presenting officer begin transfer OF THE CASE to Hopi Tribal Court; or,
 - d. recommend that the presenting officer file a petition to ADJUDICATE.
2. Informal Hearing:
 - a. Authority: The Juvenile Probation Officer may hold an informal hearing with the minor and the minor's parent(s), guardian or custodian to discuss alternatives to the filing of a petition of:
 - 1) the facts of the case brings it within the jurisdiction of the Children's Court;
 - 2) an informal adjustment of the matter would be in the best interest of the Tribe, and

- 3) the minor and his parent(s), guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

This section does not authorize the Juvenile Probation Officer to compel any person to appear at any conference, produce any papers, or visit any place.

- b. Notice: Notice of Informal Hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been scheduled.

The notice shall include a brief statement of the substances of the allegations against the minor.

- c. Confidentiality: No statement OR ADMISSION made during the informal hearing may be admitted into evidence at an adjudicatory hearing or at any proceedings against the minor under this code.
- d. Disposition: At the informal hearing the Juvenile Probation Officer SHALL take one of the following actions:
 - 1) refer to the minor and his parent(s), guardian or custodian to a community and/or village program for needed assistance.
 - 2) arrange terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.
 - 3) accept an offer IF restitution is voluntarily made by the minor.
 - 4) recommend that the Presenting Officer file a petition pursuant to Chapter VI.H.I of this Code.

Any informal adjustment period shall not exceed six (6) months.

The Juvenile Probation Officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation within five (5) days of the hearing.

- e. Monitoring: The Juvenile Probation Officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the Juvenile Probation Officer concludes that positive results are not being achieved, he shall recommend that the presenting officer file a petition pursuant to Chapter VI.H.I.

H. ADJUDICATION

1. Petition for Adjudication: Juvenile Offender proceedings under the Children's Code shall be instituted by a petition filed by the presenting officer on behalf of the Tribe. If the minor is in detention or shelter care, HE shall be ARRAIGNED within ten (10) calendar days. IF A PETITION TO ADJUDICATE IS INSTITUTED ON A COMPLAINT WITHOUT AN ARREST, HE SHALL BE ARRAIGNED WITHIN TEN (10) CALENDAR DAYS FROM THE DATE SUMMONS IS SERVED. The Petition shall include the information required for a written complaint, and if the minor is in detention or shelter care, the time he was taken into custody.
2. ARRAIGNMENT: HEARINGS ON PETITIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PRACTICE OF THE HOPI TRIBAL COURTS PURSUANT TO ORDINANCE 21, EXCEPT WHERE IT OTHERWISE CONFLICTS WITH THE RIGHTS OF INDIVIDUALS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT. THE COURT SHALL ADVISE MINORS BEFORE THE COURT OF THEIR BASIC RIGHTS UNDER THE CHILDREN'S CODE AT EACH SEPARATE APPEARANCE.
 - a. AFTER GIVING THE MINOR AN OPPORTUNITY TO CONSULT WITH COUNSEL THE COURT SHALL GIVE THE MINOR AN OPPORTUNITY TO PLEAD TO THE ALLEGATIONS;
 - b. ADMISSION OF GUILT: IF THE MINOR ADMITS TO THE ALLEGATIONS OF THE PETITION, THE CHILDREN'S COURT SHALL CONSIDER SUCH ADMISSION ONLY IF THE CHILDREN'S COURT FINDS THAT THE MINOR HAS BEEN ADVISED OF HIS RIGHTS AS SET FORTH IN CHAPTER VI.D.2 AND HE FULLY UNDERSTANDS THE POTENTIAL CONSEQUENCES OF HIS ADMISSIONS AND:
 - 1) THE MINOR VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY ADMITS TO ALL FACTS NECESSARY TO CONSTITUTE A BASIS FOR THE CHILDREN'S COURT ACTION UNDER THIS CODE.
 - 2) THE MINOR HAS NOT, IN HIS PURPORTED ADMISSION TO THE ALLEGATION(S), SET FORTH FACTS THAT, IF FOUND TO BE TRUE, CONSTITUTE A DEFENSE TO THE ALLEGATION.
3. Adjudicatory Hearing: UPON RECEIVING A NOT GUILTY PLEA AT ARRAIGNMENT OR IF THE CHILD ALLEGED TO BE CHILD OFFENDER DOES NOT ADMIT THE ALLEGATIONS OF THE PETITION, Children's Court shall set a date for A hearing which shall not be more than fifteen (15) calendar days after the minor pleads. If the adjudicatory hearing is not held within twenty (20) calendar days after receipt of the petition, the petition shall be dismissed and cannot be filed again unless:
 - a. the hearing is continued upon motion of the minor;
 - b. the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses, and the Children's Court finds that the presenting officer has exercised due diligence to obtain the evidence of witnesses, and reasonable grounds exist to believe that the material evidence or witnesses will become available; or,

- c. the minor is attending school off the Reservation, and, therefore, is not available to appear at the hearing.
 - d. THE MINOR WAS NOT AVAILABLE TO RECEIVE A SUMMONS OR ANY PARTY LISTED IN THE NEXT SECTION (VI.H.3.) IS NOT AVAILABLE TO RECEIVE A SUMMONS.
4. Summons: At least five (5) calendar days prior to the adjudicatory hearing, the Children's Court shall issue summonses to:
- a. the minor;
 - b. the minor's parent(s), guardian or custodian;
 - c. any person the Children's Court believes necessary for the proper adjudication of the case; and,
 - d. any person the minor believes necessary to the proper adjudication of the case.

A copy of the petition shall be attached to each summons.

5. Adjudicatory Hearing:

- a. Purpose: The purpose of the adjudicatory hearing shall be to determine whether there is sufficient evidence to substantiate the facts alleged in the petition beyond a reasonable doubt.
- b. Testimony: The Children's Court shall hear testimony concerning the circumstances which gave rise to the petition.

The Children's Court may order a psychological and/or psychiatric evaluation and/or medical examination for a minor who is alleged to be a juvenile offender.

If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in custody upon petition to the Court he may fingerprint the minor for purposes of immediate comparison with the latent fingerprints. Copies of the fingerprint shall be immediately destroyed if the comparison is negative.

- c. Allegations sustained: If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

I. DISPOSITION

1. Predispositional Report:

- a. Report Ordered: Upon an order from the Children's Court,

the juvenile probation officer shall prepare a written report describing reasonable and appropriate alternative dispositions.

- b. Plan: The report shall contain a specified plan for the care of and assistance to the minor calculated to resolve the problems established at the adjudicatory hearing.
 - c. Explanation: The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
 - d. Specific Reasons for Placement: If the recommendation is that the minor not be placed with his parent(s), guardian or custodian, the report shall contain specific reasons for not recommending placement of the minor with his parent(s), guardian or custodian.
2. Dispositional Hearing: A dispositional hearing shall take place not more than ten (10) calendar days after the adjudicatory hearing unless otherwise waived by the minor with the concurrence of this parent(s), guardian or custodian or counsel.
- a. Notice: Notice of the dispositional hearing shall be given to the minor and his parent(s), guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

The notice shall include a statement that the hearing is to determine the disposition of the case.
 - b. Hearing Topic: At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the juvenile probation officer and afford the parties an opportunity to object to the factual contents and conclusions of the report. The Children's Court shall also consider alternative predispositional reports prepared by the minor and his counsel, if any.
3. Disposition Options:
- a. General: If the minor has been adjudged a juvenile offender the Court shall give consideration to the due regard for tribal or family customs relative to the discipline of children. Of the available options, the Court shall select that which is the least restrictive of the minor's freedom and is in the best interest of the minor and the Tribe.
 - b. Preferred Options: The following options are preferred although the Court may also adopt other dispositions.
 - (1) place the minor on probation subject to conditions set by the Children's Court.
 - (2) place the minor to an authorized industrial school, training school, or other training or corrective

institution authorized to receive Indian children;

- (4) commit the minor to an institution or other facility for short-term confinement, study and/or evaluation that meets accepted standards for care and treatment of delinquent children;
 - (5) Place the minor on an approved ranch, forestry camp, or other camp or a similar facility, for care and for work, if possible, provided that the person, agency or association operating that facility has been approved by the Tribal Council, or has otherwise complied with all applicable tribal, state, and local laws. The minor placed in forestry camp or similar facility may be required to work on fire prevention, forestation, and reforestation, recreational works, forest roads, and on other works on or off the grounds of such facility and may be paid wages, all subject to the approval of, and under conditions set by the Children's Court.
 - (6) if the Children's Court has assurance that the responsibility to make payments will rest on the minor, and not his parent(s), guardian or custodian, order that the minor make restitution for damaged or loss caused by his wrongful acts, and impose fines not to exceed five-hundred dollars (\$500);
 - (7) arrange for employment or work programs to enable children to fulfill court imposed obligation and for other purposes when deemed desirable by the Children's Court;
 - (8) in cases of violation of traffic laws or ordinances the Children's Court may, in addition to any other disposition, restrain the minor from driving for such period of time as the Children's Court deems necessary if necessary, take possession of the minor's driver's license; and/or require that the minor attend driver education training, and/or;
 - (9) order that the minor be examined or treated by a physician, surgeon, psychiatrist, medicine man, or psychologist, or that he receive other special care, and for such purposes if necessary, place the minor in a hospital or other suitable facility.
4. Time Limit: Dispositional orders are in effect for the time limit set by the Children's Court, but no order shall continue after the minor reached the age of eighteen (18) years, unless the Children's Court continues its jurisdiction over the minor until a time not to exceed the minor's twenty-first (21) birthday.
5. Periodic Review: The dispositional orders shall be reviewed at the dis-

cretion of the Children's Court, but at least once every six (6) months.

6. Final Order: The dispositional order constitutes a final order for purposes of appeal.

7. Modification of Dispositional Order:

a. Reason: A dispositional order of the Children's Court may be modified upon a showing of a change in circumstances.

VII. VIOLATIONS

(1) Civil Violation

- A. Any person found to have violated any provision of this section shall be assessed a civil penalty in an amount not to exceed five hundred dollars (\$500.00).

(2) Specific Violation

- A. Abandonment - Any parent(s), guardian or temporary custodian who has been entrusted with or who has assumed the care of a minor under the age of eighteen (18) years of age who abandons a minor as these terms are defined in this Code, shall be deemed in violation of this Section.
- B. Failure to Support Dependant Children - Any parent(s), guardian or temporary custodian who shall refuse, fail or neglect to furnish food, shelter, or care to those dependent upon him shall be deemed in violation of this Section and the Court may order continual reasonable support payments until the minor reaches majority.
- C. Neglect - Any parent(s), guardian or temporary custodian who has been entrusted with or who has assumed the care of a minor under the age of eighteen (18) years of age who neglects a minor as these terms are defined in this Code shall be deemed in violation of this Section.

FOOTNOTE:

Reference to Related Codes:


- A. Incorporated by reference into this Code is Ordinance #13 and the following section of the Hopi Criminal Code (#21).

1. 3.3.2 Abductions
2. 3.3.11 Sexual Conduct with a Minor
3. 3.3.13 Child Neglecting
4. 3.3.14 Contributing to the Delinquency of a Minor
5. 3.3.86 Incest
6. 3.3.87 Abuse of a Minor
7. 3.3.30 Failure to send Children to School

HOPI TRIBAL COUNCIL
RESOLUTION
H- 11 -85

C E R T I F I C A T I O N

The foregoing resolution was duly adopted by the Hopi Tribal Council on January 11, 1985, at a meeting at which a quorum was present with a vote of 11 in favor, 0 opposed, 0 abstaining (Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by Section 1 (g) of Article VI of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Hopi Tribal Council on October 24, 1936, and approved by the Secretary of the Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution does require Secretarial approval and is effective upon the date of approval by the Secretary of the Interior.


Ivan L. Sidney, Chairman
Hopi Tribal Council

ATTEST:


Doris Honanie, Tribal Secretary
Hopi Tribal Council



file in Ord 35
make copy for Resolution
file

JAN 21 1985

Tribal Operations, Hopi Agency

Hopi Tribal Resolution H-11-85

Area Director
Attn: Tribal Operations

We are submitting three copies of the above resolution in which the Tribal Council amends Ordinance No. 35 - Hopi Childrens Code.

The purpose of the amendment is to set out procedures for disposition of juvenile offender cases.

We have reviewed the amendment to Ordinance No. 35 and hereby approve same.

WHEREAS, the recommendations amendments have been discussed in detail and approved by the Tribal Council;

Alph H. Secakuku
Superintendent

Attachments: [illegible]

cc: Tribal Secretary w/atch.
John Kennedy w/atch.

✓064.3

It is hereby recommended that any ordinance or resolution that is in conflict with the said Amendment is hereby superseded.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

PHOENIX AREA OFFICE

P.O. Box 7007

Phoenix, Arizona 85011

RECEIVED MAIL ROOM

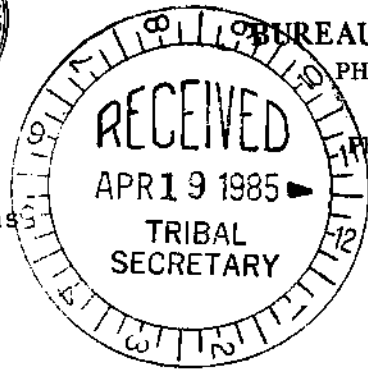
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HIA, HOPI AGENCY

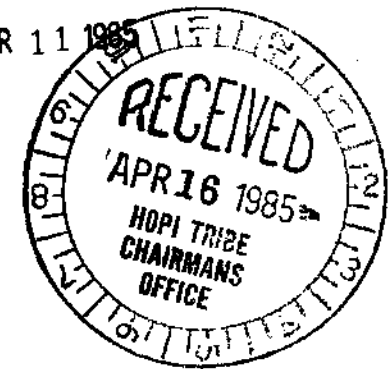
Handwritten initials and number: "HOB 417"

IN REPLY REFER TO:

Tribal Operations
(602) 241-2314
FTS 261-2314



APR 11 1985



Through: Superintendent, Hopi Agency

Mr. Ivan Sidney

Chairman, Hopi Tribal Council

Dear Mr. Sidney:

We are in receipt of Resolution No. H-11-85 enacted by the Hopi Tribal Council on January 11, 1985 and approved by the Agency Superintendent on January 21, 1985.

The purpose of Resolution No. H-11-85 is to adopt the proposed amendment to Chapter VI, Juvenile Offender, of Ordinance No. 35 - Hopi Children's Code, to further refine the procedures for disposition of juvenile offender cases.

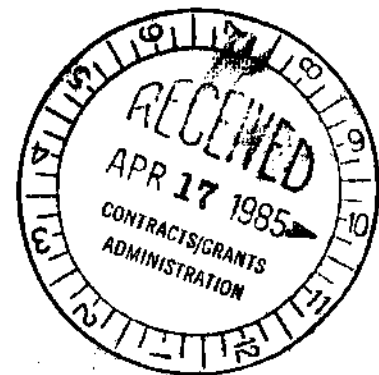
The amendment to Ordinance No. 35, Hopi Children's Code, has been reviewed by the Field Solicitor and Area Office staff, and the following suggested changes have been noted:

Section VI.D.1.c. should be renumbered as: "VI.D.2." The subsections following it should be renumbered "3" and "4."

Section VI.E. A period should follow the words, "his parent(s), guardian or custodian." The remainder of the sentence should be rewritten as follows: "The Intake Officer may further direct the child, his parent(s), guardian or custodian to return for an informal hearing with the juvenile probation officer."

Section VI.G.1.c. should be rewritten as follows: "request the presenting officer begin transfer of the case to Hopi Tribal Court; or,"

Section VI.H.2., fifth line. The word "BASIS" should be changed to "BASIC."



The above suggested changes do not affect the substantive provisions of the subject ordinance but reflect changes that could be adopted for clarity.

Overall, we find the amended ordinance to be feasible and see no legal reason to rescind the Agency Superintendent's approval. Therefore, Resolution No. H-11-85 remains in full force and effect as of the date of the Superintendent's approval which is January 21, 1985.

Sincerely,



Acting Area Director

Enclosure