

**MIAMI TRIBE OF OKLAHOMA
JUVENILE CODE**

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GENERAL PROVISIONS

Section 1 Short Title

This act may be cited as the Miami Tribe of Oklahoma Juvenile Code.

Section 2 Purpose

- A. This Code shall be construed and interpreted to fulfill the following purposes:
 - 1. To secure the care, protection, and mental and physical welfare of children coming within the provisions of this Code;
 - 2. To remove from children committing delinquent acts the legal consequences of criminal behavior, and to substitute therefore programs of supervision, treatment, and rehabilitation which:
 - a. Hold them accountable for their actions;
 - b. Provide for the safety and protection of the community; and
 - c. Promote the development of competencies which will enable them to become responsible and productive members of the community; and
- B. To set forth procedures through which the provisions of this Code are to be executed and enforced, while ensuring the rights of the parties are recognized and protected.
- C. In any case wherein no particular procedure is provided herein, resort shall be had to the Criminal Procedure Code or other applicable Tribal law, subject always to the rights of the child. If no procedure is provided in this Code, the Criminal Procedure Code, or other Tribal law, the Juvenile Court may proceed in any lawful fashion while protecting the rights of the child.

Section 3 Juvenile Court Defined

The Miami Tribe of Oklahoma Court, when in session regarding any matter relating to a child and under the provisions of this Code, shall be known as the “Miami Juvenile Court” and any duly appointed judge of the Miami Tribe of Oklahoma Court, when hearing any such matter, shall be known as the “Juvenile Court Judge.”

Section 4 Uniformity of Application and Construction

These provisions must be applied and construed to effectuate their general purpose to make uniform the rules of Juvenile procedure for proceedings in Juvenile Court.

Section 5 Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and, to this end, the provisions of this Code are severable.

Section 6 Effect on Existing Laws and Rules

- A. All of the existing laws of the Tribe and rules of the Courts shall remain in full force and effect unless such laws or rules are expressly contrary to the provisions of this Code.
- B. This Code shall serve as the procedural mechanism to address delinquent acts of a child.
- C. A violation of any provision of the Miami Tribe of Oklahoma Criminal Offenses Code or a violation of any provision contained in Chapter 10 of this Code shall serve as a basis to commence proceedings under this Code.

Section 7 Juvenile Court – Jurisdiction

- A. The Juvenile Court shall have personal, subject matter, and territorial jurisdiction, to the extent permitted under the Constitution and Laws of the Miami Tribe of Oklahoma, in all matters in which:
 - 1. An Indian child is alleged to have committed a delinquent act within the external boundaries of the Reservation; or
 - 2. An Indian child residing or domiciled on the Reservation is alleged to have committed a delinquent act.
- B. The Juvenile Court shall have jurisdiction over the parent, guardian, or custodian of a child who is under the jurisdiction of the Juvenile Court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to Section 603.

Section 8 Retention of Jurisdiction.

- A. When the Juvenile Court obtains jurisdiction over a child who is alleged to be delinquent for an offense committed before the child reached 16 years of age, jurisdiction shall continue until terminated by order of the Juvenile Court, or, until the child delinquent child reaches his or her 18th birthday, except as provided otherwise in this section.
- B. When the Juvenile Court obtains jurisdiction over a child who is alleged to be delinquent for an offense committed while the child was at least 16 years of age but

less than 17 years of age, jurisdiction shall continue until terminated by order of the Juvenile Court or until the child reaches 19 years of age.

- C. When the Juvenile Court obtains jurisdiction over a child who is alleged to be delinquent for an offense committed while the child was at least 17 years of age but less than 18 years of age, jurisdiction shall continue until terminated by order of the Juvenile Court or until the child reaches 20 years of age.
- D. The Juvenile Court retains jurisdiction over the parent, guardian, or custodian of a child who is under the jurisdiction of the Juvenile Court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to Section 603.
- E. Nothing in this section shall alter the disposition guidelines in Section 905 that the Juvenile Court must follow when dispositioning adjudication.

Section 9 Non-Criminal Proceedings

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

Section 10 Juvenile Court – Relations with Other Agencies

- A. The Juvenile Court:
 - 1. Is authorized to cooperate fully with any tribal, federal, state, public or private agency in order to participate in diversion, rehabilitation or training programs to carry out the purposes of this Code;
 - 2. May utilize such social services as may be furnished by any tribal, federal or state agency; and
 - 3. May accept or decline transfers from other tribal or state courts for the purposes of adjudication or disposition of children alleged to have committed delinquent acts.

Section 11 Transfer of Jurisdiction of a Child.

- A. Any child that meets the criteria set forth in Section 1201 of the Miami Tribe of Oklahoma Criminal Procedure Code shall be immediately transferred to Tribal Court for proceedings in accordance with Chapter 12 of the Criminal Procedure Code.
- B. A child may be transferred to the Tribal Court after being certified as an adult in accordance with Sections 107 and 108 of this Code.

- C. The Juvenile Court may accept or decline transfers from other states or tribal courts involving a child alleged to have committed a delinquent act.

Section 12 Definitions

- A. “Adult” is a person who:
 - 1. Is eighteen (18) years of age or older; and
 - 2. Is not a “child” as defined herein.
- B. “Child” is a person who:
 - 1. Is under eighteen (18) years of age; or
 - 2. Is eighteen (18) years of age or older and:
 - a. Is alleged, or found by the Juvenile Court to have committed a delinquent act; and
 - b. Therefore comes or remains within the jurisdiction over the Juvenile Court under provisions of this Code.
- C. “Custodian” is an adult entrusted with the temporary physical care, custody, and control of a child by the child’s parent, or otherwise entrusted with the custodial, personal, or financial care of a child under tribal custom.
- D. “Delinquent Act” is an act or multiple acts committed by a child that would constitute a criminal violation of the Miami Tribe of Oklahoma Criminal Offenses Code if committed by an adult or a violation of a Juvenile Offense contained herein.
- E. “Extended Family” is a child’s grandparents, great grandparents, aunts and uncles, great aunts and great uncles, brothers and sisters, brothers-in-law and sisters-in-law, nieces and nephews, first and second cousins, and step-parents.
- F. “Guardian” is a person assigned specific rights and responsibilities by court order to care for another person and the person’s real and personal property.
- G. “ICW Department” is the Miami Tribe of Oklahoma Indian Child Welfare Department, or any other entity designated by the Miami Tribe of Oklahoma to care for children.
- H. “Indian child” is a child of Indian descent who is either enrolled or enrollable in an Indian tribe, band, community, or who is a biological descendant of an enrolled member and has significant contacts or identification with an Indian community.

- I. “Juvenile Advocate” is the attorney who, where private counsel has not been retained to represent a child, shall be appointed by the Juvenile Court to represent the child at no cost to the child or the child’s parent, guardian, or custodian in proceedings conducted under this Code after the Juvenile Court determines the child and the child’s parent, guardian, or custodian are indigent.
- J. “Juvenile Case Coordinator” is the individual who shall be responsible for performing functions specifically delegated to the Juvenile Case Coordinator under the provisions of this Code. If there is no Juvenile Case Coordinator formally designated, the Tribal Prosecutor or Juvenile Court may perform any function specifically delegated to the Juvenile Case Coordinator under the provisions of this Code.
- K. “Juvenile Offense” is an offense set forth in Chapter 10 of this Code.
- L. “Juvenile Residential Care Facility” is any residential facility, other than a secure juvenile detention facility, operated by a licensed child welfare agency.
- M. “Parent”
 - 1. Shall include, subject to the provisions of subsection (2), all biological or adoptive parents of the child, whether singular or plural; and
 - 2. Shall not include a person whose parental rights have been legally terminated, nor an unwed father whose paternity has not been acknowledged or established.
- N. “Secure Juvenile Detention Facility” is any public or private facility which includes construction fixtures designed to physically restrict the movements and activities of children detained therein.
- O. “Tribal Court” is the adult division of the Miami Tribe of Oklahoma Court.
- P. “Tribal Prosecutor” is the attorney who shall represent the Tribe in all proceedings before the Juvenile Court.

CHAPTER ONE: RIGHTS OF THE PARTIES AND PARENTAL RESPONSIBILITIES

Section 101 Parties in Juvenile Proceedings

- A. The parties to all proceedings conducted pursuant to the provisions of this Code shall be:
 - 1. The child;
 - 2. The Tribe; and
 - 3. Following adjudication, the child's parent, guardian, or custodian.

Section 102 Rights in Juvenile Proceedings

- A. In all proceedings conducted under this Code, the parties shall have the right to due process, including:
 - 1. The right to adequate notice of all proceedings, and the opportunity to be heard before an unbiased finder of fact;
 - 2. The right to discovery;
 - 3. The right to testify, the right to subpoena witnesses, and the right to introduce evidence on the party's own behalf;
 - 4. The right to cross-examine witnesses, except in such cases as the provisions of this Code expressly permit the use of hearsay testimony; and
 - 5. The right to findings which are based solely upon evidence properly admitted in hearings before the Juvenile Court.
- B. In all proceedings under this Code, the child shall have the right to counsel.
 - 1. Neither the child nor the child's parent, guardian, or custodian may waive the child's right to be represented by counsel under the provisions of this Code.
 - 2. Where counsel has not already been appointed or retained to represent the child, the Juvenile Court shall appoint the Juvenile Advocate, or other qualified and competent counsel, to represent the child at the child's first appearance and at subsequent hearings under this Code upon a finding that the child and the child's parent, guardian, or custodian are indigent.
 - 3. Prior to the child's first appearance before the Juvenile Court, the Juvenile Advocate shall be authorized to represent the child, without formal appointment by the Juvenile Court, in any proceedings in which the child has

a right to counsel under the provisions of this Code.

4. Upon presentation by counsel for the child of an order of appointment or a court order specifically allowing such access, any tribal agency, department, authority, institution, school, or health care provider shall permit counsel for the child to inspect and copy, without the consent of the child or the child's parent, guardian, or legal custodian, any records relating to the child involved in the case.
- C. Every child coming within jurisdiction of the Juvenile Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this Code.
1. No statement, admission or confession made by, nor incriminating information obtained from, a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this Code, including but not limited to that which is court-ordered, shall be admitted into evidence in any proceedings before the Juvenile Court or the Tribal Court.

Section 103 Fingerprinting and Photographs

- A. A child shall not be fingerprinted or photographed, nor have any tissue sample taken, for purposes of identification in connection with any matter coming within the provisions of this Code, except by written order of the Juvenile Court.
- B. Fingerprints, photographs, or tissue samples taken pursuant to a written order of the Juvenile Court shall be used only as specified in the written order.

Section 104 Records – Confidentiality

- A. Except by an order of the Juvenile Court entered in accordance with the provisions of subsection (B), all records and files pertaining to any proceedings conducted pursuant to the provisions of this Code, including but not limited to law enforcement records and court files, shall be confidential and shall not be open to inspection to any but the following:
 1. The child, provided that:
 - a. The child's request for inspection has been made through counsel for the child;
 - b. The Juvenile Court enters an order permitting inspection by the child without the intervention of counsel; or

- c. The child has reached eighteen (18) years of age;
 2. Counsel for the child;
 3. The child's parent, guardian, or custodian, except as provided in subsection (B);
 4. The child's guardian *ad litem*;
 5. A Court of the Miami Tribe of Oklahoma, if needed to adjudicate an appeal properly made under this Code, provided that the appellate court shall keep the records confidential in accordance with this section and Section 911;
 6. The Juvenile Case Coordinator; and
 7. The Tribal Prosecutor.
- B. The Juvenile Court may enter an order providing that specific records and files pertaining to proceedings conducted pursuant to the provisions of this Code shall not be open to inspection by the child's parent, guardian, or custodian, following:
1. A hearing on the matter, at which the child shall be represented by counsel and the child's parent, guardian, or custodian shall have the right to be represented by counsel; and
 2. A finding by the Juvenile Court that such inspection would jeopardize the mental or physical welfare of the child.
- C. The Juvenile Court may, on a case-by-case basis, enter an order permitting the inspection, by specified persons or agencies, of records and files which would otherwise be confidential under subsection (A), following:
1. A hearing on the matter, at which the child shall be represented by counsel; and
 2. A finding by the Juvenile Court that such inspection is in the best interests of the child.
- D. All records and files pertaining to any child who is subject to the provisions of this Code shall be kept separate from records and files pertaining to adults.
- E. The name, picture, place of residence, or any other identifying information concerning any child, parent, guardian, or custodian, or any person appearing as a witness in any proceedings held pursuant to the provisions of this Code, shall not be published in any newspaper, newsletter, electronic publication, or internet site, and shall not be given for any other publicity.

- F. Any person who violates any provision of this section shall be ordered to appear before the Juvenile Court to show cause why they should not be held in contempt.

Section 105 Records – Expungement

- A. All records and files pertaining to any proceedings conducted pursuant to the provisions of this Code, including but not limited to law enforcement records and court files, shall be expunged when the child reaches twenty-five (25) years of age.
- B. No further inspection or use of any record or file to be expunged in accordance with the provisions of this section shall be permitted.

Section 106 Parental Responsibilities

- A. The parent, guardian, or custodian of any child coming within the jurisdiction of the Juvenile Court under the provisions of this Code shall have the following responsibilities:
 - 1. To attend all Juvenile Court hearings involving the child, or to show cause before the Juvenile Court why they should be excused from any hearing they are unable to attend;
 - 2. To bring the child before the Juvenile Court when so ordered; and
 - 3. To monitor the child’s compliance with all orders entered or conditions imposed by the Juvenile Court, and to make all reasonable efforts to ensure that the child complies with such orders or conditions.
- B. Where the responsibility imposed by Section 106(A) conflicts with the work schedule of the child’s parent, guardian, or custodian, or would otherwise cause undue hardship for the child’s parent, guardian, custodian or family, the Juvenile Court:
 - 1. Shall, whenever possible, permit the child’s parent, guardian, or custodian to attend the hearing by phone, video conferencing technology, or similar means; and
 - 2. May consider the availability and practicability of such alternatives in determining whether the child’s parent, guardian, or custodian should be excused from attending the hearing.
- C. The child’s parent shall be excused from the responsibilities imposed by Section 106(A) if the child is under the care and control of a guardian or custodian as the result of a court order.
- D. The child’s parent, guardian, or custodian may be excused from the responsibilities imposed by Section 106(A) if it appears to the Juvenile Court that there may be a conflict of interest between the child and the child’s parent, guardian, or custodian.

- E. A showing that the child’s parent, guardian, or custodian has voluntarily transferred physical custody of the child to another person shall not excuse the child’s parent, guardian, or custodian from the responsibilities imposed by Section 106(A).
- F. Any parent, guardian, or custodian who fails to comply with the requirements of Section 106(A) may be ordered to appear before the Juvenile Court to show cause why they should not be held in contempt.
 - 1. The child’s parent, guardian, or custodian shall have the right to be represented by counsel at disposition and in any proceedings for contempt brought against the child’s parent, guardian, or custodian pursuant to the provisions of this Code.

Section 107 Certification as an Adult

- A. Upon filing of a delinquency petition and after preliminary investigation is complete and there has been a finding of probable cause, the Tribal Prosecutor may file a motion requesting the Juvenile Court to transfer the child to the jurisdiction of the Tribal Court if all the following conditions are met:
 - 1. The child was fourteen (14) years of age or older at the time the child allegedly committed the offense;
 - 2. The child is alleged to have committed an offense that constitutes a felony if committed by an adult; and
 - 3. The act allegedly committed by the child resulted in serious bodily harm, death, or posed a substantial danger to the public.
- B. At least three (3) days prior to the certification hearing under Section 108, the Tribal Prosecutor shall prepare a pre-hearing report for the Juvenile Court and provide copies of the pre-hearing report to the child, the child’s parent, guardian, or custodian and the child’s counsel or Juvenile Advocate.
 - 1. The pre-hearing report shall address the issues described in Section 108(D) and 108(E) and contain information obtained during the preliminary investigation conducted under Sections 501 and 503, including but not limit to any available victim interview, input, or statement.
- C. For the purposes of Sections 107 and 108, “substantial danger to the public” is a substantial risk of serious physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons or having placed another person or persons in reasonable fear of serious physical harm.

Section 108 Certification Hearings

- A. The Juvenile Court shall hold a hearing within ten (10) days of receipt of the Tribal Prosecutor's motion to determine if a child should be certified as an adult and transferred to the jurisdiction of the Tribal Court.
- B. The Juvenile Court shall give written notice of the time, place, and purpose of the hearing to the child and the child's parent, guardian, or custodian at least five (5) days before the hearing.
- C. 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 102.
- D. In determining if a child should be certified as an adult, the Juvenile Court shall consider the following factors:
 - 1. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
 - 2. The culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense;
 - 3. The record and past history of the child, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions;
 - 4. The child's programming history, including the child's past willingness to participate meaningfully in available programming;
 - 5. The prospects for adequate protection of the public if the child is processed through the Juvenile Court; and
 - 6. The adequacy of the punishment or programming available in the Juvenile Court.
- E. The Juvenile Court may transfer jurisdiction of the child to Tribal Court only if the Court finds clear and convincing evidence that all of the following circumstances exist:
 - 1. The child was fourteen (14) years of age or older at the time the child allegedly committed the offense;
 - 2. The child is alleged to have committed an offense that constitutes a felony if committed by an adult;
 - 3. The act allegedly committed by the child resulted in serious bodily harm, death, or constitutes an imminent and a substantial danger to the public;

4. There are no reasonable prospects for rehabilitating the child through resources available to the Juvenile Court; and
 5. Retaining the proceeding in the Juvenile Court does not serve public safety.
- F. A child may be transferred to Tribal Court only if the Juvenile Court issues a written order after the conclusion of a certification hearing which contains specific findings and reasons for the transfer in accordance with Sections 108(D) and 108(E) above. Subject to Section 108(H) and Section 109, this written order terminates the jurisdiction of the Juvenile Court over the child with respect to the delinquent act alleged in the delinquency petition.
1. In addition to the Juvenile Court's order containing specific findings and reasons for transfer, the Juvenile Court shall issue a separate order stating only that the child has been certified as an adult and transferring the child to the jurisdiction of the Tribal Court. The Juvenile Court shall provide this order to the Tribal Court.
- G. Prior to the entry of any written order of certification, detention and release of the child shall be governed by this Code. Subsequent to the entry of an order certifying the child as an adult, the child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but may only, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.
- H. The juvenile proceeding commenced under this Code shall not be dismissed until the criminal proceeding has commenced and, if no criminal proceeding commences within thirty (30) days of the date of the certification, unless stayed pending appeal, the Juvenile Court shall proceed with the juvenile proceeding and the certification shall lapse.

Section 109 Appeals and Confidentiality of Certification Records.

- A. The Juvenile Court's order under Section 108 may be appealed within ten (10) days of the Juvenile Court issuing the order.
- B. An appeal of the Juvenile Court's order under Section 108 shall be conducted in accordance with the appellate rules governing appeals from Tribal Court. If such rules conflict with the provisions of this Code, this Code shall govern.
- C. Except for an order under Section 108(F)(1), all records relating to a child's certification under Sections 107, 108, and 109 shall be confidential in accordance with Section 104.

CHAPTER TWO: RULES AND PROCEDURES FOR COURT APPEARANCES

Section 201 Hearings – Advisement of Rights

- A. At the commencement of all hearings conducted pursuant to the provisions of this Chapter, the Juvenile Court shall advise the child, in language the child will easily understand:
 - 1. Of the nature and purpose of the proceedings;
 - 2. Of the right to counsel;
 - 3. Of the right to remain silent, and that any statement made by the child may be considered by the Juvenile Court as evidence that the child committed a delinquent act;
 - 4. Of the right to appeal any final order of the Juvenile Court.

Section 202 Rules in Delinquency Proceedings

- A. Delinquency proceedings before the Juvenile Court shall be governed by the rules of evidence.
- B. If this Code does not govern a procedure, the rules governing criminal proceedings before the Tribal Court shall apply, to the extent that such rules are not in conflict with the provisions of this Code.

Section 203 Jeopardy

- A. In all proceedings conducted pursuant to the provisions of this Chapter, jeopardy shall attach when:
 - 1. The Juvenile Court accepts a valid admission in accordance with the provisions of Section 805; or
 - 2. The first witness is sworn at an adjudication hearing.

Section 204 Admissibility of Evidence

- A. In any proceedings on a delinquency petition brought under the provisions of this Code:
 - 1. No out-of-court statement which would be inadmissible in criminal proceedings before the Tribal Court shall be admissible to establish the allegations of the delinquency petition;

2. No evidence which would be inadmissible in criminal proceedings before the Tribal Court because such evidence was illegally seized or obtained shall be admissible to establish the allegations of the delinquency petition;
3. No statement made by the child to the Juvenile Case Coordinator, nor any evidence derived from such a statement, shall be admissible to establish the allegations of the delinquency petition, unless the statement is made after consultation with and in the presence of counsel;
4. An out-of-court statement by the child shall be insufficient to support a finding that the child committed the acts alleged in the delinquency petition, unless the statement is corroborated by other evidence; and
5. The fact that a child has at any time been a party to a proceeding as a Child in Need of Supervision under the Child Welfare Code shall be inadmissible to establish the allegations of the delinquency petition, and any statement made by the child during the pendency of such proceedings shall be treated as a statement made in response to custodial interrogation.

Section 205 Failure to Appear

- A. In all delinquency proceedings conducted pursuant to the provisions of this Code:
 1. If a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:
 - a. Upon a first or subsequent failure to appear, the Juvenile Court may:
 - i. Issue a new summons in accordance with the provisions of Section 603 of this Code; and
 - ii. Issue a warning to the child regarding the potential consequences of a subsequent failure to appear.
 - b. Upon a second or subsequent failure to appear, the Juvenile Court may:
 - i. Issue a detention order in accordance with Section 401; and
 - ii. Following a hearing on the matter, impose additional or modified conditions of release in accordance with Section 406.
 - c. Upon a third or subsequent failure to appear, the Juvenile Court may conduct a hearing to review the need for detention in accordance with the provisions of Sections 408 to 411.
 2. If a child under sixteen (16) years of age fails to appear before the Juvenile

Court after being so ordered:

- a. If the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian, or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (1)(a); or
 - b. In the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (3).
3. If the child's parent, guardian, or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:
- a. Upon a first or subsequent failure to appear, the Juvenile Court may:
 - i. Issue a new summons in accordance with the provisions of Section 603 of this Code; and
 - ii. Issue a warning to the child's parent, guardian, or custodian regarding the potential consequences of a subsequent failure to appear.
 - b. Upon a second or subsequent failure to appear, the Juvenile Court may:
 - i. Issue a bench warrant, directing that the child's parent, guardian, or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this Section; and
 - ii. Absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian, or custodian a fine of up to \$100 (one hundred dollars);
 - c. Upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian, or custodian.
- B. No sanctions other than those authorized by this Section 205 shall be sought or imposed against a child for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this Code.

CHAPTER THREE: INTERROGATIONS

Section 301 Interrogation and Custodial Interrogation – Definitions

- A. For the purposes of this Code:
 - 1. An interrogation occurs whenever a law enforcement officer or other official asks a child a question, or subjects a child to any words or actions, that the law enforcement officer or other official knows or should know is reasonably likely to elicit an incriminating response; and
 - 2. A custodial interrogation is any interrogation during which a reasonable person of the child's age and in the child's position would consider himself or herself to be unable to terminate the encounter.

Section 302 Advisement of Rights

- A. Prior to interrogating a child, the law enforcement officer or other official shall advise the child, in language the child will easily understand:
 - 1. That the child has the right to remain silent, and anything the child says may be used against the child in court;
 - 2. That the child has the right to have his or her parent, guardian, or custodian present during any questioning;
 - 3. That the child has the right:
 - a. To be represented by counsel;
 - b. To consult with counsel prior to any questioning; and
 - c. To have counsel present during any questioning.
- B. If there is any lapse in time since the prior advisement of rights or if a law enforcement officers or other official is not the person who most recently advised the child of their rights, the law enforcement officer or other official shall again advise the child of the rights in Section 302(A).

Section 303 Presence of Parent or Counsel

- A. No child shall be subject to custodial interrogation unless the child's parent, guardian, custodian, or counsel for the child, is present.

Section 304 Inadmissible Statements

- A. An oral, written, or other statement of a child made as a result of any interrogation

shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless:

1. The child was advised in accordance with the provisions of Section 302; and
 2. The child clearly and affirmatively waived his or her rights before being questioned.
- B. An oral, written, or other statement of a child made as a result of a custodial interrogation shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless the statement is made after consultation with and in the presence of counsel.
- C. The provisions of this Section 304 shall not preclude admission of:
1. A statement made by the child in open court in any Juvenile Court or Tribal Court proceeding in which the child was represented by counsel;
 2. A spontaneous statement not made in response to interrogation; or
 3. Routinely asked during the processing of a child being taken into custody and not a question that the law enforcement officer knows or should know is reasonably likely to elicit an incriminating response.

CHAPTER FOUR: CUSTODY, RELEASE AND DETENTION

Section 401 Detention Order

- A. The Juvenile Court may issue a written order that a law enforcement officer shall take a child into immediate custody if:
1. The Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe:
 - a. The child has violated conditions of release imposed by the Juvenile Court; or
 - b. The child has committed a delinquent act or violated a disposition order entered by the Juvenile Court and:
 - i. The conduct, condition, or surroundings of the child pose a substantial risk to the health, welfare, person, or property of the child or others; or
 - ii. There is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court, or will not be brought before the Juvenile Court, notwithstanding the service of a summons.
 2. The child has failed to appear before the Juvenile Court pursuant to an order issued by the Juvenile Court.

Section 402 Law Enforcement Taking of a Child into Temporary Custody

- A. A law enforcement officer may take a child into custody when:
1. The child commits a delinquent act in the presence of the officer;
 2. The officer has a reasonable suspicion to believe a delinquent act has been committed by the child being detained;
 3. A custody order under Section 401 or warrant has been issued by the Juvenile Court authorizing the taking of a particular child.
- B. At the time the child is taken into custody, a law enforcement officer shall promptly advise the child of their rights under Section 302.
- C. Upon taking a child into custody, the law enforcement officer shall immediately attempt to notify the child's parent, guardian, or custodian that the child is in custody.
1. 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 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.

- D. The law enforcement officer shall immediately notify the Juvenile Case Coordinator when a child is taken into custody.

Section 403 Release or Delivery from Temporary Custody

- A. A law enforcement officer taking a child into custody pursuant to the provisions of Section 401 shall, without unreasonable delay:
 - 1. Release the child to the child's parent, guardian, or custodian and issue verbal counsel or warning as may be appropriate; or
 - 2. Release the child to a relative or other responsible adult if the child's parent, guardian, or custodian consents to the release and issue verbal counsel or warning as may be appropriate. If the child is twelve (12) years of age or older, the child and his parent, guardian, or custodian must both consent to release; or
 - 3. Release the child to the child's parent, guardian, or custodian and refer the matter to the Juvenile Services Coordinator for a preliminary investigation under Section 501; or
 - 4. Deliver the child to the custody of the Juvenile Services Coordinator, or to a juvenile facility as designated by the Juvenile 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.
- B. Upon being notified that a child has been taken into temporary custody, and has not been released to the child's parent, guardian, or custodian, the Tribal Prosecutor shall:
 - 1. Immediately review the need for continued detention, and
 - a. If the Tribal Prosecutor determines that detention is not necessary or authorized under Section 404, release the child to the child's parent, guardian, or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under Section 603 of this Code; or
 - b. If the Tribal Prosecutor determines that continued detention is

necessary and authorized under Section 404, confirm or arrange for the placement of the child in accordance with the provisions of Section 405.

2. If the Tribal Prosecutor does not release the child to the child's parent, guardian, or custodian, the Tribal Prosecutor shall immediately:
 - a. File written notice in the Juvenile Court of the reason, date and time the child was taken into custody, the location where the child is being detained, and the need to conduct a detention hearing in accordance with Section 411;
 - b. Provide copies of the written notice to the child, the child's parent, guardian, or custodian and counsel for the child; and
 - c. Inform the child of the actions taken by the Tribal Prosecutor to comply with the requirements of this subsection.
3. Where counsel has not already been appointed or retained to represent the child, a copy of the written notice shall be provided to the Juvenile Advocate.

Section 404 Detention

- A. A child shall not be detained unless:
 1. There is probable cause to believe the child has committed a delinquent act;
 2. No less restrictive alternatives will suffice; and
 3. There is clear and convincing evidence that the child should be detained because:
 - a. Such detention is necessary to avert a substantial risk to the health, welfare, person or property of the child or others; or
 - b. There is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court.

Section 405 Place of Detention

- A. A child alleged to have committed a delinquent act may be detained only in:
 1. A licensed foster home or a home approved by the Juvenile Court, which may be a public or private home or the home of a noncustodial parent or a relative;
 2. A juvenile residential care facility;

3. A secure juvenile detention facility designated by the Juvenile Court; or
 4. A residential treatment facility, detoxification facility, or halfway house, if there is evidence of recent or ongoing alcohol or substance abuse by the child and the child requests or agrees with such placement.
- B. Under any proceeding covered by this Juvenile Code, in no case shall a child be:
1. Detained in a jail, adult lock-up or other adult detention facility; or
 2. Subject for any reason to solitary confinement.

Section 406 Conditions of Release

- A. Before ordering that a child be detained, the Juvenile Court shall consider, and may impose, conditions of release including but not limited to:
1. Law-abiding behavior, including refraining from using or possessing alcohol or non-prescribed drugs;
 2. Compliance with orders prohibiting or restricting contact between the child and the alleged victim or other persons or locations connected with the alleged delinquent act;
 3. An order prohibiting or restricting contact between a child and another person;
 - a. An order restricting contact between a child and a member of the child's immediate or extended family shall be narrowly tailored, and the scope and terms of such an order shall be appropriately limited, to protect the safety and emotional welfare of the child and the child's family;
 4. A court-imposed curfew;
 5. A requirement that the child or the child's parent, guardian, or custodian report to the Juvenile Case Coordinator at specified intervals;
 6. An order requiring the child to remain at home at all times when the child is not in the presence of the child's parent, guardian, or custodian, at school or participating in school-related activities, or is legally required to be somewhere;
 7. Electronic home monitoring or similar means of monitoring the child's whereabouts; and
 8. Any other condition or supervised release the Juvenile Court deems proper to ensure the child's appearance at future hearings and to protect the safety of the

child and the community.

- B. Conditions of release imposed by the Juvenile Court in accordance with the provisions of this section shall not include bail.

Section 407 Conditional Release Orders – Violations

- A. If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated conditions of release imposed, the Juvenile Court may:
 - 1. Issue a custody order in accordance with the provisions of Section 401;
 - 2. Following a hearing on the matter, impose additional or modified conditions of release; or
 - 3. Conduct a hearing to review the need for detention.

Section 408 Detention Hearing – Requirement and Time Limit

- A. Whenever a child is taken into custody and is not released to the child’s parent, guardian, or custodian, the Juvenile Court shall conduct a detention hearing within two (2) days.
- B. If the detention hearing is not held within the time limit imposed by this section, the child shall immediately be released to the child’s parent, guardian, or custodian.

Section 409 Detention Hearing – Notice

- A. Written notice of the detention hearing:
 - 1. Shall be served on the child, the child’s parent, guardian, or custodian, and counsel for the child as soon as the time for the detention hearing has been set;
 - 2. Shall contain the name of the Juvenile Court, the nature and purpose of the proceedings, and the date, time, and place of the hearing;
 - 3. Shall advise the parties of their rights under the provisions of this Code; and
 - 4. Shall specify the delinquent act the child is alleged to have committed.
- B. Where counsel has not already been appointed or retained to represent the child, the written notice shall be served on the Juvenile Advocate.

Section 410 Detention Hearing – Purpose

- A. The Juvenile Court shall conduct the detention hearing for the purpose of determining:

1. Whether there is probable cause to believe the child has committed a delinquent act, unless the Juvenile Court has entered a finding of probable cause at a prior hearing;
2. Whether the child can be released without conditions;
3. If the child cannot be released without conditions, what conditions of release imposed would render detention unnecessary; and
4. If detention is necessary and authorized under Section 404, where the child should be detained pending the child's next appearance before the Juvenile Court.

Section 411 Order on Detention Hearing and Rehearing

- A. At the detention hearing, the Juvenile Court shall enter a written order releasing the child without conditions unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe the child has committed a delinquent act.
- B. If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile Court shall, at the conclusion of the detention hearing, enter a written order:
 1. Releasing the child without conditions;
 2. Releasing the child, and setting forth conditions of release; or
 3. Specifying where the child is to be detained until the next hearing.
- C. If the child was taken into custody as the result of a failure to appear before the Juvenile Court, the written order entered by the Juvenile Court shall be consistent with the provisions of Section 205.
- D. If the child is to be detained in a secure juvenile detention facility, the written order shall specify the date and time of the first detention review hearing to be held.
- E. No provision of this Chapter shall be interpreted to prohibit the Juvenile Court from releasing the child from detention prior to the appointment or appearance of counsel for the child.
- F. If the child is not released at the detention hearing, and a parent, guardian, custodian or relative was not notified of the hearing and did not appear or waive appearance at the hearing, the Juvenile Court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant

facts.

- G. If the Juvenile Court orders the child to be detained after a hearing, the Juvenile Court shall conduct a detention review hearing before the end of each seven (7) day period in which the child is detained in a secure juvenile detention facility prior to adjudication to determine if continued detention is necessary.

CHAPTER FIVE: PRELIMINARY INVESTIGATIONS AND DIVERSION

Section 501 Preliminary Investigation

- A. Informal delinquency proceedings shall be commenced by submitting a complaint to the Juvenile Case Coordinator.
- B. The complaint shall state the facts that support the allegation that the child has committed a delinquent act.
- C. Whenever a child is alleged to have committed a delinquent act, the Juvenile Case Coordinator shall conduct a preliminary investigation to determine whether the interests of the child or the community require that a formal delinquency petition be commenced.
- D. The purpose of the preliminary investigation is to determine whether:
 - 1. A petition should be filed under Chapter 6;
 - 2. The child should be referred to the ICW Department and the case should proceed under the Child Welfare Code; or
 - 3. A Diversion Agreement should be entered into under Section 508.
- E. A preliminary investigation shall include the following:
 - 1. Interviews with the complainant and victim(s), if someone other than the complainant; or
 - 2. Interviews with school officials or other individuals that know the child or the child's family.
- F. The Juvenile Case Coordinator shall create a written report that contains the information collected during the preliminary investigation, including information obtained under Section 503, if an informal conference is conducted.

Section 502 Time Limit

- A. Where the child was taken into custody and has not been released without conditions, the Juvenile Case Coordinator shall conduct the preliminary investigation:
 - 1. Within one (1) business day after the detention hearing, if the child has not been released; or
 - 2. Within five (5) days after the detention hearing, if the child has been released on conditions.

- B. If the child is not in custody or has not been subject to a detention hearing, the preliminary investigation shall be conducted within fourteen (14) business days.

Section 503 Informal Conference

- A. The Juvenile Case Coordinator may, during the course of the preliminary investigation, conduct an informal conference with:
 - 1. The child;
 - 2. The child's parent, guardian, or custodian; and
 - 3. Counsel for the child.
- B. Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Court prior to conducting the informal conference and the Juvenile Court may appoint a Juvenile Advocate.
- C. The purpose of the informal conference shall be:
 - 1. To determine if a referral to the ICW Department is necessary and proceedings under the Child Welfare Code should be commenced; and
 - 2. Where the alleged facts are sufficient to support the filing of a delinquency petition, to identify and discuss services, interventions, agreements, or other alternatives which would render the filing of a petition unnecessary.
- D. To the extent possible, the informal conference shall be treated as a non-adversarial effort to resolve the issues presented by the child's alleged conduct, without the intervention of the Juvenile Court.
- E. Statements made by the child at the informal conference shall be inadmissible, in any subsequent hearing or proceedings, as evidence that the child committed a delinquent act, but may be considered at a disposition hearing.
- F. Prior to conducting the informal conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian, or custodian:
 - 1. Of their rights under the provisions of this Code;
 - 2. Of the nature and purpose of the informal conference; and
 - 3. That participation in the informal conference is voluntary.

- G. If the child or the child’s parent, guardian, or custodian declines to participate in the informal conference, the Juvenile Case Coordinator may make a recommendation to the Tribal Prosecutor based on other information collected during the preliminary investigation, including the information collected under Section 501(E).

Section 504 Preliminary Inquiry Recommendation

- A. Upon concluding the preliminary investigation, the Juvenile Case Coordinator shall make one of the following recommendations to the Tribal Prosecutor:
 - 1. Recommend that no further action be taken in the matter, if it is determined that:
 - a. The alleged facts are insufficient to support filing of a formal delinquency petition;
 - b. The alleged facts are insufficient to require a referral to the ICW Department for a proceeding covered under the Child Welfare Code; or
 - c. The best interests of neither the child nor the community require that further action be taken.
 - 2. Recommend that a diversion agreement should be entered into with the child and the child’s parent, guardian, or custodian, if it is determined that:
 - a. The alleged facts are sufficient to support the filing of a delinquency petition; and
 - b. The best interests of both the child and the community may be adequately addressed through diversion.
 - 3. Recommend that the matter should be referred to the ICW Department and a proceeding covered under the Child Welfare Code should be commenced, if it is determined that:
 - a. The alleged facts are sufficient to support that the child may be a Child in Need of Supervision, or the child may have been subject to Abuse or Neglect, as defined in the Child Welfare Code; and
 - b. The best interests of both the child and the community may be adequately addressed through proceedings under the Child Welfare Code.
 - 4. Recommend that a formal delinquency petition should be filed in the matter, if it is determined that:

- a. The alleged facts are sufficient to support the filing of a delinquency petition;
- b. The best interests of either the child or the community require the intervention of the Juvenile Court; and
- c. The best interests of either the child or the community cannot be adequately addressed through a proceeding under the Child Welfare Code.

Section 505 Recommendation Factors

- A. In making a recommendation under Section 504, the Juvenile Case Coordinator shall consider the following factors:
 - 1. The nature and seriousness of the alleged act;
 - 2. The child's previous contacts with the police or the Juvenile Court;
 - 3. The age, maturity, and individual circumstances of the child;
 - 4. The willingness of the child to participate in a voluntary program;
 - 5. The participation and input of the child's parent, guardian, or custodian;
 - 6. The likelihood that services and resources to meet the child's needs can be identified and secured without the intervention of the Juvenile Court; and
 - 7. Any statement expressing support for diverting the matter or addressing the matter informally and without the intervention of the Juvenile Court, made by:
 - a. The complainant or the alleged victim; or
 - b. Any law enforcement officer familiar with the underlying facts of the matter or the circumstances of the child.

Section 506 Prosecutor's Determination

- A. The Tribal Prosecutor shall consider the Juvenile Case Coordinator's recommendation and take one of the following actions:
 - 1. Determine that no further action is to be taken and close the matter;
 - 2. Determine that a diversion agreement should be entered into with the child and the child's parent, guardian, or custodian pursuant to Section 508;

3. Refer the matter to the ICW Department for a proceeding covered under the Child Welfare Code and close the matter;
 4. Determine that a delinquency petition should be filed and commence a petition under Chapter 6.
- B. The Prosecutor shall give deference to the Juvenile Case Coordinator's recommendation and take the action that is in the best interest of the Tribe.

Section 507 Notice to Juvenile Court

- A. The Tribal Prosecutor shall immediately file written notice in the Juvenile Court whenever:
1. The Juvenile Court has entered a detention order, or any order imposing restrictions or other conditions or obligations upon the child in connection with the matter; and
 2. The Tribal Prosecutor has determined that:
 - a. No further action should be taken in the matter;
 - b. The matter should proceed by way of a diversion agreement entered into pursuant to the provisions of Section 508; or
 - c. The matter should be addressed through a proceeding under the Child Welfare Code.
- B. Upon the filing of the written notice required by subsection A:
1. The Juvenile Court shall enter a written order releasing the child from any detention, restrictions or other conditions or obligations previously imposed in connection with the matter; and
 2. If the child is being detained, the Tribal Prosecutor shall ensure that the child is released within twelve (12) hours of the entry of the order of release.

Section 508 Diversion Agreements

- A. Upon the Juvenile Case Coordinator's recommendation and Tribal Prosecutor's determination that the child should enter into a diversion agreement or the Juvenile Court's order for diversion, the child and the child's parent, guardian, or custodian may enter into a written diversion agreement setting forth:
1. The rights of the child and the child's parent, guardian, or custodian under the provisions of this Code;

2. That entry into a diversion agreement is voluntary, and that the child or the child's parent, guardian, or custodian may withdraw from the diversion agreement at any time;
3. That withdrawal from the diversion agreement or failure to comply with the conditions of the diversion agreement may lead to the filing of a petition; and
4. Particular conditions to be fulfilled by the child and the child's parent, guardian, or custodian over a period not to exceed six (6) months.

Section 509 Fulfillment of Conditions

- A. If the child and the child's parent, guardian, or custodian fulfill the conditions of the diversion agreement, no further action shall be taken and the matter shall be closed.
- B. If the child or the child's parent, guardian, or custodian do not fulfill the conditions of the diversion agreement, the Tribal Prosecutor may:
 1. Confer with the child and the child's parent, guardian, or custodian for the purpose of effecting necessary or recommended modifications to the diversion agreement; or
 2. File a formal delinquency petition in accordance with the provisions of Chapter 6.
- C. Upon finding by a preponderance of the evidence that the child and the child's parent, guardian, or custodian have fulfilled the conditions of the diversion agreement, the Juvenile Court shall dismiss with prejudice any subsequent petition arising out of the alleged incident.

CHAPTER SIX: DELINQUENCY PETITIONS

Section 601 Delinquency Petitions

- A. Formal juvenile offender proceedings shall be instituted by a petition filed by the Tribal Prosecutor on behalf of the Tribe and in the interests of the child. The petition 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 parents, guardian, or custodian;
 3. A citation to the specific section(s) of this Code which give the Juvenile Court jurisdiction over the proceedings;
 4. A citation to the criminal statute 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 the child was taken into custody.

Section 602 Delinquency Petition – Amendment

- A. The delinquency petition may be amended to cure defects of form at any time.
- B. The delinquency petition may be amended to allege additional delinquent acts:
1. At any time prior to the initial hearing; or
 2. After the initial hearing, but no later than three (3) business days prior to the adjudication hearing, upon a showing of good cause.
- C. The delinquency petition shall not be amended to allege additional delinquent acts after jeopardy has attached.
- D. Whenever the delinquency petition is amended, the amended petition shall be served upon all the parties to the proceeding.
- E. Whenever the delinquency petition is amended to allege additional delinquent acts, the Juvenile Court shall, upon a motion by the child, continue the adjudication hearing for such a period as is required in the interests of justice.

Section 603 Issuance of Summons

- A. After a delinquency petition has been filed, the Juvenile Court shall direct the issuance of summons to:
 - 1. The child;
 - 2. The child's parents, guardian, or custodian;
 - 3. The child's counsel, if the child has obtained counsel; and
 - 4. Any other person the Juvenile Court deems necessary for the proceedings.

- B. The summons shall contain the name of the Juvenile Court, the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.

- C. The summons shall be served upon the parties at least seven (7) days prior to the hearing. The summons shall be delivered personally by a law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Juvenile Court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

CHAPTER SEVEN: RIGHTS IN ALL PRELIMINARY HEARINGS

Section 701 Rights of Parties in Hearings

- A. The child shall be represented by counsel at all stages of any proceedings conducted pursuant to the provisions of this Chapter.
- B. The child's parent, guardian, or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian, or custodian pursuant to the provisions of this Code.
- C. At the commencement of all hearings conducted under this Chapter, the Juvenile Court shall advise the child, in language the child will easily understand:
 - 1. Of the nature and purpose of the proceedings;
 - 2. Of the right to counsel;
 - 3. Of the right to remain silent, and that any statement made by the child may be considered by the Juvenile Court as evidence that the child committed a delinquent act;
 - 4. Of the right to appeal any final order of the Juvenile Court.

Section 702 Initial Hearing

- A. The initial hearing shall be held:
 - 1. Within ten (10) days of the filing of the delinquency petition, if the child was taken into custody and has not been released; or
 - 2. Within thirty (30) days of the filing of the delinquency petition, if the child was not taken into custody or has been released.
- B. At the hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:
 - 1. The nature and purpose of the proceedings;
 - 2. The contents of the delinquency petition;
 - 3. The possible consequences if the child is found to have committed a delinquent act;
 - 4. The right to counsel;

5. The privilege against self-incrimination;
6. The right to an adjudication in accordance with the provisions of this Chapter;
7. The right to cross-examine witnesses;
8. The right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;
9. The right to appeal any final order of the Juvenile Court.

C. The Juvenile Court shall not accept an admission at the initial hearing.

Section 703 Initial Hearing – Probable Cause Determination

A. At the initial hearing, the Juvenile Court shall enter a written order dismissing the delinquency petition unless the Juvenile Court finds that the delinquency petition establishes probable cause to believe the child has committed a delinquent act.

Section 704 Initial Hearing – Judicial Diversion

A. If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile Court in its discretion may enter a written order dismissing the delinquency petition without prejudice, if the Juvenile Court determines that:

1. The interests of both the child and the community may be adequately addressed through a diversion agreement under Section 508;
2. The child, after consulting with and being advised by counsel, is willing to participate in an informal conference pursuant to the provisions of Section 503; and
3. Either of the following conditions is met:
 - a. Prior to the filing of the delinquency petition, the child did not enter into a diversion agreement pursuant to the provisions of Section 508; or
 - b. Notwithstanding the failure of a previous diversion agreement, the Juvenile Court finds reason to believe that further efforts to divert the matter may be successful.

B. Following the dismissal of a delinquency petition under Section 704(A), the Tribal Prosecutor may re-file the delinquency petition if:

1. The child and the child's parent, guardian, or custodian do not voluntarily enter into a diversion agreement; or
2. The child or the child's parent, guardian, or custodian do not fulfill the conditions of the diversion agreement.

Section 705 Initial Hearing – Discretionary Dismissal

- A. The Juvenile Court may, upon its own motion or the motion of the child, dismiss the delinquency petition if:
 1. The Juvenile Court finds that the alleged conduct did not actually cause or threaten the harm sought to be prevented by the statute defining the alleged delinquent act, or did so only to a trivial extent;
 2. The Juvenile Court finds that the alleged conduct cannot reasonably be regarded as within the contemplation of the Miami Tribe in enacting the statute defining the alleged delinquent act;
 3. The alleged victim is a member of the child's family, and the Juvenile Court finds that the alleged conduct may be more appropriately addressed by the child's parent, guardian, or custodian;
 4. The child's acts or living environment would be better addressed by a proceeding under the Child Welfare Code; or
 5. Upon the recommendation or agreement of the alleged victim, the Juvenile Court finds that the alleged conduct may be more appropriately addressed, by voluntary restitution or other conciliatory efforts or conduct on the part of the child or by the child's participation in community-based alternatives.

CHAPTER EIGHT: ADJUDICATION OF DELINQUENCY PETITIONS

Section 801 Time Limit

- A. The adjudication hearing shall be held:
 - 1. Within ten (10) days of the initial hearing, if the child was taken into custody and has not been released; or
 - 2. Within thirty (30) days of the initial hearing, if the child was not taken into custody or has been released.

Section 802 Purpose and Burden of Proof

- A. The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child has committed a delinquent act.
- B. The Tribe shall bear the burden of proving the allegations of the delinquency petition beyond a reasonable doubt.

Section 803 Conduct

- A. The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.
- B. At the commencement of the adjudication hearing, the Juvenile Court:
 - 1. Shall first advise the child in accordance with the provisions of Section 702(B); and
 - 2. Shall then inquire whether the child admits or denies the allegations of the delinquency petition.

Section 804 Admissions – Inquiry

- A. Before accepting an admission by the child to the allegations of the delinquency petition, the Juvenile Court shall inquire of the child, in language the child will easily understand:
 - 1. Concerning the number and duration of meetings between the child and counsel;
 - 2. Whether the child is satisfied that counsel has conducted a thorough factual investigation of the matter;
 - 3. Whether the child is satisfied that counsel has answered to the child's questions, and has clearly explained:

- a. The nature of the proceedings, including the purpose of the adjudication hearing and the procedures to be followed if the child denies the allegations or if the Juvenile Court does not accept an admission by the child;
 - b. The child's rights under this Code;
 - c. The alternatives to an admission by the child; and
 - d. The likely consequences of an admission by the child.
- B. The Juvenile Court shall inquire of the child's counsel:
- 1. Concerning the number and duration of meetings between the child and counsel;
 - 2. Whether counsel has conducted a thorough factual investigation of the matter;
 - 3. Whether counsel has thoroughly researched, investigated, and addressed any legal issues presented by the matter;
 - 4. Whether counsel is satisfied that the nature of the proceedings against the child and the child's rights in those proceedings; and
 - 5. That there are no compelling factual or legal defenses or arguments which the Juvenile Court should hear or consider before accepting an admission by the child.
- C. The Juvenile Court shall inquire if the Tribal Prosecutor is satisfied that there is independent evidence to corroborate an admission by the child.
- D. The Juvenile Court shall determine, after inquiring of the Tribal Prosecutor, the child's attorney and the child personally, whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof and whether any improper pressure was exerted.
- E. The Juvenile Court shall provide the child's parent, guardian, or custodian an opportunity to be heard with regard to any matter addressed pursuant the preceding subsections.

Section 805 Admissions – Acceptance by Juvenile Court

- A. The Juvenile Court shall accept an admission by the child and proceed to a disposition only upon finding:

1. That the child fully understands each of the items set forth in Section 804(A);
2. That the child voluntarily, intelligently, and knowingly admits facts sufficient to support a finding that the child committed a delinquent act;
3. That the child has not, in his or her admission or in response to the inquiries required by Section 804 set forth facts which, if found to be true by the Juvenile Court, would be a defense to the allegations;
4. That there are no other compelling factual or legal bases for declining to accept the admission.

Section 806 Denial of Allegations

- A. If the child denies the allegations, the Juvenile Court shall proceed to hear evidence on the delinquency petition.
- B. If the child remains silent, refuses to answer, or answers evasively, the Juvenile Court shall enter a denial of the allegations and proceed to hear evidence on the delinquency petition.

Section 807 Finding on Adjudication

- A. If, having accepted an admission by the child, or upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the allegations of the delinquency petition have been proven beyond a reasonable doubt, the Juvenile Court shall:
 1. Enter its finding in writing;
 2. Set the matter for disposition; and
 3. Specify in writing whether the child is to be continued in any out-of-home placement pending the disposition hearing.
- B. If the Juvenile Court finds that the allegations of the delinquency petition have not been proven beyond a reasonable doubt, it shall enter a written order dismissing the petition and releasing the child from any detention, restrictions, or other conditions previously imposed in connection with the delinquency proceedings.

CHAPTER NINE: DISPOSITION OF DELINQUENCY PETITIONS

Section 901 Predisposition Reports and Examinations

- A. The Juvenile Court may direct the Juvenile Case Coordinator to prepare a written disposition study and report for the Juvenile 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 to have committed a delinquent act;
 - 2. A notice of intent to admit the allegations of the petition has been filed; or
 - 3. Upon request of the Juvenile Court.
- B. 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. Preferences shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the Tribe.
- C. The Juvenile Court may order a medical assessment of a child arrested or detained for an 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. Where there are indications that the child may be emotionally disturbed or developmentally disabled, the Juvenile Court, on a motion by the Tribal Prosecutor or that of 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.
 - 1. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an outpatient basis unless the Juvenile Court finds that placement in a hospital or other appropriate facility is necessary.
- E. The Juvenile Court may order an examination of a child found to have committed a delinquent act by a physician, psychiatrist, or psychologist.
- F. The Juvenile Court may order that a child found to have committed a delinquent act be transferred to an appropriate facility for a period of not more than six (6) days for purposes of diagnosis with direction that the Juvenile Court be given a written report at the end of that period indicating the disposition which appears most suitable.
- G. Evaluations, assessments, dispositional reports, and other material to be considered

by the Juvenile Court in a juvenile hearing shall be submitted to the Juvenile Court and to the parties no later than three (3) days before the scheduled hearing date.

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

Section 902 Disposition Hearings Time Limit

- A. The disposition hearing shall be held:
 1. Within ten (10) days of the adjudication hearing, if the child was taken into custody and has not been released; or
 2. Within twenty (20) days of the adjudication hearing, if the child was not taken into custody or has been released.
- B. Notice of the disposition hearing shall be given to the child and the child's parents, guardian, or custodian, the child's counsel and any other person the Juvenile Court deems necessary for the hearing at least seven (7) days prior to the hearing.

Section 903 Disposition Hearings Purpose and Conduct

- A. The Juvenile 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 delinquent act.
- B. At the disposition hearing, the Juvenile Court:
 1. Shall afford the parties the opportunity to present documentary or testimonial evidence concerning the appropriate disposition of the matter and to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court;
 2. Shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator; and
 3. May consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making its determination.

Section 904 Orders on Disposition

- A. If the Juvenile Court finds that the child has committed a delinquent act, the Juvenile Court may:
 - 1. Enter a written disposition imposing a disposition contained in Section 905; or
 - 2. Enter a written order deferring the disposition for a period not to exceed six (6) months and setting forth the particular conditions to be fulfilled by the child and the child's parent, guardian, or custodian during the deferral period.

- B. When exercising its discretion in dispositional orders, the Juvenile Court shall consider:
 - 1. The nature and seriousness of the delinquent act;
 - 2. The circumstances, age, and mental and physical condition of the child;
 - 3. The child's culpability, as indicated by the circumstances of the particular case;
 - 4. The impact the child's actions have on the community and the victim, if there is a victim; and
 - 5. The child's past record of delinquency, if any.

- C. All dispositional orders issued by the Juvenile Court shall contain a written statement of the facts relied upon by the Juvenile Court in entering the order, the disposition entered, the duration of any conditions or placement or detention ordered and the reasons for rejecting less restrictive alternatives.

Section 905 Disposition Options

- A. If the Juvenile Court finds that the child committed the delinquent act, the Juvenile Court may make and record any of the following orders of disposition for the child's supervision, care, and rehabilitation:
 - 1. An order permitting the child to remain with his parent, guardian, or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;
 - 2. An order requiring the child or the child's parent, guardian, or custodian to participate in an educational or counseling program designed to deter delinquent acts or other conduct or conditions presenting a threat to the welfare of the child or the community;

3. An order requiring the child's parent, guardian, or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;
 4. An order placing the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Juvenile Court may prescribe;
 5. An order requiring the child to pay restitution;
 6. Impose a fine related to the seriousness of the child's offense if the Juvenile Court determines the child has the ability to pay the fine;
 - a. If the child has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult;
 7. An order requiring the child to undergo medical, psychological, or psychiatric treatment, where such treatment is:
 - a. Recommended by a qualified medical, psychological, or psychiatric professional; and
 - b. Necessary to address conditions which contributed to the child's adjudication.
 8. An order requiring the child to perform community service;
 9. An order requiring the child to attend structured after-school, evening, educational, vocational, or other court-approved programs appropriate for meeting the needs of the child and providing for the safety of the community;
 10. An order placing the child in the temporary legal custody of a relative or other responsible adult, subject to such conditions and limitations as the Juvenile Court may prescribe;
 11. An order providing for supervised or conditional release in accordance with the provisions of Section 406; or
 12. An order providing for the detention or other out-of-home placement of the child in accordance with the provisions of Section 405.
- B. If a child found by the Juvenile Court to have committed a delinquent act has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.
- C. The Juvenile Court or the Tribe may designate an individual to monitor a child or a

child's parent, guardian, or custodian's compliance with a disposition order and the Juvenile Court may require the child or the child's parent, guardian, or custodian to regularly report to the designated individual.

Section 906 Deferred Dispositions

- A. Upon entering an order deferring disposition under Section 904(A)(2), the Juvenile Court shall set a hearing to determine whether the child and the child's parent, guardian, or custodian have fulfilled the deferral conditions.
- B. Prior to the ending date of the deferral period, the Juvenile Court may also set one or more interim review hearings to monitor compliance with or fulfillment of the deferral conditions.
- C. At any review hearing conducted pursuant to the provisions of this section:
 - 1. The child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the order deferring disposition; and
 - 2. The Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian, or custodian has engaged in any conduct prohibited by the order deferring disposition.
- D. If the child and the child's parent, guardian, or custodian fulfill the deferral conditions, the Juvenile Court shall, no later than the ending date of the deferral period, enter a written order:
 - 1. Dismissing the delinquency petition with prejudice; and
 - 2. Releasing the child from any restrictions or other conditions or obligations previously imposed by the Juvenile Court.
- E. If the child or the child's parent, guardian, or custodian does not fulfill the deferral conditions, the Juvenile Court may enter a written order:
 - 1. Continuing the review hearing to allow additional time for the child or the child's parent, guardian, or custodian to fulfill the deferral conditions;
 - 2. Modifying the deferral conditions;
 - 3. Extending the deferral for an additional period not to exceed three (3) months; or
 - 4. Revoking the order deferring disposition.
- F. Upon revoking the order deferring disposition, the Juvenile Court may proceed to

enter any written disposition orders authorized under Section 905.

Section 907 Detention—Limitations

- A. The Juvenile Court shall not enter a disposition order providing for the detention or other out-of-home placement of the child unless:
 - 1. No less restrictive alternatives will suffice; and
 - 2. There is clear and convincing evidence that the child should be detained because:
 - a. Such detention is necessary to avert a substantial risk to the health, welfare, person, or property of the child or others;
 - b. There is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court; or
 - c. Each of the following conditions are met:
 - i. The child has repeatedly failed to comply with the disposition orders of the Juvenile Court;
 - ii. Less restrictive alternatives have repeatedly failed to bring the child into compliance; and
 - iii. Detention or out-of-home placement is reasonably calculated to bring the child into compliance.
- B. In no event shall a child be detained in a secure juvenile detention facility for a total period exceeding that for which an adult could be incarcerated for the same act under the Miami Tribe of Oklahoma Criminal Offense Code.
- C. Any detention or out-of-home placement facility shall comply with Sections 405.

Section 908 Disposition Orders – Limitations

- A. Disposition orders entered by the Juvenile Court shall continue in force for not more than one (1) year, unless they are extended after a review hearing under Section 909 or upon finding of a violation of a disposition order under Section 910.
- B. In no event shall disposition orders be extended beyond a total of three (3) years.
- C. The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

- D. With the exception of an order requiring the child to pay restitution, all disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the delinquency proceedings, when the child reaches twenty (20) years of age.

Section 909 Disposition Orders – Review

- A. The Juvenile Court shall conduct a hearing to review any disposition orders entered at least once every six (6) months.
- B. The Juvenile Court shall conduct the hearing for the purpose of determining:
 - 1. Whether the child and the child’s parent, guardian, or custodian are in compliance with those disposition orders;
 - 2. The extent to which those disposition orders have accomplished their intended purposes;
 - 3. Whether those disposition orders should continue without modification or extension, should be revoke, or should be modified or extended.
- C. The Juvenile Court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of:
 - 1. The child or the child’s counsel;
 - 2. The child's parents, guardian, or custodian;
 - 3. The Juvenile Case Coordinator;
 - 4. The Tribal Prosecutor;
 - 5. The institution, agency, or person vested with legal custody of the child or responsibility for protective supervision;
 - 6. The Juvenile Court on its own motion.
- D. All orders to modify, revoke, or extend a disposition shall be in accordance with 904(C).

Section 910 Violation of Disposition Orders

- A. If it is alleged that a child or a child’s parent, guardian, or custodian has failed to comply with a disposition order, the Juvenile Court may conduct a violation hearing separate from the disposition review hearing under Section 909 to determine if the disposition order has been violated.

- B. The Tribal Prosecutor or the individual designated to monitor post-disposition compliance shall file a petition alleging that the child has violated a disposition order. The petition shall include all relevant facts regarding the violation including any dates.
- C. The Court Clerk shall issue a notice of hearing to the child. The notice shall include a copy of the petition alleging a violation, and a notice that a violation hearing will occur, and that the child will need to have any and all witnesses at the Juvenile Court on that day. The child may contact the Court Clerk for issuance of any subpoenas necessary.
- D. At the disposition violation hearing, the Juvenile Court may take any relevant testimony from any person having knowledge regarding the allegations contained in the petition.
- E. If the allegations in the petition are sustained by clear and convincing evidence, the Juvenile Court may modify, extend, or impose any additional disposition permitted under Section 905.

Section 911 Appeals

- A. Subject to the limitation set forth in subsection (B), any party to any proceedings conducted pursuant to the provisions of this Code may appeal from any final order of the Juvenile Court within thirty (30) days.
- B. The Tribe shall not be permitted to appeal an order dismissing a delinquency petition in accordance with Section 807(B).
- C. Appeals from the Juvenile Court shall be conducted in accordance with the appellate rules governing appeals from Tribal Court, to the extent that such rules are not in conflict with provisions of this Code and the time limits imposed by such rules, when applied in conjunction with the provisions of this Code, do not unduly burden the right to appeal.
- D. All records of appellate proceedings shall be kept confidential in accordance with Section 104.

CHAPTER TEN: JUVENILE OFFENSES

Section 1001 Juvenile Offenses

- A. Should any offense contained in this Chapter 10 conflict with the Miami Tribe of Oklahoma Criminal Offenses Code, this Code shall govern as it relates to a child.

Section 1002 Alcohol and Drugs

- A. A child shall not possess, use, or consume alcoholic beverages.
- B. A child shall not possess, use, or consume any controlled substance.
- C. No child shall falsely represent his or her age for the purpose of receiving alcohol or a controlled substance.
- D. For the purposes of this Section 1001, “controlled substance” shall:
 - 1. Consist of the substances listed in 21 U.S.C. § 812, and any other chemical substance, natural or artificial, defined as a controlled substance the possession, sale, distribution, or use of which is prohibited by federal law;
 - 2. Include hemp, as defined in section 7 U.S.C. § 1639o, or the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination; and
 - 3. Include marijuana as defined in 63 Okla. Stat. Ann. § 2-101.
- E. “Controlled substance” shall not include:
 - 1. Marijuana as defined in 63 Okla. Stat. Ann. § 2-101, used for medical purposes as defined and regulated under Oklahoma law, including 63 Okla. Stat. Ann. § 420 et. seq. as amended from time to time.

Section 1003 Curfew

- A. A curfew is imposed upon all persons under the age of sixteen (16) from 10:00 p.m. to 5:00 a.m., who are prohibited from being upon any public road or public place on the Miami Tribe of Oklahoma Reservation during those hours, unless:
 - 1. Such child under 16 is accompanied by a parent, guardian, or other adult who stands in the position of a parent to the minor;

2. On an errand at direction of his or her parent;
 3. Involved in an emergency;
 4. Engaged in going to, or returning from any employment activity, hunting, fishing, or trapping; or
 5. Such child under 16 is attending or going directly to or from some legitimate group, school, church, or community meeting or activity.
- B. Law enforcement shall take into custody any child under 16 who shall violate this curfew and hold the child until they may be returned to their parent or guardian.