

TITLE 4 – DOMESTIC

CHAPTER 4-2 JUVENILE JUSTICE

4-2-1 Purpose

The Juvenile Justice Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this Code;
- (b) To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
- (c) To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian's (Tribes) Community;
- (d) To achieve the purposes of this Code in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
- (e) To separate clearly in the judicial and other processes affecting children under this Code the "juvenile offender" and the "child in need of supervision", and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families;
- (f) To provide judicial and other procedures through which the provisions of this Code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
- (g) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and;
- (h) To provide a forum where an Indian child charged to be "delinquent" or a "status offender" in other jurisdictions may be referred for adjudication and/or disposition.

4-2-2 Definitions

As used in this Code:

- (a) "Adjudicatory Hearing" - A proceeding in the Juvenile Court to determine whether a child has committed a specific "juvenile offense" or is a "child in need of supervision" as set forth in a petition.
- (b) "Adult" - An individual who is eighteen (18) years of age or older (see the definition of "transfer to Tribal Court").
- (c) "Alcohol or Substance Abuse Emergency Shelter or Halfway House" - An appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
- (d) "Child" - An individual who is less than eighteen (18) years old and has not been emancipated. (see the definition of "transfer to Tribal Court").
- (e) "Child in Need of Supervision"- means a child who:
- (1) Being subject to compulsory school attendance, is habitually absent from school; or
  - (2) Habitually disobeys the reasonable and lawful demands of his or her parents, guardian or custodian and is beyond such control; or
  - (3) Has committed a violation of the Tribes' Violations Code applicable only to children; and
  - (4) In any of the above situations is in need of care, cultural education, or rehabilitation.
- (f) "Counsel" - An advocate or attorney.
- (g) "Court" or "Juvenile Court" - The Juvenile Court of the Tribes.
- (h) "Curriculum Change" - Includes but is not necessarily limited to:
- (1) a change in a child's instructor, if available;
  - (2) a change in the scheduling of a child's classes, if available;
  - (3) reassignment of a child into another class section, if available;
  - (4) a change in the content of a child's course of instruction, if available; and
  - (5) a change in the child's school, if available.
- (i) "Custodian" - A person, other than a parent or guardian, to whom legal custody of the child has been given.

- (j) "Detention" - Exercising authority over a child by physically placing them in any juvenile facility designated by the court and restricting the child's movement in that facility.
- (k) "Dispositional Hearing" - A proceeding in the Juvenile Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense(s)" or is a child whose "family is in need of services."
- (l) "Domicile" - A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
- (m) "Emergency Foster Home" - Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.
- (n) "Foster Home" - Placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18).
- (o) "Guardian" - A person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter, and control of a child.
- (p) "Group Home" - A residential detention facility which is licensed to care for children under the age of eighteen (18).
- (q) "He/His" - The use of he/his means he or she, his or her, and singular includes plural.
- (r) "Interim Care" - The status of temporary physical control of a child who is "in need of supervision".
- (s) "Juvenile Counselor" - The juvenile counselor or the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in section 4-2-7(b) of this Code.
- (t) "Juvenile Facility" - Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes.
- (u) "Juvenile Offender" - A child who commits a "juvenile offense" prior to the child's eighteenth (18) birthday.

(v) "Juvenile Offense" - An act, which, if committed by an adult, is designated a violation under the Tribes' Violations Code, or an act which, if committed by an adult would be considered a crime under state or federal law.

(w) "Juvenile Presenter" - The juvenile presenter or juvenile presenting officer or juvenile petitioner or any other person who performs the duties and responsibilities set forth in section 4-2-7(c) of this Code.

(x) "Juvenile Shelter Care Facility" - Any juvenile facility other than a secure juvenile detention.

(y) "Parent": Includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(z) "Probation" - A legal status created by court order whereby a "juvenile offender" is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A "juvenile offender" on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

(aa) "Protective Supervision" - A legal status created by court order under which a "juvenile offender" is permitted to remain in his home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health or social services agency or some other agency designated by the court.

(bb) "Restitution" - Financial or other reimbursement by the child to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.

(cc) "Secure Juvenile Detention Facility" - A facility which (i) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (ii) restricts the movement of those placed in the locked cells or rooms, and (iii) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

(dd) "Shelter Home" - A residential facility which is licensed to care for children under the age of eighteen (18) in an unrestricted setting.

(ee) "Transfer to Tribal Court" - Transferring a child from the jurisdiction of the Juvenile Court to the jurisdiction of the Tribal Court according to section 4-2-4 of this Code which results in the termination of the Juvenile Court's jurisdiction over that offense.

(ff) "Tribal Council" - The Tribal Council of the Tribes.

(gg) "Tribal Court" - The adult court for the Tribes.

#### 4-2-3 Jurisdiction of the Juvenile Court

There is hereby established for the Tribes a court to be known as the Tribes' Juvenile Court. The Juvenile Court has concurrent jurisdiction over all proceedings established in this Code in which a child who is a member of the Tribes is:

(a) Juvenile Offender

Alleged to be a "juvenile offender" as defined in section 4-2-2 (u) of this Code, unless the Juvenile Court transfers jurisdiction to the Tribal Court according to chapter 4-2-4 of this Code; or

(b) Child in Need of Supervision

Alleged to be a child who is in need of supervision as defined in section 4-2-2(e) of this Code.

#### 4-2-4 Transfer to Tribal Court

(a) Transfer Petition

An officer of the court may file a petition requesting the Juvenile Court to transfer the child to the jurisdiction of the adult Tribal Court if the child is sixteen (16) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

(b) Transfer Hearing

The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the Court. Written notice of the time, place and purpose of the hearing is to be given to the child and the child's parent, guardian or custodian at least three (3) days before the hearing. At the commencement of the hearing, the Court shall notify the child and the child's parent, guardian or custodian of their rights under section 4-2-8 of this Code.

(c) Deciding Factors in Transfer Hearing

The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:

- (1) the nature and seriousness of the offense with which the child is charged;

(2) the nature and condition of the child, as evidenced by his age, mental and physical condition; and

(3) the past record of offenses.

(d) Standard of Proof in Transfer Hearing

The Juvenile Court may transfer jurisdiction of the child to Tribal Court only if the Court finds clear and convincing evidence that both of the following circumstances exist:

(1) there are no reasonable prospects for rehabilitating the child through resources available to the Juvenile Court; and

(2) the offense(s) allegedly committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.

(e) Pre-Hearing Report in Transfer Proceedings

At least three (3) days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the Juvenile Court and make copies of that report available to the child and the child's advocate, parent, guardian or custodian. The pre-hearing report shall address the issues described in sections 4-2-4(c) and 4-2-4(d) above.

(f) Written Transfer Order

A child may be transferred to Tribal Court only if the Juvenile Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with sections 4-2-4(c) and 4-2-4(d) above. This written order terminates the jurisdiction of the Juvenile Court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the Tribal Court for a criminal offense unless the case has been transferred to Tribal Court as provided in this chapter.

4-2-5 Juvenile Court Procedure

(a) Non-Criminal Proceedings

No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of a crime unless the Juvenile Court transfers jurisdiction to the Tribal Court according to chapter 4-2-4 of this Code.

(b) Use in Other Proceedings

The adjudication, disposition, and evidence presented before the Juvenile Court shall be inadmissible as evidence against the child in any proceeding in another court, including the Tribal Court.

(c) Rules of Procedure

The procedures in the Juvenile Court shall be governed by Chapter 2-15.

4-2-6 Relations With Other Agencies

(a) Cooperation and Grants

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.

(b) Social Services

The Juvenile Court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

(c) Contracts

The Juvenile Court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children whose status is adjudicated by the Juvenile Court, subject to the approval of the Tribal Council before the expenditure of tribal funds.

(d) Transfers from Other Courts

The Juvenile Court may accept or decline transfers from other state or Tribal Courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.

4-2-7 Juvenile Court Personnel

(a) Juvenile Court Judge

(1) Appointment

The Juvenile Court judge(s) shall be appointed or elected in the same manner as the Tribal Court judge(s).

(2) Qualifications

The general qualifications for Juvenile Court judge(s) shall be the same as the qualifications for Tribal Court judge(s). In addition, Juvenile Court judges shall have significant prior training and/or experience in juvenile matters.

(3) Powers and Duties

In carrying out the duties and powers specifically enumerated under this Juvenile Justice Code, judges of the Juvenile Court shall have the same duties and powers as judge of the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants.

(4) Disqualification or Disability

The rules on disqualification or disability of a Juvenile Court judge shall be the same as those rules that govern Tribal Court judges.

(b) Juvenile Counselor/Juvenile Probation Officer

(1) Appointment

The Court shall appoint juvenile counselors or juvenile probation officer(s) to carry out the duties and responsibilities set forth in this Code. The chief judge of the Tribal Court shall certify annually to the Tribal Council the number of qualified juvenile counselor(s) or juvenile probation officer(s) needed to carry out the purpose of this Code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile counselors" or "juvenile probation officers" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(2) Qualifications

The juvenile counselor must have an educational background and/or prior experience in the field of delivering social services to youth.

(3) Resource Development

The Juvenile Court counselor shall identify and develop resources in conjunction with the Juvenile Court and the Tribal Council, to enhance each tribal child's potential as a viable member of the tribal community.



(4) Duties.

- (A) Make investigations as provided in this Code or as directed by the Court;
- (B) Make reports to the Court as provided in this Code or as directed by the Juvenile Court;
- (C) Conduct informal adjustments;
- (D) Provide counseling services;
- (E) Perform such other duties in connection with the care, custody or transportation of children as the court may require.

(5) Prohibited Duties

The juvenile counselor shall not be employed as or be required to perform the duties of a prosecutor, juvenile presenter or law enforcement official.

(c) Juvenile Presenter

(1) Appointment

The Court shall appoint juvenile presenters to carry out the duties and responsibilities set forth in this Code. The Tribal Attorney shall certify annually to the Tribal Council the number of qualified juvenile presenters needed to carry out the purpose of this Code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile presenters" or "juvenile presenting officers" or "juvenile petitioners" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(2) Qualifications

The qualifications of the juvenile presenter(s) shall be the same as the qualifications for the official who acts as prosecutor for the Tribal Court.

(3) Duties

- (A) File petitions with the court as provided in this Code;
- (B) Represent the tribe in all proceedings under this Code; and
- (C) Perform such other duties as the court may order.

(d) Additional Court Personnel

The Court may set qualifications and appoint additional Juvenile Court personnel such as guardians ad litem, Court appointed special advocates (CASA), juvenile advocates, and/or referees whenever the Court decides that it is appropriate to do so.

4-2-8 Rights of Parties in Juvenile Proceedings

(a) Privilege Against Self-Incrimination

A child alleged to be a "juvenile offender" or a child whose family is "in need of services" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under section 4-2-14(c) of this Code when the child's health and well-being are in serious jeopardy.

(b) Admissibility of Evidence

In a proceeding on a petition alleging that a child is a "juvenile offender" or a child "in need of services":

- (1) an out-of-court statement that would be inadmissible in a criminal matter in Tribal Court shall not be received in evidence;
- (2) evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;
- (3) unless advised by counsel, the statements of a child made while in custody to a juvenile counselor, including statements made during a preliminary inquiry, informal adjustment or predispositional study, shall not be used against the child in determining the truth of allegations of the petition;
- (4) a valid out-of-court admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence;

(c) Fingerprinting and Photographs

A child in custody shall not be fingerprinted nor photographed for criminal identification purposes except by order of the Juvenile Court. If an order of the Juvenile Court is given, the fingerprints or photographs shall be used only as specified by the Court.

(d) Right to Counsel

Upon the filing of a Petition:

(1) the child and the child's parent, guardian or custodian identified in the Petition shall have the right to counsel at their own expense in connection with all subsequent hearings and proceedings.

(2) if, at any time during the proceedings, the Juvenile Court determines there is a conflict of interest between the child and the child's parent, guardian or custodian, the Juvenile Court may, subject to available funding, appoint counsel to represent the child in all subsequent hearings and proceedings.

(e) Explanation of Rights

At his first appearance before the Juvenile Court, and at each subsequent appearance before the Court, the child alleged to be a "juvenile offender" or "in need of services" and the child's parent, guardian or custodian shall be informed by the Court of the following:

- (1) the allegations against him;
- (2) the right to an advocate or attorney at his own expense;
- (3) the right to testify or remain silent and that any statement made by him may be used against him;
- (4) the right to cross-examine witnesses;
- (5) the right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf; and
- (6) the possible consequences if the allegations in the petition are found to be true.

4-2-9 Juvenile Offender – Taken Into Custody

(a) Taking A Child Into Custody

A law enforcement officer may take a child into custody when:

- (1) the child commits a "juvenile offense" in the presence of the officer;
- (2) the officer has a reasonable suspicion to believe a "juvenile offense" has been committed by the child being detained; or
- (3) an appropriate custody order or warrant has been issued by the court authorizing the taking into custody of a particular child.

(b) Provision of Rights

At the time the child is taken into custody as an alleged "juvenile offender," the arresting officer shall give the following warning:

- (1) the child has a right to remain silent;
- (2) anything the child says can be used against the child in court;
- (3) the child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning, and;
- (4) the child has a right to an advocate or attorney at his own expense.

(c) Release or Delivery from Custody

A law enforcement officer taking a child into custody shall give the warnings listed in section 4-2-9(b) to any child he takes into custody prior to questioning and then shall do one of the following:

- (1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;
- (2) release the child to a relative or other responsible adult tribal member if the child's parent, guardian or custodian consents to the release. (If the child is ten (10) years of age or older, the child and his parent, guardian or custodian must both consent to the release); or
- (3) deliver the child to the juvenile counselor, or to a juvenile facility as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances.

(d) Review by Juvenile Counselor or Juvenile Facility

The juvenile counselor or juvenile official at the juvenile facility (as designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:

- (1) the act is serious enough to warrant continued detention; and
- (2) there is probable cause to believe the child has committed the offense(s) alleged; and

(3) there is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or

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

(e) Notification of Family

If a child is taken into custody and not released to his parent, guardian or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the-home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

(f) Criteria for Selecting Juvenile Facility

If the juvenile counselor or juvenile official at the juvenile facility (as designated by the Court) determines that there is a need for continued custody of the child in accordance with section 4-2-9(d) of this Code, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

(1) child may be detained in a Secure Juvenile Detention Facility (as defined in section 4-2-2(c) of this Code) as designated by the Court only if one or more of the following conditions are met:

(A) the child is a fugitive from another jurisdiction wanted for a felony offense;

(B) the child is charged with murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in a serious bodily injury;

(C) the child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention;

(D) the child is charged with committing one of the following acts which would be an offense if the child were an adult vehicular homicide, abduction, rape, arson, burglary or robbery;

(E) the child is already detained or on conditioned release for another "juvenile offense";

(F) the child has a demonstrable recent record of willful failures to appear at Juvenile Court proceedings;

(G) the child has made a serious escape attempt; or

(H) the child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child.

(2) A child may be housed in a Juvenile Shelter Care Facility (as defined in section 4-2-2(c) of this Code) as designated by the Court only if one of the following conditions exist:

(A) one of the conditions described in section 4-2-9(f)(1) above exists; or

(B) the child is unwilling to return home or to the home of an extended family member; or

(C) the child's parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the child to return to his home;

(D) there is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.

(3) A child may be referred to an Alcohol or Substance Abuse Emergency Shelter or Halfway House (as defined in section 4-2-2(c) of this Code) if it is determined that there is a need for continued custody of the child in accordance with section 4-2-9(d) of this Code and (i) the child has been arrested or detained for a "juvenile offense" relating to alcohol or substance abuse, (ii) there is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and (iii) the child is not deemed to be a danger to himself or others.

#### 4-2-10 Juvenile Offender – Detention Hearing

##### (a) Requirement of Detention Hearing

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the Court within forty-eight (48) hours, inclusive of holidays and weekends, of the child's initial detention under Chapter 4-2-9 of this Code.

##### (b) Purpose of Detention Hearing

The purpose of the detention hearing is to determine:

- (1) whether probable cause exists to believe the child committed the alleged "juvenile offense"; and
- (2) whether continued detention is necessary pending further proceedings.

(c) Notice of Detention Hearing

Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:

- (1) the name of the court;
- (2) the title of the proceedings;
- (3) a brief statement of the "juvenile offense" the child is alleged to have committed; and
- (4) the date, time and place of the detention hearing.

(d) Detention Hearing Procedure

Detention hearings shall be conducted by the Juvenile Court separate from other proceedings. At the commencement of the detention hearing, the Court shall notify the child and the child's parent, guardian or custodian of their rights under chapter 4-2-8 of this Code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Court shall be admitted.

(e) Standards to be Considered at Detention Hearing

The Court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in sections 4-2-9(d) and 4-2-9(f) of this Code.

(f) Finding at Detention Hearing

The Court shall issue a written finding stating the reasons for release or continued detention of the child. If the court determines that there is a need for continued detention, the court shall specify where the child is to be placed until the adjudicatory hearing.

(g) Rehearing the Detention Matter

If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at

the hearing the court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

#### 4-2-11 Juvenile Offender – Initiation of Proceedings

##### (a) Investigation by the Juvenile Counselor

The juvenile counselor shall make an investigation within twenty-four (24) hours of the detention hearing or the release of the child to his parent, guardian or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the juvenile counselor shall:

- (1) recommend that no further action be taken;
- (2) suggest to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under sections 4-2-11(b) and 4-2-11(c) of this Code;
- (3) if the alleged offense is within the jurisdiction of the Peacegiving Court, inform the child and child's parent, guardian or custodian that they may request a Peacegiving session to resolve the matter;
- (4) request the juvenile presenter to begin transfer to adult Tribal Court proceedings under chapter 4-2-4 of this Code; or
- (5) recommend that the juvenile presenter file a petition under section 4-2-11(d) of this Code. The petition shall be filed within forty-eight (48) hours if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

##### (b) Informal Adjustment

- (1) During the course of the preliminary investigation to determine what further action shall be taken, the juvenile counselor shall confer with the child and the child's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
- (2) The juvenile counselor shall consider the following factors in determining whether to proceed informally or to file a petition:
  - (A) nature and seriousness of the offense;
  - (B) previous number of contacts with the police, juvenile counselor or the Court;



- (C) age and maturity of the child;
- (D) attitude of the child regarding the offense;
- (E) willingness of the child to participate in a voluntary program, and;
- (F) participation and input from the child's parent, guardian or custodian.

(c) Informal Conference

(1) After conducting a preliminary investigation, the juvenile counselor shall hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case.

(2) Notice of the informal conference shall be given to the child and the child's parent, guardian or custodian and their counsel as soon as the time for the conference has been established. This Section does not authorize the Juvenile Court Counselor to compel any person to appear at any conference, to produce any papers or to visit any place.

(3) The juvenile counselor shall inform the child, and the child's parent, guardian or custodian of their basic rights under section 4-2-8 of this Code. Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.

(4) At the informal conference, upon the basis of the information obtained during the preliminary investigation, the juvenile counselor may:

(A) suggest a peacegiving session to the child and the parent, guardian or custodian;

(B) refer the child and the parent, guardian or custodian to a community agency for services or other assistance;

(C) secure the informal agreement of the child and his parent(s), guardian or custodian, to be approved by the Juvenile Court, to terms of supervision of the child calculated to assist and benefit the child, provide restitution acceptable to any person harmed by the conduct of the child, and benefit the Tribes which regulate the child's activities and which are within the ability of the child to perform;

(D) accept an offer of restitution if voluntarily made by the child; or

(E) recommend the filing of a petition.

(5) The child shall be permitted to be represented by counsel at the informal conference.

(6) If the child does not desire to participate voluntarily in a diversion program, or in a Peacegiving session, the juvenile counselor shall recommend that the juvenile presenter file a petition under section 4-2-11(d) of this Code.

(7) Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.

(8) If the child fails to successfully complete the terms of his informal adjustment agreement, the juvenile counselor may recommend that a petition be filed in the case under section 4-2-11(d) of this Code.

(9) No statement made during the informal conference may be admitted into evidence at an adjudicatory hearing or any proceeding against the child. Such statements may be used during peacegiving.

(d) Filing and Content of Petition

Formal "juvenile offender" proceedings shall be instituted by a petition filed by the juvenile presenter on behalf of the Tribes and in the interests of the child. The petition shall be entitled, "In the matter of a child" and shall set forth with specificity:

- (1) the name, birth date, residence, and tribal affiliation of the child;
- (2) the names and residences of the child's parent, guardian or custodian;
- (3) a citation to the specific section(s) of this Code which give the Court jurisdiction over the proceedings;
- (4) a citation to the Violations Code or other law or ordinance which the child is alleged to have violated;
- (5) a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and
- (6) whether the child is in custody and, if so, the place of detention and time he was taken into custody.

4-2-12 Juvenile Offender - Peacegiving Court

(a) Availability of Peacegiving Court

At any time after the filing of a "juvenile offender" petition, and before the entry of a disposition order, the Court may, on motion of the juvenile presenter or that of counsel for the child, suspend the proceedings and refer the matter to the Peacegiving Court .

(b) Objection to Peacegiving Court

If the child objects to a referral to the Peacegiving Court, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the Court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to refer the matter to the Peacegiving Court and may, in its discretion, refer the matter to the Peacegiving Court.

(c) Upon referral to the Peacegiving Court, proceedings in the Juvenile Court shall be suspended until such time as the Peacegiving Court returns the matter to the Juvenile Court. The Peacegiving Court shall retain jurisdiction of the matter so long as is necessary to fulfill the Peacegiving Process, or until earlier returned to the Juvenile Court upon a determination by the Peacegiving Court that Peacegiving has been ineffective in resolving the issues that brought the child to the court's attention. In no event shall Peacegiving Court jurisdiction extend beyond the eighteenth (18<sup>th</sup>) birthday of the child.

(d) Failure to Fulfill Terms and Conditions of Peacegiving Court

Prior to the child's eighteenth (18<sup>th</sup>) birthday, the Peacegiving Court returns the matter to the Juvenile Court because Peacegiving has been ineffective, the Court may:

- (1) resume the proceeding in the Juvenile Court at the procedural stage from which it was referred to Peacegiving; or
- (2) Dismiss the proceeding if the interests of justice so dictate.

(e) New Juvenile Offense Complaint

If prior to either completion or termination of Peacegiving Court proceedings, a new "juvenile offender" complaint is filed against the child and the juvenile counselor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the juvenile presenter may:

- (1) file a petition to refer the new-offense to the Peacegiving Court for inclusion in the Peacegiving process,
- (2) file a petition to revoke Peacegiving Court jurisdiction and return the original matter to the Juvenile Court, or
- (3) file a petition on the basis of the new complaint which has been filed against the child.

(f) Dismissal of Petition

A child who is discharged by or who successfully completes a period under Peacegiving Court jurisdiction without reinstatement of the original "juvenile offense" petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

#### 4-2-13 Juvenile Offender – Adjudication Proceedings

##### (a) Purpose and Conduct of Adjudicatory Hearing

Hearings on "juvenile offender" petitions shall be conducted by the Juvenile Court separate from other proceedings. The Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a "juvenile offense". At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 4-2-8 of this Code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

##### (b) Time Limitations on Adjudicatory Hearings

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the "juvenile offender" petition by the Juvenile Court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the "juvenile offender" petition by the Juvenile Court.

##### (c) Notice of Hearing

Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 4-2-10(c) of this Code.

##### (d) Denial of Allegations

If the allegations in the "juvenile offender" petition are denied, the Juvenile Court shall set a date, in accordance with section 4-2-13(b) above, to hear evidence on the petition. If the child remains in custody, the evidentiary hearing shall be set not more than twenty (20) days from the filing of the petition, unless waived by the child.

##### (e) Admission of Allegations

If the child admits the allegations of the petition, the Juvenile Court shall consider a disposition only after a finding that:

- (1) the child fully understands his rights under section 4-2-8 of this Code, and fully understands the consequences of his admission;
- (2) the child voluntarily, intelligently and knowingly admits all facts necessary to constitute a basis for Juvenile Court action; and
- (3) the child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

(f) "Juvenile Offender" - Finding After Admission

If the Court finds that the child has validly admitted the allegations contained in the petition, the Court shall make and record its finding and schedule a disposition hearing in accordance with section 4-2-15 of this Code. Additionally, the court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

(g) "Juvenile Offender" Finding After Hearing

If the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its finding and schedule a disposition hearing in accordance with section 4-2-15 of this Code. Additionally, the Court shall specify in writing whether the child is to be continued in an out-of-home placement pending the disposition hearing.

(h) Dismissal of Petition

If the Court finds that the allegations on the "juvenile offender" petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

4-2-14 Juvenile Offender - Predisposition

Studies, Reports and Examinations

(a) Predisposition Study and Report

The Court shall direct the juvenile counselor to prepare a written predisposition study and report for the Court concerning the child, the child's family, environment, and any other matter relevant to need for treatment or other appropriate disposition of the case when:

- (1) the child has been adjudicated as a "juvenile offender"; or
- (2) a notice of intent to admit the allegations of the petition has been filed.

(b) Contents of Predisposition Study and Report

The report shall contain a specific plan for the child, aimed at resolving 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 child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

(c) Medical Assessment and Treatment for Alcohol or Substance Abuse

The Juvenile Court may order a medical assessment of a child adjudicated to have committed a "juvenile offense" relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well-being.

(d) Pre-Adjudication Examination of Emotionally or Developmentally Disabled Child

Where there are indications that the child may be emotionally disturbed or developmentally disabled, the court, on a motion by the juvenile presenter or counsel for the child, may order the child to be tested by a qualified psychiatrist, psychologist or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

(e) Pre-Disposition Examinations

The Court may order an examination of a child adjudicated as a "juvenile offender" by a physician, psychiatrist or psychologist. The Court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing.

(f) Transfer for Diagnosis

The Court may order that a child adjudicated as a "juvenile offender" be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

(g) Submission of Reports

Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons

why a report has not been completed shall be filed with the Court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

#### 4-2-15 Juvenile Offender – Disposition Proceedings

##### (a) Purpose and Conduct of Disposition Hearing

Disposition hearings shall be conducted by the Juvenile Court separate from other proceedings. The Court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense." The Court shall make and record its dispositional order in accordance with sections 4-2-15(e) and 4-2-16. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 4-2-8 of this Code. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.

##### (b) Time Limitations on Disposition Hearings

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing.

##### (c) Notice of Disposition Hearing

Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 4-2-10(c) of this Code.

##### (d) Evidence and Reports

In the disposition hearing, the Court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

(e) Disposition Alternatives

If a child is found by the Court to be a "juvenile offender," the Court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

- (1) permit the child to remain with parent, guardian or custodian, subject to such conditions and limitations as the court may prescribe;
- (2) place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe;
- (3) order the child to pay restitution (as defined in section 4-2-2(c) of this Code);
- (4) place the child under protective supervision (as defined in section 4-2-2(c) of this Code) under such conditions and limitations as the Court may prescribe;
- (5) place the child on probation (as defined in section 4-2-2(c) of this Code) under such conditions and limitations as the Court may prescribe; or
- (6) place the child in a juvenile facility designated by the Court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility.

4-2-16 Juvenile Offender – Review, Modification, Revocation, Extension or Termination of Dispositional Orders

(a) Mandatory Review of Disposition Order

Dispositional orders are to be reviewed at the Court's discretion at least once every six (6) months.

(b) Modification, Revocation, or Extension of Disposition Order

The Court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of;

- (1) the child;
- (2) the child's parent, guardian or custodian;
- (3) the child's counsel
- (4) the juvenile counselor,
- (5) the juvenile presenter;



(6) the institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or

(7) the Court on its own motion.

(c) Hearing to Modify, Revoke or Extend Disposition Order

A hearing to modify, revoke or extend the disposition order shall be conducted according to sections 4-2-15(a), 4-2-15(c), 4-2-15(d) and 4-2-15(e) of this Code.

(d) Automatic Termination of Disposition Order

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to section 4-2-21(c) of this Code.

4-2-17 Child in Need of Supervision– Interim Care

(a) Limitation on Taking Into Custody

No child who is alleged to be a child in need of supervision may be taken into custody unless such taking into custody is in accordance with provision for "interim care set forth in this section.

(b) Interim Care Without Court Order

A child may be taken into interim care by a law enforcement officer without order of the court only when:

(1) the officer has reasonable grounds to believe that the child is in circumstances which constitute a substantial danger to the child's physical safety; or

(2) an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement ordered by the Court under chapter 4-2-20 of this Code.

(c) Procedure for Interim Care

A law enforcement official taking a child into custody under the interim care provisions of this Code shall immediately:

- (1) inform the child of the reasons for the custody;
- (2) contact the juvenile counselor who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
- (3) take the child to the placement specified by the juvenile counselor, or in the event of the unavailability of a juvenile counselor, to an appropriate juvenile shelter care facility as designated by the court; and,
- (4) inform the child's family in accordance with section 4-2-17(d) of this Code.

(d) Notification of Family

The law enforcement officer or the juvenile counselor shall immediately notify the child's parent, guardian or custodian of the child's whereabouts, the reasons for taking the child into custody, and the name and telephone number of the juvenile counselor who has been contacted. Efforts to notify the child's parent, guardian or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

(e) Time Limitation on Interim Care

Under no circumstances shall any child taken into interim care under section 4-2-17(b) of this Code be held involuntarily for more than forty-eight (48) hours.

(f) Restrictions on Placement

A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses. If a child taken into interim care is placed in a facility used for the detention of "juvenile offenders" or alleged "juvenile offenders," he must be detained in a room separate from the "juvenile offenders" or alleged "juvenile offenders."

(g) Restriction on Transportation

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

(h) Voluntary Services

The juvenile counselor shall offer and encourage the child and the child's family, guardian or custodian to voluntarily accept social services.

(i) Voluntary Return Home

If a child has been taken into interim care under the provisions of section 4-2-17(b) of this Code and the child's parent, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian or custodian or as arranged by the juvenile counselor.

(j) Shelter and Family Services Needs Assessment

If the child refuses to return home and if no other living arrangements agreeable to the child and to the child's parent, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian or custodian. The juvenile counselor also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

4-2-18 Child in Need of Supervision– Initiation of Proceedings

(a) Who May Submit Requests

Requests stating that a child is in need of supervision may be submitted by the child; the child's parent, guardian or custodian; an appropriate social services agency; the juvenile counselor. The issuance and filing of a citation by tribal police which alleges a violation of the Tribes' Violations Code that may only be committed by a minor, shall also constitute a request to file a petition under this section. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school but only if the request is accompanied by a declaration in which the authorized representative swears that the school has complied with each of the steps set forth in section 4-2-18(g) of this Code.

(b) Referral of Requests to Juvenile Counselor; Informal Conference

Requests stating that a child is in need of supervision shall be referred to the juvenile counselor, who shall assist either a child or a child's parent, guardian or custodian in obtaining appropriate and available services, as well as assisting in any subsequent filing of a petition alleging that the child is in need of supervision.

(1) The Juvenile Court Coordinator will hold an informal conference with the child and the child's parent, guardian or custodian, and any other persons, including the Tribal prosecutor, whose presence is considered appropriate by the Juvenile Court Coordinator regarding alternatives to the filing of a Petition if:

- (A) the admitted facts bring the case within the jurisdiction of the Juvenile Court;
- (B) an informal agreement of the matter would be in the best interest of the child and the Tribes; and
- (C) the child and his parent, guardian or custodian consent to an informal agreement with knowledge that the consent is voluntary.

(2) Notice

Notice of the informal conference shall be given to the child and the child's parent, guardian or custodian and their counsel as soon as the time for the hearing has been established. This Rule does not authorize the Juvenile Court Coordinator to compel any person to appear at any conference, to produce any papers or to visit any place.

(3) Evidence

No statement made during the informal conference may be admitted into evidence at an adjudicatory hearing or any proceeding against the child. Such statements may be used during peacegiving.

(4) Disposition at Informal Conference

At the informal conference, the Juvenile Court Coordinator may:

- (A) suggest a peacegiving session to the child and the parent, guardian or custodian;
- (B) refer the child and the parent, guardian or custodian to a community agency for services or other assistance;
- (C) secure the informal agreement of the child and his parent(s), guardian or custodian, to be approved by the Juvenile Court, to terms of supervision of the child calculated to assist and benefit the child, provide restitution acceptable to any person harmed by the conduct of the child, and benefit the Tribes which regulate the child's activities and which are within the ability of the child to perform;
- (D) accept an offer of restitution if voluntarily made by the child; or
- (E) recommend the filing of a Petition.

(c) Withdrawal of Request

A request stating that a child is in need of supervision may be withdrawn by the party submitting the request at any time prior to the adjudication of any petition filed in proceedings.

(d) Authorization to File Petition

A petition alleging that a child is in need of supervision shall not be filed unless the juvenile presenter has determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his family.

(e) Petition--Required Signatures

A petition alleging that a child is in need of supervision shall be signed by both the juvenile presenter and the party submitting the request as authorized in section 4-2-18(a) of this Code.

(f) Petition--Form and Contents

A petition alleging that a child is in need of supervision shall be entitled, "In the Matter of \_\_\_\_\_, a child," and shall set forth with specificity.

- (1) the name, birth date and residence address of the child and whether the child is the complainant or respondent in the proceedings;
- (2) the name and residence address of the parents, guardian or custodian of the child and whether the parents, guardian or custodian are the complainant or respondent in the proceedings;
- (3) that the child is a child is in need of supervision as defined in section 4-2-2(c) of this Code;
- (4) that the petitioner has exhausted or the respondent has refused appropriate and available services as evidenced by a report which shall be prepared and submitted by the juvenile counselor at the same time the petition is filed, or, in the case of petition based upon a child's alleged habitual and unjustifiable absence from school, that a declaration as required under section 4-2-18(a) of this Code has been filed by a school official;
- (5) that Court intervention is necessary to secure services which are accessible to the Court; and
- (6) the additional required allegations set forth in either section 4-2-18(g) or section 4-2-18(h) of this Code.

(g) Petition--Additional Required Allegations for School Absence

In addition to the allegations required under section 4-2-18(f) of this Code, a petition alleging that a child is habitually and without justification absent from school shall also allege the following:

- (1) that the school and a child's parent, guardian or custodian have held a meeting, or the child's parent, guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school;
- (2) that the school has provided an opportunity for counseling to determine whether a curriculum change (as defined in section 4-2-2(c) of this Code) would resolve the child's problem and if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program;
- (3) that the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child in accordance with the school regulations to determine whether learning problems may be a cause of the child's absence from school and, if so, what steps have been taken to overcome the learning problems;
- (4) that the social worker or other appropriate official of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school and, if so, what appropriate action has been taken; and
- (5) that the school has sought assistance from appropriate agencies and resources available to the local school board or private school, or has referred the matter to a local social services agency for the purpose of utilizing and coordinating such agencies and resources.

(h) Petition-Additional Required Allegations for Breakdown In The Parent-Child Relationship

In addition to the allegations required under section 4-2-18(f) of this Code, a petition alleging that there is a breakdown in the parent-child relationship shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

- (1) the child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
- (2) the child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative;
- (3) the child has sought assistance at an appropriate juvenile shelter care facility for runaways or the child has refused assistance from such a facility; and
- (4) the child has been placed in a foster home or the child has refused placement in a foster home.

(i) Summons in a Child-is-in-need-of-Supervision Proceeding

After a petition alleging that a child is in need of supervision has been filed, summonses shall be issued directly to the child, the child's parent, guardian or custodian, their counsel and to such other persons as the court considers proper or necessary parties. The content and service of the summons shall be in accordance with section 4-2-10(c).

4-2-19 Child in Need of Supervision–Peacegiving Court

(a) Availability of Peacegiving Court

At any time after the filing of a petition alleging that a child is in need of supervision, and before the entry of a disposition order, the Court may, on motion of the juvenile presenter or that of counsel for the child, suspend the proceedings and refer the matter to the Peacegiving Court .

(b) Objection to Peacegiving Court

If the child objects to a referral to the Peacegiving Court, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the Court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to refer the matter to the Peacegiving Court and may, in its discretion, refer the matter to the Peacegiving Court.

(c) Upon referral to the Peacegiving Court, proceedings in the Juvenile Court shall be suspended until such time as the Peacegiving Court returns the matter to the Juvenile Court. The Peacegiving Court shall retain jurisdiction of the matter so long as is necessary to fulfill the Peacegiving Process, or until earlier returned to the Juvenile Court upon a determination by the Peacegiving Court that Peacegiving has been ineffective in resolving the issues that brought the child to the court's attention. In no event shall Peacegiving Court jurisdiction extend beyond the eighteenth (18<sup>th</sup>) birthday of the child.

(d) Failure to Fulfill Terms and Conditions of Peacegiving Court

Prior to the child's eighteenth (18<sup>th</sup>) birthday, the Peacegiving Court returns the matter to the Juvenile Court because Peacegiving has been ineffective, the Court may:

- (1) resume the proceeding in the Juvenile Court at the procedural stage from which is was referred to Peacegiving; or
- (2) Dismiss the proceeding if the interests of justice so dictate.

4-2-20 Child in Need of Supervision – Hearings and Disposition

(a) Conduct of Hearings

Child-in-need-of-supervision hearings shall be conducted by the Juvenile Court separate from other proceedings. At all hearings, the child and the child's family, guardian or custodian shall have the applicable rights listed in chapter 4-2-8 of this Code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses and other persons requested by the parties shall be admitted.

(b) Notice of Hearings

Notice of all child-in-need-of-supervision hearings shall be given to the child, the child's parent, guardian or custodian, their counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 4-2-10(c) code.

(c) Adjudicatory Hearing

The Court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the child is a child in need of supervision. If the Court finds on the basis of clear and convincing evidence that the child is a child in need of supervision, the Court may proceed immediately, or at a postponed hearing, to make disposition of the case. If the court does not find that the child is a child in need of supervision, it shall dismiss the petition.

(d) Predisposition Studies, Reports and Examinations

The court may order any appropriate predisposition study, report or examination under chapter 4-2-14 of this Code.

(e) Disposition Hearing

At the disposition hearing, or the disposition portion of a combined jurisdiction/ disposition hearing, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the Court and may be relied upon to the extent of its probative value even though not competent had it been offered during the adjudicatory phase of the hearing. The Court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider any alternative predisposition report or recommendations presented by the child or the child's counsel.



(f) Disposition Alternatives

If the Court finds that a child is a child in need of supervision, the Court may make any of the following orders of disposition, giving due weight to the need to preserve the unity of the family whenever possible:

- (1) permit the child to remain with his parents, guardian or custodian subject to those conditions and limitations the court may prescribe, including the protective supervision (as defined in section 4-2-2(c) of this Code) of the child by a local social services agency;
- (2) refer the child and his parents, guardian or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the Court;
- (3) transfer legal custody of the child to any of the following if the child is found to be a child in need of supervision due to a breakdown in the parent-child relationship:
  - (A) a relative or other individual who, after study by the juvenile counselor or other agency designated by the Court, is found by the Court to be qualified to receive and care for the child, or;
  - (B) an appropriate agency for placement of the child in an appropriate juvenile shelter care facility (as defined in section 4-2-2(c) of this Code) for a period not to exceed thirty (30) days; with simultaneous directed referral of the family to a social services agency for counseling and/or other social assistance. A child may be placed under this section for an additional period not to exceed ninety (90) days after a hearing to determine the necessity of an additional placement.
- (4) Refer the child to Peacegiving Court

(g) Restriction on Dispositional Placements

The child shall not be confined in an institution established for the care and rehabilitation of "juvenile offenders" unless the child is also found to be a juvenile offender. Under no circumstances shall a child in need of supervision be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

(h) Modification, Revocation or Extension of Disposition Order

The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:

- (1) the child
  - (2) the child's parent, guardian, or custodian;
  - (3) the child's counsel;
  - (4) the juvenile counselor;
  - (5) the juvenile presenter;
  - (6) the institution, agency or person vested with legal custody of the child or responsibility for protective supervision; or
  - (7) the court on its own motion.
- (i) Termination of Disposition Order
- (1) Any disposition order concerning a child in need of supervision shall be reviewed not less than once every six (6) months. Review hearings shall be conducted under the provisions set forth in sections 4-2-20(e). At the review hearing, the Court shall determine whether the circumstances that led to the intervention of the Juvenile Court have been resolved. If the court finds by clear and convincing evidence that the circumstances that led to the finding that the child is a child in need of supervision, continue to exist, or that the child is engaged in a program of rehabilitation which is not complete, the Court may continue the order of disposition for an additional six (6) months, or modify the order as appropriate to meet the best interests of the child.
  - (2) The disposition order concerning a child in need of supervision shall automatically terminate when the child reaches his eighteenth (18<sup>th</sup>) birthday or is legally emancipated by the Court.

#### 4-2-21 Juvenile Appeals

(a) Who Can Appeal

Any party to a Juvenile Court hearing may appeal a final Juvenile Court order, including all transfer, adjudication and/or disposition orders except that the Tribes cannot appeal an adjudication order.

(b) Time Limit for Appeal

Any party to appeal a final Juvenile Court order or disposition shall file a written notice of appeal with the Court within thirty (30) days of the final order or disposition.

(c) Record

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.

(d) Stay of Proceedings on Appeal

The filing of an appeal shall not automatically stay the execution of a final court order or disposition. The party appealing must affirmatively seek an order of stay from the appellate court, which upon issuance, shall stay the Juvenile Court proceedings.

(e) Conduct of Appeals

All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure so long as those provisions are not in conflict with the provisions of this Juvenile Code.

APPENDIX A  
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

## JUVENILE JUSTICE

### LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacts the "Juvenile Justice" Ordinance, Resolution No. 05-110, Ordinance No. 067, in a regular Tribal Council meeting on November 13, 2005. Vote was 6 (for), 0 (against) and 0 (abstaining).

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians approved the "Juvenile Justice" Ordinance, Resolution No. 05-039, Ordinance No. 067, in a regular Tribal Council meeting on May 15, 2005. Vote was 5 (for), 0 (against) and 0 (abstaining).