

**TITLE 5 – CIVIL CODE
CHAPTER 7 – JUVENILES**

TABLE OF CONTENTS

| | | | |
|---------------------|--|---|----|
| SUBCHAPTER A | | GENERAL PROVISIONS | |
| Section 10 | Purpose | | 1 |
| Section 20 | Definitions | | 2 |
| Section 30 | Juvenile Court Relations with other Agencies | | 6 |
| Section 31 | Juvenile Court Authorization for Signature on Welfare Assistance Grant Funds Application | | 6 |
| SUBCHAPTER B | | JUVENILE OFFENSES | |
| Section 40 | Taking a Child into Custody | | 7 |
| Section 50 | Provision of Rights | | 7 |
| Section 60 | Release or Delivery from Custody | | 8 |
| Section 70 | Review by Presenting Officer or Juvenile Facility | | 8 |
| Section 80 | Notification of Family | | 8 |
| Section 90 | Selection of Juvenile Facility | | 8 |
| Section 100 | Detention Hearing | | 9 |
| Section 110 | Initiation of Proceedings | | 10 |
| Section 120 | Informal Adjustment | | 10 |
| SUBCHAPTER C | | STATUS OFFENSES | |
| Section 130 | Definition of Status Offenses | | 11 |
| Section 140 | Interim Care/Custody | | 11 |
| Section 150 | Voluntary Services | | 12 |
| Section 160 | Voluntary Return Home | | 12 |
| Section 170 | Shelter Needs Assessment | | 12 |
| Section 180 | Initial Proceedings | | 12 |
| SUBCHAPTER D | | CHILD WELFARE POLICY ACT OF 2002 | |
| Section 190 | Child/Family Protection and Welfare | | 13 |
| Section 200 | Findings | | 13 |
| Section 210 | Placement Policy | | 14 |
| Section 220 | Implementation | | 15 |
| SUBCHAPTER E | | ABUSE AND NEGLECT | |
| Section 230 | Duty to Report | | 16 |
| Section 240 | Persons Require to Report | | 16 |
| Section 250 | Anonymous Reports | | 17 |
| Section 260 | Immunity from Liability | | 17 |
| Section 270 | Penalty for Not Reporting | | 17 |
| Section 280 | Initial Report; Content; Form | | 17 |
| Section 290 | Central Registry | | 17 |
| Section 300 | Investigation | | 18 |
| Section 310 | Authority to Remove | | 18 |
| Section 320 | Grounds for Emergency Removal | | 18 |
| Section 330 | Power to Remove | | 18 |
| Section 340 | Waiver of Parental Consent | | 18 |
| Section 350 | Notice of Removal | | 19 |
| Section 360 | Restrictions on Placement | | 19 |
| Section 370 | Filing Protection Petition | | 20 |
| Section 380 | Authorization of Medical Treatment | | 20 |
| Section 390 | Foster Care Licensing | | 20 |

| | | |
|---|---|----|
| Section 395 | In-Home Intervention | 21 |
| SUBCHAPTER F TERMINATION OF PARENTAL RIGHTS | | |
| Section 400 | Purpose | 21 |
| Section 410 | Involuntary Termination | 22 |
| Section 420 | Voluntary Termination of Parental Rights | 22 |
| Section 430 | Effect of Termination of Parental Rights | 23 |
| SUBCHAPTER G ADOPTIONS | | |
| Section 440 | Open Adoption..... | 23 |
| Section 450 | Consent to Adoption | 24 |
| SUBCHAPTER H EMANCIPATION OF MINORS | | |
| Section 460 | Emancipated Minor Defined..... | 24 |
| Section 470 | Effect of Emancipation | 25 |
| Section 480 | Effect of Fraud | 25 |
| SUBCHAPTER I RECORDS | | |
| Section 490 | Juvenile Court Records | 26 |
| Section 500 | Law Enforcement, Fire Department and Social Service Records | 26 |
| SUBCHAPTER J TRUANCY | | |
| Section 510 | Purpose | 27 |
| Section 520 | Short Title; Codification | 27 |
| Section 530 | Definitions | 27 |
| Section 540 | Duties of Parent or Guardian | 28 |
| Section 550 | Exemptions to Enrollment, Notice and Filing Requirements | 28 |
| Section 560 | Truancy- Status Offenses | 29 |
| Section 570 | Failure to Send Child to School | 29 |
| Section 580 | Affirmative Defenses to School Attendance Requirements | 29 |
| Section 590 | Truancy Records; Information Sharing..... | 29 |
| Section 600 | Effective Date and Repealed..... | 30 |
| SUBCHAPTER K MISCELLANOUS | | |
| Section 610 | Rights to Victims | 30 |
| SUBCHAPTER L VOLUNTARY PLACEMENT AGREEMENTS | | |
| Section 620 | Purpose | 30 |
| Section 630 | Authorizations..... | 30 |
| Section 640 | Terms | 30 |

**TITLE 5 – CIVIL CODE
CHAPTER 7 – JUVENILES**

*Legislative History: Enacted on February 18, 1989 by Resolution No. C2-85-89.
Amended on March 17, 1990 by Resolution No. C3-89-90.
Amended on May 24, 1990 by Resolution No. C5-104-90
Recodified on August 9, 2006 by Resolution No. C08-313-06.
Amended on October 10, 2007 by Resolution No. C10-166-07
and Ordinance No. 15-07
Amended on April 9, 2008 by Resolution No. C04-66-08
and Ordinance No. 08-08.
Amended on May 14, 2008 by Resolution No. C05-107-08 and
Ordinance No. 19-08
Amended on March 25, 2009 by Resolution No. C03-47-09 and Ordinance No.
7-09.
Amended on August 4, 2010 by Resolution No. C08-124-10 and Ordinance No.
17-10.
Amended on October 6, 2010 by Resolution No. C10-175-10 and Ordinance No.
22-10.
Amended on February 25, 2015 by Resolution No. C02-34-15 and Ordinance
No. 04-15.
Amended on May 18, 2016 by Resolution No. C05-80-16 and Ordinance
No. 12-16
Amended on September 26, 2018 by Resolution No. C09-218-18 and Ordinance
No. 24-18.*

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Purpose (5 PYTC § 7-10)

The Juvenile Chapter shall be construed and interpreted to fulfill the following purposes:

- (A) To preserve and retain the unity of the family and provide for the care, protection and wholesome mental and physical development of children coming within the provisions of this chapter.
- (B) To ensure that a program of supervision, care and rehabilitation will be available to those children who come within the provisions of the chapter.
- (C) To achieve the purpose of this chapter in a family environment whenever possible, separating the child from his parents only when necessary for the child's welfare or in the interests of public safety.
- (D) To provide fair procedures for enforcing this chapter that recognizes and protects the rights of the parties.

- (E) To separate clearly in the judicial and other processes affecting children under this chapter, the "juvenile offender," the "family in need of services," and the "child in need of protection," and to provide appropriate and distinct dispositional options for treatment and rehabilitation to these children and families.
- (F) To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation with the protection of the Pascua Yaqui Community.

Section 20 Definitions (5 PYTC § 7-20)

- (A) "Abandon" - The failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with the child, including the providing of normal supervision, when such failure is accomplished by an intention on the part of the parent to permit such condition to continue for an indefinite period in the future. Failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence of abandonment.
- (B) "Abandoned Infant" - Means a child under one (1) year of age, and has been left without any identifying indication of the parents' identity, and the circumstances indicate an intent to permanently abandon the child.
- (C) "Abuse" - The infliction of physical, emotional or mental injury on a child, or sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and exploiting a child to such an extent that his health, moods or emotional well being is endangered.
- (D) "Adoptive Placement" - The placement of a juvenile who is legally free for adoption with a family who is certified by a court of competent jurisdiction for adoption.
- (E) "Adult" - A person who is 18 years of age or older.
- (F) "Aggravated Circumstances" shall mean any factor involved in the commission of an act of abuse or neglect that increases its enormity or adds to the injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.
- (G) "Child" - An individual who is under the age of 18 years of age.
- (H) "Child In Need Of Protection" means a child who adjudicated to be:
 - (1) In need of proper and effective parental care or control and has no parent or guardian or custodian able or willing to exercise such care or control.
 - (2) Who has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian necessary for his health and well being.
 - (3) A juvenile who has been abandoned by his parents, guardian or custodian.
 - (4) A juvenile who has been physically, emotionally, psychologically or sexually abused by his parent(s), guardian(s) or custodian(s).

- (5) A juvenile who has been sexually exploited by his or her parent(s), guardian(s) or custodian(s).
- (6) A juvenile whose parent(s), guardian(s) or custodian(s) has knowingly, intentionally or negligently:
 - (a) Placed the child in a situation that may endanger his life or health, or
 - (b) Tortured, cruelly confined, or cruelly punished him.
- (7) A juvenile who has committed delinquent acts as a result of parental pressure, guidance or approval.

- (I) "Consent Decree" - A court order which suspends a "juvenile offender" or "minor in need of control" proceeding and continues the minor under the supervision of the court under terms and conditions negotiated with the juvenile counselor and agreed to by all parties in an informal adjustment conference and/or agreement.
- (J) "Counsel" - An advocate or attorney. An attorney is licensed by the State of Arizona and a member of the Pascua Yaqui Bar. An advocate is a lay counsel who is not a licensed attorney and is a member of the Pascua Yaqui Bar.
- (K) "Court Judge" - Any duly appointed judge of the Pascua Yaqui Tribe when exercising jurisdiction under this chapter.
- (L) "Custodian" - A person, other than a parent or guardian, to whom legal custody of the child has been given but does not include the person that has only physical custody.
- (M) "Custody Or Legal Custody" - The status created by order of the Pascua Yaqui Tribal Juvenile Court or any other Court of competent jurisdiction that vests the following rights and responsibilities:
 - (1) The right to have physical possession of the juvenile.
 - (2) The right and duty to protect, train, and discipline the juvenile.
 - (3) The responsibility to provide the juvenile with food, shelter, education and ordinary medical care, and the authority to consent to surgery or extraordinary care in an emergency.
- (N) "Detention" - The placement of a juvenile in a physically restrictive facility.
- (O) "Dispositional Hearing" - A proceeding of 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 "minor in need of control."
- (P) "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 considers being their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
- (Q) "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.

- (R) "Extended Family" - A person who has reached the age of 18 years and who is the juvenile's grandparent, aunt or uncle, brother or sister, brother-in-law, or sister-in-law, niece or nephew, first or second cousin or step-parent, godparent or any other person defined by the laws and customs of the Pascua Yaqui Tribe.
- (S) "Family in Need of Services"
- (1) A family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardians, or custodian to permit a child to live with them or based on the child's refusal to live with his parents, guardian or custodian.
 - (2) In either of the following circumstances:
 - (a) The conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family.
 - (b) The child or his family are in need of treatment, rehabilitation or services not presently received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services.
 - (c) The conduct complained of presents a clear and substantial danger to the parent, guardian or custodian's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family.
- (T) "Foster Home" - Placement with a family whose home has been licensed to accept placement of children under the age of 18 years.
- (U) "Genetic and Social History" - A comprehensive report, when obtainable, on the birth parents, siblings to the birth parents, if any, and the parents of the birth parents, which shall contain the following information:
- (1) Medical history.
 - (2) Health status.
 - (3) Cause and age at death.
 - (4) Height, weight, eye and hair color.
 - (5) Ethnic origins.
- (V) "Godparents" - The sponsors of the child in religious and cultural ceremonies as recognized by a church and tribal law and custom.
- (W) "Guardian *Ad Litem*" - A person other than the juvenile's parents who is by law responsible for that juvenile, but not the juvenile's property.
- (X) "Interim Care" - Emergency placement in a shelter, home or juvenile shelter facility.
- (Y) "Juvenile" -
- (1) A person under 18 years of age.

- (2) A person 18 years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his 18 birthday.
- (Z) "Juvenile Offense" - An act which, if committed by an adult, is designated a crime under the Pascua Yaqui Tribal Codes.
- (AA) "Juvenile Presenter" - The juvenile presenter or juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in 3 PYTC § 1-4.
- (BB) "Minor in Need of Control" - A minor who persistently or habitually refuses to obey the reasonable or proper order or directions of his parent(s), guardian or custodian or who is beyond the control of such person, or who violates an ordinance establishing a curfew or who violates any status offense defined in Section 130. Such minor is within the jurisdiction of the Juvenile Court which may adjudge such person to be a ward of the Court as a minor in need of control.
- (CC) "Parent" - Includes a natural or adoptive parent but does not include persons whose parental rights have been terminated nor does it include the unwed father whose paternity has not been acknowledged or established.
- (DD) "Petitioner" - Includes both petitioners under a joint petition.
- (EE) "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.
- (FF) "Protective Services" - Program of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life and to preserve the family unit by focusing on families where unresolved problems have produced visible signs of dependency or abuse and the home situation presents actual and potential hazards to the physical or emotional well being of children. The program shall seek to strengthen parental capacity and ability to provide good child care.
- (GG) "Protective Service Worker" - A person employed by Pascua Yaqui Social Services who assists in carrying out the provisions of the Juvenile Chapter.
- (HH) "Putative Father" - Any man not deemed or adjudicated by a court of competent jurisdiction to be the father of genetic origin of a juvenile who claims or is alleged to be the father of genetic origin of such juvenile.
- (II) "Secure Juvenile Detention Facility" - A detention facility designated by the court which restricts the movement and activity of the juvenile and in which he is kept both from sight and sound of adult detainees.
- (JJ) "Shelter Home or Juvenile Shelter Care Facility" - A residential facility which is licensed to care for children under the age of 18 years.
- (KK) "Status Offender" - Acts or conduct which is considered an offense merely because of the age of the actor, such "offenses" are committed by "minors in need of control", for example:
- (1) A child, while subject to compulsory school attendance, who is habitually absent from school.

- (2) Curfew violations.
- (3) Runaway.
- (LL) "Yaqui Indian Child" - Any unmarried person under the age of 18 years who is a minimum one-fourth Yaqui Indian blood quantum and a member of the Tribe or who is eligible for membership.

Section 30 Juvenile Court Relations with other Agencies (5 PYTC § 7-30)

- (A) 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 programs and to receive grants-in-aid to carry out the purposes of this chapter. This authority is subject to the approval of the Tribal Council if it involves an expenditure of tribal funds.
- (B) The Juvenile Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided it is economically administered without unnecessary duplication and expense.
- (C) 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 approval of the Tribal Council before the expenditure of tribal funds.
- (D) The Juvenile Court may accept or decline transfers from other states or tribal courts involving alleged juvenile offenders or minors in need of control for the purposes of adjudication and/or disposition.
- (E) The Juvenile Court is authorized to appoint attorneys to represent children and parents in Child in Need Protection cases and is authorized to enter into agreement with attorneys to provide juvenile court representations. The Court is further authorized to appoint a child or children a guardian ad litem where appropriate in the discretion of the court and to negotiate agreements with attorneys to provide such services as a guardian ad litem.

Section 31 Juvenile Court Authorization for Signature on Welfare Assistance Grant Funds Applications. (5 PYTC § 7-31)

- (A) The Juvenile Court is authorized to sign Applications on behalf of a Child for Bureau of Indian Affairs Welfare Assistance Grant (WAG) funds where:
 - (1) A Child is a ward of the Pascua Yaqui Tribal Court; and
 - (2) The Child's parent or guardian is absent, unable, or unwilling to sign the application; and
 - (3) The Child's Social Services caseworker is unable to sign on the Child's behalf as appointed guardian because he or she is a certifying officer for the Child with the BIA.
- (B) Applications to the Pascua Yaqui Tribal Court for the Court's signature must meet the following criteria:
 - (1) The Child for whom the application is made must be a member of the Pascua Yaqui Tribe; and

- (2) There must be no parent or guardian available or willing to sign the application on the Child's behalf and the Child's social services caseworker can attest that reasonable attempts have been made to contact the Child's parents or guardian; and
 - (3) The parents of the Child for whom the application is made must be unable or unwilling to provide for the Child's special needs in his or her home.
- (C) The criteria listed in Subsection (B) must be certified to the Court by the Child's social services caseworker by affidavit under oath.
- (D) The Court shall be entitled to rely upon the affidavit set forth in Subsection (C) to establish that the requirements of Subsection (A) and (B) are met.
- (E) The Court may establish such rules and procedures as it deems appropriate, for creation and maintenance of files and records relevant to applications submitted to the Court under this Section 31.

SUBCHAPTER B JUVENILE OFFENSES

Section 40 Taking a Child into Custody (5 PYTC § 7-40)

- (A) 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) If the officer has reasonable cause to believe a "juvenile offense" has been committed by the child being detained.
 - (3) An appropriate custody order or warrant has been issued by the Court authorizing the taking of a particular child.
- (B) A probation officer may take a child into custody when:
- (1) A petition has been filed alleging the minor to be an "offender" or "in need of control" or the minor has been so adjudicated.
 - (2) The probation officer has reasonable cause to believe that the juvenile may leave the jurisdiction of the Court or the minor has violated either his conditions of release or conditions of probation.
 - (3) An appropriate custody order or warrant has been issued by the Court authorizing the taking of a particular child.

Section 50 Provision of Rights (5 PYTC § 7-50)

At the time a child is taken into custody as an alleged "juvenile offender" or "minor in need of control", the arresting officer shall give the following warning:

- (A) The child has a right to remain silent.
- (B) Anything the child says can be used against the child in Court.
- (C) The child has the right to the presence of his parent, guardian, or custodian and/or counsel during questioning.

- (D) The right to counsel if he or she is not represented, and if the provision of 3 PYTC § 2-2-310(B) apply, that counsel will be provided at no cost to the defendant if the court determines that the juvenile's parents or guardians are indigent.

Section 60 Release or Delivery from Custody (5 PYTC § 7-60)

A law enforcement officer taking a child into custody shall give the warnings listed in Section 40 to any child he takes into custody prior to questioning and then shall do one of the following:

- (A) Release the child to his/her parent, guardian or custodian and issue verbal counsel or warning as may be appropriate.
- (B) 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 years or older, both child and parent must consent to such release.
- (C) Deliver the child to the juvenile counselor or 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 substance.

Section 70 Review by Presenting Officer or Juvenile Facility (5 PYTC § 7-70)

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/her parent, guardian or custodian in order to appear at the hearing on a date to be set by the Court, unless:

- (A) The act is serious enough to justify continued detention.
- (B) There is probable cause to believe the child has committed the offense(s) alleged.
- (C) There is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings.
- (D) There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

Section 80 Notification of Family (5 PYTC § 7-80)

If a child is taken into custody and not released to his/her parent, guardian or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent. All reasonable efforts shall be made to advise the parent 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, the notice shall be given to a member of the extended family of the parent, guardian or custodian.

Section 90 Selection of Juvenile Facility (5 PYTC § 7-90)

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 70, the following criteria shall be used to determine the appropriate juvenile facility for the child.

- (A) A child may be detained in a secure juvenile detention facility as designated by the Court if one or more of the following conditions are met:
- (1) The child is a fugitive from another jurisdiction wanted for a felony offense.
 - (2) The child is charged with murder, sexual assault, a crime of violence with a deadly weapon, or a crime which has resulted in serious bodily injury.
 - (3) The child is uncontrollable and has committed or has attempted to commit a serious physical assault on the arresting officer or on other security personnel when resisting arrest or detention.
 - (4) 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, battery, rape, arson, burglary or robbery.
 - (5) The child is already detained or on conditional release for another "juvenile offense".
 - (6) The child has a demonstrable recent record of willful failures to appear in Juvenile Court proceedings.
 - (7) The child has made a serious escape attempt.
 - (8) 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.
- (B) A child may be housed in a juvenile shelter care facility as designated by the Court, if one of the following conditions exists:
- (1) One of the conditions of Subsection (A) exists.
 - (2) The child is unwilling to return home or to the home of an extended family member.
 - (3) The child's parents, etc., or extended family member is unavailable, unwilling or unable to permit the child to return to his home.
 - (4) 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.
- (C) A child may be referred to an alcohol or substance abuse emergency shelter or half-way house if it is determined that there is a need for continued custody of the child in accordance with Section 60 and:
- (1) The child has been arrested or detained for a "juvenile offense" related to alcohol or substance abuse.
 - (2) There is space available in an alcohol or substance abuse emergency shelter or half-way house designated by the Court.
 - (3) The child is not deemed to be a danger to himself or others.

Section 100 Detention Hearing (5 PYTC § 7-100)

When a child who has been taken into custody is not released, a detention hearing shall be convened within 72 hours, inclusive of holidays and weekends, of the child's initial detention pursuant to the Rules of Juvenile Court.

Section 110 Initiation of Proceedings (5 PYTC § 7-110)

- (A) Investigation. The presenting officer shall investigate within 48 hours of the juvenile being detained or subsequent release of the juvenile, to determine whether the interests of the juvenile and the Tribe require that further action be taken.
- (B) Recommendation. Upon completion of the investigation, the presenting officer may:
 - (1) Recommend that no further action be taken.
 - (2) Suggest to the child and the child's parents, guardian or custodian that they appear for an informal adjustment conference under Section 120(C).
 - (3) Request that transfer to adult Tribal Court proceedings under 3 PYT R.Juv.P. Rule 60 be held.
 - (4) File a petition under Rules of Juvenile Court, Rule 50. The petition shall be filed within 72 hours if the child is in custody. If the child has been previously released to his parents, guardian or custodian, the petition shall be filed within ten days.

Section 120 Informal Adjustment (5 PYTC § 7-120)

- (A) During the course of the preliminary investigation to determine what further action shall be taken, the juvenile counselor and presenting officer shall confer with the child and the child's parents for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
- (B) The presenting officer shall consider the following factors in determining whether to proceed informally or to file a petition:
 - (1) Nature and seriousness of the offense.
 - (2) Previous number of contacts with police, juvenile counsel or the Court.
 - (3) Age and maturity of the child.
 - (4) Attitude of the child regarding the offense.
 - (5) Willingness of the child to participate in a voluntary program.
 - (6) Participation and input of the child's parents.
- (C) Informal Conference.
 - (1) After conducting the preliminary investigation, the presenting officer shall hold an informal conference with the child and the child's parents, guardian or custodian to discuss alternative courses of action in the particular case.

- (2) The presenting officer shall inform the child, the child's parents, guardian or custodian, of their basic rights under 3 PYT R.Juv.P. Rule 20. 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.
- (3) At the informal conference upon the basis of information obtained during the preliminary investigations, the presenting officer may enter into a written agreement with the child and the child's parents, guardian or custodian, specifying particular conditions to be observed during the informal adjustment period, not to exceed six months. The child and the child's parents, guardian or custodian, shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the Court for a hearing on the case.
- (4) The child is permitted to be represented by counsel at the informal conference.
- (5) If the child does not desire to participate voluntarily in a diversion program, the presenting officer shall file a petition under 3 PYT R.Juv.P. Rule 50.
- (6) Upon successful completion of the informal adjustment agreement, the case shall be closed with no further action taken in the case.
- (7) If the child fails to complete the terms of his informal adjustment agreement, the presenting officer may file a petition in the case under 3 PYT R.Juv.P. Rule 50.

SUBCHAPTER C STATUS OFFENSES

Section 130 Definition of Status Offenses (5 PYTC § 7-130)

- (A) "Minor In Need of Control" Is a youth who by the status of his age has committed an offense for which an adult could not be charged. Such "status offenses" are:
 - (1) Without justification and habitually absent from school.
 - (2) Curfew violation.
 - (3) Runaway.

Section 140 Interim Care/Custody (5 PYTC § 7-140)

- (A) Limitations on Custody. No child who is subject to such proceedings shall be taken into custody unless such taking into custody is in accordance with this Section and with the provision for "interim care" as defendant in this chapter.
- (B) Interim Care without Court Order. A child may be taken into interim care by law enforcement officers 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.
 - (2) An agency legally charged with the supervision of the youth has notified a law enforcement agency that the child has run away from placement ordered by the Court.

- (C) Procedure. A law enforcement official taking a child into custody under the interim care provisions of this chapter shall immediately:
- (1) Inform the child of the reasons for the custody.
 - (2) Contact the juvenile presenting officer 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 presenting officer, or in the event of the unavailability of the juvenile shelter care facility as designated by the Court.
 - (4) Inform the child's family in accordance with Subsection (D).
- (D) Notification of Family. The law enforcement officer or the juvenile presenting officer shall immediately notify the child's parents, 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 presenting officer, who has been contacted. Efforts to notify the child's parents, 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 parents, guardian or custodian, the notice shall be given to a member of the extended family of the parents, guardian or custodian.
- (E) Time Limit. Under no circumstances shall any youth taken into interim care under this Section be held involuntarily for more than 72 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 youth taken into interim care is placed in a facility used for detention of "juvenile offender" or alleged "juvenile offenders", he must be detained in a room separate from the "juvenile offenders" or alleged "juvenile offenders."
- (G) Restrictions 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 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 48 hours after any transportation of a child with an adult under arrest.

Section 150 Voluntary Services (5 PYTC § 7-150)

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

Section 160 Voluntary Return Home (5 PYTC § 7-160)

If a child has been taken into interim care under the provisions of this chapter and the child's parents, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parents, guardian or custodian or as arranged by the juvenile presenting officer.

Section 170 Shelter Needs Assessment (5 PYTC § 7-170)

If the child refuses to return home or if no other living arrangements agreeable to the child and to the child's parents, guardian or custodian can be made, the juvenile presenting officer shall offer the child shelter in an appropriate juvenile shelter care facility as designated by the Court which is located as close as possible to

the residence of the child's parents, guardian or custodian. The juvenile presenting officer also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

Section 180 Initial Proceedings (5 PYTC § 7-180)

- (A) Investigation. The juvenile presenting officer shall conduct an investigation within 48 hours of the youth being referred for interim care and/or upon information from law enforcement, social services, other agencies, or parents, guardian or custodian that the youth has allegedly committed an offense and is a "minor in need of control" to determine whether the interests of the juvenile, the family and/or the Tribe require that further action be taken.
- (B) Recommendation. Upon completion of the investigation, the presenting officer may:
 - (1) Recommend no further action be taken.
 - (2) Suggest to the child and child's parents, guardian or custodian that they seek voluntary services from a social service agency.
 - (3) Recommend that the child and child's parents, guardian or custodian participate in an informal adjustment and conference under Section 120 and/or enter into a consent decree under 3 PYT R.Juv.P. Rule 70.
 - (4) File a petition under 3 PYT R.Juv.P. Rule 140. The petition shall be filed within 48 hours if the youth is in an interim care facility. If the youth is not in "custody" or has been released, the petition shall be filed within ten days.

SUBCHAPTER D CHILD WELFARE POLICY ACT OF 2002

Section 190 Child/Family Protection and Welfare (5 PYTC § 7-190)

This subchapter of the Juvenile Code is intended to provide for the safety, health and well-being of the children and families of the Pascua Yaqui Tribe. The general provisions contained in subchapter A apply herein.

Section 200 Findings (5 PYTC § 7-200)

- (A) Preservation of Yaqui families is critical to the survival of the Yaqui Tribe and Yaqui cultural traditions.
- (B) The Tribe has an obligation and duty to support, preserve, and reunify Yaqui families.
- (C) The Indian Child Welfare Act, 25 U.S.C. §1901 et. seq., gives the Tribe authority to advocate and enforce the Tribe's law in state child welfare cases.
- (D) The Tribe as a sovereign government should exercise its jurisdiction to protect Yaqui children.
- (E) Tribal members surveyed believe that Yaqui families should have extended family and tribal support when parents cannot properly care for their children.
 - (1) Tribal members surveyed believe that Yaqui children should be placed with extended family or other Yaqui families if their parents cannot properly care for them.

- (2) Tribal members surveyed are willing to help other family members or other Yaqui families if parents cannot properly care for their children.
 - (3) Tribal members surveyed do not believe that Yaqui children should be placed in state foster care.
 - (4) Tribal members surveyed believe the Tribe should provide various services to support parents, children, extended family members, and Yaqui foster care parents if parents cannot properly care for their children.
- (F) There are approximately 60 child dependency cases involving child tribal members. Approximately 30 cases are in state courts and approximately 30 cases are in Tribal Court.
- (G) The Tribe has not consistently exercised its sovereignty to transfer jurisdiction of child dependency cases from state court to the Tribe's court. Prior to 2002, only two cases have been transferred.
- (H) There is no current policy or guidelines in place to provide guidance to the Tribe's social services workers or attorneys on how to represent the Tribe's interest in either state or Tribal Court.

Section 210 Placement Policy (5 PYTC § 7-210)

- (A) Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq, the Tribe hereby establishes the following out of home placement policies for Yaqui children in state court and the Tribe's court dependency cases:
- (1) Yaqui children shall be placed, in order of preference, with:
 - (a) A Yaqui extended family member.
 - (b) A non-Yaqui extended family member.
 - (c) A non-related Yaqui family.
 - (d) An Indian family.
 - (e) A non-Indian family licensed or approved by the Tribe.
 - (2) If Yaqui children are placed with a non-Yaqui family, the following placement conditions, when reasonable, should be imposed:
 - (a) Yaqui child/children should have reasonable access to Yaqui family members, including, but not limited to: visitation, phone calls, and correspondence;
 - (b) If the Yaqui child/children wish to observe or participate in the Tribe's cultural and religious ceremonies - especially Cuaresma (Easter) - the Tribe's Social Services department must be notified so that appropriate arrangements can be made;
 - (c) Yaqui child's/children's name(s) cannot be changed;
 - (d) All correspondence from the Tribe (such as the Yaqui Times, special mailings, etc.) must be accepted;
 - (e) The Tribe must be kept informed of all address changes;

- (f) The Tribe's Social Services department must be allowed to conduct reviews at least two times per year, upon adequate advance notice from the Tribe;
 - (g) If the non-Yaqui family placement or parental rights are at risk, the Tribe's Social Services department must be notified immediately.
- (3) These placements preferences are effective for temporary and permanent placements, including foster care, permanent guardianship, and adoption placements.
 - (4) The placement preferences do not apply to court-ordered institutional care.
- (B) Pursuant to the inherent sovereign authority of the Pascua Yaqui Tribe, the Tribe hereby establishes the following permanency preferences:
- (1) Family reunification.
 - (2) Extended family member or foster parent permanent guardianship.
 - (3) Termination of parental rights and adoption only when absolutely necessary.
- (C) Pursuant to the inherent sovereignty of the Pascua Yaqui Tribe and the Indian Child Welfare Act, the Tribe should request a transfer of jurisdiction to the Tribe's court on every appropriate state child dependency case. The decision to transfer a case will be made by the ICWA Case Review Board.
- (D) The Tribe will develop and provide holistic and unified programs and services to support family reunification.
- (E) The Tribe will develop and provide holistic and unified programs and services to support extended family members and other Yaqui families who serve as guardians or foster parents for Yaqui children.
- (F) The Tribe will negotiate an Inter-Governmental Agreement with the State of Arizona that reflects the Tribe's policy for placement and permanency preferences as well as program and service requirements.
- (G) The Tribe will negotiate a Title IV-E (foster care) funds sharing agreement with the State of Arizona.

Section 220 Implementation (5 PYTC § 7-220)

- (A) The Tribe's attorneys, representing the Tribe in tribal or state court, shall present the Tribe's placement and permanency planning policy when filing the original petition or the motion to intervene.
- (B) The Tribe will establish, in the Department of Social Services, a Family Preservation Office. The responsibilities of the Office are to:
- (1) Target at-risk families.
 - (2) Develop and present for Council approval, a Child and Family Services Plan, consistent with federal regulations, that encompasses the planning and service delivery for child welfare and family preservation services.

- (a) The programs and services should reflect the Tribe's preference for placing children with Yaqui extended family members or other Yaqui families. This should be taken into account when creating program and service eligibility requirements; provided these requirements should not be in violation of federal or tribal law.
- (b) The programs and services should include, but aren't limited to, placement prevention, family reunification, and family-based services that seek to promote family preservation.
- (3) Coordinate the above-listed programs with other departments of the Tribe.
- (4) Coordinate the above-listed programs with the state of Arizona.
- (5) Aggressively identify and obtain resources to support the Office and its programs and services.
- (C) The Departments of Social Services, Behavioral Health, Employment, Housing, and Education and Tribal Court shall work together to implement these programs and services.
- (D) The Department of Social Services will hire, or, if necessary, contract for, a grant writer who shall monitor, identify, and upon Council approval, apply for federal, state, and private organization programs that are available to the Tribe for family preservation, family reunification, and child welfare purposes.
- (E) The Department of Social Services will report, on a quarterly basis, to the Council on the following items:
 - (1) The implementation of the Office of Family Preservation.
 - (2) The development of the Child and Family Services Plan.
 - (3) The development, implementation, and coordination of new programs.
 - (4) The status of current child welfare cases (in both state and Tribal Court).
 - (5) Inventory of all Yaqui children in out-of-home placements and the type of placements.
- (F) Jurisdiction of child dependency cases shall be accepted by the Pascua Yaqui Tribe trial court when petitioned by the tribal prosecutor, irrespective of whether it is an original petition or based on a transfer from state court.

SUBCHAPTER E ABUSE AND NEGLECT

Section 230 Duty to Report (5 PYTC § 7-230)

Any person who knows or has reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the Tribal Social Services Department, and the Tribal Law Enforcement Department, and the Juvenile Presenting Office.

Section 240 Persons Required to Report (5 PYTC § 7-240)

Those persons mandated to report the suspected abuse, neglect or abandonment include any:

- (A) Physician, nurse, dentist, optometrist, chiropractor, psychiatrist, psychologist, therapist/counselor, medical emergency technician, paramedic, fire department personnel or any other medical or mental health professional or worker;
- (B) School principal, teacher, classroom aide, counselor, bus driver or any other tribal, federal, public or private school official or employee;
- (C) Social worker, day care worker, or other child care staff including foster parents, residential care or institutional personnel;
- (D) Peace officer, law enforcement officer, probation officer, judge, court clerk, attorney, lay advocate, or other judicial system official or employee.

Section 250 Anonymous Reports (5 PYTC § 7-250)

Any person who has a reasonable cause to suspect that child has been abused, neglected, or abandoned, shall immediately report the abuse, neglect or abandonment. Those persons reporting, except as specified in Section 240 above, may remain anonymous.

Section 260 Immunity from Liability (5 PYTC § 7-260)

Persons or agencies reporting in good faith that knows or suspect instances of child abuse, neglect, or abandonment, shall be immune from civil liability or criminal prosecution.

Section 270 Penalty for Not Reporting (5 PYTC § 7-270)

Those persons mandated to report a case of known or suspected abuse, neglect or abandonment pursuant to this code, and who knowingly fail to do so or willfully prevent someone else from doing so, shall be subject to a criminal cause of action proceeding in the Tribal Court. Tribal employees, who are required to report suspected abuse, neglect, or abandonment and fail to do so, shall be subject to disciplinary proceedings under the Tribe's Personnel Policies.

Section 280 Initial Report; Content; Form (5 PYTC § 7-280)

- (A) Form: Those persons mandated to report under Section 240 above, shall promptly make an oral report to the Tribal Social Services Department and then follow with a written report soon thereafter as possible, but within 48 hours.
- (B) Contents: The following information shall be included in the written report:
 - (1) Names, addresses and tribal affiliation of the child, his parents, guardians, or custodians;
 - (2) The child's age;
 - (3) The nature and content of the child's abuse, neglect or abandonment;
 - (4) Previous abuse or neglect of the child or his siblings if known;
 - (5) The name, age and address of the person alleged to be responsible for the child's abuse or neglect, if known;
 - (6) The name and address of the person or agency making the report.
- (C) Photographs of Visible Trauma.

Persons reporting suspected abuse or neglect may photograph or cause x-rays to be taken of the child suspected of being abused or neglected, and such photographs or x-rays may be introduced into evidence at a hearing.

Section 290 Central Registry (5 PYTC § 7-290)

- (A) The Department of Social Services and/or the Law Enforcement Department shall maintain a central registry of reports, investigations and evaluations of child abuse and neglect as required in Section 280 and shall include the status outcome of the report.
- (B) Data shall be kept in the central registry until the child concerned reaches the age of 18 years (unless the Juvenile Court order that individual records be kept on file beyond that date in order to protect other siblings). Individual data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the department and the Juvenile Court to social service agencies, public health agencies, law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.
- (C) Central registry non-identifying aggregate data may be provided annually to the Tribal Council.

Section 300 Investigation (5 PYTC § 7-300)

The child abuse or neglect initial report filed pursuant to Section 280 shall be investigated within one Court working day by the Social Services Department or other appropriate agency, unless the Juvenile Court directs otherwise.

Section 310 Authority to Remove (5 PYTC § 7-310)

If the person investigating the report of abuse or neglect finds that the grounds for removal, listed in Section 320 below have been met, such persons may remove the child, from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

Section 320 Grounds for Emergency Removal (5 PYTC § 7-320)

No child shall be removed from the home of the child's parent, guardian, or custodian without the consent of the parent, guardian, or custodian absent a specific order of the Juvenile Court, except as follows:

- (A) When failure to remove the child may result in a substantial risk of death, permanent injury or serious emotional harm; or
- (B) When the parent, guardian or custodian is unable or unwilling to provide for the child's basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

Section 330 Power to Remove (5 PYTC § 7-330)

A social services department worker or a law enforcement officer shall have the power to remove a child pursuant to this Section provided that:

- (A) Reasonable grounds existed at the time of the removal to believe the removal was necessary pursuant to Section 320; and

- (B) The person removing the child ensures the safety and well-being of the child; until such time as the Juvenile court assumes control of the matter; and
- (C) The person removing the child complies with the notice provisions contained in Section 350.

Section 340 Waiver of Parental Consent (5 PYTC § 7-340)

- (A) Examinations. Photographs, x-rays, medical examinations, and psychological examinations of a child alleged to have been the subject of abuse or neglect shall be allowed without parental consent and/or court order if the local child protective services worker or law enforcement officer has reason to believe the child has been subject to abuse or neglect.
- (B) Interviews. In any case in which social services or local law enforcement has reason to believe that a child has been subject to abuse or neglect, the officials shall be allowed to interview the child without first obtaining the consent of the parent, guardian or custodian.

Section 350 Notice of Removal (5 PYTC § 7-350)

- (A) Notice to Juvenile Court. After a child is removed from his home, the person who removed the child shall attempt to contact the Juvenile Court within six hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than the close of business next Court working day.
- (B) Notice to Parent, Guardian or Custodian. The Court shall make all reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the Court knowing the child was removed. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or to the location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

Section 360 Restrictions on Placement (5 PYTC § 7-360)

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of juveniles alleged to be juvenile offenders, but may be detained in the following community-based shelter care facilities:

- (A) A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective services, etc.
- (B) A facility operated by a licensed child welfare services agency; or
- (C) With a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or negligent parent, guardian or custodian, or to the residence where the alleged abuse occurred, without the prior approval of the Court; or
- (D) Any other suitable place, other than the facility for the care and rehabilitation of Juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the Social Services Department.

Section 370 Filing Protection Petition (5 PYTC § 7-370)

(A) Authorization to File Petition.

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the juvenile presenting officer on behalf of the Tribe and in the best interest of the child.

(B) Time Limitations.

- (1) If a child has been removed from the home, then a child/family protection petition shall be filed with the Children's Court no later than 12:00 p.m. of the second Court working day following the removal.
- (2) If the child has not been removed from the home, then a child/family protection petition shall be filed with the Juvenile Court within three days of the Social Services Department completing their initial investigation.

Section 380 Authorization of Medical Treatment (5 PYTC § 7-380)

At any time whether or not the child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

- (A) A parent, guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or
- (B) If a physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian, or other custodian refuses or fails to consent, and if time allows in a situation of this type, the Court shall cause every effort to be made to grant the parents, guardian or custodian, an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.
- (C) In making this order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Tribal customs, traditions or religions, if the child or his parent, guardian or custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment, or practices in fact the Tribal customs, traditions or religion upon which they rely for such treatment of the child.
- (D) After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.
- (E) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to any criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

Section 390 Foster Care Licensing (5 PYTC § 7-390)

The Pascua Yaqui Tribe Social Services Department shall promulgate rules, regulations and procedures for the licensing and regulation of foster homes.

Such rules, regulations and procedures shall be available to foster parents, potential foster parents, and the Court. Any other parties may request copies for a fee.

Section 395 In-Home Intervention (5 PYTC § 7-395)

- (A) After the filing of a Child In Need of Protection petition, the court may order in-home intervention if all of the following are true:
 - (1) The child has not been removed pursuant to Section 320 (A) of this chapter.
 - (2) In-home intervention appears likely to resolve the risk issues described in paragraph 4 of this subsection.
 - (3) The parent, guardian or custodian agrees to a case plan and participation in services.
 - (4) One of the following condition exists:
 - (a) The child is at risk of harm, due to the inability or unwillingness of the parent guardian or custodian, to provide food, clothing, shelter or medical care.
 - (b) The parent, guardian or custodian is unable to provide proper care, control and supervision of the child.
- (B) The in-home intervention order may include a training or treatment plan for the parent, guardian or custodian and the child. Child Protective Services may be ordered to provide services, including Title IVE accepted services, to the parents that help them accomplish their case plan.
- (C) The in-home intervention shall include a specific time for completion of the in-home intervention, which shall not exceed one (1) year without review and approval by the court. The court shall dismiss the Child In Need of Protection Petition if the specific time for completion of the in-home intervention has expired without being extended by the court and a formal trial on the issues has not been set as provided in 3 PYTC § 2-6-260.
- (D) If the parent, guardian or custodian violates the in-home intervention order, the court may take whatever steps it deems necessary to obtain compliance or may rescind the order and set a pre-trial conference and formal trail on the issues as provided in sections 3 PYTC § 2-6-250 and 3 PYTC § 2-6-260.

SUBCHAPTER F TERMINATION OF PARENTAL RIGHTS

Section 400 Purpose (5 PYTC § 7-400)

The purpose of this subchapter is to provide for the voluntary and involuntary termination of the parent/child relationship and for the substitution of parental care and supervision by the judicial process. This subchapter shall be construed in a manner consistent with the philosophy that all parties shall be secured their rights as enumerated in the Indian Civil rights Act of 1968 and that the family unit is of most value to the community and the individual family members, when that unit remains united together. Termination of the parent/child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interests of the child to terminate the parent child relationship.

Section 410 Involuntary Termination (5 PYTC § 7-410)

(A) Grounds for Involuntary Termination.

- (1) That the parent has abandoned the child.
- (2) That the parent has willfully inflicted repeated physical abuse upon the child resulting in serious physical injuries to the child.
- (3) Willful and repeated acts of sexual abuse or sexual exploitation.
- (4) The return of the child may result in serious permanent emotional damage as supported by the best evidence available in the field of child development.
- (5) The parent is unable to discharge parental responsibilities because of mental illness, mental deficiency, or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continued for a prolonged period indeterminate period.
- (6) The child has been under the care and custody of the Social Services Department for fifteen (15) of the most recent twenty-two (22) months and the parent has been unable to remedy the circumstances that caused the child to be under the care and custody of the Social Services Department and there is a substantial likelihood that the parent will not be capable of exercising proper care and control in the near future.
- (7) The parent has been convicted of any of the following offenses: the murder of another child of the parent; the manslaughter of another child of the parent; the aiding or abetting, attempting, conspiring or soliciting to commit the murder or manslaughter of another child of the parent; or a felony assault that results in serious bodily injury to the child or another child of the parent.
- (8) If the Tribal Court has determined a child to be an abandoned infant.

(B) Pre-Filing Requirements.

A petition seeking involuntary termination of the parent-child relationship must establish the following:

- (1) A ground for the involuntary termination of parental rights as provided by sub-section (A) of this section.
- (2) Continuation of the parent/child relationship clearly diminishes the child's prospects of successful placement into a permanent and stable home.
- (3) Not returning the child to their parent is the least detrimental alternative that can be taken.
- (4) Termination of the parental rights are in the child's best interest.

Section 420 Voluntary Termination of Parental Rights (5 PYTC § 7-420)

Parental rights may be relinquished voluntarily by a parent in writing, if signed by the parent in the presence of the Court and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten days after the birth of the child. The Court shall ensure that the

parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his/her parental rights shall be provided an interpreter if she/he does not understand English.

Section 430 Effect of Termination of Parental Rights (5 PYTC §7-430)

- (A) Upon the termination of parental rights, all rights, powers, privileges, immunities, duties and obligations including rights to custody, to control visitation or support existing between the child and parent shall be severed and terminated unless otherwise directed by the Court. The parent shall have no standing to appear at any future legal proceeding concerning the child. Any support obligations existing prior to the effective date of the order terminating parental rights shall not be severed or terminated. The rights of one parent may be terminated without affecting the rights of the other parent. A termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination.
- (B) An order terminating the parent/child relationship does not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this chapter be deemed to affect any rights or benefits that the child derives from the child's descent from a member of a federally recognized Indian tribe.

SUBCHAPTER G ADOPTIONS

Section 440 Open Adoptions (5 PYTC § 7-440)

Adoptions under this subchapter shall be in the nature of "open adoptions." The purpose of such open adoptions is not to permanently deprive the child of connections to, or knowledge of, the child's natural family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end, the following shall apply and be contained in all adoptive orders and decrees.

- (A) The adoptive parents and adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as forth herein.
- (B) The adoptive child shall have an absolute right, absence a convincing and compelling reason to the contrary, to information and knowledge about his natural family and his tribal heritage.
- (C) The adoptive child and members of the child's natural extended family (including parents) may have the right to reasonable visitation, subject to reasonable controls of the adoptive parents, unless otherwise restricted by the Court for a compelling reason.
- (D) Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents and vice versa in the same manner as if natural parents and child.

Section 450 Consent to Adoption (5 PYTC § 7-450)

- (A) Written consent to an adoption is not required if:
- (1) The parent has abandoned the child.
 - (2) The parent's rights have been terminated.
 - (3) The parent has relinquished his parental rights.
 - (4) The parent has been declared incompetent.
- (B) Written consent to an adoption is required of:
- (1) The biological or adoptive mother.
 - (2) The biological, adoptive or, acknowledged father.
 - (3) The custodian if empowered to consent.
 - (4) The Court if the custodian is not empowered to consent.
 - (5) The child if over 12 years of age.
- (C) Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court prior to ten days after the birth of the child. An interpreter shall be provided if the person consenting to the adoption does not understand English. Consents of a child over the age of 12 years shall be made orally either in Court or in chambers with only the judge, any other person(s) the judge deems necessary, and the child present.
- (D) Any consent given under the provisions of this chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.
- (1) All withdrawals must be in writing and notarized or witnessed by the Clerk of the Court, with the original being filed with the Court.
- (E) Within two years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing, the Court shall vacate the decree and return the adopted person to that status he had prior to the entry of the decree.

SUBCHAPTER H EMANCIPATION OF MINORS

Section 460 Emancipated Minor Defined (5 PYTC § 7-460)

Any person under the age of 18 years who comes within the following description is an emancipated minor:

- (A) Who has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

- (B) Who is on active duty with any of the armed forces of the United States of America; or
- (C) Who has received a declaration of emancipation pursuant to 3 PYT R.Juv.P. Rule 430.

Section 470 Effect of Emancipation (5 PYTC § 7-470)

An order that a minor is emancipated shall have the following effects:

- (A) The minor may consent to medical, dental or psychiatric care, without parental consent, knowledge or liability;
- (B) The minor may enter into a binding contract;
- (C) The minor may sue and be sued in his own name;
- (D) The minor shall be entitled to his own earnings and shall be free of control by his parents or guardian;
- (E) The minor may establish his own residence;
- (F) The minor may buy and sell real and personal property;
- (G) The minor may not thereafter be the subject of a petition as an abused, dependent, neglected or uncared for child or youth;
- (H) The minor may enroll in any school or college, without parental consent;
- (I) The minor shall be deemed to be over 18 years of age for purposes of securing an operator's license, and a marriage license without parental consent;
- (J) The parents of a minor child shall no longer be the guardians of the minor;
- (K) The parents of a minor shall be relieved of any obligations respecting his school attendance;
- (L) The parents shall be relieved of all obligations to support the minor;
- (M) The minor shall be emancipated for the purposes of parental liability for his acts; and
- (N) The minor may enlist in the armed forces of the United State without parental consent.

Section 480 Effect of Fraud (5 PYTC § 7-480)

A declaration of emancipation obtained by fraud or by the withholding of material information shall be voidable. The voiding of any such declaration pursuant to this section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the declaration was in effect.

A proceeding under this section may be commenced by any person or by any public or private agency. Notice of the commencement of such a proceeding and of any order declaring the declaration of emancipation to be void shall be consistent with the requirements of 470(B) and (D).

SUBCHAPTER I RECORDS

Section 490 Juvenile Court Records (5 PYTC § 7-490)

A record of all hearings in Juvenile Court shall be made and preserved. All Juvenile Court records shall be confidential and shall not be open to inspection to any but the following:

- (A) The child.
- (B) The child's parent, guardian or custodian.
- (C) The prospective adoptive parent(s).
- (D) The child's counsel or guardian *ad litem*.
- (E) The Juvenile Court's personnel directly involved in the handling of the case.
- (F) Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.
- (G) The Juvenile Presenting Officer and Tribal Prosecutor.
- (H) The Tribal Police Department, for inclusion in its records.
 - (1) Notwithstanding any other provision of Tribal law, the Tribal Police Department shall be authorized to share its records with any Law Enforcement Agency, including, but not limited to the Pima County Sheriff's Department and the City of Tucson, Police Department, for use in their records system and subsequent sharing.
 - (2) For purpose of this subsection, a Law Enforcement Agency shall be defined as any federal, state, state political subdivision, and or Indian Agency responsible for investigating possible violations of the criminal law, enforcing the criminal laws, prosecuting violations of the criminal laws or detaining violators of the criminal laws of the United States, and state or political subdivision of a state or an Indian tribe.

Section 500 Law Enforcement, Fire Department and Social Service Records (5 PYTC § 7-500)

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement, fire department and social services records shall be confidential and shall not be open to inspection to any but the following:

- (A) The child.
- (B) The child's parent, guardian or custodian.
- (C) The prospective adoptive parent(s).
- (D) The child's counsel or guardian *ad litem*.
- (E) The Juvenile Court's personnel directly involved in the handling of the case.
- (F) Any other person by order of the Court having legitimate interest in the particular case or the work of the Court.

- (G) The Juvenile Presenting Officer and Tribal Prosecutor.
- (H) The Tribal Police Department for inclusion in its records.
 - (1) Notwithstanding any other provision of Tribal law, the Tribal Police Department shall be authorized to share its records with any Law Enforcement Agency, including but not limited to, the Pima County Sheriff's Office and the City of Tucson Police Department, for use in their record's system, and subsequent sharing.
 - (2) For the purposes of this subsection, a Law Enforcement Agency shall be defined as any federal, state, state political subdivision or Indian agency responsible for investigating possible violations of the criminal laws, enforcing the criminal laws, prosecuting violations of the criminal laws or detaining violators of the criminal laws of the United States, any state or political subdivision of a state, or Indian tribe.

SUBCHAPTER J TRUANCY

Section 510 Purpose (5 PYTC § 7-510)

The purpose of this ordinance is to require the regular attendance at school of all school-age children living on the reservation.

Section 520 Short Title; Codification (5 PYTC § 7-520)

- (A) This ordinance shall be known as the "Truancy Reduction Ordinance of 2010."
- (B) This ordinance shall be codified in Title 5, Chapter 7, Subchapter J.

Section 530 Definitions (5 PYTC § 7-530)

For purposes of this subchapter:

- (A) "Child," "Juvenile" or "Minor" refers to an individual who is under the age of 18 years of age.
- (B) "Charter school" means a school as defined in A.R.S. §15-101(3).
- (C) "Diligent efforts" means efforts by the parent or guardian to send their children to school. Such efforts by the parents or guardians may include, but is not limited to the following: Enrolling their children in school, communicating with their child's school regarding their child's attendance, documenting such communications with the school, arranging for transportation for their children to get to and from school, and any disciplinary efforts pursued by the Parent or guardian.
- (D) "Guardian" means the person who has legal custody, care, and control of the child pursuant to court order, including foster parents.
- (F) "Home school" or home-schooled means a school conducted primarily by the parent or guardian, or instruction provided in the child's home at the parent or guardian's direction, and whose instruction meets the educational standards established by the State of Arizona.
- (G) "Parent" means the natural or adoptive parent of a child but does not include persons whose parental rights have been terminated nor does it include the unwed father whose paternity has not been established.

- (H) "Private school" means a nonpublic or non-State institution, other than the child's own home, where academic instruction is provided for at least the same number of days and hours each year as is required of similarly-aged children in the equivalent, local public school system.
- (I) "Public School" means any public institution, including charter schools, established for the purposes of offering instruction to pupils in pre-kindergarten programs or any combination of grades one through twelve."
- (J) "Truancy" or "Truant" is any unexcused absence from one or more classes or periods during the same school day."

Section 540 Duties of Parent or Guardian (5 PYTC § 7-540)

- (A) The parent or guardian must:
 - (1) Enroll each child who has reached the age of six (6), and through and including the age of seventeen (17), in a public, private, charter, or home school that provides instruction in at least the subjects of reading, grammar, mathematics, social studies and science.

Section 550 Exemptions to Enrollment, Notice and Filing Requirements (5 PYTC § 7-550)

- (A) A parent or guardian is excused from the responsibilities described in Section 540, above, if:
 - (1) The child is in such physical or mental condition, as supported by written medical opinion, that instruction is inexpedient or impracticable; or
 - (2) The child has satisfactorily completed a 12-grade course; received a high school diploma or equivalent acknowledgment of study; or passed a GED exam, as established by legitimate certificate or documentation; or
 - (3) The child, through his parent/guardian, has presented reason(s) for nonattendance at school which are satisfactory to the school principal or the school principal's designee and such approval is memorialized in writing and signed by the principal or designee; or
 - (4) The child is at least 14 years old and is actively enrolled and satisfactorily pursuing a work-training, career education, career & technical education, vocational education or manual training program which meets the educational standards established and approved by the State of Arizona Department of Education, unless and until such time that the Tribe supplements and/or establishes its own standards.
 - (5) The child will attend home school and parent/guardian has filed an affidavit of intent with the Tribe's Education Division stating that the child is being provided with instruction in a home school.
 - (a) The affidavit of intent shall include:
 - (i) The child's name.
 - (ii) The child's date of birth.
 - (iii) The current address of the school the child is attending.
 - (iv) The name, telephone number(s) and address(es) of those persons who currently have custody of the child; and

- (v) The name(s) of those who will be accountable for the day-to-day academic instruction and periodic performance evaluation.
- (b) An affidavit of intent shall be filed within 30 days from the time the child purportedly begins school. Such affidavit is required at the start of each new school year unless the home school instruction is terminated. The parent or guardian shall notify the Tribe's Education Division within 30 days of such termination, indicating that the child is no longer being instructed at a home school and what academic plans will be replacing the home schooling. If the home school instruction is later resumed, the parent or guardian shall again file an affidavit with the Tribe's Education Division, within 30 days of resumption.
- (c) If the child will attend home school, attest that the standards for measuring appropriate teaching, curriculum and testing will be no less than those outlined by the State of Arizona under A.R.S. §§15-745(B), 15-763, 15-802.01 and 15-828 unless and until such time that the Tribe supplements and/or establishes their own criteria for appropriate home-schooling.

Section 560 Truancy – Status Offenses (5 PYTC § 7-560)

Any child who is truant shall be adjudicated as a status offender for *Minor in Need of Control* as defined in the Tribal Juvenile Code.

Section 570 Failure to Send Child to School (5 PYTC § 7-570)

Any Indian who shall without good cause neglect or refuse to send his or her children or any children under his or her care to school and said children having not reached their 18th birthday shall be deemed guilty of an offense.”

Section 580 Affirmative Defenses to School Attendance Requirements (5 PYTC § 7-580)

- (A) A child, parent or guardian may raise an affirmative defense against a violation of Sections 560 or 570 if:
 - (1) The child, parent, or guardian establishes any of the exceptions contained in section 550; or
 - (2) The child is absent from the school either with the school's permission, or as a result of suspension or expulsion; or
 - (3) The child is engaged in a cultural activity that requires the child's participation somewhere other than school during regular school hours and which is authorized by the parent or guardian; or
 - (4) The child is being home-schooled pursuant to this ordinance.”

Section 590 Truancy Records; Information Sharing (5 PYTC § 7-590)

Law Enforcement shall be authorized to share and receive information regarding children, and regarding parents or guardians who are under investigation for a truancy offense, with any department or agency that may facilitate their investigation or that may provide services to such individuals.”

Section 600 Effective Date and Repealed (5 PYTC § 7-600)

- (A) To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supersede and the conflicting provision shall be and hereby is repealed.
- (B) This Ordinance is effective upon the date of its enactment.”

SUBCHAPTER K MISCELLANEOUS

Section 610 Rights of Victim (5 PYTC § 7-610)

The rights afforded victims, as set forth in Title 4, Chapter 5, shall apply to all juvenile court proceedings.

SUBCHAPTER L VOLUNTARY PLACEMENT AGREEMENTS

Section 620 Purpose (5 PYTC § 7-620)

The purpose of voluntary placement is to help parents who may need assistance for a short period of time, by providing basic care for their child(ren) in an out-of-home setting.

Section 630 Authorization (5 PYTC § 7-630)

The Social Services Department is authorized in its discretion to enter into voluntary placement agreements with parents where there is a reason to believe there is a child in need of protection. Under no circumstances is voluntary placement agreement to be considered when the child is at serious risk of abuse or neglect. If evidence exists to support a petition of abuse or neglect, a petition must be filed.

Section 640 Terms (5 PYTC § 7-640)

- (A) A voluntary placement agreement shall be by written agreement between the Social Services Department and the parent(s). A separate written agreement shall be entered into between the Social Services Department and a temporary placement.
- (B) The voluntary placement agreement shall specify at a minimum the legal status of the child and the rights and obligations of the parent(s) or guardian(s), the child and the Social Services Department while the child is in placement. Such status and obligations are as follows:
 - (1) The child is in the temporary custody of the Social Services Department and the parent(s) has authorized the Social Services Department to obtain any needed emergency medical care or make decisions on other basic needs for the child, and temporary placement with a party proposed by the parent(s) or determined by the Social Services Department.
 - (2) The parent is agreeing to have the Social Services Department take this temporary custody and provide placement while the parent(s) is addressing any outstanding issues, which could affect the safety and well-being of the child.
 - (3) A statement that the parent(s) can revoke the voluntary agreement and have the child returned any time before Court intervention.

- (4) The term of the agreement shall be for a period of up to ninety (90) days. The agreement may be renewed one time for up to an additional ninety (90) days.
- (C) If the parent fails to comply with the voluntary placement agreement, the Social Services Department may terminate the agreement and file a child in need of protection petition.”

DISPOSITION TABLE

| Former Section | New Section |
|-------------------------------------|---------------------|
| Title 2, Chapter 1 | Subchapter A |
| Title 2, Ch. 1, Sec. 1.1 | Section 10 |
| Title 2, Ch. 1 | Section 20 |
| Title 2, Ch. 1, Sec. 1.4 | Section 30 |
| NEW | Section 31 |
| Title 2, Ch. 3, Sec. 3.1 | Section 40 |
| Title 2, Ch. 3, Sec. 3.3 | Section 50 |
| Title 2, Ch. 3, Sec. 3.4 | Section 60 |
| Title 2, Ch. 3, Sec. 3.5 | Section 70 |
| Title 2, Ch. 3, Sec. 3.6 | Section 80 |
| Title 2, Ch. 3, Sec. 3.7 | Section 90 |
| NEW | Section 100 |
| Title 2, Ch. 3, Sec. 3.9 | Section 110 |
| Title 2, Ch. 3, Sec. 3.10 | Section 120 |
| | |
| Title 2, Chapter 4 | Subchapter C |
| Title 2, Ch. 4, Sec. 4.1 | Section 130 |
| Title 2, Ch. 4, Sec. 4.2 | Section 140 |
| Title 2, Ch. 4, Sec. 4.3 | Section 150 |
| Title 2, Ch. 4, Sec. 4.4 | Section 160 |
| Title 2, Ch. 4, Sec. 4.5 | Section 170 |
| Title 2, Ch. 4, Sec. 4.6 | Section 180 |
| | |
| Title 2, Chapter 5 | Subchapter D |
| Title 2, Ch. 5, Sec. 5.1 | Section 190 |
| Title 2, Ch. 5, Sec. 1 | Section 200 |
| Title 2, Ch. 5, Sec. 2 | Section 210 |
| | |
| Title 2, Ch. 6, 7, 8, 11, 12 | Subchapter E |
| Title 2, Ch. 6, Sec. 6.1 | Section 230 |
| Title 2, Ch. 6, Sec. 6.2 | Section 240 |
| Title 2, Ch. 6, Sec. 6.3 | Section 250 |
| Title 2, Ch. 6, Sec. 6.4 | Section 260 |
| Title 2, Ch. 6, Sec. 6.5 | Section 270 |
| Title 2, Ch. 6, Sec. 6.6 | Section 280 |
| Title 2, Ch. 6, Sec. 6.7 | Section 290 |
| Title 2, Ch. 7, Sec. 7.1 | Section 300 |
| Title 2, Ch. 7, Sec. 7.2 | Section 310 |
| Title 2, Ch. 7, Sec. 7.3 | Section 320 |
| Title 2, Ch. 7, Sec. 7.4 | Section 330 |
| Title 2, Ch. 7, Sec. 7.5 | Section 340 |
| Title 2, Ch. 7, Sec. 7.6 | Section 350 |
| Title 2, Ch. 7, Sec. 7.7 | Section 360 |
| Title 2, Ch. 8, Sec. 8.1 | Section 370 |
| Title 2, Ch. 11, Sec. 11.1 | Section 380 |
| Title 2, Ch. 12, Sec. 12.1 | Section 390 |
| NEW | Section 395 |

| Former Section | New Section |
|-------------------------------|---------------------|
| Title 2, Chapter 14 | Subchapter F |
| Title 2, Ch. 14, Sec. 14.1 | Section 400 |
| Title 2, Ch. 14, Sec. 14.2 | Section 410 |
| Title 2, Ch. 14, Sec. 14.5 | Section 420 |
| Title 2, Ch. 14, Sec. 14.6(D) | Section 430 |
| | |
| Title 2, Chapter 15 | Subchapter G |
| Title 2, Ch. 15, Sec. 15.1 | Section 440 |
| Title 2, Ch. 15, Sec. 15.2 | Section 450 |
| | |
| Title 2, Chapter 10 | Subchapter H |
| Title 2, Ch. 10, Sec. 10.1 | Section 460 |
| Title 2, Ch. 10, Sec. 10.5 | Section 470 |
| Title 2, Ch. 10, Sec. 10.7 | Section 480 |
| | |
| Title 2, Chapter 17 | Subchapter I |
| Title 2, Ch. 17, Sec. 17.1 | Section 490 |
| Title 2, Ch. 17, Sec. 17.2 | Section 500 |
| | |
| | Subchapter J |
| | Section 510 |
| | Section 520 |
| | Section 530 |
| | Section 540 |
| | Section 550 |
| | Section 560 |
| | Section 570 |
| | Section 580 |
| | Section 590 |
| | Section 600 |
| | Section 610 |
| | Section 620 |
| | Section 630 |
| | Section 640 |
| | |