INTRODUCTION
(Amended & Approved by Board of Directors 03-09-2021)

§ 1. Citation

This Title may be cited as the “Juvenile Procedures Act-Deprived.”

§ 2. Purpose

(a) The purposes of this Title are to:

(1) Secure for every child subject to this Title such care and guidance, preferably in their own home, as will best serve their welfare and the interests of the Wyandotie Nation and society in general;

(2) Preserve and strengthen the ties between the child and their Tribe whenever possible;

(3) Preserve and strengthen family ties whenever possible, and, to strengthen and improve the home and its environment when necessary;

(4) Remove a child from the custody of their parents and traditional custodians only when their welfare would otherwise be endangered;

(5) Secure for any child removed from the custody of their parents the necessary care, guidance, and discipline to assist them in becoming a responsible and productive member of their Tribe and society in general.

(b) In order to carry out these purposes, the provisions of this Title shall be liberally construed.

§ 3. Definitions

Unless the context otherwise requires, as used in this Title, the term:

(a) “Adjudicatory hearing: means a hearing to determine whether the allegations of a petition filed pursuant to this Title alleging a child to be neglected, deprived, or in-need-of-mental-health treatment are supported by the evidence

(b) “Adult: means a person eighteen years of age or over.

(c) “Aunt means a person who by blood or means a person who, by blood or marriage, is:
(1) A female sibling of a biological parent;
(2) A female cousin of a biological parent;
(3) A female child of a grandparent, or
(4) Any other female person, who by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws written or commonly held by virtue of culture of any Indian Tribe or State, would come within the terms of subparagraphs (1), (2) or (3) of this subsection.

(d) “Best interest of a child” means all relevant factors, including but not limited to, the following:

(1) Preference of the child’s parents as to their custody;
(2) Preference of the child as to their custody;
(3) The interaction and interrelationship of the child with their parents, siblings and any other persons who may significantly affect a child’s best interest;
(4) The child’s adjustment to their home, school, and community; and
(5) The mental and physical health of all individuals involved.

(e) “Brother” means:

(1) Any male sibling; or
(2) Any other male person, who by virtue of an adoption either of themselves or of a member of their family pursuant to the laws or customs of any Indian Tribe or State, would hold the relationship of a sibling with the person in question.

(f) “Brother-in-law” means the husband of a sister by blood or marriage.

(g) “Child” means a person under the age of eighteen (18) years of age except any person who has been emancipated.

(h) “Child care center” means an institution or facility designed for the care of children licensed or approved pursuant to Tribal ordinance or program policy, or if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
"Child in need of mental health treatment" means a child in need of mental health treatment as defined by Oklahoma's In-patient Mental Health Treatment of Children Act, 46 A O.S. §5-501 et seq.

"Child placement agency" means an agency designed for the care or placement of children licensed or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

"Child Welfare Officer" shall mean the supervisor or acting supervisor of the Nation’s Indian Child Welfare Department and their employees.

"Child with a disability" means any child who has a physical or mental impairment which substantially limits one or more of the major life activities of the child or who is regarded as having such an impairment by a competent medical professional.

"Child in need of mental health treatment" means a child in need of mental health treatment as defined by Oklahoma's In-patient Mental Health Treatment of Children Act, 46 A O.S. §5-501 et seq.

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responsible for the child’s health or welfare or whose parent, guardian or custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such maltreatment or abuse and prevent it from recurring;

(3) Who is a child in need of special care and treatment because of their physical or mental condition, including but not limited to, a child born in a condition of dependance on a controlled dangerous substance and their parents, legal guardian or other custodian is unable or willfully fails to prevent it from recurring;

(4) Who is a child with a disability deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated children without the disability or children with disabilities whether because of the fault of the parent, guardian or custodian or because the parent, guardian, or custodian does not have the ability to provide for the child; provided that no medical treatment is necessary, if in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or

(5) Whose parent or legal custodian, for good cause, desires to be relieved of custody.

However, no child who, in good faith, is being provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof shall be considered, for that reason alone, to be a deprived child pursuant to any provision of this Code;

(u) “Dispositional hearing” means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the Court to determine what treatment should be ordered for the family and the child and what placement of the child should be made during the period of treatment.

(v) “Emancipation” means a procedure by which a child who is over sixteen (16) years of age and who has, with the real or apparent assent of their parents, demonstrated their independence from their parents in matters of care, custody and earnings, may petition the Court for recognition of such status. The term may include, but shall not be limited to, any child who has sole responsibility for their own support, who is married or who is in the military.

(w) “Emergency custody” means Court ordered custody of a child prior to adjudication of the child.
“Foster child” means a child placed in foster placement.

“Foster family” means all persons living in a foster family home other than a foster child.

“Foster family home” means the private residence of a family which provides foster care services to a child. Such term shall include a foster family home, a therapeutic foster family home or the home of a relative.

“Foster parent” means any individual maintaining a foster family home who is responsible for the care of a foster child.

“Foster placement” means a child placing agency or foster family home providing foster care services.

“Group care facility” means places other than foster family care home or child care centers providing care for groups of children.

“Grandparent” means:

1. A biological grandparent;
2. The brother and sisters of biological grandparent, and their spouses, or
3. Any other person, who by virtue of an adoption either of themselves or a member of their family pursuant to the laws or customs of any Indian Tribe or State, would come within the terms of subparagraphs (1) or (2) of this subsection.

“Guardian” means a person other than the child’s parent who is by law responsible for that child.

“Indian Tribe” shall mean any federally recognized tribal government other than the Wyandotte Nation.

“Investigation” means a mandatory pre-adjudicatory process by the Indian Child Welfare Department to determine the safety of a child and to make a recommendation to the Tribal Prosecutor as to whether a petition should be filed alleging a child to be a deprived child or whether other non-adjudicatory alternatives are available.
(ii) "Indian Child Welfare" or "Indian Child Welfare Department" means the Indian Child Welfare Program of the Wyandotte Nation.

(jj) "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Wyandotte Nation.

(kk) "Juvenile Court" or "Court" means the Juvenile Division of the Wyandotte Nation Tribal Court System or the Juvenile Court or C.F.R. Court established for other Indian Tribes or as State Juvenile Courts is appropriate from the context.

(ll) "Least Restrictive Alternative" means restrictions placed on a child which are reasonably related to the Court's objective and are the least drastic methods available to achieve those objectives.

(mm) "Mental health facility" means a mental health facility as defined by the Oklahoma's In-Patient Mental Health Treatment of Children Act, 43 A O.S. § 5-501 et seq.

(nn) "Nation" and variants thereof, both uppercase and lowercase, shall mean the Wyandotte Nation unless otherwise indicated.

(oo) "Neglected Child" or "Dependent Child" means a deprived child.

(pp) "Nephew" means the male child of a brother, sister, brother-in-law or sister-in-law by blood, marriage, adoption or custom.

(qq) "Niece" means the female child of a brother, sister, brother-in-law or sister-in-law by blood, marriage, adoption or custom.

(rr) "Out-of-home placement" means a placement, other than the placement in the home of the parent or guardian from whose custody the Court has removed the child, until the child is reunified with the child's parents.

(ss) "Parent" means either a natural parent or a parent by adoption, custom, common law, or tradition. Parent does not include an unwed father unless he has acknowledged paternity of the child orally to two or more disinterested parties or in writing under oath unless paternity has been established by judicial action or was established prior to the child's birth.

(tt) "Permanent custody" means Court ordered custody of an adjudicated deprived child whose parental rights have been terminated.

(uu) "Person responsible for a child's health or welfare" includes a parent, legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution,
“Preliminary inquiry” means an assessment and determination as to whether there is sufficient information to proceed with an investigation of abuse or neglect of a child or an investigation of failure to protect by the person responsible for the child when there are allegations of abuse or neglect.

“Protective custody” means custody of a child taken pursuant to §205 et seq. of this Code.

“Protective supervision” means a legal status created by Court order under which the child is permitted to remain in their own home under the supervision of the Juvenile Court through the Wyandotte Nation Indian Child Welfare Services during the period during which treatment is being provided to the family by the Wyandotte Nation Indian Child Welfare Services or other agencies designated by the Court.

“Relative” means a grandparent, great grandparent, brother, sister, aunt, uncle, nephew, niece, cousin, or any other person related to the child within the fourth degree of consanguinity.

“Residential child care center” means a twenty-four (24) hour a day residential group care facility at which a specified number of children, normally unrelated, reside with adults other than their parents.

“Residual parental rights and responsibilities” means those rights and responsibilities remaining with the parent(s) after legal custody or guardianship of the person of said child has been vested in another person, agency or institution, but where parental rights have not been terminated, including but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child and the right to reasonable visitation with the child unless restricted by the Court.

“Shelter” means a facility for the temporary care of a child in physically unrestricting facilities pending Court disposition or execution of a Court order for emergency or temporary placement.

“Sister” means

(1) Any female sibling; or

(2) Any other female person, who by virtue of an adoption either of themselves or of a member of their family pursuant to the laws or customs of any Indian Tribe or State, would hold the relationship of a sibling with the person in question.
(ddd) "Sister-in-law" means the wife of a brother by blood or marriage.

(eee) "Step-parent" means a person married to a biological parent but who is not a biological parent of the child.

(fff) "Supreme Court" shall mean the Court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

(ggg) "Temporary Custody" means Court ordered custody of an adjudicated deprived child.

(hhh) "Termination of parental rights" or "Termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated and the child's right to receive financial support from the parent whose rights have been terminated.

(iii) "Traditional custodian" means those relatives of the child other than the parents, who by force of the traditions, customs and common law of the Wyandotte Nation have the rights, duties and responsibilities of assisting the parents in rearing the child and providing for their support or may act in loco parentis by virtue of custom and tradition.

(ijj) "Transfer proceedings" means any proceeding in the Wyandotte Nation Court System to grant, accept or decline transfer of any child's case from or to the Courts of any Indian Tribe or State whenever such transfer is authorized by Tribal, Federal or State law.

(kkk) "Treatment and service plan" means a written document which includes at least the following:

1. A plan for assuring the child receives proper care;
2. A plan for assuring that services are provided to the parents, child and placement providers;
3. A plan to improve the conditions in the parents' home;
4. A plan to facilitate return of the child to the child's own home or to an alternative permanent placement;
5. A plan to address the needs of the child while in out-of-home care; and
6. A plan that discusses the appropriateness of the services for the child under the plan.
(III) "Tribal Court" means the District Court of the Wyandotte Nation.

(mm) "Uncle" means a person who by blood or marriage is:

(1) A male sibling of a biological parent;

(2) A male cousin of a biological parent;

(3) A male child of a grandparent, or

(4) Any other male person who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws written or commonly held by virtue of culture of any Indian Tribe or State, would come within the terms of subparagraphs (1), (2) or (3) of this subsection.

§ 4. Place of Sitting

The Juvenile Division of the District Court shall maintain offices and sit in the same place as the District Court sits, provided that the Juvenile Division, in a transfer proceeding or where otherwise necessary and expedient in the interest of justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.
Chapter 1

GENERAL PROVISIONS

§ 101. Juvenile Division Established

There is hereby created and established within the Tribal Court, a Juvenile Division whose powers and duties are set forth in this Title. The District Court Judge shall preside over the Juvenile Division pursuant to the rules promulgated by the Wyandotte Board of Directors.

§ 102. Officers of the Court

The Supervisor of the Indian Child Welfare Department, caseworkers, child protections workers, family violence workers, and other Indian Child Welfare Services are, by virtue of this ordinance and/or Court Order, officers of the Wyandotte Tribal Court.

§ 103. Jurisdiction

(a) Except as otherwise provided by law, the Juvenile Division shall have exclusive jurisdiction in proceedings:

(1) Concerning any child in need of supervision within the Wyandotte Nation’s territorial jurisdiction.

(2) Concerning any child who is neglected, dependent, or in-need-of-mental-health-treatment within the Wyandotte Nation’s territorial jurisdiction.

(3) Concerning any transfer proceeding to or from a Court of another sovereign in a children’s case.

(4) To determine the legal custody of any child or to appoint a guardian of the person or legal custodian of any child who comes within the Juvenile Court’s jurisdiction.

(5) For the issuance of orders of support of minor children.

(6) To determine the parentage of a child and to make an order of support in connection therewith.

(7) For the adoption of a person of any age.

(8) For the judicial consent to the marriage, employment, or enlistment of a child, when such consent is required by law.

(9) For the treatment or commitment of a mentally ill or developmentally disabled child who comes within the Court’s jurisdiction.
(b) The Court may issue temporary orders providing for protection, support or medical or surgical treatment as it deems in the best interest of any child concerning whom a petition has been filed prior to adjudication or disposition of their case.

(c) The Juvenile Court shall have concurrent jurisdiction over other children located within the territorial jurisdiction of the Nation and over all Wyandotte children wherever they may be located.

§ 104. Jurisdiction Over Extended Family

Where the Juvenile Court asserts jurisdiction over a child under this Title, the Court shall also have jurisdiction over the child’s extended family whenever necessary to further the best interests of the child.

§ 105. Continuing Jurisdiction

The Juvenile Court may retain continuing jurisdiction over children and their extended families who, while subject to the Juvenile Court jurisdiction, leave the reservation whenever necessary to further the best interests of the child.

§ 106. Extended Family Defined

For purposes of State Court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., a child’s extended family is defined to mean any familial or culturally defined clan or band relationships.

§ 107. Transfers from State Court or other Tribal Court

(a) Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b), any State Court may transfer to the Juvenile Court herein any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member of, or eligible for membership in the Wyandotte Nation of Oklahoma, if the Court finds that the transfer would not be detrimental to the best interests of the child.

(b) By this Ordinance, the Chief of the Wyandotte Nation of Oklahoma or their designee and the Supervisor of the Indian Child Welfare Program are hereby established as the appropriate persons to receive notice of Indian Child Welfare Act cases from the Courts of any state or sovereign.

(c) The Court shall determine whether the transfer to the Nation’s jurisdiction would be detrimental to the best interest of the child in a transfer hearing initiated by the Nation after the order of transfer is received by the Court Clerk of the Tribal Court. In making such determination, the Court may consider:
Whether the child or its family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide, and;

If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will not appear the Court should decline to accept the transfer until after the adjudication is completed, and

Any other matters which may adversely affect the Nation’s ability to provide treatment or necessary services to the family.

A Court transferring a case to the Nation’s jurisdiction under subsection (a) of this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Tribal Court, which Court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a Tribal Court Juvenile Division case number as in other cases.

The Indian Child Welfare Department shall conduct an investigation and file a written report, including recommendations as to transfer of the proceedings, with the Tribal Prosecutor within five (5) days of receipt of notice of an Indian Child Welfare Act proceeding or a request for transfer from another Tribe.

Upon transfer of jurisdiction from a State or Tribal Court, the Tribal prosecutor shall file a petition in the Tribal Court to accept transfer of jurisdiction and the Indian Child Welfare Department shall arrange for transportation and placement of the child, if required.

§ 108. Full Faith and Credit

Orders of State Courts and other Tribal Courts involving children over whom the Tribal Court could assume jurisdiction shall be recognized and given full faith and credit if:

(a) The issuing Court had jurisdiction over the parties and the subject matter;

(b) The procedures specified in the Indian Child Welfare Act, if applicable, were properly followed; and

(c) Due process and other rights provided by the Indian Civil Rights Act were accorded all interested parties.

§ 109. Child Welfare Transfers to Tribal or State Court

(a) The Tribal Court, in its discretion, is authorized to transfer any child’s case arising within the Tribal jurisdiction, if said child is not a member or eligible for
membership in the Nation, to the Court of the child's Indian Tribe, or if the child is non-Indian, to the Courts of the State where the child is a resident or domiciled, upon the petition of the Prosecutor of the Wyandotte Nation of Oklahoma, either parent, a custodian or guardian, the child's Tribe, or an appropriate official of the child's state.

(b) In making such transfer the Tribal Court may consider:

(1) The best interest of the child;

(2) Any special needs or mental or physical disease or defects of the child and family and the ability of that Tribe and the receiving jurisdiction to meet those needs;

(3) If transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;

(4) Emotional, cultural, and social ties of the child and its family;

(5) The likelihood that the same child and family would return to the Tribal jurisdiction within a reasonable time and come before the Tribal Court Juvenile Division again.

(c) Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Tribal Court may retain physical custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

§ 110. Notice of Legal Rights

(a) At the first appearance before the Court, the child and their parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

(1) The right to be represented by an attorney, at their own expense, at every stage of the proceeding;

(2) The right to see, hear, and cross-examine all witnesses against them; and

(3) The right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them.

§ 111. Wyandotte Tribal Prosecutor Duties
The Prosecutor shall represent the Nation in the interest of the child in all proceedings subject to this Title in which the Nation is a party. In proceedings subject to this Title in which the Nation is not a party, the Prosecutor shall intervene on behalf of the Nation in the interest of the child.

§ 112. Jury Trials

(a) A child, their parent or guardian, or any interested party may demand a trial by jury, or the Court on its own motion, may order such a jury to try the case in the following cases:

(1) In adjudicatory hearings concerning an alleged delinquent, neglected or deprived child, or a child in need of supervision, where termination is stated as a possible disposition in the petition, and

(2) In termination of parental rights hearings;

(b) Unless a jury trial is demanded, it shall be deemed to be waived.

§ 113. Procedure

(a) The rules of juvenile procedure herein set forth shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply;

(b) The Courts of the Wyandotte Nation shall have the authority by written Court rule, not inconsistent with this Title or the Rules of Civil Procedure, and filed of record in the Court Clerk's office, to provide for any procedure or form necessary for the efficient, orderly and just resolution of cases under this Title.

§ 114. Hearings

(a) Hearings shall be held before the Court without a jury, except as provided in §112 and may be conducted in an informal manner, except: the general public shall be excluded. The Court shall admit only such persons as have an interest in the case or the work of the Court. Hearings may be continued as ordered by the Court;

(b) A verbatim record shall be taken of all proceedings, unless waived, which might result in the deprivation of custody. A verbatim record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge;
When more than one child is named in a petition alleging need of mental health treatment or neglect or deprived, the hearings may be consolidated; or heard separately at any stage of the proceedings, at the Court’s discretion;

Children’s cases shall be heard separately from adult’s cases and the child or their parents, guardian or other custodian may be heard separately when deemed necessary by the Court; and

The name, picture, place or residence or identity of any child, parent, guardian, other custodian or person appearing as a witness in children’s proceedings under this Title shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause and specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of contempt of Court, and upon conviction thereof, shall be subject to a civil fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the jail utilized by the Nation for not more than thirty (30) days or both.

§ 115. Mileage and Witness Fees

In proceedings pursuant to this Court, the Court may allow mileage as in civil actions to witnesses and reimbursement for expert witnesses but shall not be tendered in advance of the hearing.

§ 116. Penalties

A willful violation of any provision of an order of the Court issued under the provisions of this Code shall constitute indirect contempt of Court and shall be punishable as such. Punishment for any such act of contempt shall be civil or criminal in nature, at the discretion of the Court. Such punishment, if civil, shall not exceed a fine of Five Hundred Dollars ($500.00). Such punishment, if criminal, shall not exceed a fine of Three Hundred Dollars ($300.00) or imprisonment in the tribal jail for not more than thirty (30) days, or both such fine and imprisonment.

§ 117. Social Study and other Reports

(a) Unless waived by the Court, the Wyandotte Nation Indian Child Welfare or other agency designated by the Court, shall make a social study and report in writing in all children’s cases except:

(1) If the allegations of a petition are denied by the parents, guardians, or legal custodian the study shall not be made until the Court has entered an order of adjudication; and

(2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions unless the adoption is a relative placement.
For the purpose of determining proper disposition of a child the general rules of evidence shall apply; written reports and other materials relating to the child’s mental, physical and social history may be received and considered by the Court along with evidence. The Court shall require that the person who wrote the report or prepared the material to appear as a witness and be subject to both direct and cross-examination; and

The Court shall inform the child, their parents, legal guardian, or custodian of the right of cross-examination concerning any written report or other material as specified in subsection (b) of this section.

§ 118. Effect of Proceedings

(a) No adjudication or disposition in proceedings under this Title shall impose any civil disability on a child or disqualify them from any Tribal personnel system or military service application or appointment from holding Tribal office;

(b) No adjudication, disposition or evidence given in proceedings brought under the Title shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Title concerning the same child.

§ 119. Inspection of Court Records

(a) Records of Court proceedings shall be open to inspection by the parents or guardians, attorneys and other parties in proceedings before the Court, and to any agency to which legal custody of the child has been transferred, except records of Court proceedings in formal adoption and formal relinquishment proceedings shall be confidential and open to inspection only by Court order;

(b) With consent of the Court, records of Court proceedings may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings; and

(c) Counselor’s records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court.

§ 120. Indian Child Welfare – Record

The records of the Children and Family Services Administration concerning all children’s cases under the provisions of this Title shall not be inspected or disclosed to the public, including the names of the children taken into temporary custody or issued a summons, except:
To the victim in each case when the child is found guilty of a delinquent act;

When the child has escaped from an institution in which he has been committed;

By order of the Court;

When the Court orders the child to be held for criminal proceedings;

When there has been a criminal conviction and a pre-sentence investigation is being made on an application for probation; or

When the disclosure is to a Tribal, Federal or State officer, employee or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

§ 121. Search Warrants or Pick Up Orders for the Protection of Children

(a) A search warrant or pick-up order may be issued by the Juvenile Court to search any place for the recovery of any child within the jurisdiction of the Court believed to be a child in need of mental health treatment or a neglected or deprived child;

(b) Such a warrant or order shall be issued only on the conditions that the application for the warrant shall:

(1) Be sworn to or affirmed before the Court;

(2) Name or describe with particularity the child sought;

(3) State that the child is believed to be a child in need of mental health treatment or a neglected or deprived child and the reasons upon which such belief is based;

(4) State the address or legal description of the place to be searched; and

(5) State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.

§ 122. Issuance of Search Warrants or Pick Up Orders

(a) If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child;
The search warrant or pick-up order shall state the grounds or probable cause for its issuance;

The warrant or pickup order shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct;

A copy of the warrant or pick-up order shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one is home, a copy shall be left in plain sight within the place searched;

If the child is found, the child shall be taken into custody and transported to and placed in the physical custody of the Indian Child Welfare worker; and

The warrant or pick-up orders shall be returned to the issuing Court immediately upon service and the officer shall subscribe on the warrant their name, the date and time of service and the place where the child was delivered by them. A copy shall be delivered to the Tribal Prosecutor. If the child was not found, such information should be subscribed on the warrant.

§ 123. Expiration of Search Warrants and Pick-Up Orders

A search warrant or pick-up order for the protection of a child shall be null and void if not served within ten (10) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

§ 124. Appeals

An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals are taken. Initials shall appear on the record on the appeal in place of the name of the child and respondents. Appeals shall be advanced on the calendar of the Appellate Court and shall be decided at the earliest practical time.
Chapter 2

ADJUDICATION

§ 201. Evidence of Child Abuse or Neglect in Matrimonial or Child Custody Actions

(a) If the evidence in an action for a divorce, for alimony without a divorce, for an annulment, for custody of a child or for the appointment of a guardian of the person of a child, for habeas corpus in subsequent proceedings in such actions, indicates that a child is deprived, the Court shall notify the Indian Child Welfare Department that the child may be a victim of abuse or neglect. The Indian Child Welfare Department shall conduct a preliminary inquiry or investigation concerning such report. The Indian Child Welfare Department shall submit all findings regarding the preliminary inquiry to the Tribal Prosecutor and send a copy of its findings to the Court within thirty (30) days of such notice and notify parties to the proceeding of the submission of the report to the Court. The Tribal Prosecutor shall advise the Court within three (3) days of receipt of said findings whether a deprived petition will be filed. If no deprived petition is filed, the Court may take appropriate action regarding the custody of the child or children or appointment of a guardian for the child or children.

(b) Nothing in this section shall preclude the Court from entering an order to have the child or children taken into protective custody if evidence presented to the Court indicates a child is in surroundings that are such as to endanger the welfare of the child. If a child is taken into protective custody by such an order, the provisions of §205 et. sec. applies.

§ 202. Intake

(a) Each allegation of child abuse/neglect and in need of mental health treatment within the Court’s jurisdiction shall be investigated by the Indian Child Welfare Department and/or the Tribal Police.

(b) An intake refers to the initial process of gathering information which may be pertinent to provide services or proceed with an investigation.

(c) All intakes shall have a written record.

(d) If the Child Welfare officer determines that the interests of the child or the community require that Court action be taken, they shall request in writing that the Tribal Prosecutor file a petition and deliver a copy of the entire case file to the Tribal Prosecutor.

(e) If the Child Welfare officer determines that the interests of the child or the community require that Court action be taken, Indian Child Welfare may offer such
services and make such referrals to other agencies as may be feasible to help the family with any defined problems.

§ 203. Tribal Prosecutor Intake/Duties

(a) Upon receiving a request to file a petition and the accompanying reports and files from the Indian Child Welfare office, the Tribal Prosecutor shall review the case file, reports, and any witness statements to determine if there is sufficient evidence which will be admissible under the Nation's rules of evidence to establish the jurisdiction of the Juvenile Court over the child.

(b) If the Tribal Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the Juvenile Court over the child, they shall, in writing, refuse to file the requested petition, or in their discretion, may request the Indian Child Welfare Department or Law Enforcement Agency to conduct a further investigation into the matter. Should the Tribal Prosecutor decline to file a petition, they must submit a written response to the Indian Child Welfare Department detailing the reasons a petition will not be filed.

(c) If the Tribal Prosecutor determines that sufficient evidence is available to establish jurisdiction of the Juvenile Court over the child, they shall file a petition concerning the child.

§ 204. Responsibility for Deprived Children

It shall be the responsibility of the Indian Child Welfare Department to provide care for deprived children who are committed to the care of the Indian Child Welfare Department for custody or guardianship.

§ 205. Children taken into Custody Prior to filing of Petition - Protective Custody

(a) A child may be taken into protective custody prior to the filing of a petition.

(1) By a peace officer or officer of the Court, without a Court order, if the child's surroundings are such as to endanger the welfare of the child;

(2) By an order of the Court issued upon the application of the Tribal Prosecutor. The application presented by the Tribal Prosecutor may be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the Court that there is reasonable abandonment, abuse, or neglect, or is in surroundings that are such as to endanger the welfare of the child. The application may be verbal, if verbal, a written application shall be submitted to the Court no later than the close of the next day that the Court is open for business; or
(3) By order of the Court when the child is in need of medical treatment or mental health treatment in order to protect the child’s health or welfare and the child’s parent(s), legal guardian, custodian or other person responsible for the child’s health or welfare is unwilling or unavailable to consent to such medical or mental health treatment or other action pursuant to this Code.

(b) Whenever a child is taken into protective custody:

(1) Such child may be taken to a children’s shelter or into an emergency foster home placement;

(2) Such child may be taken before the Judge of the Court for the purpose of obtaining an order for protective custody. The child may be placed in the custody of the Indian Child Welfare Department, if ordered by the Court, for placement in a relative’s home or in foster care if such placement is determined by the Indian Child Welfare Department to meet the needs of the child;

(3) Such child may be taken directly to or retained in a health care facility for medical treatment, when it reasonably appears to the peace officer or officer of the Court that the child is in need of immediate treatment to preserve the child’s health or as otherwise directed by the Court; or

(4) Such child may be taken directly to or retained in a mental health facility for mental health care or an in-patient mental health treatment when it reasonably appears to the peace officer or officer or the Court that the child is in need of emergency mental health care to preserve the child’s health or as otherwise directed by the Court.

(5) The Court shall be immediately notified, verbally or in writing, that the child has been taken into protective custody. If notification is verbal, written notification shall be sent to the Court no later than the close of the next day that the Court is open for business.

(6) No child taken into protective custody pursuant to this section shall be confined in any jail, adult lockup or adult or juvenile detention facility. No child shall be transported or detained in a secure facility in association with delinquent, criminal, vicious or dissolute persons.

§ 206. Emergency Medical Treatment or Mental Health Care

(a) If the child is taken into protective custody due to the need of immediate emergency medical treatment or mental health care to protect the child’s health or welfare, the Court may issue an emergency ex parte order upon the application of the Tribal Prosecutors. The application for an emergency ex parte order may be verbal or in
writing and shall be supported by facts sufficient to demonstrate to the Court that there is reasonable cause to believe that the child is in need of emergency treatment or care to protect the child's health or welfare.

(b) The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any emergency ex parte order issued by the Court shall be served upon such parent, guardian or person having custody or control of the child. Within twenty-four (24) hours of the filing of the application, the Court shall hold a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

§ 207. Immunity from Liability

No peace officer, officer of the Court or person(s) acting pursuant to a Court order authorizing medical treatment or mental health evaluation or treatment, in accordance with the provisions of this part, for any child found in need of such medical treatment or mental health evaluation or treatment shall have any liability, civil or criminal, for such authorization.

§ 208. Deferred Prosecution Agreements/Contracts

(a) Prior to the filing of a petition, either the Court or the Tribal Prosecutor, with the consent of the Indian Child Welfare Department, may divert any child's case, except a case alleging physical or sexual abuse, from the Court process.

(b) Diversion shall be made by entering into a contract with the child's parent(s), guardian, or other custodian whereby the parent, guardian, or other custodian agrees to undergo specified treatment for the condition(s) noticed, including an agreement to do or refrain from doing certain acts and the Indian Child Welfare Department and the Tribal Prosecutor agree not to file a petition in the case so long as the parent(s), guardian, or other custodian comply with the contract.

(c) Each such contract shall contain the following:

(1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract;

(2) The specific treatment programs the parent(s), guardian, or custodian agree to complete successfully and the duration;

(3) The specific tasks which the parent(s), guardian, or custodian agree to do or to refrain from doing;

(4) The specific treatment or other social services to be offered by the Nation or other agencies and accepted by the family;

(5) A fixed limited time for the contract to run, not exceeding one (1) year;
(6) That the Nation will not file a petition on the subject of the contract for the facts or allegations stated if the parent(s), guardian or custodian comply with each of the contract terms for the full term of the contract; and

(7) That each party has received a copy of the contract.

(d) No diversion contract may place physical custody in any person or agency other than the parent(s), guardian, or other legal custodian unless it bears the approval in writing of the Judge of the Juvenile Court.

§209. Deferred Prosecution Agreements/Contracts inadmissible

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence. The parents, guardian or custodian may choose to prove the contract and show their compliance with the terms thereof as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance with the terms of the contract, the Court shall dismiss the petition unless it determines by evidence beyond a reasonable doubt that the child is in imminent danger of severe physical or mental harm.

§210. Petition Form

A petition in a deprived child proceeding may be filed by the Tribal Prosecutor to determine if further action is necessary. Such petitions and all subsequent Court documents in such proceeding shall contain a heading and title in substantially this following form:

IN THE DISTRICT COURT OF THE WYANDOTTE NATION
JUVENILE DIVISION
WYANDOTTE, OKLAHOMA

IN THE MATTER OF

An Alleged ____ Child,
And Concerning:

Case No. ____________

________________________

Respondent(s)

§211. Petition contents

The petition shall be verified and may be upon information and belief. The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction; the name, age and residence of the child and the names and residences of their parents, guardian or other custodian or of their nearest relative if no parent, guardian or other custodian is known; the relief requested
and an endorsement of witnesses intended to be called by the petitioner; if any facts required are not known by the petitioner, the petitioner shall so state, along with the reasons why said facts are not known to petitioner. Any action pertaining to the possible termination of the legal relationship between parent(s) and child(ren) must contain a motion for such action based on continued disregard for the reasonable orders of the Court of the Wyandotte Nation. The petition shall be signed by the Tribal Prosecutor or designee. A copy of the petition shall be attached to and delivered with the summons.

§ 212. Filing Petition when Child in Protective Custody - Time

(a) If a child has been taken into protective custody pursuant to the provisions of this Code, before a petition for a deprived child proceeding has been filed, the petition shall be filed and a summons issued within five (5) judicial days from the date of such assumption of custody. Except as otherwise provided by this section, if such petition is not filed and a summons issued therein as required by this subsection, custody of the child shall be released to the child’s parent(s), legal guardian, custodian or another responsible adult.

(b) If the child has been taken into custody and upon allegations of cruelty on the part of the child’s parent(s), legal guardian or custodian, the five (5) day limitation provided for in subsection (a) of this Section shall not cause the child to be released to such person(s).

§ 213. Amendment of Petition

No pleading subsequent to the petition for a deprived child proceeding is required and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing. A petition may be amended by order of the Court at any time before an order of adjudication has been made, provided that the Court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the Court shall not amend the adjudicatory category prayed for in the petition.

§ 214. Summons - Form

(a) Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE DISTRICT COURT OF THE WYANDOTTE NATION
JUVENILE DIVISION
WYANDOTTE, OKLAHOMA

IN THE MATTER OF

)  
)  
)
An Alleged Child, And Concerning:  

Case No.__________

Respondent(s)

SUMMONS

THE WYANDOTTE NATION TO:

Respondents.

YOU ARE HEREBY NOTIFIED that a petition has been filed in the District Court of the Wyandotte Nation alleging that the above-named child(ren) is a deprived child(ren) and that as the parent(s), guardian, or custodian of said child(ren) you have been named as the Respondent(s), all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the courtroom of the District Court of the Wyandotte Nation, Wyandotte, Oklahoma on the ____ day of ________________, 20___, at the hour of ______________ o’clock ___m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above-named child(ren) is/are in your physical custody or subject to your control to bring the child(ren) to Court with you.

You may seek the advice of an attorney on any matter relating to this action at your own expense.

FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD(REN) AS DEPRIVED CHILD(REN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD(REN) OR THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD(REN).

____________________  
COURT CLERK

(SEAL)

(Return as in other civil cases)
The summons shall be served on the person(s) who has actual custody of the child(ren), and if the child has reached the age of twelve (12) years of age, a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian or next friend. If no parent or guardian can be found a summons shall be served on such other person or person(s) as the Court shall designate. Summons may be issued requiring the appearance of any other person(s) whose presence is necessary.

Service of summons shall be made as provided for in civil actions or service may be made by certified mail to such person’s last known address, requesting a return receipt from the addressee only. If the address of the person to be summoned is not known, or if the mailed summons is returned, the Court may order that notice of the hearing be published once in a newspaper of general circulation in the jurisdiction and a copy of the summons shall be mailed by regular first-class mail to the last-known address of the parent(s).

The Court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian.

If notice is published, the Court shall not hold the hearing until at least ten (10) days after the date of publication.

If one or more persons must be served by publication, the Court may delay the date of hearing with reasonable notice to the other persons who have been served or are properly and legally notified to any date that the Court determines to be reasonable any may proceed with the action.

An order determining that a child is deprived shall not become final until thirty (30) days after the date of the publication of the notice.

§ 215. When Summons Unnecessary

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

§ 216. Additional Parties to be Summoned

The Court, on its own motion or on the motion of any party, may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

§ 217. Court Diversion by Stipulation/Consent Decree
a) After filing a petition, Indian Child Welfare and the Tribal Prosecutor may divert any child's case, except a case alleging physical or sexual abuse, from the adjudicatory process with the consent of the respondents and the Court by stipulation to the validity of the allegations in the petition if:

(1) The Court has informed the child and their parents, guardian, or custodian of their rights to:

(I) Deny the allegations of the petition and require the Nation to prove each allegation by admissible evidence;

(II) Confront and cross-examine witnesses against them to call witnesses on their own behalf;

(III) A trial by jury of six (6) persons at the adjudicatory stage where a jury trial is available; and

(IV) Be represented by counsel at their own expense at each stage of the proceedings, and, to the extent counsel is available at no fee, to have counsel appointed for them if they cannot afford private counsel.

(2) The Court believed they understood their rights.

§ 218. Limitation of Diversions

There shall be no diversion where the respondents were referred to the Court by any person and where there has been any sustained petition for a deprived child in the preceding sixty (60) months.

§ 219. Failure to Appear

(a) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of Court and a bench warrant may issue;

(b) If after reasonable effort the summons cannot be served, or if the welfare of the child requires that they be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other custodian of the child(ren), or a pick up order may issue for the child(ren) as provided by law.

(c) When a parent or other person who signed a written promise to appear and bring the child(ren) to Court, or who has waived or acknowledged service fails to appear with the child(ren) on the date set by the Court, a bench warrant may be issued for the parent or other person, the child or both.

§ 220. Appointment of Guardian Ad Litem
(a) The Court may appoint a guardian ad litem to protect the interest(s) of the child(ren) in proceedings pursuant to this Chapter when:

(1) No parent, guardian, custodian, or relative of the child appears at the first or any subsequent hearing on the case; or

(2) The Court finds that there may be a conflict of interest between the child(ren) and parent(s), guardian or other custodian; or

(3) The Court finds that it is in the child(ren)'s interest(s) and welfare and necessary whether or not a parent, guardian, or other custodian is present.

(b) The Court may appoint a guardian ad litem for any parent in proceedings pursuant to this Code who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, the conservator shall be informed that a guardian ad litem has been appointed.

(c) At the time any child first appears in Court, if it is determined that there is no guardian of the person, the Court shall appoint a guardian of the person of the child before proceeding with the matter.

(d) In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem may be appointed for said child. Said guardian shall have the power to represent the child in the legal proceedings.

(e) All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child(ren).

§ 221. Adjudicatory Hearing

(a) At the adjudicatory hearing, which shall be conducted as provided by the rules of civil procedure, the Court shall consider whether the allegations of the petition are supported by a preponderance of the evidence; except that jurisdictional matters of the age and residence of the child(ren) shall be deemed admitted by or on behalf of the child(ren) unless specifically denied prior to the adjudicatory hearing.

(b) When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence.

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

§ 222. Mentally Ill and Developmentally Disabled Children

(a) If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled as these terms are defined in this Section, the Court shall order that the child be examined by a physician, psychiatrist or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty (30) days in the custody and control of the Indian Child Welfare Department.

(b) A suitable facility for the purpose of examination shall be a facility designated by the Court for treatment and evaluation, neither a Tribal, City or County jail nor a detention facility shall be considered a suitable facility under any circumstance.

(c) If the report of the examination made pursuant to subsection (a) of this Section states the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Court may order such hospitalization, institutional confinement or treatment prior to, during, or after adjudication.

(d) The Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment due to completion of treatment.

(e) The Court shall set a time for resuming the hearing on the original petition when:

(1) The report of the examination made pursuant to subsection (a) of this Section states the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment is required;

(2) The child is found not to be mentally ill; or

(3) The report of the examination made pursuant to subsection (a) of this Section states that the child is developmentally disabled, but not mentally ill.

(f) "Mentally ill person" means a person who is of such mental condition that a person is in need of supervision, treatment, care or restraint.

(g) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or a neurological impairment which may have originated during the first eighteen (18) years of life which can be expected to continue indefinitely and which constitutes a substantial handicap;
"Mentally disabled person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that the person lacks sufficient control, judgment and discretion to manage property or affairs or who, by reason of this deficiency and for the person's own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control or care.

§ 223. Admissibility of pre-recorded statement of a child age 12 or under who is the victim of abuse

(a) This Section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused and shall apply only to the statement of that child or other child witnesses.

(b) The recording of an oral statement of the child made before the proceedings begin is admissible into evidence if:

1. The Court determines that the time, content and circumstances of the statement provide sufficient indicia of reliability and no corroboration of the child's statement is necessary for admission;

2. No attorney for any party is present when the statement is made;

3. The recording is both visual and aural and is recorded on file or video tape or by other electronic means;

4. The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

5. The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question(s);

6. Every voice on the recording is identified;

7. The person(s) conducting the interview of the child in the recording is present at the proceeding and is available to testify or be cross-examined by any party; and

8. Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence and a copy of a written transcript transcribed by a licensed or certified Court reporter is provided to the parties.
§ 224. Taking testimony of a child age 12 or under in room other than courtroom - Recording

(a) This Section shall apply only to a proceeding affecting the parent-child, guardian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused and shall apply only to the statement of that child or other child witnesses.

(b) The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the Court, the finder of fact and the parties to the proceeding. Only an attorney for each party, the guardian ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child and persons necessary to operate the equipment may be present in the room with the child during their testimony. Only the attorneys for the parties may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during their testimony but does not permit the child to see or hear them.

(c) The Court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the Court, the finder of fact and the parties to the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (b) of this section may be present during the taking of the child's testimony. Only the attorney for the parties may question the child and the persons operating the equipment shall be confined from the child's sight and hearing. The Court shall ensure that:

(1) The recording is both visual and aural and is recorded on file or video tape or by other electronic means;

(2) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered;

(3) Every voice on the recording is identified, and;

(4) Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom and a copy of a written transcript transcribed by a licensed or certified Court reporter is provided to the parties.

(d) If the testimony of a child is taken as provided by subsections (b) or (c) of this Section, the child shall not be compelled to testify in Court during the proceeding.
§ 225. Court Diversion

At any time during the adjudicatory process, but prior to the entry of order sustaining the petition as provided in §227 of this Code, a Court diversion by virtue of stipulation may be entered as provided in §217 of this Code.

§ 226. Dismissal of Petition

When the Court finds that the allegations of the petition are not supported by a preponderance of the evidence, the Court shall order the petition dismissed and the legal custody of the child shall be returned to their parents, guardian or other custodian, further, they shall also be discharged from any restriction previously ordered.

§ 227. Sustaining Petition

When the Court finds that the allegations of the petition are supported by a preponderance of the evidence, the Court shall sustain the petition and make an order of adjudication setting forth the child to be a deprived child making the child a ward of the Court. In cases concerning a deprived child, evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is deprived and such evidence shall be sufficient to support an adjudication under this section.

§ 228. Temporary Orders

Upon sustaining a petition, the Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay or may choose of its own volition to hold a dispositional hearing at any reasonable time.

§ 229. New Hearing Authorized

(a) A parent, guardian, custodian or next friend of any child adjudicated under this Code, or any person affected by an order in a proceeding under this Chapter, may petition the Court for a new hearing on the following grounds:

(1) That new evidence which was not known or could not with due diligence have been made available at the original hearing and which might affect the order has been discovered; or

(2) That irregularities in the proceedings prevented a fair hearing.

(b) If it appears to the Court that the motion should be granted it shall order a new hearing and shall make such disposition of the case as warranted by all of the facts and circumstances and the best interest of the child.
Chapter 3

Disposition Hearings and Placement

§ 301. Dispositional Hearing

After making an order of adjudication, and finding the child to be a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Nation at a hearing scheduled for that purpose.

§ 302. Social Studies and Reports

(a) After adjudication and prior to disposition, the Court may order any agency within its jurisdiction and/or request any other agency to prepare and submit to the Court at any point in the proceedings a social study, home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition for the family.

(b) After adjudication the Court may order or request any agency to submit a pre-adjudicatory social study or report helpful in determining proper treatment and disposition for the family.

(c) Such reports shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the dispositional hearing.

§ 303. Case/Service Plan

(a) In every case the Court shall order Indian Child Welfare to prepare a detailed case plan for the treatment and disposition of the problems identified in the adjudication.

(b) The case plan shall contain:

(1) A brief social and family history;

(2) A brief statement of the causes of the Court exercising its jurisdiction;

(3) The specific treatment programs the family is required to complete, their duration, and what is expected to be accomplished;

(4) The specific actions the parents, guardian, or other custodian or child should be ordered to do or refrain from doing and the reasons therefore;

(5) The specific treatment or other social services offered by the Nation or other agencies which the family should be required to accept;

(6) The person or agency to be vested with custody of the child if the child cannot remain in their own home and a detailed plan describing how and
when the child will be returned to their home under supervision and when Court supervision should cease; and

(7) The goal(s) of the plan, whether that be reunification, independent living, adoption, etc.

(c) The case plan shall be filed with the Court and a copy delivered to the parties of their attorney at least five (5) days prior to the dispositional hearing.

(d) The case plan must contain reasonable goals that can be accomplished. Innovative plans shall be utilized to gain a higher prospective degree of success.

§ 304. Medical Examination

The Court may have the child examined by a physician, psychiatrist or psychologist and the Court may place the child in a hospital or other suitable facility for this purpose.

§ 305. Hearing Purpose

The purpose of the dispositional hearing is for the Court to determine the treatment which should be ordered to attempt to correct the problems which led to the adjudication and to provide for the health, welfare and safety of the child during the treatment period or, if treatment cannot or does not correct the problems after actual attempts have been made to do so, to provide for the long term health, welfare and safety of the child.

§ 306. Hearing Informal

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

§ 307. Continuance

(a) The Court may continue a hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports of other evidence, and the Court may continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible consequence.

(b) If the hearing is continued, the Court shall make an appropriate order for detention of the child for release in the custody of parents, guardian or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.
In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from their home before an order of disposition has been made.

§ 308. Order of Protection/Protective Orders

(a) The Court may make an order of protection in assistance, or as a condition of, any decree of disposition authorized by this Chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, guardian or any other person who is a party to the proceedings.

(b) The order of protection may require any such person:

(1) To stay away from a child or particular residential area;

(2) To permit a parent to visit a child only at stated periods or in supervised conditions;

(3) To abstain from offensive conduct against a child, parent or parents, guardian, or any other person to whom custody of a child has been given;

(4) To give proper attention to the care of the home;

(5) To cooperate in good faith with an agency;

(I) which has been given legal custody of a child;

(II) which is providing protective supervision of a child by Court order, or

(III) to which the child has been referred by the Court.

(6) To refrain from acts of commission or omission that tend to make a home an improper place for a child; and/or

(7) To perform any legal obligation of support.

(c) When such an order of protection is made applicable to a parent or guardian, it may specifically require active participation in the rehabilitation process and may impose specific requirements upon such parent or guardian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in subsection (e) of this Section.

(d) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified or extended for a specified period
of time if the Court finds that the best interests of the child and the Nation will be served thereby.

(e) A person failing to comply with an order of protection without good cause may be found in contempt of Court.

§ 309. Placement Preferences

(a) In making a placement of or committing legal custody of a child to some person in the dispositional process whether for foster/alternative care or adoption, the Court shall place the child in the following descending order of preference:

(1) The natural parents, adoptive parents, or step-parents as the case may be:

(2) A preference for placement, in the following order, shall be given to:

(I) natural, adoptive, or step-parents;

(II) a member of the child’s extended family, a child’s extended family is defined to mean any familial or culturally defined clan or band relationships within the Wyandotte Nation or another Tribe;

(III) a member of the Wyandotte Nation;

(IV) a member of an Indian Tribe;

(V) a home licensed by the Wyandotte Nation’s Indian Child Welfare Department;

(VI) a home licensed by another Indian Tribe;

(VII) an Indian home licensed by the State; or

(VIII) a public or private institution for children approved by the Wyandotte Nation’s Child Welfare Department or operated by an Indian organization which has programs suitable to meet the needs of a Wyandotte child.

(b) Where appropriate, the Court may consider the preference of the parents and the proximity of the prospective foster/alternative care home to the child’s home in applying these preferences.

(c) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.
(d) The Court may place the child in the custody of the Indian Child Welfare for further placement pursuant to subsection (a) of this Section. When the Court does so, the agency shall place said child in accordance with the preference described above.

(c) State Courts shall follow the placement preference rules outlined herein.

§ 310. Movement of Child in Custody of the Indian Child Welfare Department

(a) The Indian Child Welfare Department shall notify the Court, the Tribal Prosecutor, and the Guardian Ad Litem whenever a child in the custody of the Indian Child Welfare Department is moved from one location to another. Foster parents shall be notified by the Indian Child Welfare Department prior to movement of the child.

(b) The Indian Child Welfare Department shall inform the Court and attorney regarding the location of the child unless the movement was due to an emergency situation, in which case the notification required under this paragraph shall be within one (1) business day after such movement. As used in this subsection “emergency situation” means a movement of the child requested by a person having actual physical custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or if movement is for emergency medical treatment.

(c) The Indian Child Welfare Department shall not move any deprived child from one place to another if the child has already been moved once since the last Court hearing without first obtaining the approval of the Court following a hearing into the reasons and necessity for moving the child. However, the Indian Child Welfare Department may move the child due to an emergency, in which case a hearing shall be conducted concerning the reasons and necessity for moving the child, if requested in writing, within ten (10) days following the moving of the child. Court approval shall not be required for movement to or from a children’s shelter due to an emergency, including a placement failure, a placement disruption or similar cause.

§ 311. Unmanageable and Uncontrollable Children

If a child who has been adjudicated as a deprived child and who has been placed in the custody of the Indian Child Welfare Department becomes unmanageable and uncontrollable while in the legal custody of the Indian Child Welfare Department, the Department may return the child to the Court for further disposition or may provide information to the Tribal Prosecutor and request the filing of a petition alleging the child to be delinquent, in need of supervision or in need of mental health treatment, if such petition is warranted by the facts in the case.

§ 312. Disposition
When a child has been adjudicated to be deprived, neglected, or in-need-of-mental health treatment, the Court shall enter a dispositional order which shall include one or more of the following provisions the Court finds appropriate:

(a) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision, under such conditions as the Court may impose;

(b) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with §309 of this Code;

(c) The Court may place legal custody in the Indian Child Welfare Department for placement in a family care home or other child care facility in accordance with §309 of this Code; and/or

(d) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist or psychologist or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

§ 313. Review of Disposition Order

Every disposition order regarding a child adjudicated to be deprived shall be reviewed by the Court at least every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of the parent or parents are terminated and a final adoption decreed.

§ 314. Review Hearing Reports

(a) The Indian Child Welfare Department shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

(b) Said report shall include, but not be limited to:

   (1) A summary of the physical, mental and emotional condition of the child, the conditions existing in the out-of-home placement where the child has been placed and the child’s adjustment thereto;

   (2) A report on the child’s progress in school, and if the child has been placed outside the child’s home, the visitation exercised by the parents of the child or other persons authorized by the Court;

   (3) Services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other placement to independent living; and
Any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated deprived. Specific recommendations, giving reasons therefore, whether:

(I) the parental rights of the parent or parents of the child should be terminated and the child placed for adoption;

(II) the child should remain in the home or be placed outside of the home of the child’s lawful parents; or

(III) the child should remain outside the home or be returned to the home from which the child was removed.

The Guardian Ad Litem representing a child may submit a report to the Court for presentation at the review hearing to assist the Court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

All reports shall be filed in the Court not later than five (5) days prior to the review. Further, the reports are to be to the Tribal Prosecutor, Guardian Ad Litem and other parties or attorneys involved no later than five (5) days prior to the review. All incidents and information involving the five days prior to the review may be given in addendum to the report in writing or orally at the review hearing.

§ 315. Motion for Termination of Parental Rights

Termination of a parent-child legal relationship shall be considered only after the filing of a written motion alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a separate hearing following an adjudication of a child as deprived or neglected. Such motion shall be filed at least thirty (30) days before such hearing, and shall be signed by the Tribal Prosecutor or designee.

§ 316. Appointment of Counsel

(a) After a motion for termination of a parent-child legal relationship is filed pursuant to this Chapter, the parent or parents shall be advised of the right to counsel, at their own expense, and counsel shall be appointed whenever counsel is available at no fee or whenever the Court fund has sufficient un-obligated funds to pay an attorney.

(b) An attorney, who shall be the child’s previously appointed guardian ad litem whenever possible, shall be appointed to represent the child’s best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in juvenile law. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court’s jurisdiction is terminated. If
§ 317. Notice of Hearing to Terminate Parental Rights

(a) A parent shall be given actual notice of any hearing to terminate such parent’s parental rights. The notice shall indicate the relief requested and the hearing shall not be held until at least (10) days after the receipt of notice, except with the consent of the parent, if known.

(b) If the Court finds that the whereabouts of the parent cannot be ascertained, it may order that notice be given by publication and a copy mailed to the last known address of the parent. The notice shall be published once in a newspaper of general circulation in the jurisdiction and the hearing shall not be held for at least ten (10) days after the date of publication of the notice. Except as otherwise provided by subsection (c) of this Section, if a parent has not received actual notice of the hearing at which they are deprived of their parental rights, the order depriving them of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this Section shall prevent the Court from immediately taking custody of a child and ordering whatever action may be necessary to protect their health or welfare.

(c) For the purpose of terminating the parental rights of a father or putative father of a child born out of wedlock, who has not prior to the commencement of a proceeding to terminate parental rights to such child exercised parental rights and duties, shall not be deemed to have parental rights to such child. The father or putative father shall be entitled to notice and an opportunity to be heard pursuant to this Section, except that the Court may:

(1) Waive notice to a putative father whose identity is unknown to the mother of the child born out of wedlock and the mother of the child signs a sworn statement before the Court that the identity of the father or putative father of the child is unknown and the Court is satisfied, after inquiry into the matter, that their identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law.

(2) When the identity of the father or putative father of a child born out of wedlock is known but their whereabouts are unknown and the Court, after inquiry, is satisfied that after diligent search their whereabouts remain unknown, order that notice be given by publication as provided in subsection (b) of this Section and a copy mailed to the last known address, if known, of such father or putative father. When notice is given by publication, the order terminating parental rights shall not become final for a period of fifteen (15) days from the date of the order.
§ 318. Termination of Parental Rights by Abandonment

Before a termination of the parent-child legal relationship based on abandonment can be ordered, the petitioner shall file an affidavit stating what efforts have been made to locate the parent or parents of the child subject to the motion for termination. Such affidavit shall be filed no later than ten (10) days prior to the hearing.

§ 319. Criteria for Termination

(a) The Court may order a termination of the parent-child legal relationship upon the finding of any of the following:

(1) That the child has been abandoned by their parent or parents;

(2) That the child has been adjudicated as deprived and all the following exist:
   (I) that an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or parents or has not been successful;
   (II) that the parent is unfit;
   (III) that the conduct or condition of the parent or parents is not likely to change over time; and
   (IV) that it is in the child’s best interest.

(3) A finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other Court order during the preceding year or, in the absence of such order, consistent with the parent’s means and earning capacity;

(4) A conviction in a criminal action in any jurisdiction as to physical or sexual abuse of a child or a finding in a deprived child action either of the following has occurred:
   (I) the parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court or that the child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse; and/or
   (II) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or sibling of such child
from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse.

(5) A conviction in a criminal action that the parent has caused the death of a sibling of a child due to physical or sexual abuse or chronic neglect of such sibling.

(b) In determining unfitness, conduct or condition, the Court shall find that continuation of the legal relationship between the parent and child is likely to result in grave risk of death or serious injury to the child or that the conduct or condition of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. In making such determinations, the Court shall consider, but not be limited to, the following:

(1) Emotional illness, mental illness or mental deficiency of the parent of such duration or nature as to render the parent unlikely over time to care for the ongoing physical, mental and emotional needs of the child;

(2) Conduct towards the child of a physically or sexually abusive nature;

(3) History of violent behavior;

(4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;

(5) Excessive use of intoxicating liquors or narcotics or dangerous drugs which affect the ability to care and provide for the child;

(6) Neglect of the child;

(7) Long-term confinement of the parent;

(8) Injury or death of a sibling due to proven abuse or neglect by parental figures;

(9) Reasonable efforts by child care agencies which have been unable to rehabilitate the parent or parents.

(c) In considering any of the factors in subsection (b) of this Section in termination of the parent-child legal relationship, the Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child’s physical, mental, and emotional conditions.
§ 320. Criteria for Order Terminating Parental Rights

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

§ 321. Review of Child’s Disposition Following Termination of the Parent-Child Legal Relationship

(a) The Court, at the conclusion of a hearing in which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held no later than ninety (90) days following the date of termination. At such hearing, the Indian Child Welfare Department, vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) If no adoption has taken place within reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provisions be made immediately for long-term alternative placement of the child.

§ 322. Expert Testimony

(a) Subject to the availability of funds, an indigent parent has the right to have appointed one expert witness of their own choosing whose reasonable fees and expenses, subject to the Court’s prior review and approval, shall be paid from the Court funds.

(b) All ordered evaluations shall be made available to counsel as expeditiously as possible prior to the hearing.

§ 323. Effect of Order

(a) An order for the termination of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except for the right of the child to inherit from the parent.

(b) No order of decree entered pursuant to this Chapter shall disentitle a child to any benefit due them from any third person, including but not limited to, any Indian Tribe, any agency, any State or the United States.

(c) After the termination of the parent-child legal relationship, the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.
§ 324. Adoption Action Not to be Combined with Termination of Parental Rights

(a) Except as otherwise provided for in subsection (b) of this Section, an action to adopt a child shall not be combined with an action to terminate parental rights and when the rights of a parent have been terminated neither an interlocutory nor a final decree of adoption may be rendered until the decree terminating parental rights has become final.

(b) This Section shall not apply to:

(1) A proceeding to adopt a child without the consent of a parent when the Court has determined that consent is not legally required; or

(2) A proceeding to adopt a child born out of wedlock when the mother of the child is granting consent to the adoption, is a party to the action and there has been no judicial or administrative determination of the paternity.

§ 325. Confidential Nature of Proceeding and Record

Unless the Court shall otherwise order, all hearings held in proceedings under this Chapter shall be confidential and shall be held in closed Court without admission of any person other than interested parties and witnesses. Further, all papers, records or files pertaining to proceedings under this Chapter, kept by the Court or by the Indian Child Welfare Department shall be confidential and withheld from inspection except upon order of the Court for good cause shown. Upon application and for good cause being shown, the Court, by written order reciting its findings, shall permit the necessary information to be released or may restrict the purposes for which it shall be used. Any person in charge of such records or having access to such records or information who discloses any information, including but not limited to, all records and reports relevant to the case and any records and reports, contrary to the provisions of this Chapter, may be charged criminally with a misdemeanor and be held civilly liable.

§ 326. Modification of Decrees or Orders

Any decree or order made pursuant to this Chapter may be modified by the Court at any time, provided, however, that an order terminating parental rights shall not be modified.

§ 327. Traditional Custodian's and Grandparent's Rights

(a) No dispositional order or decree including termination or parental rights and adoption shall divest the child's traditional custodians or grandparent of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding Tribal customs and traditions or their duty to provide the necessities of life for the child should the parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the
individual was a party, provided that adoptive traditional custodians shall also succeed in these rights and duties.

(b) The rights and duties of the traditional custodians and grandparents may be enforced by court order whenever it appears in the child’s best interest to do so, provided that all parties to the case shall be given notice and an opportunity to be heard.

§ 328. Order for Support

(a) Whenever a child is removed from the custody of its parent, guardian or other custodian, the parent or other person shall be ordered by the Court to contribute a reasonable amount within their means, or to do labor for the Nation, or take other reasonable action to provide support for the child.

(b) In cases of necessity, the Court may order a traditional custodian to assist in providing the necessities of life within that custodian’s means after a hearing, whether the child has been placed in their own home or elsewhere.

(c) When Indian Child Welfare is paying for alternative/foster care for such child, the contribution of the parent shall be paid to the Court Clerk and dispensed by Court order to the agency or the Nation as may be necessary by law or appropriate in the circumstances.

§ 330. Emancipation

A child sixteen (16) years or older, but less than eighteen (18) years of age, may petition the Court to be considered an emancipated minor. Determination of whether such status shall be given to the minor is to be made by the Juvenile Court. The decision shall be made by a clear and convincing standard. Evidence for the determination of emancipated status shall include, but is not limited to:

(a) The real or apparent assent of their parent(s);

(b) Demonstration of their independence from their parent(s) in matters of care, custody and earnings through employment or other means providing for their own food, shelter and other cost-of-living expenses;

(c) Proof they have sole responsibility for their own support;

(d) Proof they are married;

(e) Proof they are in the military; or

(f) Any other evidence the Court finds relevant to make an emancipation determination.
Chapter 4

Child Abuse Reporting & Prevention

§401. Legislative Purpose

The Wyandotte Nation Tribal Council hereby declares that the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Chapter it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Nation that the various federal, state and Tribal medical, mental health, education, and social services agencies impacting on child welfare matters find a common purpose through cooperative participation in the child protection teams created in this Chapter.

§402. Definitions

As used in this Chapter, unless the context otherwise requires:

(a) “Abuse” or “child abuse or neglect” means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any kind, subdural hematoma, soft-tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition or death or circumstances indicate that such condition or death may not be the product of an accidental occurrence;

(2) Any case in which a child is subject to sexual assault, molestation, sexual exploitation, or lewd conduct; and/or

(3) Any case in which the child’s parents, guardian, or custodian fails to take the same actions to provide adequate food, clothing, shelter, or supervision that a prudent parent would take.

(4) In all cases, those investigating reports of child abuse shall consider accepted child rearing practices of the culture in which the child participates. Nothing in this subsection shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(b) "Child" means any person under the age of eighteen (18) years, except any person emancipated in accordance with §260 of this Code or any person who has been certified as an adult pursuant to §548 of this Code or 10 O.S. §7303-4.3 and convicted.
“Child protection team” means a multi-disciplinary team consisting, where possible, of a physician, the Child Protection Worker, Indian Child Welfare, Family Services Supervisor, Child Care Coordinator, a representative of the Tribal law enforcement agency, a representative of a non-Tribal law enforcement agency, a mental health agency representative, a representative of the Social Services Department, a representative of the State Department of Human Services, an attorney, and a representative of the local school district. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be comprised of fewer than three (3) persons. The role of the child protection team shall be advisory and recommendatory.

"Confirmed report" means a report which is determined by an Indian Child Welfare worker, based upon some credible evidence, to constitute child abuse or neglect.

“Law enforcement” means the Wyandotte Nation Tribal Police Department.

"Person responsible for the child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program; or an owner, operator, or employee of a child care facility.

"Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals by a person responsible for the child's health or welfare.

"Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, by a person responsible for the child's health or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts by a person responsible for the child's health or welfare.

§403. Persons Required to Report Child Abuse or Neglect

(a) Any person specified in subsection (b) or (c) of this section who has reasonable cause to know or suspect that a child has been subjected to physical or sexual abuse, sexual exploitation or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect or who has knowledge of the birth of a child dependent on a controlled substance shall immediately report or cause a report to be made of such fact to the Indian Child Welfare Department or the Tribal Police. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Indian Child Welfare Department.
(b) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

1. Physician or surgeon, including a physician in training, residents and interns;
2. Child health associate or community health representative;
3. Medical examiner or coroner;
4. Dentist or dental hygienist;
5. Emergency medical technician or paramedic;
6. Osteopath;
7. Optometrist;
8. Chiropractor;
9. Chiropodist or podiatrist;
10. Registered nurse or licensed practical nurse;
11. Hospital personnel engaged in the admission, care, or treatment of patients;
12. Veterinarian;
13. School official or employee, included but not limited to, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant or school bus driver;
14. Social worker or worker in a family care home or child care center, child day care worker, head start teacher, public assistance worker, worker in a group home or residential or day care facility, licensed or unlicensed marriage, family, or children's counselor;
15. Mental health professional;
16. Any law enforcement personnel; and
17. The Tribal Prosecutor or assistants.
(c) In addition to those persons specifically required by this Section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person, whether or not a citizen of the Wyandotte Nation, shall report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Indian Child Welfare Department or the Tribal Police.

(d) The privileged communication between patient and physician, between husband and wife or any other privilege or contract shall not relieve any person from the reporting requirements to this section.

(e) Any person under the jurisdiction of the Wyandotte Nation who willfully violates the provisions of this Section, any person who inhibits or prevents a person described in subsection (b) from making a report, or any person who knowingly and willfully makes a false report or a report that the person knows lacks factual foundation:

(1) Shall be subject to a civil penalty not to exceed Five Hundred Dollars ($500.00); and

(2) Shall be liable for associated administrative costs incurred by the Nation as a result; and

(3) Shall be liable for court costs; and

(4) Shall be liable for damages approximately caused thereby.

(g) Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, guardian or custodian, in good faith, allows the child to be provided with treatment and care by spiritual means alone in accordance with the tenets and practice of a recognized church, religious denomination, traditional healing or medicine or other religious organization by a recognized practitioner thereof.

§404. Reporting Procedures

(a) Reports of known or suspected child abuse or neglect made pursuant to this Chapter shall be made immediately to the Indian Child Welfare Department or Tribal Police and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the central registry on forms supplied by the Indian Child Welfare Department.

(b) Such reports, when possible, shall include the following information:
(1) The name, address, age, sex, blood quantum, and social security number of the child;

(2) The name and address of the parent, guardian, or custodian;

(3) The nature and extent of the child's injuries, including any evidence of previously known or suspected abuse or neglect to the child or the child's siblings;

(4) The names and addresses of the alleged perpetrators of the suspected abuse or neglect, if known;

(5) The family composition;

(6) The source of the report and the name, address, and occupation of the person making the report;

(7) Any action taken by the reporting source, including times, locations, and dates; and

(8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

c) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the Indian Child Welfare Department to the Tribal Prosecutor and Wyandotte Nation Tribal Police.

d) A written report from persons or officials required by this Chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

§405. Action Upon Receipt of Report

(a) The Indian Child Welfare Department shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect. The immediate concern of such investigation shall be the protection of the child.

(b) The investigation shall include a written report which, to the extent that it is reasonably possible, shall address the following:

(1) The nature, extent and cause of the abuse or neglect;

(2) The identity of the person or persons responsible for such abuse or neglect;
(3) The names and conditions of other children who may be subject to similar abuse or neglect because of proximity to or association with the suspected perpetrator(s); and

(4) The written report shall, at a minimum, include the results of an interview with the child, and a physical description of the child(ren), including any visible evidence of abuse or neglect. Such a description shall be obtained through direct observation of the child(ren), and the Indian Child Welfare worker shall take or cause to be taken all such evidence as soon as reasonably possible.

(c) Whenever possible the interview shall take place at the child's residence or the place in which the abuse or neglect reportedly occurred; a description of all other pertinent data observed at the interview location shall be included in the report.

(d) If admission to such residence or location cannot be obtained, the Court, upon good cause shown, shall order the responsible person(s) to allow the interview, examination, photography, and investigation. Should the responsible person(s) refuse to allow the interview, examination, photography and investigation, the Court shall hold an immediate hearing to show cause why the responsible person(s) should not be held in contempt of court.

(e) Upon receipt of a report, if the Indian Child Welfare Department has a confirmed report, it shall immediately offer social services to the child(ren) and the family and may cause a petition to be filed by the Tribal Prosecutor in the Tribal Court. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal Police is necessary for the protection of the child or other children under the same care, the Tribal Police and the District Judge shall be notified. If immediate removal is necessary to protect the child or other children under the same care from further abuse, the child or children may be placed in protective custody in accordance with Tribal law.

(f) The Indian Child Welfare Department shall be the receiving agency responsible for the coordination of all investigations of all reports of known or suspected child abuse or neglect. The Indian Child Welfare Department shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Indian Child Welfare Department may conduct the investigation independently or in conjunction with the Tribal Police Department or may arrange for the initial investigation to be conducted by another agency in cooperation with the Indian Child Welfare Department. The Indian Child Welfare Department shall provide for persons to be continuously available to respond to such reports. Tribal, state, and federal agencies shall cooperate to fulfill the requirements of this subsection. As used in this subsection, “continuously available” means the assignment of a person to be near an operable telephone or pager, not necessarily located in the premises ordinarily used for business by the Indian Child Welfare Department, or to have
such arrangements made through agreements with the Tribal Police and/or local law enforcement agencies.

(g) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Indian Child Welfare Department in order to refer the case for investigation. If the local law enforcement agency is unable to contact the Indian Child Welfare Department, it shall refer the matter immediately to the Tribal Police for a complete investigation by the Indian Child Welfare Department and the Tribal Police. The Tribal Police, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Indian Child Welfare Department.

§406. Interference with Investigation and Retaliation Prohibited Civil Penalty

(a) No person shall interfere with a lawful investigation of suspected child abuse.

(b) No person shall retaliate by any means against any person who has made a good faith report of suspected child abuse or who cooperates with an investigation of suspected child abuse.

(c) Any person who violates subsections (a) or (b) of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to Five Hundred Dollars ($500.00) per occurrence. The penalty shall be assessed by the Tribal Court only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred.

§407. Required Report of Postmortem Investigation

(a) Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal Police, the Tribal Prosecutor, and the Indian Child Welfare Department.

(b) The tribal department with such report shall forward a copy of such report to the central registry.

§408. Evidence of Abuse

(a) Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before them a child reasonably
believed to have been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(b) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to Indian Child Welfare.

§409. Immunity from Liability

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Code, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this Chapter or otherwise performing his duties or acting pursuant to this Code shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

§410. Temporary Protective Custody

The Judge of the Wyandotte Nation Tribal Court shall be responsible for making available a person appointed by the Chief Justice, who may be the Juvenile Judge, or any other officer of the Court, to be available by telephone at all times to act with the authorization and be the authority of the Juvenile Division of the Court when no judicial officer is present in the Court, to issue written or verbal temporary protective orders, or in the alternative or in addition thereto, the Judge may enter his general order detailing the procedure to be used in taking children into custody on an emergency basis when no Judge or Magistrate is present at the Court. These orders may be requested by the Indian Child Welfare Department, a tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before them a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required, if the belief that circumstances or the condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child’s life or health. The Indian Child Welfare Department shall be notified of such action immediately by the Court appointed official in order that child protective proceedings may be initiated. In every case in which a temporary protective custody order has been issued, the Indian Child Welfare Department through the Tribal Prosecutor shall file a dependency or neglect petition within five (5) working days unless a petition has already been filed.

§411. Confidentiality of Records

(a) Except as provided in this Section, reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

(b) Disclosure of the name and address of the child and family and other identifying information involved in such reports shall be permitted only when authorized by a
court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

(c) Any person who violates any provision of this Section shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00)

(d) Only the following persons or agencies shall be given access to child abuse or neglect records and reports:

1. The Tribal Police or their cooperative agencies, Indian Child Welfare Department staff and cooperating departments and agencies investigating a report of alleged child abuse or neglect or treating a child or family which is the subject of the report;

2. A physician who has before them a child whom he reasonably suspects to be abused or neglected;

3. An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record of a parent, guardian, custodian, or other person who is responsible for the child's health or welfare;

4. Any person named in the report or record who was alleged to be abused or neglected or, if a minor or other incompetent, at the time of the request, is named in the report, the guardian ad litem;

5. A parent, guardian, custodian, or other person responsible for the health and welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;

6. A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;

7. The central registry/case management system of child protection;

8. Members of the child protection team;

9. The Tribal Prosecutor and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary; and/or

10. Such other person as a Court may determine, for good cause.
(e) After a child who is the subject of a report reaches the age of eighteen (18) years, access to the record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in subsection (d) and is a suspected victim of child abuse. The amount and type of information released shall depend upon the source of the report and shall be determined by regulations established by the Indian Child Welfare Department Supervisor. However, under no circumstances shall the information be released unless the person requesting such information is entitled thereto as confirmed by the Supervisor of the Indian Child Welfare Department and the information released states whether or not the report is founded or unfounded. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless by the Tribal Prosecutor or a Tribal Police officer and the purpose is to initiate court action or unless he is the subject of a report.

§412. Duty to Provide Summary to Person Being Investigated

As soon as possible after initiating an investigation of a parent or other person having responsibility for the health or welfare of a child, the Indian Child Welfare Department shall provide to the parent or person a brief and easily understood summary of:

(a) The procedures of the Indian Child Welfare Department for conducting an investigation of alleged child abuse or neglect, including:

(1) a description of the circumstances under which the Indian Child Welfare Department would seek to remove the child from the home through the judicial system, and

(2) an explanation that the law requires the Indian Child Welfare Department to refer all reports of alleged criminal child abuse or neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred.

(b) The procedures to follow if there is a complaint regarding the actions of the Indian Child Welfare Department or to request a review of the findings made by the Indian Child Welfare Department in the investigation;

(c) The person's right to review all records filed with the Court concerning the investigation, provided review shall not include the name of the person who filed the report and provided the review would not jeopardize an ongoing criminal investigation or adjudicatory hearing;

(d) The person's right to seek legal counsel; and

(e) The process the person may use to acquire access to the child if the child is removed from the home.
§413. Child Protection Teams - Purpose

Utilization of a child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided to immediately secure the children’s safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members. Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions.

§414. Child Protection Teams (CPT) - Meetings

It is the intent of this legislation to mandate the maintenance of an effective child protection team. The Supervisor of the Indian Child Welfare Department shall have responsibility for inaugurating the child protection team.

(a) The child protection team shall staff anonymous cases (no names, addresses, or identifiers mentioned) and make recommendations regarding the diagnostic, prognostic, and treatment services being offered to the child or family in connection with the reported abuse.

(b) At each meeting, each member of the child protection team shall be provided with necessary information in the case(s) to be considered.

(c) The public shall not be permitted to attend those portions of child protection team meetings concerned with mandatory team discussions of public and private agencies’ responses to each report of child abuse and neglect being considered by the team, as well as, the team’s recommendations related to public agency responses. In all its discussions, the team shall not disclose the names or addresses and identifying information relating to the children, families, or informants in those cases.

(d) At the beginning of the discussion of each case, a designated team member shall state the following information, arrived at by consensus of the team: Whether the case involves mild, moderate, or severe abuse or neglect; whether the child is an infant, a toddler, a preschool or school aged child, or a teenager and the sex of the child. In no case shall the informant’s name or other identifying information about the informant be revealed. The team shall also state whether the child was hospitalized and whether the child’s medical records were checked.

(e) At this session, and immediately after any sessions at which a child abuse or neglect case is discussed, the child protection team shall review the responses of public and private agencies to each report of child abuse or neglect, shall state whether such responses were timely, adequate, and in compliance with provisions of this Chapter,
and shall report information relating to any inadequate responses, specifically indicating the public and private agencies involved.

(f) After this mandatory discussion of agency responses, the child protection team shall consider identifying details of the case being discussed, and discuss confidential reports, including, but not limited to, the reports of physicians and psychiatrists, or when the members of the team desire to act as an advisory body concerning the details of treatment or evaluation programs.

(g) At the CPT’s next regularly scheduled meeting, or at the earliest possible time, the team shall report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

(h) The CPT shall make a report of its recommendations to the Wyandotte Nation Tribal Court and the Indian Child Welfare Department with suggestions for further action. Tribal, state, and federal agencies may cooperate in meeting the requirements of this subsection.

(i) Each member of the team shall be appointed by the agency represented. At the behest of the Wyandotte Nation Executive Council, a representative to the CPT shall be selected and serve on the team.

(j) The Supervisor of Indian Child Welfare or a designee thereof shall be deemed to be the coordinator of the child protection team.

(k) The coordinator shall insure that all difficult cases of child abuse are discussed with the child protection team. The coordinator shall make and complete, within ninety (90) days of CPT review, a report to the District Judge regarding the recommendations of the CPT in a particular case. It is the responsibility of the Indian Child Welfare Department to report to the federal registry when necessary or required.

§415. Child Protection Team - Authority and Functions

(a) The Wyandotte Nation Child Protection Team shall be designated as the entity for screening all referrals by the Indian Child Welfare Department related to child abuse or neglect. Utilization of the existing county child protection team serves to provide professional screening of difficult cases, promotes confidentiality, and avoids needless duplication of agencies serving the same client population. Through broad-based representation, including representation from the tribal membership, Indian Child Welfare Department and the local school district, the county child protection team can provide a broad range of referral services, which will maximize treatment options available to families.

(b) The child protection team is technical and advisory in nature; it is not intended to undermine the authority and responsibility of individual agencies. It is designed to
promote cooperation, communication, and consistency among agencies. Although it is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies, the child protection team's purpose shall be to facilitate rather than hinder the decision-making process.

(c) Strict confidentiality shall be maintained by all child protection team members.

(d) Recommendations are to be made by the child protection team to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and appropriate family members.

§416. Child Protection Teams - Duties

(a) The child protection team shall report its recommendations to the Indian Child Welfare Department with suggestions for further action or a statement that the team has no recommendations or suggestions.

(b) The duties of the child protection team include:

1. Monitoring child abuse and neglect reports to insure that adequate preventive, protective, and corrective services are provided;

2. Reviewing and tracking of all child abuse and neglect cases which have been referred;

3. Reviewing referrals for recommendations related to the filing of dependency/neglect petitions;

4. Reviewing case plans for their adequacy;

5. Maintaining confidentiality of information;

6. Sending local child protection team data to area child protection teams;

7. Developing standards to determine which cases should be investigated;

8. Providing information and technical recommendations to the Indian Child Welfare Department;

9. Educating communities about child abuse and neglect problems and solutions;
(10) Identifying danger signs which prompt intervention and/or preventive actions;

(11) Assisting in the development and implementation of plans to promote the long-term well-being of children and their families; and

(12) Assisting in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect and self-sufficiency of community members.

§417. Central Registry/Case Management System

(a) To insure the same level of protection for Indian children as offered to other children of the State of Oklahoma there shall be established a central registry of child protection in the Indian Child Welfare Department for the purpose of maintaining a registry of information concerning each case of child abuse reported under this Chapter.

(b) The central registry shall contain, but shall not be limited to:

(1) All information in any written report received under this Chapter;

(2) Record of the final disposition of the report, including services offered and services accepted;

(3) The plan for rehabilitative treatment;

(4) The name and identifying data, date, and circumstance of any person requesting or receiving information from the central registry;

(5) Any other information which might be helpful in furthering the purposes of this Code.

(c) The Supervisor of the Indian Child Welfare Department shall have charge of the central registry. Subject to available appropriations, the Supervisor shall equip the Indian Child Welfare Department so that data in the central registry may be made available during nonbusiness hours through the use of computer technology. Such computerized records shall be password coded and only Indian Child Welfare Department personnel, judges, and Tribal Police shall have access to the password.

(d) After a child who is the subject of a report reaches the age of eighteen (18) years, access to the record under this Section shall be permitted only if a sibling or offspring of such child is before any person mentioned in §403(b) and is a suspected victim of child abuse. The amount and type of information released shall depend
upon the source of the report and shall be determined by regulations established by
the Indian Child Welfare Department Supervisor. However, under no
circumstances shall the information be released unless the person requesting such
information is entitled thereto as confirmed by the Supervisor of the Indian Child
Welfare Department and the information released states whether or not the report
is founded or unfounded. A person given access to the names or other information
identifying the subject of a report shall not divulge or make public any identifying
information unless by the Tribal Prosecutor or a Tribal Police officer and the
purpose is to initiate court action or unless he is the subject of a report.

(e) Unless an investigation of a report conducted pursuant to this Chapter determines
there is some credible evidence of the alleged abuse, all information identifying the
subject of the report shall be expunged from the central registry and destroyed
within three (3) years. The decision to expunge or destroy the record shall be made
by the Supervisor of the central registry.

(f) In all other cases, the record of the reports to the central registry shall be sealed no
later than four (4) years after the child’s eighteenth (18th) birthday. Once sealed,
the record shall not otherwise be available unless the Supervisor of the central
registry, pursuant to rules promulgated by the Indian Child Welfare Department
and upon notice to the subject of the report, gives personal approval for an
appropriate reason. In any case and at any time, the Supervisor may amend, seal,
expunge or destroy any record upon good cause shown and notice to the subject of
the report.

(g) At any time the subject of a report may receive, upon request, a report of all
information pertinent to the subject’s case contained in the central registry, but the
Supervisor is authorized to prohibit the release of data that would identify the
person who made the report or who cooperated in a subsequent investigation which
may be detrimental to the safety or interest of such person.

(h) At any time subsequent to the completion of an investigation, the subject of the
report may request the Supervisor to amend, seal, or expunge the record of the
report. If the Supervisor does not act within a reasonable time, but in no event later
than thirty (30) days after such request, the subject shall have the right to a fair
hearing before the District Court to determine whether the record of the report in a
central registry should be amended, sealed, or expunged on the grounds that it is
inaccurate or it is being maintained in a manner inconsistent with this Chapter. The
Indian Child Welfare Department shall be given notice of the hearing. The burden
in such a hearing shall be on the Indian Child Welfare Department. In such hearings
the fact that there was such a finding of child abuse or neglect shall be presumptive
evidence that the report was substantiated.

(i) Written notice of any amendment, sealing, expungement, or order to destroy made
pursuant to the provisions of this Code shall be given to the subject of such report
and to the Indian Child Welfare Department. The latter, upon receipt of such notice, shall take appropriate action regarding such information in its files.

(j) Any person who willfully or who encourages the release of data or information contained in the central registry to a person not permitted access to such information by this Chapter shall be subject to a civil penalty not in excess of Five Hundred Dollars ($500.00) and any actual damages sustained for breach of confidentiality.

(k) The central registry shall adopt such rules and regulations as may be necessary to encourage cooperation with other Tribes, states, and the National Center on Child Abuse and Neglect.

§418. Court Proceedings - Guardian Ad Litem

(a) In any proceeding initiated pursuant to this Section, the Court shall name as respondents all persons alleged by the petition to be the legal or actual physical custodians or guardians of the child. In every such case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.

(b) The Court in every case filed under this Chapter shall appoint, if funds are available, at no fee, a guardian ad litem at the first appearance of the case in Court. The guardian ad litem shall be provided with all reports relevant to the case made to or by any agency or person pursuant to this Chapter and with reports of any examination of the responsible person made pursuant to this Section. The Court or the worker assigned to the case shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect of the child involved. The guardian ad litem shall be charged in general with the representation of the child’s interest. To that end he shall make such further investigations as deemed necessary to ascertain the facts, talk with or observe the child involved, interview witnesses and the foster/alternative parents of the child, and examine and cross-examine witnesses in both the adjudicatory and dispositional hearings and may introduce and examine witnesses, make recommendations to the Court concerning the child’s welfare, and participate further in the proceedings to the degree necessary to adequately represent the child.

(c) If the prayer of the petition is granted, the costs of this proceeding, including guardian ad litem and expert witness fees, may be charged by the Court against the respondent.

(d) It is not necessary that the guardian ad litem be an attorney.

§419. Child Abuse and Child Neglect Diversion Program

(a) The Tribal Prosecutor, upon recommendation of a Tribal Department or any person, may withhold filing a case against any person accused or suspected of child abuse or neglect and refer that person to a nonjudicial source of treatment or assistance,
upon conditions set forth by the Indian Child Welfare Department and the Tribal Prosecutor. If a person is so diverted from the criminal justice system, the Tribal Prosecutor shall not file charges in connection with the case if the person participates to the satisfaction of the Indian Child Welfare Department and the Tribal Prosecutor in the diversion program offered.

(b) The initial diversion shall be for a period not to exceed two (2) years. This diversion period may be extended for a one (1) year period by the Tribal Prosecutor, if necessary. Decisions regarding extending diversion time periods shall be made following review of the person diverted by the Indian Child Welfare Department and the Tribal Prosecutor.

(c) If the person diverted successfully completes the diversion program to the satisfaction of the Indian Child Welfare Department and the Tribal Prosecutor, said person shall be released from the terms and conditions of the program, and no criminal filing for the case shall be made.

(d) Participation by a person accused or suspected of child abuse in any diversion program shall be voluntary.

§420. Evidence Not Privileged

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to this Chapter.
Chapter 5

Alternative/Foster Care Placement

§501. Definitions

(1) "Foster care" or "alternative care" means continuous twenty-four hour care and supportive services provided for a child in foster placement while the child needs out-of-home placement.

(2) "Foster child" means a child placed in foster placement.

(3) "Foster family" means all persons living in a foster family home, other than a foster child.

(4) "Foster home" or "alternative care home" means a facility for the care of not more than ten (10) children in a family type setting, or approved pursuant to Tribal law, or, if outside the Tribal jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(5) "Foster parent" or "foster care provider" means any individual maintaining a foster family home, who is responsible for the care of a foster child.

(6) "Foster placement" means a foster family home providing foster care services.

(7) "Out-of-home placement" means a placement, other than a placement in the home of the parent or guardian from whose custody the Court has removed the child, until the child is reunified with the child's parents or a permanent placement is made;

(8) "Relative" means a grandparent, great grandparent, brother, or sister of whole or half blood, aunt, uncle, or any other person related to the child within the fourth degree of consanguinity.

§502. Foster Care Placement

Except as otherwise provided in this Chapter, no child in the custody of the Indian Child Welfare Department shall be placed with any foster placement unless the foster placement has a current license or authorization issued by the Indian Child Welfare Department or a license with the State or another Tribal Indian Child Welfare.

§503. Responsibility of Recruiting Foster Care Homes

It shall be the responsibility of the Indian Child Welfare Department to recruit, screen, and approve alternative care homes for children in accordance with this Chapter. Emphasis should be placed on finding tribal and relative foster care families.
§504. Approval of Alternative Care Homes

The Indian Child Welfare Department pursuant to rules not inconsistent with this Chapter which it shall develop and file, shall have the authority to approve foster care and other alternative care homes for children.

§505. Written Contract

(a) The Indian Child Welfare Department shall prior to any out-of-home foster placement, enter into a written contract with the foster care placement provider. The contract shall provide, at a minimum:

1. That the Indian Child Welfare Department shall have access at all times to the child and to the foster placement;

2. A listing of any specific requirements, specific duties or restrictions in providing foster care services;

3. That any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child’s attorney; and

4. That the foster care placement provider shall comply with the written rules and regulations established by this Chapter and the Indian Child Welfare Department in their regulation of foster care homes.

(b) The Indian Child Welfare Department shall provide the following information to the foster parents, along with a copy of the written contract required pursuant to subsection (a) of this section:

1. The names and telephone numbers of the child’s case worker, and the case workers’ supervisors;

2. A copy of the grievance procedure established by the Supervisor of the Indian Child Welfare Department;

3. Information detailing the foster parents’ ability to submit written reports to the Court, or to petition the Court directly for review of a decision by the Indian Child Welfare Department to remove a foster child who has been placed with the foster parent, in accordance with the limitations and requirements of §407 of this Chapter; and

4. A copy of the policies and procedures of the Indian Child Welfare Department which pertain to placement operations of the Department, and which may be necessary to properly inform the out-of-home placement...
providers of the duties, rights and responsibilities of the out-of-home placement providers and the Indian Child Welfare Department.

(c) The Indian Child Welfare Department shall maintain supervision of all children placed in foster placement and shall maintain supervision of and make regular visits to such foster placement. The Indian Child Welfare Department shall visit each foster placement no less than once every month. After each visit the worker shall prepare and maintain a written report of the findings for each visit.

§506. Previous Foster Parent Preferred Placement

Unless there is a relative placement available, a foster parent shall be considered as a preferred placement option when the foster child who was formerly placed with the foster parent is to be reentered into foster care at the same level and type of care, if that placement is consistent with the best interests of the child and other children in the foster parent's home.

§507. Removal from Foster Home

(a) In making placements in foster care the Indian Child Welfare Department shall, if possible, arrange for a pre-placement visit for the child with the persons who will be providing foster care.

(2) If a child in the custody of the Indian Child Welfare Department has resided with a foster parent for three (3) or more months, except in an emergency, shall:

(1) give a minimum of five (5) days' advance notice to the foster care family before removing a child from such family's care, and

(2) at the time of such notification, provide the foster family with a written statement of the reasons for removing a child.

§508. Investigation
(a) The Indian Child Welfare Department shall not place a child in an out-of-home placement unless a criminal background investigation has been completed.

(b) The Indian Child Welfare Department shall conduct a home study of an out-of-home placement, unless the Indian Child Welfare Department has a home study less than one (1) year old on file.

(c) The Indian Child Welfare Department shall insure that the child to be placed in out-of-home placement receives a complete medical examination within thirty (30) days of initial placement, unless there was an examination conducted on the child upon removal of the child and the Court finds no need for further examination.

§509. Basic Standards for Alternative Care Families

In considering alternative parents, the primary consideration should be the capacity to provide love and understanding to a child or children in distress and maintain reasonable cultural contact.

§510. Basic Requirements of Alternative Care Families

Alternative care families shall meet the following personal criteria:

(a) The age of alternative parent(s) shall be consideration only if it affects their physical capability, flexibility, and ability to care for a specific child.

(b) A written statement from a physician, regarding the alternative care parent(s) and their children's general health, specific illnesses, or disabilities shall be a routine part of the study evaluation process. Alternative care parent(s) and all other adults and the children present in the home shall submit to tuberculin tests and have been found free of disease; other tests may be required as indicated.

(c) Physical handicaps of alternative care parent(s) shall be a consideration only as it affects their ability to provide adequate care to alternative children or may affect an individual child's adjustment to the family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

§511. Income of Alternative Care Families

(a) When the Indian Child Welfare Department does not have a plan or funds for cost reimbursement for alternative care families, it shall determine that the alternative care family's income is stable and sufficient for the maintenance of the family and the child or children placed with the family.

(b) Employment of alternative care parent(s) outside the home:
(1) Alternative care parents, either or both spouses, may work outside the home as long as the needs of the child can be met.

(2) When both parents in a two parent home and when single parents are employed, it is preferable that the home be used for school age children, and only when there are suitable plans, approved by the Indian Child Welfare Department, for care and supervision of the child after school and during the summer while parent(s) are at work. Alternative care parent(s) must make appropriate and advance plans for the care of children when not personally available.

§512. Physical Facilities

(a) Physical facilities of the alternative care home shall present no hazard to the safety of the children.

(b) Alternative care homes shall meet Tribal zoning and housing requirements and/or be inspected by the Indian Child Welfare Department.

(c) Physical standards for the alternative care home shall be set according to individual living standards for the community in which the alternative care home is located. These standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family and its self-respect in the community in which it resides. Such standards shall be no more or less stringent than any common cultural morals of Wyandotte Nation citizens.

(d) Comfort and privacy:

(1) It is preferable that children, regardless of the number, be allowed "their own space", however large or small. Sharing of rooms is appropriate as long as there is sufficient individual space for each child and personal belongings.

(2) The sharing of sleeping rooms by children of opposite sexes is acceptable for small children, but undesirable for children who may be experiencing difficulties in the development of their sexual identities, attitudes, and behavior. Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.

(3) Individual space shall be provided for the child's personal belongings.

(e) Alternative care family homes shall be reasonably accessible to schools, recreation, ceremonial grounds, churches, other community facilities, and special resources, such as medical clinics, as needed.
(f) If the home is otherwise suitable, the alternative care family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

§513. Family Composition

(a) Single or two parent households are appropriate; dependent on the particular needs of a child.

(b) The presence of other children and other adults in the home will be considered in terms of the affect upon adding another child.

(c) The number and ages of children in a home shall be considered on a case by case basis, taking into account the alternative parent(s)' ability to meet the needs of all children present in the home, physical accommodation of the home, and especially the affect which an additional child would have on the family as a unit. It is preferable that:

(1) Alternative care parent(s) shall care for not more than the number of infants it appears they are capable of providing for adequately.

(2) Alternative care families should have sufficient resources for all children in the home. Exceptions shall be made in order to keep siblings together.

(3) The age range of the children in an alternative care home shall be agreed upon by parent(s) and the Indian Child Welfare Department.

(4) All placement situations shall consider the effect of having some children in the home whose parent(s) or custodian(s) visit them and other children whose parent(s) or custodian(s) do not.

(5) Alternative care homes shall not provide placements for more than one agency at a time without written agreement delineating the responsibilities of all parties involved.

§514. Personal Characteristics

Prospective alternative parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Such characteristics are reflected in the following:

(a) Psycho-social history, including significant childhood relationships and experiences, i.e. parent-child, sibling, or other relationships.

(b) Role identification and acceptance.
Reactions to experiences of separation and loss, i.e. through death, desertion, divorce.

Education, employment, and patterns of interpersonal relationships.

General social, intellectual, and cultural level of family.

Level of everyday functioning:

1. Home and money management ability;
2. Daily routine and habits; and
3. Reactions to stress.

Affect responses, i.e. ability to give and receive love, deal with loss, separation, and disappointment, etc.

Moral, ethical, and spiritual qualities of the family.

Religious affiliation and habits.

Hobbies, special interests, skills, and talents.

§515. Alternative Care Parenting Abilities

An assessment of prospective alternative care parent’s parenting ability regarding a specific child shall consider the following:

(a) Motivation for application.

(b) Characteristics & number of children best suited to family.

(c) Existing relationships, attitudes, and expectations regarding children and parent-child relationships, especially where such existing attitudes and relationships might effect the child.

(d) Attitudes of members of the extended family regarding child placement.

(e) Ability to accept and love a child as they are.

(f) Capacity to absorb the child into family life functioning without undue disruption.

(g) Capacity of parent(s) to provide for child's needs while giving proper consideration to other children.
(h) Biological children's attitudes towards accepting children.

(i) Realistic assessment of various aspects of parenthood.

(j) Personal characteristics necessary to provide continuity of care throughout child's need for placement.

(k) Flexibility to meet changing needs over the course of placement.

(l) Ability to relate to neglectful and abusive natural parent(s).

(m) Ability to accept child's relationship with own family, including extended family.

(n) Ability, where appropriate, to care for children with special needs, i.e. physical handicaps, emotional disturbances, etc.

(o) Areas in which on-going social work assistance may be needed.

(p) Ability to help a child return home or be placed for adoption/permanency and gain satisfaction from the experience.