CO-38-11

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - FIRST YEAR 2011

AN ACT

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER, AND NAABIK'ÍYÁTI'; REPEALING TITLE 9, §§1051 - 1307; AND AMENDING AND ENACTING TITLE 9, §§1001 - 1504 TO ENACT THE NAVAJO NATION ÁLCHÍNÍ BI BEEHAZ'ÁANNII ACT OF 2011

BE IT ENACTED:

Section 1. Enactment of the Navajo Nation Álchíní Bi Beehaz'áannii Act of 2011

The Navajo Nation hereby enacts the Navajo Nation Álchíní Bi Beehaz'áannii Act of 2011.

Section 2. Findings and Purpose

1. The Navajo Nation has a legitimate and compelling interest, *'parens patriae*, in the well-being, welfare and safety of those children who come within its jurisdiction; that they grow up to become free, independent, and well-developed individuals and citizens; in ensuring that, to the extent possible, family units remain intact; and also in protecting and maintaining the safety and integrity of the community as a whole.

2. The Navajo Nation Supreme Court acknowledged that children, even unborn children, occupy a place in Navajo society that can best be described as holy or sacred.

3. Children coming within the jurisdiction of the Navajo Nation face myriad hazards to their mental and physical well-being from delinquency, incorrigibility, truancy, neglect, abuse, exploitation and other ills.

4. Children coming within the jurisdiction of the Navajo Nation face clear and present danger from exploitation, torture, abuse, neglect, truancy, and delinquency; the Navajo Nation has an obligation to act in an aggressive and culturally appropriate manner to protect its most vulnerable and precious resource, to reserve, to restore harmony and to promote unity to individuals,

families and the community pursuant to Navajo statutory law and Diné bi beehaz'áannii with the cooperation of other governments and agencies; while at the same time honoring and respecting the rights of parents.

5. Current laws concerning dependency, child in need of supervision, delinquency, termination of parental rights, and Indian Child Welfare Act proceedings require revision, amendment and/or repeal in order to efficaciously meet the Navajo Nation's obligations to its children who come within its jurisdiction in a culturally appropriate manner that seeks to preserve, restore and facilitate the harmony and unity of the family unit; protects and cares for the mental and physical well-being of children and families; preserves family unity; involves families in treatment, rehabilitation and aftercare; intervenes ad educates in family disharmony; and ensures fundamental fairness in process and procedure for every individual who comes within the jurisdiction of the Navajo Nation.

Section 3. Repeal of Title 9, §§1051-1307

The Navajo Nation Council hereby enacts the Act by repealing 9 N.N.C. §§1051 through 1307 as follows:

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~~**TITLE 9. DOMESTIC RELATIONS**~~

~~**CHAPTER 11. NAVAJO NATION CHILDREN'S CODE**~~

~~**SUBCHAPTER 3. ESTABLISHMENT OF FAMILY COURT AND PROBATION OFFICE**~~

~~**§ 1051. The Family Court**~~

~~A. There is established for each Judicial District of the Navajo Nation a division to be known as the Family Court.~~

~~B. The procedures in a Family Court shall be governed by the rules of procedure for the district court which are not in conflict with the Children's Code.~~

~~C. The Family Court is authorized to cooperate fully with any federal, state, Navajo Nation, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants in-aid to carry out the purposes of this Code.~~

~~D. The Family Court, in the exercise of its duties and in exercise of any duties to be performed by other offices under its supervision or control, shall utilize such social services as may be available through the Navajo Nation, federal, or state government.~~

~~E. The Family Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Nation that, absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Family Court.~~

~~§ 1052. Court personnel--Appointment, certification, qualifications, duties~~

~~A. Family Court Judge.~~

~~1. A Family Court judge shall be appointed in each judicial district in the manner and with the same qualifications as provided for in appointment of judges of the district courts. A judge of the district court may be appointed by the Chief Justice of the Navajo Nation to serve as a Family Court judge as the need requires. A judge so appointed shall serve as the Family Court judge during good behavior. The Navajo Nation Council shall have the power to remove a judge for cause and may appoint additional judges if necessity requires.~~

~~2. No Family Court judge shall hear a case which he or she has previously participated in as an advocate or in which he or she has a personal interest. The Code of Judicial Conduct of the American Bar Association shall control where conflict of interest exists. No person shall serve as Family Court judge within six months from the time they have been responsible for juvenile legal matters while employed with the Navajo Nation Nation government.~~

~~B. Presenting Officer.~~

~~1. The office of the Family Court presenting officer is established in each judicial district. The district prosecutor of the Navajo Nation is ex-officio presenting officer for the judicial district.~~

~~2. The Chief Prosecutor of the Navajo Nation, after consulting with and upon recommendation of the Family Court judges, shall certify to the Judiciary Committee annually the number of qualified presenting officers needed to carry out the purposes of this Code.~~

~~The Chief Prosecutor of the Navajo Nation shall be the appointing authority for all presenting officers.~~

~~3. The presenting officer shall represent the people of the Navajo Nation in all proceedings under this Code.~~

~~4. The presenting officers' qualifications shall be the same as the qualifications of the district prosecutors of the Navajo Nation.~~

~~C. Probation Officer.~~

~~1. The Probation Office of the Family Court is hereby established. The number of probation officers shall be determined according to Subdivision (2).~~

~~2. The probation officers of the Family Court shall carry out the duties and responsibilities set forth in this title. The Chief Justice of the Navajo Nation, after consultation with and upon recommendation of the Family Court judges, shall certify annually to the Judiciary Committee of the Navajo Nation Council the number of qualified probation officers for the Family Court needed to carry out the objectives of this title.~~

~~§ 1053. Probation office; establishment; reporting~~

~~A. The Chief Justice of the Navajo Nation may establish juvenile probation offices at each of the agencies comprising the Navajo Nation. The Chief Justice of the Navajo Nation shall be the appointing authority for all probation office personnel. If probation officers are established by the Chief Justice of the Navajo Nation, he or she shall also establish a classification and compensation plan for all positions in the service in accordance with the personnel rules of the Courts of the Navajo Nation.~~

~~B. The Probation Offices shall provide the Chief Justice of the Navajo Nation and the Judiciary Committee of the Navajo Nation Council such information as is requested about children coming into contact with the probation offices or the court under the provisions of the Children's Code.~~

~~§ 1054. Powers and duties of probation officers~~

~~A. Probation officers shall have the power and duty to carry out the objectives and provisions of the Children's Code, and shall:~~

~~1. Make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable.~~

~~2. Make predisposition studies and submit reports and recommendations to the Court.~~

~~3. Supervise and assist a child placed on probation or under his or her supervision by court order;~~

~~4. Perform any other functions designated by the Court.~~

~~B. A probation officer does not have the powers of a law enforcement officer. A probation officer may take into custody and place in detention a child who is under his or her supervision as a delinquent child when the probation officer has reasonable cause to believe that the child has violated the conditions of his or her probation or that the child may leave the jurisdiction of the court. A probation officer taking a child into custody under this Subsection is subject to and shall proceed in accordance with the provisions of the Children's Code relating to custody and detention procedures and criteria.~~

~~C. Probation officers shall not act as prosecutors or presenting officers in presenting juvenile matters to the Family Court.~~

~~§ 1055. Jurisdiction of the Family Court~~

~~A. The Family Court shall have exclusive original jurisdiction over all proceedings under the Family Court in which a child is alleged to be a child in need of supervision, dependent child, or a delinquent child.~~

~~B. The Family Court shall have exclusive original jurisdiction of the following proceedings:~~

~~1. For the termination of parental rights;~~

~~2. For the adoption of a child;~~

~~3. To determine custody of, or to appoint a custodian or guardian for a child;~~

~~4. For the commitment of a mentally retarded or mentally ill child;~~

~~5. To authorize the marriage of a minor who does not have a parent or guardian, or when a parent or guardian refuses to consent, when the law requires consent to the marriage by a parent or guardian.~~

~~C. Jurisdiction obtained by a Family Court over a child is retained until terminated by any of the following situations:~~

~~1. The child becomes an adult, except where a child becomes an adult during the pendency of proceedings in the Family Court.~~

~~2. The case is transferred by the court to the district court pursuant to § 1114 of this Code.~~

~~3. When the Family Court enters an order terminating jurisdiction.~~

~~D. Territorial jurisdiction. The Family Court may hear child custody matters involving Navajo children wherever they may arise. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority. The Family Court shall have jurisdiction over non-Navajo child custody matters arising within the boundaries of Navajo Indian Country when the parties submit to the jurisdiction of the Court or when the best interests of the child require such an arrangement. The Family Court shall have exclusive jurisdiction over any Navajo child who resides or is domiciled within the borders of Navajo Indian Country, or who is a ward of the Family Court.~~

~~§ 1056. Shelter care and detention facilities--Standards-Reports~~

~~A. The Office of the Chief Justice of the Navajo Nation, in conjunction with the Division, shall develop a Navajo Nation-wide plan for the establishment of district or agency detention and shelter care facilities, or alternatives thereto, for children alleged to be delinquent and detained under the provisions of the Children's Code. The plan shall be completed within one year after the effective date of the Children's Code. The plan shall include provisions for transportation services. The plan shall take into consideration existing detention and shelter care facilities and shall be developed in a manner that makes the best use of these facilities. It shall also provide an accurate projection of costs, alternatives for implementation and a cost effectiveness analysis. The plan shall be reviewed and updated every three years.~~

~~B. The Navajo Division of Public Safety, in conjunction with the Division, shall seek funds from state, federal, Tribal and other available sources, to construct and operate detention facilities and shelter care and may contract for detention and shelter care facilities, and services to be provided to the Family Court by other persons.~~

~~C. The Division of Health shall promulgate rules concerning health and safety issues for all detention and shelter care facilities which shall include: standards for the sites, design, construction, equipment, care, program, personnel and clinical services. The Division of Health shall license and approve all detention and shelter care facilities within the Navajo Nation meeting the promulgated standards. The Division may establish by rule appropriate procedures for provisional licensure and the waiving of any standards for facilities in existence at the time of adoption of the standards, except it shall not allow waiver of standards pertaining to adequate health and safety protection of residents and staff of the facility. The Division of Health may request assistance from the Division of Social Services for review of care, personnel and clinical services components. No child shall be detained in a detention or shelter care facility unless it is licensed as approved by the Division. Licensure shall be renewed upon full review every two years.~~

~~D. The Division of Health shall inspect all detention and shelter care facilities within the Navajo Nation at least every six months and shall require those reports it deems necessary from detention and shelter care facilities. If, as a result of an inspection, a licensed detention or shelter care facility is determined as failing the required standards, its license shall be subject to revocation after a hearing by the Division of Health, but only if alternative detention or shelter care facilities are available within the Navajo Nation. If no other facilities are available, a schedule of compliance shall be drafted. Failure to comply with the schedule shall result in revocation of the facility's license.~~

~~E. Any person aggrieved by an administrative decision of the Division of Health rendered under the provisions of this Section may petition for the review of the administrative decision by filing a petition requesting judicial review in the Family Court for the district in which the detention or shelter care facility is located.~~

~~The District Court's review shall be of the written transcript of the administrative hearing and the decision of the Division. The District Court shall uphold the decision of the Division of Health unless it finds that decision to be:~~

~~1. Illegal or in violation of the Indian Civil Rights Act or the Navajo Nation Bill of Rights;~~

~~2. The result of arbitrary or capricious action by the Division of Health; or~~

~~3. Not supported by substantial evidence; in which case it shall reverse the decision of the Division of Health and remand the manner for appropriate action or further review by the Division of Health.~~

~~NAVAJO NATION CODE ANNOTATED~~
~~TITLE 9. DOMESTIC RELATIONS~~
~~CHAPTER 11. NAVAJO NATION CHILDREN'S CODE~~
~~SUBCHAPTER 5. PROCEDURE IN THE FAMILY COURT~~

~~§ 1101. Commencement of proceedings by petition~~

~~A. Proceedings in the Family Court shall be initiated by the filing of a petition signed by the presenting officer or other member of the Navajo Nation Bar Association.~~

~~B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a law enforcement official upon information and belief, may cause a petition to be initiated by the presenting officer.~~

~~§ 1102. Venue~~

~~A. The venue for Children's Code proceedings shall be determined by the residence or domicile of the child, or the judicial district where the alleged delinquency, dependency or neglect is committed. Venue exists concurrently in the Window Rock District for Navajo children who reside outside Navajo Indian Country.~~

~~B. Where the residence of the child and the situs of the alleged delinquency, dependency, or neglect are in different judicial districts, initiating proceedings in one judicial district shall bar the institution of proceedings in the other judicial districts.~~

~~**§ 1103. Preliminary inquiry and referral**~~

~~A. Allegations that a child is a child offender or a child in need of supervision shall be referred to the presenting officer, who shall conduct a preliminary investigation to determine the best interest of the child and the Navajo Nation with regard to any action to be taken. Petitions alleging neglect or abuse may be referred to a probation officer who shall refer them to the appropriate agency for preliminary inquiry to determine the best interest of the child with regard to any action to be taken.~~

~~B. During the preliminary inquiry on the petition, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of affecting adjustments that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights under Subsections (A)-(E) of this Section and no person may be compelled to appear at any conferences, to produce any papers, or to visit any place. Voluntary agreements for the disposition of a child custody matter may be arranged with the agreement of the parties. A copy of such agreement shall be filed with the Family Court.~~

~~C. After completion of the preliminary inquiry on a petition, the presenting officer shall either authorize the filing of a petition or refuse to authorize the filing of a petition.~~

~~D. When a child is in detention or custody, and the filing of a petition is not authorized by the presenting officer, the petition shall be dismissed and the child shall be released immediately.~~

~~E. On motion by or on behalf of a child, a petition alleging delinquency or need of supervision shall be dismissed with prejudice if it was not filed within 30 days from the date the petition is referred to the presenting officer.~~

~~**§ 1104. Petition--Form and content**~~

~~A petition initiating any proceeding under the Children's Code shall be captioned "In the Children's Court of the Navajo District Court _____ (judicial district)", and entitled, "In the Matter of _____ a child, census number: _____ DOB: _____" and shall set forth with specificity:~~

~~A. The facts necessary to invoke the jurisdiction of the Family Court.~~

~~B. A statement that the child is in need of supervision, care or rehabilitation.~~

~~C. If the child is alleged to be a juvenile offender, a citation to the appropriate section of the Criminal Code or Motor Vehicle Code which the child is alleged to have violated.~~

~~D. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.~~

~~E. The name, birth date, residence and address of the child.~~

~~F. The names and residence addresses of parents, guardians, custodians and spouse, if any, of the child; and if none of the parents, guardians, custodians or spouse, if any, reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the court.~~

~~G. The name of the officer presenting the petition and the date and time presented.~~

~~H. Whether the child is in custody, and, if so, the place of detention and the time he was taken into custody.~~

~~I. If any matters required to be set forth by this Section are not known, a statement that they are not known should be made.~~

~~§ 1105. Filing and dismissal of petition~~

~~A. The petition shall be filed with the clerk of the Family Court.~~

~~B. A petition alleging that a child is in need of supervision or is a child offender shall be dismissed with prejudice if a preliminary hearing is not held within:~~

~~1. Ten days from the date of the petition is filed when a child is in custody.~~

~~2. Twenty days from the date of the petition is filed when a child is not in custody or is released.~~

~~3. Unless the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of the unavailable witnesses. A continuance not to exceed 10 days, if a child is in custody, or 20 days, if said child is not in custody, will be granted only upon a showing by the presenting officer that he has exercised due diligence in his attempts to secure the evidence and/or attendance of witnesses. If a proper showing of diligence is not made, the petition must be dismissed with prejudice.~~

~~C. The petition shall not be dismissed for violation of this Section if the child is participating in a court ordered diversion.~~

~~§ 1106. Summons; service~~

~~A. After a petition is filed, the court shall set a time for a hearing and direct the issuance of summons by the court clerk.~~

~~B. A summons shall be issued to a child alleged to be a delinquent child or a child in need of supervision if the child is 14 years of age or older and to the child's parents or guardian and to such other persons as the court considers proper or necessary parties.~~

~~C. The form of service shall conform to the requirements of the Rules of Civil Procedure of the Navajo Nation.~~

~~§ 1107. Basic rights~~

~~A. A child alleged to be a delinquent child or a child in need of supervision shall, from the time of being taken into custody, be accorded and advised of the privilege against self-incrimination and from the time of detention in a detention facility shall not be questioned except to determine identity and to determine the name of the child's parents or legal custodian.~~

~~B. In a proceeding on a petition alleging delinquency or in need of supervision:~~

~~1. An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.~~

~~2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.~~

~~3. An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.~~

~~C. A child in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the court. If an order of the court is given, the fingerprints or photographs, shall be used only as specified by the court. Any person who willfully violates the provisions of this Subsection is guilty of a misdemeanor.~~

~~D. In all proceedings on a petition alleging delinquency or need of supervision, and in those instances specified under other provisions of the Children's Code, the Court shall make a preliminary finding on the issue of whether the child's interests are represented by the parties to the proceeding. If the Court determines that the child's interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the interests of the child.~~

~~E. In proceedings on a petition alleging dependency or abuse, the parents, guardian and custodian of the child shall be informed of available legal services and that they have the right to be represented by counsel.~~

~~F. The Court, at any stage of a proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if his interests conflict with those of his parent, guardian or custodian. A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.~~

~~G. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested~~

~~with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.~~

~~H. Criminal proceedings, actions and other proceedings in the District Court based upon an offense alleged in a petition under the Children's Code, or an offense based upon the conduct alleged in the petition, are barred if the Family Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A proceeding may be subsequently initiated in District Court if the Family Court does not dispose of all relevant issues.~~

~~I. In a proceeding on a petition, a party is entitled to the opportunity to introduce evidence and be heard, and to confront and cross-examine witnesses testifying against him, and to admit or deny the allegations in a petition. Provided, in cases transferred to Navajo Nation Courts pursuant to the federal Indian Child Welfare Act where the Family Court petition would be subject to dismissal due to the unavailability of witnesses or the unwillingness of state personnel to testify in Navajo Nation Courts, the Family Court may accept as evidence reports and other public records generated beyond Navajo Indian Country where the best interests of the child require.~~

~~J. Where appointment of counsel for the child is made, the Court shall appoint counsel from the members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless compensation is authorized by the Court.~~

~~§ 1108. Taking into temporary custody~~

~~A. A child may be taken into temporary custody:~~

~~1. Pursuant to an order of the Court issued because a parent, guardian or custodian failed when requested to bring the child before the Court after having promised to do so at the time the child was released from custody.~~

~~2. By a law enforcement officer or protective services worker when he has reasonable grounds to believe that the child has run away from his parents, guardian or custodian.~~

~~3. By law enforcement officer or protective services worker if there exist reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.~~

~~4. Pursuant to the laws of arrest, without a warrant, when there exists probable cause to believe that the child committed a delinquent act.~~

~~B. Any law enforcement officer or protective services worker having a child in temporary custody for reasons other than the commission of a delinquent act may place the child in a shelter care facility.~~

~~§ 1109. Release or delivery from temporary custody~~

~~A. A person taking a child into temporary custody shall, with all reasonable speed:~~

~~1. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or~~

~~2. In the case of an alleged delinquent or child in need of supervision, release the child to the child's parent, guardian or custodian upon a written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court; or~~

~~3. In the case of the alleged delinquent or child in need of supervision, deliver the child to the probation office or to a place of detention designated by the court.~~

~~4. In the case of an alleged neglected or abused child, deliver the child to the Division or to an appropriate shelter care facility; or for an alleged delinquent, child in need of supervision or neglected or abused child, to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.~~

~~B. When an alleged delinquent or child in need of supervision is delivered to the probation office or to a place of detention designated by the Court, a probation officer, prior to placing the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court. If detention appears inappropriate, the probation officer shall request the presenting officer to petition the Court for a review of its decision.~~

~~C. When an alleged neglected or abused child is delivered to the Division, a Division caseworker, prior to placing the child in custody, shall review the need for doing so and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court.~~

~~D. When a child is delivered to an appropriate shelter care facility, a Division caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the Court.~~

~~E. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than 72 hours, to the child's parent, guardian or custodian and to the Court together with a statement providing the reason for taking the child into custody.~~

~~F. In all cases when a child is taken into custody, he shall be released to his parent, guardian or custodian in accordance with the conditions and time limits set forth in the Rules of Procedure for the Family Court.~~

~~§ 1110. Criteria for detention of children~~

~~A. Unless ordered by the Court pursuant to the Children's Code, a child taken into custody shall not be placed in detention prior to the Court's disposition unless:~~

~~1. Probable cause exists to believe that if not detained, the child will commit injury to persons or property of others, or cause injury to himself or be subject to injury by others; or~~

~~2. Probable cause exists to believe that the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child; or~~

~~3. Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.~~

~~B. This Subchapter shall govern the decision of all persons responsible for determining whether detention is appropriate prior to the Court's disposition.~~

~~§ 1111. Place of detention or shelter care~~

~~A. A child alleged to be a delinquent child may be detained pending a court hearing in any of the following places:~~

~~1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or~~

~~2. A facility operated by a licensed child welfare services agency; or~~

~~3. A detention facility approved by the Family Court for children alleged to be delinquent children; or~~

~~4. In any other suitable place designated by the Family Court and certified under § 1056, and which meets the standards for detention facilities under the Children's Code.~~

~~B. A child alleged to be a child in need of supervision or a dependent child shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent, but shall be detained in the following shelter care facilities:~~

~~1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or~~

~~2. A facility operated by a licensed child welfare services agency; or~~

~~3. Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Family Court and certified by the appropriate authority.~~

~~C. The official in charge of a jail or other facility for the incarceration of adult offenders or persons charged with crimes and the arresting law enforcement officer shall inform the probation officers within four working hours and the Court within four working hours or 48 consecutive hours if on a weekend, whichever is the shorter time, when an individual, who is or appears to be under the age of 18 years, is received at the facility, and upon request shall deliver him to the court or the probation officer or transfer him to a facility designated by the Court.~~

~~§ 1112. Place of temporary custody~~

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

~~A. A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence; or~~

~~B. A facility operated by a licensed child welfare services agency; or~~

~~C. With a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court; or~~

~~D. Any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined and which meets the standards for shelter care facilities established by the Division.~~

~~§ 1113. Detention hearing required for detained child, court determination and disposition~~

~~A. Where a child who has been taken into custody is not released but is detained:~~

~~1. A petition shall be filed by the presenting officer with the Court within 48 hours excluding Saturdays, Sundays and legal holidays, and, if not filed within the stated time, the child shall be released.~~

~~2. A detention hearing shall be held within 24 hours, excluding Saturdays, Sundays and legal holidays of the filing of a petition to determine whether continued detention is required pursuant to criteria established by the Children's Code.~~

~~B. The judge may appoint one or more persons to serve as referees on a full or part-time basis for the purpose of holding detention hearings. The Chief Justice of the Navajo Nation shall approve all contracts with the referees and shall fix their hourly compensation pursuant to the Personnel Policies and Procedures of the Navajo Nation.~~

~~C. Written notice of the detention hearing stating the time, place and purposes of the hearing shall be given by the person designated by the Court to the child's parent(s), guardian or custodian, if they can be found, and to the child if the petition alleges that the child is delinquent or in need of supervision.~~

~~D. At the commencement of the detention hearing, the judge or referee shall advise the parties of their basic rights provided in the Children's Code, and shall appoint counsel, guardians and custodians, if appropriate.~~

~~E. If the judge or referee finds the child's detention is appropriate under the criteria established by the Children's Code, he shall order the detention in an appropriate facility in accordance with the Children's Code.~~

~~F. If the judge or referee finds that detention of the child is not appropriate under the criteria established by the Children's Code, he shall order the release of the child, but, in so doing, may order one or more of the following conditions:~~

~~1. The child be placed in the custody of a parent, guardian or custodian or relative, or under the supervision of an agency agreeing to supervise the child.~~

~~2. Place restrictions on the child's travel, association with other persons or place of abode during the time of release.~~

~~3. Impose any other condition deemed reasonably necessary and consistent with the Children's Code, including a condition requiring that the child return to custody if required.~~

~~C. An order releasing a child on any conditions specified in this Section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.~~

~~H. At the detention hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or referee even though it would be otherwise inadmissible in a hearing on the petition.~~

~~I. If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or referee shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and an affidavit stating the relevant facts.~~

~~§ 1114. Transfer to District Court-Hearing~~

~~A. After a petition has been filed alleging a delinquent act, the court may, before a hearing on the merits, transfer the matter for prosecution in the District Court, if:~~

~~1. The child was 16 years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act would be a crime if committed by an adult; and~~

~~2. A hearing on whether the transfer should be made is held in conformity with the rules for a hearing on a petition alleging a delinquent act, except the hearing will be to the Court without a jury; and~~

~~3. Written notice of the time, place and purpose of the hearing is given to the child, parents, guardian or custodian at least three days before the hearing; and~~

~~4. The Court at the hearing finds there are reasonable grounds to believe that:~~

~~a. The child committed the delinquent act alleged; and~~

~~b. The child is not amenable to treatment or rehabilitation as a child through available facilities; and~~

~~c. The child is not committable to an institution for the mentally retarded or mentally ill; and~~

~~d. The interests of the Navajo Nation require that the child be placed under legal restraint or detention.~~

~~B. Prior to the hearing, the Juvenile Representative shall prepare for the Court and make available copies to the child, his counsel, ,or his parents, guardian or custodian, a predispositional report relevant to the issues described in Subparagraphs (b), (c), and (d) of Paragraph (A) (4) of this Section and the court shall hear evidence on Subsection (A) and make specific findings in regards thereto.~~

~~C. A written transfer order containing specific findings and reasons for the order terminates the jurisdiction of the Family Court over the child with respect to the delinquent acts alleged in the petition. No child shall be prosecuted in the District Court for a criminal offense originally subject to the jurisdiction of the Family Court unless the case has been transferred as provided in this Subsection.~~

~~§ 1115. Adjudicatory hearings; findings; dismissal; disposition~~

~~A. Hearing on petitions shall be conducted by the Court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether or not the child committed the alleged delinquent act(s). If no jury is demanded, the hearing will be by the Court without a jury. All hearings on petitions other than those alleging delinquency will be without a jury. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. The Court shall advise persons before the court of their basic rights under the Children's Code and other laws at each separate appearance.~~

~~B. All hearings on petitions alleging delinquency of a child shall be open to the general public except after a finding of exceptional circumstances the Court, in its discretion, deems it appropriate to conduct a closed delinquency hearing.~~

~~1. All dependency and child-in-need-of-supervision hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the Court may be present at a closed hearing.~~

~~2. Persons the Court finds to have a proper interest in the case or in the work of the Court, including members of the Bar, may be admitted by the Court to closed hearings on the condition that they respect the confidentiality of the proceeding. Accredited representatives of the news media may be allowed to attend closed hearings at the discretion of the Family Court judge subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent or guardian of that child, and subject to such regulations as the Court deems necessary for the maintenance of order, decorum and for the furtherance of the purposes of the Children's Code.~~

~~3. If the Court finds that it is in the best interest of the child, the child may be temporarily excluded from a neglect or abuse hearing and during the taking of evidence on the issues of need for treatment and rehabilitation in delinquency and need-of-supervision hearings. A child may be temporarily excluded by the Court during a hearing on dispositional issues under the same method.~~

~~C. Those persons or parties who intentionally divulge information in violation of Subsection (B) of this Section shall be guilty of an offense. Persons found guilty of violating the provisions of this Section shall be subject to imprisonment for a term not to exceed 90 days and be ordered to pay a fine not to exceed two hundred fifty dollars ($250.00).~~

~~D. The Court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegations of dependency, delinquency or need of supervision shall make and record its findings on whether or not the child is a dependent child or whether or not the acts subscribed to the child were committed by the child. If the Court finds that the allegations on the petition have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings, unless the best interests of the child require otherwise.~~

~~E. If the Court finds, on the basis of valid admission to the allegations of the petition, or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence, that the child committed the acts by reasons of which he is alleged to be delinquent or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation and file its findings thereon. In the absence of evidence to the contrary, evidence, of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the Court finds that a child alleged to be delinquent or in need of supervision is not in need of care or rehabilitation, it shall dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings, or make such other order as it deems proper.~~

~~F. If the Court finds on the basis of a valid admission of the allegations of the petition, or on the basis of clear and convincing evidence that the child is dependent or is in need of care or rehabilitation as a delinquent child or child in need of supervision, the Court may proceed immediately or at a continued hearing to dispose of the case.~~

~~G. In the dispositional hearing, the Family Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.~~

~~H. By motion of a party or by its own authority, the Court may continue the hearing on the petition for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The Court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuance under this Subsection, the Court shall make an appropriate order for detention or legal custody.~~

~~I. Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court no later than five days before the scheduled hearing date. An affidavit including reasons why a report has not been completed shall be filed with the Court no later than five days before the scheduled hearing date, if the report will not be submitted before the deadline. The Court may in~~

~~its discretion dismiss a petition if the necessary reports, evaluations or other material have not been timely submitted.~~

~~**§ 1116. Predisposition studies; reports and examination**~~

~~A. After a petition has been filed and the allegations of the petition have been established by admission or after a hearing, the Court shall direct that a predisposition study and report be made in writing by the Division caseworker or other appropriate officer designated by the Court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case.~~

~~B. Where there is indication that the child may be mentally ill or mentally retarded, the Court, on motion by the presenting officer or that of other counsel may order the child to be examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an out-patient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.~~

~~C. The Court, after hearing, may order examination by a physician, psychiatrist or psychologist, of a parent whose ability to care for or supervise a child is an issue before the Court. The parent or custodian may refuse to be examined, but such refusal may be considered by the judge or jury.~~

~~D. The Court may order that a child adjudicated as a delinquent child or a child in need of supervision be transferred to an appropriate facility for a period of not more than 30 days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.~~

~~**§ 1117. Dependency predisposition studies, reports and examinations**~~

~~A. Prior to holding a dispositional hearing, the Court shall direct that a predisposition study and report be made in writing to the Court by the Division.~~

~~B. The predisposition study required under Subsection (A) shall contain the following information:~~

~~1. A statement of the specific harm to the child that intervention is designed to alleviate;~~

~~2. If removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents;~~

~~3. A treatment plan consisting of:~~

~~a. A description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, a specific plan setting out the steps to be taken by the parents and caseworker and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the Division's overall plan for insuring that the services will be delivered;~~

~~b. If removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs which have been considered and rejected;~~

~~c. A description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent occurs or continues; and~~

~~d. A description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary.~~

~~C. A copy of the predisposition report shall be provided by the Division to counsel for all parties at least five days before the dispositional hearing.~~

~~§ 1118. Social and legal records—Inspection~~

~~A. Social, medical, psychiatric and psychological records of the Court concerning a child and produced or recorded by requirement or authority contained in the Children's Code, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:~~

~~1. The judge, Division caseworkers, probation officers and Court personnel;~~

~~2. Representatives of any agency providing supervision and having legal custody of the child;~~

~~3. Representatives of the Division;~~

~~4. Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.~~

~~B. All or any part of records or information secured from records listed in Subsection (A), when presented to the Court in a proceeding under the Children's Code, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure win place the informant in danger or that disclosure would not be in the child's best interests.~~

~~C. Except as permitted by this Section, whoever discloses, makes use or knowingly permits the use of information concerning a child before the Court, directly or indirectly derived from the records listed in Subsection (A), or acquired in the course of official duties, shall be subject to 90 days in jail or a two hundred fifty dollars ($250.00) fine, or both.~~

~~§ 1119. Sealing of records~~

~~A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code or on the Court's own motion, the Court may vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, probation services and of any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the Court finds that:~~

~~1. Two years have lapsed since the final release of the individual from legal custody and supervision, or two years have lapsed since the entry of any other judgment not involving legal custody or supervision.~~

~~2. The individual has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a court, and no proceeding is pending seeking such a conviction or finding.~~

~~B. Reasonable notice of the motion shall be given to:~~

~~1. The Family Court presenting officer;~~

~~2. The authority granting the release, if the final release was from a parole or probation agency,~~

~~3. The law enforcement officer, department and central records depository having custody of the law enforcement files and records if such records are included in the motion;~~

~~4. Any other agency having custody of records or files subject to the sealing order.~~

~~C. Upon entry of the sealing order, the proceedings in the case shall be expunged and all index references shall be deleted; the Court, law enforcement officers and departments and agencies shall~~

~~reply, and the individual may reply to an inquiry that records with respect to such person have been expunged. Copies of the sealing order shall be sent to each agency or official named herein.~~

~~D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the Court only:~~

~~1. Upon motion by the individual who is the subject of the records and only to those persons named in the motion;~~

~~2. In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment, or to persons engaged in fact-finding or research in work related to the child's welfare.~~

~~E. Any finding or allegation of delinquency or need of supervision subsequent to the sealing order may by Court order be used as a basis to set aside the sealing order.~~

~~F. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed by the Court at the end of the dispositional stage.~~

~~§ 1120. Damages to or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution~~

~~A. Any person may recover damages, not to exceed five thousand dollars ($5,000), in a civil action in a court or tribunal of competent jurisdiction, from the parent, guardian or custodian of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or~~

~~destroyed property, real or personal, belonging to the person bringing the action and that the parent, guardian or custodian failed to provide adequate supervision of the child.~~

~~B. Recovery of damages under this Section is limited to actual damages proved in the action, taxable Court costs, and, in the discretion of the Court, reasonable attorney's fees to be fixed by the Court or tribunal.~~

~~C. Nothing contained in this Section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Children's Code.~~

~~§ 1121. Motor Vehicle Code violations~~

~~A. The District Court of the Navajo Nation shall have original exclusive jurisdiction of the following Motor Vehicle Code violations involving a child when the person alleged to have committed the violation is a child who has reached his fifteenth birth date:~~

~~1. Driving while under the influence of intoxicating liquor or drugs;~~

~~2. Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;~~

~~3. Reckless driving.~~

~~B. If a child is charged with any of the violations specified in Subsection (A) of this Section, the child may be transferred to the Family Court at the discretion of the District judge. Upon transfer, the child shall be proceeded against in the same manner as a child alleged to be a delinquent child.~~

~~C. Any Motor Vehicle Code violation by a child, including those specified in Subsection (A) of this Section, shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of the Children's Code.~~

~~D. No court may incarcerate a child who has been found guilty of any Motor Vehicle Code violation without first securing the approval of the Family Court.~~

~~**§ 1122. Court costs and expenses**~~

~~A. The following expenses shall be a charge upon the funds of the Court upon their certification by the Court:~~

~~1. The expenses of service of summons, notices, subpoenas and other like expenses incurred in any proceeding under the Children's Code;~~

~~2. Reasonable compensation of a guardian ad litem appointed by the Court.~~

~~B. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the Court finds that they are financially able to pay all or part of the costs and expenses in Subsection (A) of this Section, the court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the Court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the Court, to the Court.~~

~~C. Whenever legal custody of a dependent child or a child in need of supervision is vested in someone other than the child's parents, the Court, after notice to the parents or other persons legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parents or other legally obligated persons to pay to the court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.~~

~~D. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment may be filed, and, if filed, shall have the effect of a civil judgment.~~

~~**§ 1123. Duty to report child abuse; penalty for failure to report**~~

~~A. Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement official, registered nurse, visiting nurse, school teacher or social worker acting in his or her official capacity, or any other person having reason to believe that serious injury or injuries have been inflicted upon the child as a result of abuse, neglect or starvation, shall report the matter immediately to:~~

~~1. The appropriate Navajo Nation, state or federal health and social service department in the agency where the child resides; or~~

~~2. The presenting officer of the judicial District where the child resides.~~

~~B. An oral report shall be made promptly by the recipient of the report under Paragraph (1) or (2) of Subsection (A) of this Section to the presenting officer by telephone or in person and a written report shall be submitted to the presenting officer as soon thereafter as possible. The written report shall contain the names and addresses of the child and his or her parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and other information that might be helpful in establishing the cause of injuries and the identity of the person or persons responsible for the injuries, and where the child has been referred or can be found.~~

~~C. Any person failing, neglecting or refusing to report a suspected case of child abuse, neglect or starvation shall be guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00).~~

~~§ 1124. Admissibility of report in evidence; immunity of person reporting~~

~~A. In any proceeding alleging child abuse or neglect under the Children's Code resulting from a report submitted under § 1123, or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege or rule against disclosure.~~

~~B. Any person reporting an instance of suspected child abuse, neglect or starvation, or participating in a judicial proceeding brought as a result of a report submitted under § 1123 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability that might otherwise be incurred or imposed by law, unless a finding is made that the person acted in bad faith or with malicious purpose.~~

~~NAVAJO NATION CODE ANNOTATED~~
~~TITLE 9. DOMESTIC RELATIONS~~
~~CHAPTER 11. NAVAJO NATION CHILDREN'S CODE~~
~~SUBCHAPTER 7. DISPOSITION~~

~~§ 1151. Disposition of a dependent child~~

~~A. In the disposition phase of every case under this Code, the Court shall give priority to placement of the child with the closest relative who is found qualified to receive and care for the child by the Court after investigation by the Court counselor or an agency designated by the Court.~~

~~B. If a child is found to be dependent, the Court may in its judgment make any of the following dispositions in the best interests of the child:~~

~~1. Permit the child to remain with his parents, guardian or custodian subject to conditions and limitations prescribed by the Court;~~

~~2. Place the child under protective supervision of the Division;~~

~~3. Transfer legal custody of the child to any of the following:~~

~~a. An agency responsible for the care of dependent children;~~

~~b. A child-placing agency able to assume responsibility for the education, care and maintenance of the child and which is licensed or otherwise authorized by law to receive a child for placement into foster care, including a child care institution or a family home; or~~

~~c. A relative or other individual who, after study by the Family Court counselor or agency designated by the Court, is found by the Court to be qualified to receive and care for the child; or~~

~~4. Make such other disposition as may be necessary to serve the best interests of the child.~~

~~C. Any parent, guardian or custodian of a child who is placed in the legal custody of the Division or other person shall have reasonable rights of visitation with the child as determined by the Court unless the Court finds that the best interests of the child preclude any such visitation.~~

~~**§ 1152. Disposition of adjudicated delinquent child or a child in need of supervision**~~

~~A. If a child is found to be delinquent, the Court may impose a fine not to exceed the fine which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child:~~

~~1. Any disposition that is authorized for the disposition of a dependent;~~

~~2. Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;~~

~~3. Place the child on probation under such conditions and limitations as the Court may prescribe.~~

~~B. If a child is found to be in need of supervision, the Court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:~~

~~1. Any disposition that is authorized for the disposition of a dependent child;~~

~~2. Transfer legal custody to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children; or~~

~~3. Place the child on probation under those conditions and limitations the Court may prescribe.~~

~~C. Unless a child found to be dependent or in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children. No child found to be delinquent or in need of supervision shall be committed or transferred to a facility used for execution of sentences of persons convicted of crimes.~~

~~D. Whenever the Court vests legal custody in an agency, institution or department it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.~~

~~§ 1153. Disposition of a mentally ill or mentally retarded child~~

~~If, at any stage of a proceeding under the Children's Code, the evidence indicates that the child is mentally retarded or mentally ill, the Court shall transfer legal custody of the child for a period not exceeding 30 days to an appropriate agency for further study evaluation and a report an the child's condition. The Court may thereafter issue an appropriate decree.~~

~~§ 1154. Continuance under supervision without judgment--Consent decree-Disposition~~

~~A. At any time after the filing of a delinquency or in need-of-supervision petition, and before the entry of a judgment, the Court may, on motion of the presenting officer or counsel for the children suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The Court order continuing the child under supervision pursuant to this Section shall be known as a "consent decree".~~

~~B. If the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the presenting officer after consultation with probation services, the Court shall consider the objections and the reasons therefore, and may in its discretion enter the consent decree.~~

~~C. A consent decree shall remain in force for a period not to exceed six months unless the decree is discharged sooner by probation services. Prior to the expiration of the six months period, and upon the application of probation services or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his counsel and he shall have 30 days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.~~

~~D. If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree, the presenting officer may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same, manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the Court may:~~

~~1. Extend the period of the consent decree; or~~

~~2. Make any other disposition which would have been appropriate in the original proceeding.~~

~~E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency or need of supervision judgment shall not be in jeopardy again in any court for the same offenses alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this Subsection precludes a civil suit against the child and his parents for damages arising from his conduct~~

~~F. A judge who, pursuant to this Section, elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency or need of supervision petition if:~~

~~1. A consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or~~

~~2. A consent decree is granted but the delinquency or in-need-of-supervision petition is subsequently reinstated.~~

~~§ 1155. Interlocutory disposition order in cases where service is made by publication; effect~~

~~A. If the service of a summons upon any party is made by publication the Court may conduct a provisional hearing upon the allegations of the petition, make findings and enter an interlocutory order of disposition if:~~

~~1. The petition alleges that the child is dependent, in need of supervision or delinquent; and~~

~~2. The summons served upon parties other than those served by publication, in addition to other requirements:~~

~~a. States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;~~

~~b. Requires the party served to appear and, if appropriate, to answer the allegations of the petition at both the provisional and final hearing; and~~

~~c. States that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and~~

~~3. The child is personally before the Court at the provisional hearing on petitions alleging delinquency and in need of supervision, but the Court may waive the presence of the child in dependency cases.~~

~~B. All relevant provisions of the Children's Code shall apply to preliminary hearings, but the Court's findings and order of disposition shall have only an interlocutory effect pending the final hearing on the petition.~~

~~C. The interlocutory order shall have the following effect on the rights and duties of the party served by publication:~~

~~1. If the party served by publication fails to appear at the final hearing on the petition, the findings and interlocutory orders shall become final without further evidence, shall be entered as a judgment and shall have the same effect as if made at the final hearing; or~~

~~2. If the party served by publication appears at the final hearing, the interlocutory findings and orders shall be vacated and disregarded, and the hearing shall proceed upon the allegations of the petition as otherwise provided by the Children's Code without regard to this Section.~~

~~§ 1156. Limitations on dispositional judgments; modification, termination or extension of court orders~~

~~A. A judgment vesting legal custody of a child in an agency shall remain in force for an undetermined period not exceeding two years from the date entered, except that no child shall be ordered for more than one year to an institution for the housing of delinquent children without further order of the Court. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the custody and rehabilitation of delinquent children divests the Court of jurisdiction at the time of transfer of custody and:~~

~~1. The agency to which legal custody is transferred has the exclusive power to parole or release the child;~~

~~2. The supervision of a child after release under Paragraph (1) of this Subsection may be conducted by the agency in conjunction with the Probation Office of the Navajo Nation, or any other suitable agency or under any contractual arrangements deemed appropriate;~~

~~3. A child or his guardian may petition the Family Court for review of agency decision denying parole or termination.~~

~~B. A judgment vesting legal custody of a child in an individual shall remain in force for two years from the date entered and automatically terminate at the end of the two years unless terminated or extended by order of the Court.~~

~~C. A judgment of probation or protective supervision shall remain in force for an undetermined period not exceeding two years from the date entered.~~

~~D. A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the two-year period. A release and the reasons therefore shall be reported promptly to the Court in writing by the releasing authority.~~

~~E. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:~~

~~1. A child, whose legal custody has been transferred to a person, and who requests the Court for a modification or termination of the judgment alleging that the transfer of legal custody is no longer necessary and that the person has denied application for release of the child or has failed to act upon the application within a reasonable time; or~~

~~2. A person vested with legal custody, or responsibility for protective supervision, who requests the Court for an extension of the judgment on the grounds that the requested action is necessary to safeguard the welfare of the child or the public interest.~~

~~F. At any time prior to the expiration of a judgment transferring legal custody, the court may extend the judgment for an additional period of one year if it finds that the extension is necessary to safeguard the welfare of the child or the interest of the Navajo Nation.~~

~~G. Prior to the expiration of a judgment of probation or protective supervision, the Court may extend the judgment for an additional period of one year if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.~~

~~H. When a child reaches 18 years of age all judgments affecting the child then in force automatically terminate.~~

~~§ 1157. Judgment; noncriminal nature; nonadmissibility~~

~~The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Navajo Nation program or obtaining Navajo Nation employment. The disposition of a child and any evidence given in a hearing in court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching majority.~~

~~§ 1158. Appeals~~

~~A. Any party may appeal from a final judgment of the Family Court to the Supreme Court of the Navajo Nation in the manner provided by the rules of the Court. The appeal shall be heard by the Supreme Court based on the files, records and transcript of the Family Court proceeding. The name of the child shall not appear in the record on appeal. The case number from the Family Court shall be used on all documents filed with and issued by the Supreme Court.~~

~~B. The appeal to the Supreme Court shall not stay the judgment appealed from, but the Supreme Court may order a stay upon an application consistent with the provisions of the Children's Code, if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practical time.~~

~~C. The Supreme Court shall affirm the Family Court's judgment or it shall modify the Court's judgment and remand the child to the jurisdiction of the Family Court for disposition consistent with the Supreme Court's decision.~~

~~D. A child who has filed a notice of appeal shall be furnished an electronically recorded transcript of the proceedings, or as much of it as is requested without cost, upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is not able to pay for the cost thereof.~~

~~§ 1159. Procedural matters under the Children's Code~~

~~A. The Court may allow, on its own motion or the motion of the presenting officer or counsel for the child, amendment of a petition or motion to add additional issues, findings or remedies raised during the proceeding.~~

~~B. Upon application of a party or on its own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects.~~

~~C. The Court may cite a person for contempt of court for disobeying the Court's order or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders.~~

~~D. In any proceeding under the Children's Code, either on motion of a party or on the Court's own motion, the Court may make an order restraining the conduct of any party over whom the Court has obtained jurisdiction.~~

~~§ 1160. Purchase of care from private agency by public agency~~

~~When the legal custody of a child is vested in the Division under the provisions of the Children's Code the Division may transfer physical custody of the child to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the Division covering the care and treatment the child is receiving. Frequency of reports will be determined by the Division. The Division may see the child with reasonable notice to the private agency.~~

~~§ 1161. Probation revocation; disposition~~

~~A child on probation incident to an adjudication as a delinquent child or a child in need of supervision who violates a term of the probation may be proceeded against in a probation revocation proceeding. Revocation of probation shall be part of the initial proceeding and is began by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to Revoke Probation shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt. The hearing shall be before the Court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a finding of probation violation is made, the Court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.~~

~~NAVAJO NATION CODE ANNOTATED~~
~~TITLE 9. DOMESTIC RELATIONS~~
~~CHAPTER 11. NAVAJO NATION CHILDREN'S CODE~~

~~SUBCHAPTER 9. PROTECTIVE SERVICES~~

~~§ 1251. Protective services worker; power and duties~~

~~A. Protective services workers shall be employed by the Division.~~

~~B. The Division may cooperate with such state and community agencies as are necessary to achieve the purposes of this Chapter. The Division may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Navajo Nation Council or its designate.~~

~~C. A protective services worker shall:~~

~~1. Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a 24 hour basis.~~

~~2. Receive from any source, oral or written information regarding a child who may be in need of protective services.~~

~~relationship alleging grounds contained in Subsection (B). Any person may provide information showing that the parent-child relationship should be terminated to the Presenting Officer, and the Presenting Officer may initiate a petition based on such information.~~

~~B. Evidence sufficient to justify the termination of the parent-child relationship shall include any of the following grounds; the Court may also consider the best interests of the child:~~

~~1. That the parent has abandoned the child or that the parent has made no effort to maintain a parental relationship with the child.~~

~~2. That the parent has seriously neglected or willfully abused the child.~~

~~3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.~~

~~4. That the parent is deprived of his or her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.~~

~~5. That the parents have voluntarily relinquished their rights to a child or have consented to adoption.~~

~~§ 1302. Contents of petition~~

~~A. A petition for the termination of the parent-child relationship filed pursuant to this Chapter shall include, to the best information or belief of the petitioner:~~

~~1. The name and address of the petitioner;~~

~~2. The name, sex, date and place of birth, census number and residence of the child;~~

~~3. The basis for the Court's jurisdiction;~~

~~4. The relationship of the petitioner to the child or the fact that no relationship exists;~~

~~5. The names, addresses, and dates of birth, and census numbers of the parents, if known;~~

~~6. The names and addresses of the persons having legal custody or guardianship of the person or acting in loco parentis to the child, or the organization or authorized agency having legal custody or providing care for the child;~~

~~7. The grounds on which termination of the parent-child relationship is sought; and~~

~~8. The names and addresses of persons, or authorized agencies or officers thereof to whom or to which legal custody or guardianship of the person of the child might be transferred.~~

~~B. A copy of any relinquishment or consent, if any, previously executed by the parent shall be attached to the petition. Where placement outside Navajo Indian Country is contemplated, a consent or relinquishment shall conform with the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913.~~

~~§ 1303. Notice; waiver; guardian ad litem~~

~~A. After a petition for termination of parental rights has been filed, the clerk of the Family Court shall set a time and place for hearing. Notice thereof shall be given to the parents of the child, the person having physical custody of the child, the person having legal custody of the child, any individual standing in loco parentis to the child and the guardian ad litem, if any, as provided in the rules for service of process in civil actions.~~

~~B. The hearing shall take place no sooner than 10 days after the completion of service of notice.~~

~~C. Notice and appearance may be waived by a parent before the Court or in writing and attested to by two or more credible witnesses who are 18 or more years of age subscribing their names thereto in the presence of the person executing the waiver. The waiver shall contain language explaining the meaning and consequences of the waiver and the effect of termination of parental rights. The parent who has executed such a waiver shall not be required to appear, unless the child may be placed outside Navajo Indian Country, in which case the requirements of the Indian Child Welfare Act, 25 U.S.C. § 1913, must be complied with.~~

~~D. When termination of the parent-child relationship is sought under § 1301(B)(3), the Court shall appoint a guardian ad litem for the alleged incompetent parent. The Court may otherwise appoint a guardian ad litem as deemed necessary for any party.~~

~~E. The presenting officer, upon the request of the Court, the Division, or on his own motion, may intervene in any proceeding under this Subchapter to represent the interest of the child.~~

~~§ 1304. Social study prior to disposition; contents~~

~~A. Upon the filing of a petition, the Court shall order the Division, an agency or other person selected by the Court to conduct a complete social study. A written report shall be submitted to the Court prior to hearing, except that when an agency is the petitioner, either in its own right or on behalf of a parent, a report in writing of the social study made by such agency shall accompany the petition. The Court may order any additional studies it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. The report submitted shall include a specific recommendation on the termination of the parent-child relationship and the reasons therefore.~~

~~B. The Court may waive the requirement of the social study when the Court finds that it is in the best interest of the child.~~

~~§ 1305. Hearing~~

~~Cases filed under this Subchapter shall be heard by the Court in a closed hearing. Only such persons whose presence the judge finds to have a direct interest in the case or in the work of the Court shall be admitted provided that such persons shall not disclose any information obtained at the hearing. The Court may require the presence of any parties and witness it deems necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to § 1303, or has relinquished his rights to the child shall not be required to appear at the hearing unless placement outside Navajo Indian Country is contemplated.~~

~~**§ 1306. Court order; form; contents**~~

~~A. Every order of the Court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.~~

~~B. If the Court finds grounds for the termination of the parent-child relationship it shall terminate such relationship and take one of the following courses of action:~~

~~1. Appoint an individual as guardian of the child's person;~~

~~2. Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency; or~~

~~3. Place the child for adoption or order that an adoptive placement for the child be found.~~

~~C. The Court shall also make an order fixing responsibility for the child's support. The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.~~

~~D. Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, provided that where the Court finds that the best interests of the child require substitution or supplementation of parental care and supervision, the Court shall make such orders as are necessary.~~

~~**§ 1307. Effect of court order**~~

~~An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall be terminated by a final order of adoption.~~

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Section 4. New Title 9 Amendments and Enactments

The Navajo Nation Council hereby enacts the Act by amending and enacting 9 N.N.C. §§1001-1504 as follows:

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NAVAJO NATION CODE ANNOTATED
TITLE 9. DOMESTIC RELATIONS CODE
SUBCHAPTER 1. GENERAL PROVISIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S

§ 1001. Purpose

The ~~Children's Code~~ the Navajo Nation Álchíní Bi Beehaz'áannii shall be liberally ~~construed~~ interpreted and ~~interpreted~~ construed to ~~effectuate~~ fulfill the following ~~legislative~~ purposes:

A. To recognize and reaffirm the duty of a parent and/or guardian provide for the safety, welfare, and guidance of their children.

B. To preserve and restore the harmony and unity of the family by ~~whenever possible to~~ ~~provide for~~ ensuring access to the mental and physical care~~,~~ and protection ~~and wholesome mental and physical development~~ of the children and families which come ~~coming~~ within the ~~provisions of the Children's Code~~ jurisdiction of the Navajo Nation;

C. ~~Consistent with the protection of the Navajo community, to prevent children from committing delinquent acts and to offer a program of supervision, care and rehabilitation~~ To protect children by taking actions and offering programs as may be proper and necessary to prevent delinquency, incorrigibility, truancy, neglect and abuse;

D. To achieve the purposes of ~~the Children's Code~~ the Navajo Nation Álchíní Bi Beehaz'áannii in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or safety, or in the interest of public safety;

E. ~~To separate clearly in judicial and other processes affecting children under the Children's Code the dependent child, the child in need of supervision and the delinquent child, and to provide appropriate options for treatment and rehabilitation of these~~

~~children~~ To mandate the participation of children and family members into appropriate culturally relevant treatment, rehabilitation and aftercare;

F. To seek out culturally appropriate methods for prevention, intervention and treatment of family disharmony.

~~E~~F. To ~~provide a judicial division separate from the District Courts of the Navajo Nation with procedures through which the provisions of the Children's Code may be~~ executed and enforced~~, in which the parties are assured of a fair hearing, and their constitutional and other legal rights recognized and enforced~~ the Álchíní Bi Beehaz'áannii and to ensure fundamental fairness consistent with Diné bi beehaz'áannii, the Navajo Nation Bill of Rights and other statutory provisions for every individual who comes within the jurisdiction of the Navajo Nation Courts; and

~~F~~G. To ~~provide a forum in which Navajo children charged to be delinquent or in need of supervision in other jurisdictions may be referred for adjudication and disposition, or for disposition alone.~~ facilitate the purposes of the Navajo Nation Álchíní Bi Beehaz'áannii through coordination with other governments and agencies; and

H. To facilitate family harmony using measures consistent with Navajo Nation statutes and Diné bi beehaz'áannii.

§ 1002. Definitions

The ~~laws under this Subchapter shall be referred to as the Navajo Nation Children's Code, unless the context otherwise requires~~ following definitions shall be limited to this Chapter:

A. "Abandon~~ed~~ment" means the ~~failure of the~~ parent(s) fails to provide ~~reasonable support and maintain regular contact with the child, including the provision of~~ adequate care and/or parental supervision~~.~~; and ~~Failure~~ fails to maintain a ~~normal~~ parental relationship with the child without just cause for a period of ~~six~~ three months~~ shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment~~.

B. "Abandoned Infant" mean a child under the age of one (1) year whose parent(s) have failed to provide adequate care and/or parental supervision; and fails to maintain a parental relationship with the child without just cause. The period of abandonment may be for less than three (3) months.

~~B~~C. "Abuse" means the infliction of physical, emotional, sexual or ~~mental~~ psychological injury on a child and shall include ~~failing to maintain reasonable care and treatment or~~ exploiting or overworking a child to such an extent that ~~his or her~~ his/her health, morals, or emotional well-being is endangered.

~~C~~D. "Adjudicatory Hearing" means a ~~proceeding in the Family Court to determine whether a child has committed a specific delinquent act as set forth in a petition~~ hearing on the factual and legal issues of the petition upon which the Court renders a decision.

E. "Adoption" means legally taking a child into one's family and raising as their own.

~~D~~F. "Adult" means a person 18 years of age or older, or a person who is otherwise emancipated by Court order ~~of a court of competent jurisdiction~~.

~~E. "Agency" means an organization licensed by the Division for adoption or for the provision of foster care.~~

G. "Aggravated Circumstances" means any factor involved in the commission of an act of abuse or neglect that increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse. Aggravated circumstances shall include, but not be limited to, that the parent has:

1. committed murder of another child of the parent; or

2. committed voluntary manslaughter of another child of the parent; or

3. aided or abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter; or

4. committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

5. had his/her parental rights terminated involuntarily to a sibling of the subject child.

~~F~~H. "Child" means ~~an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of 18 years~~ a person who has not attained the age of eighteen (18) and who is unmarried or has not been emancipated.

~~G~~I. "Child in Need of Supervision" (CHINS) means a child who is in need of care or rehabilitation in the following situations:

1. Being subject to compulsory school attendance, is ~~habitually~~ consistently absent or tardy from school, pursuant to Title 10 N.N.C. §118; or

2. ~~Habitually~~ Consistently disobeys the reasonable and lawful demands of ~~his or her~~ his/her parent(s), guardian(s) or custodian(s), or school personnel and is ~~ungovernable and~~ beyond control; or

3. Has committed an offense ~~not classified as criminal or one applicable only to children~~ under Title 14, Civil Traffic Infractions; ~~and~~ or

4. ~~In any of the foregoing situations is in need of care or rehabilitation~~ Has committed other non-criminal offenses under this Code.

J. "Custodian" means a person other than a parent or guardian in whose custody a minor child has been placed temporarily and no order granting legal custody has been given.

~~H. "Family Court" means the division of the District Court of the Navajo Nation exercising jurisdiction under this Code.~~

~~I. "Family Court Judge" means any duly appointed judge of the Family Court division of the Navajo Nation District Court exercising jurisdiction under this Code.~~

~~J. "Counsel" means a person who is a member of the Navajo Nation Bar Association.~~

~~K. "Court" when used without further qualification, means the Family Court division of the Navajo Nation District Court.~~

~~L. "Custodian" means a person other than a parent or legal guardian to whom legal custody of a child has been given by order of the Family Court, but does not include a person who has only physical custody.~~

~~M~~K. "Delinquent Act" means an act committed by a child, which would be designated as a crime pursuant to Title 17 of ~~the Navajo Nation~~ this Code and ~~the following~~ those traffic offenses ~~within Title 14 of the Navajo Nation Code~~ enumerated in §1317(A) herein.

~~1. Driving while under the influence of intoxicating liquors or drugs;~~

~~2. Failure to stop in the event of an accident causing death, personal injuries or damage to property, and~~

~~3. Reckless driving.~~

~~N~~L. "Delinquent Child" means a child who is adjudicated to have committed a delinquent act.

~~O~~M. "Dependent Child" means a child who is abused and/or neglected by a parent(s), guardian(s) or custodian(s).

~~1. Who has been abandoned by his or her parents, guardian or custodian; or~~

~~2. Who is without proper parental care and control, or whose subsistence, education, medical or other care or control necessary for his or her well-being is inadequate because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; or~~

~~3. Whose parent(s), guardian or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or~~

~~4. Who has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act, or other federal law; or~~

~~5. Who has been physically, emotionally, psychologically or sexually abused by his or her parent, guardian or custodian; or~~

~~6. Who has been sexually exploited by his or her parent(s), guardian or custodian; or~~

~~7. Whose parent(s), guardian or custodian has knowingly, intentionally or negligently:~~

~~a. Placed the child in a situation that may endanger his or her life or health; or~~

~~b. Tortured, cruelly confined or cruelly punished him or her.~~

~~P~~N. "Detention" means the ~~temporary~~ placement of a child alleged or determined to have committed a delinquent act ~~who~~ that requires custody in a physically restricting ~~facilities~~ facility for the protection of the child or the Navajo Nation ~~pending court disposition~~.

~~Q~~O. "Detention Facility" means a place where a child alleged to have committed a delinquent act may be detained under ~~the Children's Code~~ this Chapter pending a court hearing or after adjudication.

~~R~~P. "Division" means the Navajo Division of Social Services.

~~S~~Q. "Domicile" ~~includes a child who physically resides within "Navajo Indian Country" in the custody of his or her parents or custodians~~ means where the child's parent or legal guardian intends to permanently reside. The domicile of a child is that of the custodial parent. The domicile of a child born out of wedlock is that of the natural mother unless otherwise established in the father. ~~Domicile includes the intent to establish a permanent home or where the parents or custodians consider to be their permanent home.~~ Domicile for purposes of jurisdiction ~~is~~ under this Chapter is established at the time of the alleged act(s).

~~T. "Judge", when used without further qualification, means the judge of the Family Court.~~

R. "Emancipation" means a child over the age of sixteen (16) and under the age of eighteen (18) who has shown he/she is capable of providing for himself/herself without parental supervision and support; and a court has issued an order to that effect.

S. "Family Conference" means a meeting initiated by the Division and including the parent(s), guardian(s) or custodian(s), and family members to discuss a family resolution to alleviate the dependency issues.

T. "Family Group Conferencing" means a meeting convened by the Division at their initiation or upon referral to include parent(s), guardian(s) or custodian(s) and other family members and, if the family consents, professionals who work with the child and family, such as the teachers, psychologists, extended family, religious or traditional counselors, and friends of the family.

U. "Foster Parent" means a person, including a relative of the child, licensed by the Division or a child placement agency to provide temporary care for children in the legal custody of the Division.

~~U~~V. "Guardian" means a person ~~assigned by a court of law~~, other than a parent appointed by an appropriate legal entity, having the duty and authority to provide care and control of a child. ~~A person shall not be a guardian except pursuant to an order of a court.~~

W. "Guardian Ad Litem" means a person appointed by the Court to represent the best interests of the child.

1. This person is not the guardian or the legal counsel for the child and is not a named party to the case.

2. May be a member of the community who has received training to be a guardian ad litem, this could include elders, community leaders or social workers.

3. May be a member of the Navajo Nation Bar Association, after the Court issues appropriate findings and concludes that a Bar member is necessary.

X. "Hearing Officer" means a Navajo Nation Bar Association member with experience in proceedings under this Chapter appointed by a judge.

~~V~~Y. "Law Enforcement Officer" means a duly commissioned peace officer, sheriff, or deputy sheriff~~, municipal police officer, or constable~~.

Z. "Legal Counsel" means a person who is a member of the Navajo Nation Bar Association.

~~W~~AA. "Legal Custody" refers to the legal status over a child created by ~~the~~ court order ~~of a court or tribunal of competent jurisdiction that vests in a person the right to have physical custody of the child, the right to determine where and with whom he or she shall live, the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities; an individual granted legal custody of a child shall exercise his or her rights and responsibilities as custodian personally unless otherwise authorized by the court or tribunal entering the order~~.

BB. "Neglect" means the failure or inability of the parent, legal guardian or custodian to provide protection, food, clothing, shelter, medical care, education or supervision for the child's health, safety and well being.

~~X~~CC. "Parent" includes a ~~natural~~ biological or adoptive parent ~~but does not include any person whose~~, or where legal paternity has been established and whose parental rights have not been terminated.

DD. "Paternity" means the legal acknowledgment of the parental relationship between a father and his child. For purposes of establishing paternity, a man is presumed to be the father, if he:

1. Was married to the mother when the child was conceived or born. He attempted to marry the mother (even if the marriage was not valid) and the child was conceived or born during the "marriage," or

2. Has his name on the birth certificate or other legal form, such as a live birth acknowledgment form, and neither parent has challenged it, or

3. Married the mother after the birth and agreed either to have his name on the birth certificate or to support the child, or

4. Welcomed the child into his home and openly held the child out as his own.

EE. "Permanency Options" means options for the placement of a child in a stable long term family environment that is in the best interest of the child. In order of preference, the Navajo Nation shall:

1. Reunify the child with the parent(s), guardian(s) or custodian(s);

2. Create a permanent guardianship with a qualified relative;

3. Adoption with a person(s) enrolled or eligible for enrollment with the Navajo Nation;

4. Adoption by a qualified Native American;

5. Adoption by a non-Native American.

FF. "Protective Custody" means removal of a child by the Division or Law Enforcement from the home upon a non-judicial determination that the child is not safe within the home.

~~Y~~GG. "Protective Services" means a program ~~of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life, and help preserve the family unit by focusing on families where unresolved problems have produced visible signs of dependency or abuse and the home situation may present actual and potential hazards to the physical or emotional well-being of children~~ in which a Division social worker intervenes and takes necessary action, including removal of the child from the home, to protect and stabilize a family in the best interest and welfare of the child.

~~Z. "Protective Services Worker" means a person who has been selected by and trained pursuant to the requirements established by the Division and assists in carrying out the provisions of this Subchapter.~~

~~AA~~HH. "Protective Supervision" refers to the legal status created by ~~court order under which the child is permitted to remain in his or her own home, or is placed with a relative or other suitable individual with supervision and assistance is provided by the court, a health and social services agency or some other agency designated by the court.~~ the Court, by which the Division is given authority to monitor the safety and welfare of the child, no matter where he/she is placed for the duration of the proceedings before the Court.

II. "Regional Children's Review Board" means a five member board representative of the various community resources (i.e. medical personnel, legal advocates, educators, foster parents, peace makers, etc.), at least one of whom is not responsible for case

management of or delivery of services to either the child or the parents who are the subject of a permanency review in dependency proceedings.

~~BB~~JJ. "Shelter Care" means ~~the care~~ a temporary placement of a child ~~placed in a foster home or institution maintained by individuals or organizations to receive and care for children pending court disposition or transfer to another jurisdiction~~ approved by the Division pending final disposition of the Court.

§ 1003. ~~Family Courts~~ Courts; Generally

~~The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all matters arising under the Navajo Nation Children's Code.~~

A. The Court is authorized to cooperate fully with any federal, state, Navajo Nation, public or private agency to participate in any diversion, rehabilitation, training, peacemaking programs and to receive grants in aid to carry out the purposes of this Chapter.

B. The Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Nation that, absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Nation Courts.

§ 1004. Jurisdiction

A. The Court shall have jurisdiction over all proceedings in which a child is alleged to be a dependent child, a child in need of supervision, or a delinquent child.

B. The Court shall have jurisdiction of:

1. The termination of parental rights;

2. The adoption of a child;

3. Determining physical and/or legal custody of, or to appoint a custodian or guardian for a child;

4. The commitment of a mentally ill or mentally disabled child;

5. The authorization of the marriage of a minor;

6. The emancipation of a child.

C. Territorial jurisdiction

1. The Court may hear all matters under this Chapter involving all children, including non-Navajo, residing within Navajo Indian Country or committed an act within Navajo Indian Country.

2. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority.

D. Jurisdiction obtained by a Court over a child is retained until terminated by any of the following situations:

1. The child becomes eighteen (18) except when the court finds that it is in the best interests of the child to exercise jurisdiction until the age of twenty-one (21).

2. The case is transferred to adult Court pursuant to §1312 of this Chapter.

3. When the Court enters an order terminating jurisdiction.

§ 1005. Venue

A. Venue for proceedings under this Chapter shall be determined by the residence or domicile of the child or the judicial district where the alleged act occurred. Venue exists concurrently in the District Courts for Navajo children who reside outside Navajo Indian Country.

B. Where the residence of the child and the location of the alleged act are in different districts, initiating proceedings in one district shall bar subsequent filing of proceedings in other districts.

§ 1006. Division of Social Services; Responsibilities and Duties

A. The Division is the lead Navajo Nation agency that shall preserve and restore the harmony and unity of the family by providing for the safety, wellbeing and protection of children and families which come within the jurisdiction of the Navajo Nation pursuant to this Code and established policies and procedures.

B. The Division shall provide the following protective services:

1. Receive from any source oral or written information regarding alleged abused or neglected children and when appropriate arrange for temporary out of home placement for such children on a twenty-four (24) hour basis.

2. Upon receipt of an initial report or information alleging abused or neglected children immediately:

a. Notify and coordinate with Law Enforcement throughout the investigation;

b. Conduct a thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

3. Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his/her surroundings and that his/her removal is necessary.

4. The Division shall cooperate with the Law Enforcement to remove a child from the custody of his/her parent(s), guardian(s), or custodian(s) when necessary.

5. During the investigation evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. The Division shall determine whether any of such children is a child in need of protective services.

6. Make reasonable efforts, when required, to prevent the need for removal of the child from the family, and offer appropriate services to the family of any child determined to be a child in need of protective services.

7. If the Division in its assessment finds that Court intervention is warranted, it shall refer the matter to the Office of the Prosecutor or an individual who is a member of the Navajo Bar Association and employed/contracted by the Navajo Nation.

C. The Division may cooperate with such state and community agencies as are necessary to achieve the purposes of this Chapter. The Division may negotiate working agreements with other jurisdictions, subject to ratification by the Navajo Nation Council.

§ 1007. Law Enforcement; Responsibilities and Duties

A. Law Enforcement shall investigate dependency, child in need of supervision and delinquency reported or referred to it by any individual or agency regarding all matters under this Chapter.

B. Law Enforcement shall be available twenty-four (24) hours a day seven (7) days a week to respond to and investigate reports of alleged dependency, child in need of supervision and delinquency. Law Enforcement shall immediately consult with the Division regarding the report if an emergency placement is necessary.

C. Law Enforcement shall conduct investigations of all reports of dependency, child in need of supervision and delinquency pursuant to established protocols, including identified time lines.

D. Upon the report of alleged abuse and/or neglect Law Enforcement shall immediately notify and coordinate with the Division throughout the investigation.

E. When conflicts of jurisdictional issues occur, the Law Enforcement officer will notify the local agency jurisdiction by telephone and follow-up with a copy of the report.

F. Determination of priority for action shall be a joint decision of the responsible agencies and/or investigators through the exercise of their professional judgment.

1. Response is determined by the apparent potential risk of harm to the child. Priority assessments will be determined on a case-by-case basis.

2. The Law Enforcement officer can request the assistance of the Division.

3. Law Enforcement shall assist as appropriate and as availability allows in situations in where the child(ren) is in no immediate danger or where child safety is assured.

§ 1008. Prosecutor; Responsibilities and Duties

A. The Office of the Prosecutor shall represent the Navajo Nation in all proceedings under this Code.

B. The Prosecutors shall consult with the Division when proceedings are initiated pursuant to Subchapter 2, Dependency Proceedings, of this Chapter, herein, to ensure that the best interests of the child are served.

C. When proceedings are initiated pursuant to Subchapter 3, Child in Need of Supervision, or Subchapter 4, Delinquency Proceedings, of this Chapter, the Prosecutor shall consider and dispose of the proceeding in a way that restores Ké to the child, their family, and his/her surroundings.

§ 1009. Detention and Shelter facilities; Standards

All detention and shelter facilities shall be in compliance with the rules promulgated by the Division of Health.

§ 1010. Appeals

In cases where custody, placement and detention of a child is at issue, the Navajo Supreme Court will immediately review the files, records and transcripts from the trial Court and may render a decision without a hearing. Proceedings under this Chapter shall be expedited in furtherance of the best interests of the child.

§ 1011. Social and Legal Records; Inspection

A. Social, medical, psychiatric and psychological records of the Court concerning a child and produced or recorded by requirement or authority contained in this Chapter, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:

1. The judge, the Division, probation officers and Court personnel;
2. Representatives of any agency providing supervision and/or having legal custody of the child;

3. Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.

4. Any release of the above information shall be consistent with the Navajo Nation Privacy and Access to Information Act.

B. All or any part of records or information secured from records listed in Subsection (A), when presented to the Court in a proceeding under this Chapter, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.

C. Any unlawful disclosure of the information identified in Subsection (A) herein shall be subject to the criminal and civil sanctions of the Navajo Nation Privacy and Access to Information Act.

§ 1012. Sealing and Destroying of Records

A. On motion by or on behalf of a child who has been the subject of a petition filed under this Chapter or on the Court's own motion, the Court may vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, probation services and of any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the Court finds that:

1. Two (2) years have lapsed since the final release of the child from legal custody and supervision, or two (2) years have lapsed since the entry of any other judgment not involving legal custody or supervision.

2. The child has not, within the two (2) years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a Court, and no proceeding is pending seeking such a conviction or finding.

B. Notice of the motion shall be provided to parties and other individuals having an interest in the proceedings and pursuant to the Navajo Rules of Civil Procedure.

C. Upon entry of the sealing order the record shall be permanently closed and may only be unsealed pursuant to an order of the Court thereafter by one of the following:

1. By motion of the child who is the subject of the records and only to those persons named in the motion;

2. In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment or to persons engaged in fact-finding or research in work related to the child's welfare.

D. Any finding or allegations of delinquency or need of supervision subsequent to the sealing order may by Court order be used as a basis to set aside the sealing order.

E. A person who has been the subject of a petition filed under this Chapter shall be notified of the right to have records sealed by the Court at the end of the dispositional stage.

F. In delinquency proceedings all records shall be destroyed when the child reaches the age of twenty-one (21) or by Court order.

§ 1013. Court Costs and Expenses

A. If, after due notice to the parent(s) or other person(s) legally obligated to care for and support the child, and after a hearing, the Court finds that such person(s) is financially able to pay all or part of the Court costs, fees and expenses of this Section, the Court shall order them to pay the costs and expenses and may prescribe the manner of payment.

B. Whenever custody of a dependent child or a child in need of supervision is vested in someone other than the child's parent(s), the Court, after notice to the parent(s) or other person(s) legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parent(s) or other legally obligated person(s) to pay to the Court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.

C. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment may be filed, and, if filed, shall have the effect of a civil judgment.

TITLE 9. DOMESTIC RELATIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S CODE
SUBCHAPTER 2. DEPENDENCY PROCEEDINGS

§ 1101. Children not taken into physical custody; Family Group Conferencing

A. The goal of family group conferencing is to ensure families re-assume primary responsibility, *t'áá hwó ájít'eego*, with guidance from the Division, in regard to children's safety and well-being to eliminate the need for Court intervention.

B. The Division is required to refer every reported and substantiated case of child abuse and neglect to a family group conference when the abuse or neglect does not require removal.

C. The Division may refer cases involving family disputes or neglect where the child has not been removed to family group conferencing through the Peacemaking Program.

D. Concerned family members and professionals may refer any matter concerning a child to family group conferencing either through the Division or Peacemaking Program. Such a referral shall not preclude removal if reasonable grounds exist to believe that the child is abused and/or neglected and removal is necessary.

E. A Court may refer a matter to family group conferencing through the Division or Peacemaking Program at any time after a petition is filed.

§ 1102. Taking into physical custody

A. A child may be taken into physical custody by the Division or Law Enforcement officer if reasonable grounds exist to believe that the child is abused and/or neglected and removal is necessary. The Division or Law Enforcement officers shall have authorization to address the immediate needs and emergency medical attention of the child during the initial hold period prior to the filing of a petition.

B. Any Law Enforcement officer or the Division having a child in temporary physical custody for reasons other than the commission of a delinquent act may place the child pursuant to § 1108 herein.

C. If a child is taken into temporary physical custody the Division shall obtain a medical clearance of the child within twenty-four (24) hours.

D. If a child is taken into custody and is not released to the child's parent(s), guardian(s) or custodian(s), the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, to the child's parent(s), guardian(s) or custodian(s), and to the Prosecutor together with a statement providing the reason for taking the child into custody. If no parent(s), guardian(s) or custodian(s) can be found the Division may give notice at the last known physical address or to an immediate relative of the parent(s), guardian(s) or custodian(s).

E. Temporary custody shall not exceed ~~ninety-six (96)~~ One hundred-twenty (120) hours from the time the child is initially taken into physical custody, excluding Saturdays, Sundays and holidays.

§ 1103. Release or delivery from physical custody

A. The Law Enforcement officer taking an allegedly abused and/or neglected child into physical custody shall within twenty-four (24) hours:

1. Release the child to the child's parent(s), guardian(s) or custodian(s) when there is no immediate danger to the child and issue verbal counsel to ensure the child's safety; or

2. Deliver the child to the Division; or

3. Deliver the child to an appropriate shelter care facility; or

4. Deliver the child to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis; and

5. Notify the Division in any of the above situations.

B. The Division or Law Enforcement officer taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two (72) hours, to the child's parent(s), guardian(s) or custodian(s) and to the Prosecutor together with a statement providing the reason(s) for taking the child into custody.

C. The Division shall review the need for continued custody within a reasonable time after delivery of the child to the facility and shall release the child from custody if appropriate. The Division shall determine whether the child can be released from custody with the provision of appropriate services to the family, or under specified restrictions.

§ 1104. Preliminary assessment; Family Conference; Referral

A. The Division shall conduct a family conference within forty-eight (48) hours of the child being taken into custody, excluding Saturdays, Sundays and holidays. The Division will give notice of the conference to the parent(s), guardian(s) or custodian(s) of the child by all reasonable means but, if the parent(s), guardian(s) or

custodian(s) cannot be notified or located or refuse to participate in the conference, the conference shall still go forward. Upon completion the matter may be referred:

1. To services within the Division to work with the family to alleviate the issues identified including written referral for the family to other appropriate agencies, and the child will be returned, or

2. To the Prosecutor's Office, within seventy-two (72) hours of taking the child into custody, to assess whether to file a dependency proceeding.

B. Upon commencement of the family conference, the parent(s), guardian(s) and/or custodian(s) of the child shall be informed of available legal services in writing and that they have the right to be represented by counsel and no person may be compelled to appear at any conference, to produce any papers, or to visit any place.

C. For those cases that may require Court intervention, Law Enforcement and/or the Division shall promptly make a verbal report to the Prosecutor by telephone or in person for preliminary inquiry, and followed up by a written report if deemed necessary.

D. The written report shall contain the names and addresses of the child and his/her parent(s), guardian(s) or custodian(s), the child's age, the nature and extent of the child's abuse and/or neglect, including any evidence of previous abuse and/or neglect and other information that might be helpful in establishing the cause of abuse and/or neglect and the identity of the person or persons responsible for the abuse and/or neglect, and where the child has been referred or can be found.

§ 1105. Petition; Form and Content

A petition initiating any proceeding under this Subchapter shall be captioned "In the Court of the Navajo Nation, Judicial District of (judicial district)", and entitled, "In the Matter of a child, census number: DOB: and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. If the child is alleged to be a dependent child, a citation to the appropriate Section of the Chapter shall be included.

C. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.

D. The name, birth date, residence and address and clan (if known) of the child.

E. The name(s) and residence addresses of parent(s), guardian(s), and custodian(s) of the child; and if none of the parent(s), guardian(s) or custodian(s) reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

F. The name of the Prosecutor presenting the petition.

G. Whether the child is in custody, and, if so, where the child is placed and the time and date the child was taken into custody.

H. The efforts made by the Division or other agencies, persons or entities to prevent the removal of the child from the parent(s), guardian(s) or custodian(s) through the provision of specific identified services, if appropriate, including whether family group conferencing was conducted.

I. If any matters required to be set forth by this Section are not known, a statement that they are not known should be made.

§ 1106. Filing of Petition

A. A petition shall be filed by the Prosecutor within twenty-four (24) hours from the time the Division refers the matter to the Prosecutor, excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released to the parent(s), guardian(s) or custodian(s).

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, upon information and belief, may cause a petition to be initiated by the Prosecutor alleging one or more of the following, the child:

1. Has been abandoned by his/her parent(s), guardian(s) or custodian(s); or

2. Is without proper parental care and control, or whose subsistence, education or medical care necessary for the child's well-being is inadequate because of the faults or habits of the parent(s), guardian(s) or custodian(s); or their neglect or refusal, when able to do so, to provide to the child; or

3. Has parent(s), guardian(s) or custodian(s) unable to discharge his/her responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or

4. Has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act, or other federal law; or

5. Has been physically, emotionally, psychologically or sexually abused by his/her parent(s), guardian(s) or custodian(s), or another person due to inadequate parental control; or

6. Has been sexually exploited by his or her parent(s), guardian(s) or custodian(s), or another person due to inadequate parental control; or

7. Has parent(s), guardian(s) or custodian(s) who knowingly, intentionally or negligently:

a. Placed the child in a situation that may endanger his/her life or health; or

b. Tortured, cruelly confined or cruelly punished him or her.

§ 1107. Informal Adjustment

A. At any time after a petition is filed, but before the adjudicatory hearing the Prosecutor and respondent(s), with concurrence of the Division, may file a motion to suspend the proceedings.

B. Informal adjustment shall only be utilized when it promotes the best interests of the child and protects the child's health and safety.

C. Respondent(s) shall comply with any recommended informal adjustment plan developed by all parties involved and supervised by the Division, which shall not exceed six (6) months from the date all parties have signed and agreed to the plan, unless the plan is

completed earlier or parties agree to extend; such extension shall not exceed ninety (90) days.

D. Upon completion of the plan the petition will be dismissed by motion of the Prosecutor.

E. Should the respondent(s) not comply with the plan, the dependency action may be reinstated by motion of the Prosecutor.

§ 1108. Shelter Care; Motion and Hearing

A. After or concurrent with the filing of the petition, the Prosecutor or an individual who is a member of the Navajo Bar Association and employed/contracted by the Navajo Nation may file a motion for an order of temporary legal and/or physical custody.

B. A hearing on the motion shall be held within twenty-four (24) hours from the time the motion is filed, excluding Saturdays, Sundays and Court holidays. If parent(s), guardian(s) or custodian(s) cannot be found for timely notification of the hearing, the Court may in its discretion continue the hearing for a period not to exceed forty-five (45) calendar days.

C. A child shall not remain in custody unless one of the following criteria is met at the shelter care hearing. Probable cause exists to believe that:

1. If not in custody, the child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. The child has no parent(s), guardian(s) or custodian(s) able to provide adequate supervision and care for the child; or

3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers; or

4. The health and safety of the child cannot be assured if the child is not kept in custody.

D. Any order issued pursuant to this Section, which removes (even temporarily) the child from his/her home shall contain the findings: "that reasonable efforts to prevent removal from the family were made or that it is reasonable to make no efforts to reunite the family, and that out of home placement would be in the best interest of the child or that remaining in the current residence is contrary to the welfare of the child."

E. Written notice of the custody hearing stating the time, place and purpose of the hearing shall be given by the person designated by the Court to the child's parent(s), guardian(s) or custodian(s), at their last known physical address, or if the parent(s), guardian(s) or custodian(s) cannot be found, to an immediate relative.

F. A hearing officer may be appointed by the Court to recommend findings to the judge regarding the need for further custody of the child.

G. At the commencement of the custody hearing, the judge or hearing officer shall advise the parties of their basic rights, including their right to be represented and appointed legal counsel.

H. The Court, at its discretion, may appoint a guardian ad litem. The duties of the guardian ad litem shall be to:

1. Guide the Court to serve the best interests of the child;

2. Inform by written report to the Court on matters regarding the background, environment, needs and wishes of the child;

3. Appear at all proceedings and to speak on behalf of the child; and

4. Remain active until discharged by Court order or when the case is closed with the Court.

I. If the judge or hearing officer finds out of home placement is appropriate under criteria established by this Section, the judge shall issue an order placing the child in an appropriate location.

J. If the Court finds out of home placement is not appropriate under the criteria established by this Section, the judge shall order release of the child, but may order protective supervision until further order of the Court.

K. If the Court determines that the child requires assessments the Division will make the necessary arrangements.

L. All relevant and material evidence helpful in determining the need for continued custody may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

M. If a parent(s), guardian(s), or custodian(s) was properly notified and failed to appear or waive appearance at the custody hearing, the Court shall proceed with the hearing.

§ 1109. Shelter Care Placement

A. Placement shall not be in a jail or other facility intended or used for the incarceration of adults or for detention of delinquent children.

B. A child may be placed in the temporary custody of:

1. A relative or other household member who is willing to guarantee that:

a. The child will not be returned to the alleged abusive or neglectful parent(s), guardian(s) or custodian(s), and will not be allowed to have visitation with the parent(s), guardian(s) or custodian(s) without prior approval from the Division, and

b. There is no registered sex offender, or person convicted of or charged with crimes of sexual or physical abuse against children in the household.

2. A licensed foster home or a home otherwise authorized under the law to provide foster care or group home.

3. A facility operated by a licensed child welfare services agency.

4. Any other suitable placement determined by the Division.

§ 1110. Preliminary Hearing

Within fifteen (15) calendar days after the shelter care hearing, the Court shall schedule a preliminary hearing to address the following:

A. Review the status of service of process;

B. Inform parent(s), guardian(s) or custodian(s) of their continuing legal rights to representation for the duration of the proceedings;

C. Advise parent(s), guardian(s) or custodian(s) of the petition filed and contents therein;

D. Review the response to the petition. If the time to respond to the petition is waived, the Court may proceed pursuant to § 1111 or § 1113, herein;

E. Narrow the issues including a statement from the parties regarding stipulations or disputes;

F. Consider alternative processes, i.e. informal adjustments, dismissal, or peacemaking;

G. If no settlement, schedule an adjudicatory hearing to take place no later than thirty (30) calendar days.

§ 1111. Adjudicatory Hearing

A. A hearing, shall be conducted by the Court separate from other proceedings. All hearings will be without a jury.

B. Hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the Court may be present at a closed hearing. In addition, persons the Court finds to have a proper interest in the case may be admitted by the Court to closed hearings on the condition that they respect the confidentiality of the proceedings.

C. Those persons or parties who intentionally divulge information in violation of Subsection (B) may be found liable for a civil offense. Persons found in violation of this Section by a preponderance of the evidence may be ordered to pay a civil fine not to exceed five hundred dollars ($500.00), and may be subject to other action by the Court necessary to protect the confidentiality of the proceedings and the best interest of the child.

D. The Court shall make the following findings:

1. If the allegations as identified in the petition pursuant to § 1106(B) are denied, the Court shall proceed to hear all of the evidence and enter into the record whether or not the child is dependent based on clear and convincing evidence.

2. If admitted, the Court shall make findings of the validity of the admission.

3. If the Court finds that the allegations have not been established, it shall dismiss the petition and order the child be returned to the parent(s), guardian(s) or custodian(s).

4. If child is found to be dependent pursuant to § 1106(B), the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

§ 1112. Predisposition studies, reports and examinations

A. Prior to holding a dispositional hearing, the Court shall direct a predisposition study and written report from the Division.

B. The predisposition study required under Subsection (A) shall contain the following information:

1. A statement of the specific harm to the child that intervention is designed to alleviate;

2. If removal from or continued placement outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his/her parent(s), guardian(s) or custodian(s);

3. A case plan consisting of:

a. A description of the specific progress needed to be made by both the parent(s) and the child in order to prevent further harm to the child and to reunify the family, a specific plan setting out the steps to be taken by the parent(s) and the Division social worker and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the Division's overall plan for insuring that the services will be delivered;

b. Recommended services based on appropriate assessments, including any culturally relevant assessments, that will, if completed, remedy the conditions that led to removal of the child;

c. Pertinent treatment efforts facilitated by the family, including culturally relevant services and assessments;

d. Case history, including previous Division and/or Court ordered intervention;

e. Justification for continued out of home placement;

f. A description of the steps that will be taken to minimize any harm to the child that may result if separation from his/her parent(s) occurs or continues;

g. Permanency placement options, including adoption, guardianship, long-term care, in the event reunification is not in the child and/or the family's best interest.

C. A copy of the predisposition report shall be provided by the Division to the Court and to all parties or their counsel, if any, at least but not less than five (5) days, excluding Saturdays, Sundays and Court holidays before the dispositional hearing.

§ 1113. Disposition Hearing

A. The Court may in its judgment make any of the following dispositions in the best interests of the child and shall consider:

1. Recommendations of the Division.

2. Formal evaluations and assessments for the parent(s) and the child, if necessary.

3. Other recommendations from the parties.

4. Order of Placement

a. Permit the child to remain with his/her parent(s), guardian(s) or custodian(s) subject to conditions and limitations prescribed by the Court;

b. Place the child under protective supervision of the Division;

c. Transfer and maintain legal custody of the child to the Division for appropriate placement.

5. Any other disposition as may be necessary to serve the best interests of the child.

B. This hearing, if not held in conjunction with the adjudicatory hearing shall commence no later than thirty (30) calendar days after conclusion of the adjudicatory hearing.

C. If the Court orders continued out of home placement, the Court shall make a finding that return of the child would be contrary to the welfare of the child and that reasonable efforts have been made to prevent continued removal of the child. In addition, the Court's order shall provide that the parent(s), guardian(s), custodian(s) or other family members shall have reasonable rights of visitation unless the Court finds that the best interests of the child preclude any such visitation.

D. The Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence even though not otherwise admissible.

E. By motion of a party or by its own authority, the Court may continue the hearing for a period not to exceed ten (10) working days to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. During any continuance under this Section, the Court shall issue an appropriate order for temporary legal custody.

F. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The Court shall make a determination within sixty (60) days of the child being removed that reasonable efforts to reunite the family have been offered to the family. Such efforts may include the Court making a determination that reunification should be facilitated by referring the family to the Peacemaking Program.

G. The Court may determine that reasonable efforts are not required to be made when the Court finds the efforts would be futile; or the parent(s), guardian(s) or custodian(s) has subjected the child to aggravated circumstances. In which case, a permanency review hearing, pursuant to § 1115 herein, shall be held within thirty (30) calendar days of such a determination.

§ 1114. Regional Children's Review Board

A. The Courts shall authorize a Regional Children's Review Board to review cases determined by the Court to be long-term out-of-home placements.

B. The Division Central Administration shall create policies and procedures detailing the functions of the Regional Children's Review Board. These policies and procedures shall include the necessary criteria and continued membership on a Regional Children's Review Board.

C. The Court shall contact the Division Central Administration for case assignment to an appropriate Regional Children's Review Board.

D. Regional Children's Review Boards shall:

1. Review, within six (6) months of placement and at least once every six (6) months thereafter, the case of each child who remains in out-of-home placement and who is the subject of a dependency action to determine what efforts have been made by the Division to carry out the case plan for the permanent placement of such child.

2. Allow a child's parent(s), guardian(s) and custodian(s) to attend the case review. The parent(s), guardian(s) and custodian(s) may be represented at the case review by legal counsel.

a. A party may object to what is presented at a case review and he/she must object at the time of the presentation to the Regional Children's Review Board. The case review shall continue over the objection.

b. The party objecting shall then request a hearing from the Court and present to the Court the reasons for the objection.

c. The Regional Children's Review Board shall submit findings and recommendations to the Court with the understanding that the Court will only consider these findings and recommendations after the requested hearing.

3. Review any case assigned by the Court for early review of the case plan within sixty (60) days after the removal of a child from that child's home.

4. Submit to the Court within ten (10) working days following the review its findings and recommendations regarding the efforts and progress made by the Division to carry out the case plan, together with any other recommendations it chooses to make regarding the child. The findings and recommendations shall include the date of the next review. A copy of such findings and recommendations shall be sent to the Division. The Court shall review the findings and recommendations within ten (10) working days of issuance and issue an order ~~adopting the~~ or schedule a hearing to mak their own findings and recommendations.

5. Encourage and facilitate the timely return of children to his/her parent(s), guardian(s) or custodian(s).

6. Encourage the Division to exert all possible efforts to make arrangements for permanent plans for children for whom return to the parent(s), guardian(s), custodian(s) or adoption is determined to be infeasible or impossible.

7. Promote and encourage the Division to maximize stability and family continuity for children in foster care by discouraging unnecessary changes in the placement of foster children.

§ 1115. Review Hearings; Permanency

A. The first review hearing shall be conducted by the Court and held within six (6) months from the date of removal or the date of the judicial finding of abuse and/or neglect, whichever is earlier and every six (6) months thereafter.

B. The permanency review hearing shall be held every six (6) months after the first review hearing of a child's dispositional order or within twelve (12) months of a child entering foster care. For purposes of this Section, a child shall be considered to have entered foster care on the earlier of:

1. The date of the adjudicatory order finding that the child has been abused or neglected; or

2. Sixty (60) days after the date on which the child was removed from the home.

C. The permanency review hearing shall be held every six (6) months when a child is in the legal custody of the Division.

D. The first review and permanency hearing shall be conducted by the Court. Subsequent review and permanency hearings may be referred to a Regional Children's Review Board for a review as established by the Division policies and procedures, as well as, § 1114(D), herein, when the Court has determined that the placement is long-term out-of-home.

E. These hearings shall review any progress made regarding any treatment plan ordered at the disposition hearing and include the following:

1. Determine the safety of the child, the continuing need for and appropriateness of the placement;

2. Determine the extent of compliance with the case plan;

3. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and

4. Project a likely date by which the child may be returned and safely maintained at home and consider permanency options in the event return of the child does not occur. Permanency options shall include possible placement for adoption, permanent guardianship, or the possible filing of termination of parental rights.

5. Determine whether the family will be referred to a Peacemaker with specialized training in child dependency issues to facilitate a permanency placement.

6. If the Division plan does not include either reunification, adoption, guardianship or placement with a fit and willing relative, the Court shall determine whether compelling reasons exist to find that these placements are not in the best interest of the child.

F. If the Division determines that the most appropriate plan is placement in another planned permanent living arrangement and not one identified in Subsection (E)(6), herein, the Court shall ensure that the Division, by compelling evidence, demonstrate that this is in the best interest of the child and the most appropriate plan. The Court shall enter written factual findings and conclusions of law supporting its judgment.

§ 1116. Voluntary Placement

A. A parent can have his/her child placed voluntarily out of home by making such a request to the Division.

B. Such placement shall be by written agreement between the Division, the parent(s) and any proposed temporary placement. The agreement shall be filed with the Court by the Prosecutor for docketing and recognition.

C. The voluntary placement agreement shall specify at a minimum the legal status of the child and the rights and obligations of the parent(s) or guardian(s), the child and the Division while the child is in placement. Such status and obligations are as follows:

1. The child is in the temporary custody of the Division and the parent(s) has authorized the Division to obtain any needed emergency medical care or make decisions on other basic needs for the child, and temporary placement with a party proposed by the parent(s) or determined by the Division.

2. The parent is agreeing to have the Division take this temporary custody and provide placement while the parent(s) is addressing any outstanding issues, which could affect the safety and well being of the child.

3. A statement that the parent(s) can revoke the voluntary agreement and have his/her child returned to him/her any time before Court intervention.

D. The agreement shall be in effect for up to one hundred fifty (150) days. A hearing shall be held on the status of the voluntary out of home placement by the one hundred fiftieth (150th) day. The Prosecutor can vacate the hearing if the child returns to the parent(s).

1. A judicial determination shall be made that the continued out of home placement is in the child's best interest and that reasonable efforts to prevent removal were made or are not required by the one hundred seventy-ninth (179th) day the child is voluntarily placed out of home.

2. Upon this initial determination the case shall be referred to the Office of the Prosecutor to proceed as a dependency pursuant to § 1106, herein.

§ 1117. Duty to report child abuse; penalty for failure to report

A. Any medical provider, school personnel, law enforcement official, or social worker, acting in his or her official capacity, or any appointed or elected Naat'aanii, having a reason to believe that any abuse or neglect has been inflicted upon a child shall report the matter immediately to a Law Enforcement official or the Division.

B. Any other person having reason to believe that a child has been subjected to serious injury or injuries have been inflicted upon the child as a result of abuse or neglect shall report the matter immediately to a Law Enforcement official or the Division.

C. A lay person who provides a report of abuse or neglect may at his/her discretion remain anonymous.

D. Any person failing, neglecting or refusing to report a suspected case of child abuse or neglect pursuant to this Section may be subject to civil sanction including but not limited to a penalty not to exceed five-hundred dollars ($500.00).

§ 1118. Waiver of Privilege and Immunity

A. In any proceeding alleging child abuse or neglect under this Chapter resulting from a report submitted under § 1117, or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege, rule or law against disclosure.

B. Any person reporting an instance of suspected child abuse or neglect, or participating in a judicial proceeding brought as a result of a report submitted under § 1117 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability, unless a finding is made that the person acted in bad faith or with malicious purpose.

C. The Division shall be immune from civil or criminal liability for services rendered pursuant to this Chapter, unless the Division acted with gross negligence or malice or unless the Division has been charged with or is suspected of abusing, abandoning or neglecting the child in question.

§ 1119. Interlocutory disposition order in cases where service is made by publication; effect

A. When a parent cannot be served pursuant to the Navajo Rules of Civil Procedure, the Court shall issue an order of publication to comply with those rules. After service by publication has been completed and the parent(s), guardian(s) or custodian(s) still fails to appear, the Court shall conduct a provisional hearing, which shall enter an interlocutory order of the following:

1. Make findings on the allegations of the petition declaring the child dependent;

2. Determine legal custody and placement of the child;

3. Determine appropriate services for the child;

4. Continuing efforts by the Navajo Nation to notify the parent(s), guardian(s) or custodian(s) of the proceedings.

B. The interlocutory order shall remain in effect for no longer than six (6) months and if the parent(s), guardian(s) or custodian(s) still fails to appear within that period, the interlocutory order shall become a final judgment and proceed pursuant to § 1113 herein.

C. The Court shall conduct the proceedings pursuant to §§ 1111 and 1113 [adjudication and disposition] upon the parent(s), guardian(s) or custodian(s) presence at the final hearing or pursuant to a voluntary waiver of notice and appearance at any time during the proceedings.

TITLE 9. DOMESTIC RELATIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S CODE
SUBCHAPTER 3. CHILD IN NEED OF SUPERVISION PROCEEDINGS

§ 1201. Commencement of proceedings; Preliminary Inquiry and Referral

A. Proceedings shall be initiated by the filing of a petition signed by the Prosecutor.

B. Any governmental employee, including social workers and school personnel; or parent(s), guardian(s) or custodian(s), who has knowledge of the facts alleged or is informed of them and believes that they are true; or a Law Enforcement official upon information and belief, may cause a petition to be initiated by the Prosecutor.

C. The Prosecutor shall determine whether a petition should be filed or whether the matter should be referred to other appropriate forums/agencies including peacemaking and diversion programs to address the needs of the minor child and to determine what is in the child's best interest including family involvement.

1. Referral to Peacemak~~e~~ring Program:

a. The Prosecutor may refer cases involving family disputes or neglect where the child has not been removed to family group conferencing through the Peacemaking Program.

b. A Court may refer a matter to family group conferencing through the ~~Division of~~ Peacemaking Program at any time after a petition is filed.

D. Where there is an indication that the child may be mentally ill or mentally disabled, the Court, the Prosecutor, other counsel or party may motion for an order to have the child examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition.

§ 1202. Petition; Form and Content

A petition initiating any proceeding under this Subchapter shall be captioned "In the Court of the Navajo Nation, Judicial District of(judicial district)", and entitled, "In the Matter of a child, census number: DOB: , and concerning , parents"; and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. A statement that the child is in need of supervision, care or rehabilitation.

C. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred, including the appropriate citations to the Code.

D. The name, birth date, residence and address of the child.

E. The names and residence addresses of parent(s), guardian(s), and custodian(s); and if none of the parent(s), guardian(s), or custodian(s), reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

F. The name of the Prosecutor presenting the petition and the date and time presented.

G. A statement of the date referred to the Prosecutor and that the petition was filed within thirty (30) days of that date.

H. Whether the child is in protective custody, and, if so, the place and the time he/she was taken into custody.

I. List of Prosecutor's proposed witnesses.

J. If any matters required to be set forth by this Section, not including the allegations, are not known, a statement that they are not known should be made.

§ 1203. Filing and Dismissal of Petition

A. The Prosecutor shall file all pleadings with the clerk of the Court.

B. A petition shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten (10) calendar days from the date the petition is filed when a child is taken into protective custody (i.e. group home or foster care).

2. Twenty (20) calendar days from the date the petition is filed when a child is not taken into protective custody or is released.

3. The hearing may be continued, which shall not exceed ten (10) calendar days, if a child is taken into protective custody, or twenty (20) calendar days, if child is not taken into protective custody upon motion by:

a. The Prosecutor by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the name(s) and address(es) of the unavailable witness(es) and will be granted only upon a showing by the Prosecutor that they have exercised due diligence in attempts to secure the evidence and/or attendance of witness(es). If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

b. The Court for lack of service.

c. Any party to allow time for appointment of counsel.

C. A petition shall be dismissed if filed more than thirty (30) calendar days from the date of the information provided to the Prosecutor.

§ 1204. Basic Rights

A. The child shall be, from the time of the filing of the petition or, in an emergency, when taken into protective custody, advised of the privilege against self incrimination, including the child's right to have his/her parent(s), guardian(s), or custodian(s) present. If taken into protective custody, the child shall not be questioned except to determine identity and to determine the name of the child's parent(s), guardian(s), or custodian(s).

B. In a proceeding on a petition alleging a child in need of supervision:

1. An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.

2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.

3. An extra-judicial admission or confession made by the child out of Court is insufficient to support a finding that the child committed the act(s) alleged in the petition unless it is corroborated by other evidence.

C. A child detained shall not be fingerprinted, photographed, genetically tested for criminal identification purposes except by order of the Court. If ordered, the fingerprints or photographs, or genetic test shall be used only as specified by the Court. Any person who willfully violates the provisions of this Section is subject to a civil fine of no more than five hundred dollars ($500.00).

D. The Court shall make a preliminary finding on the issue of whether the child's best interests are represented by the parties; including parent(s), guardian(s), or custodian(s); the Division; the Prosecutor; and other necessary parties to the proceeding.

1. If the Court determines that the child's best interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the best interests of the child.

2. If the child's interests conflict with those of the parent(s), guardian(s) or custodian(s), the Court shall appoint a guardian ad litem to represent the best interests of the child.

3. If the Court determines that the child has other legal interests that must be represented, it can appoint legal counsel for the child after appropriate findings.

4. In the above situations, a party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

E. A party, including the minor child or parent(s), guardian(s), or custodian(s), is entitled to the opportunity to introduce evidence and be heard, and to confront and cross examine witnesses testifying against the child, and to admit or deny the allegations in a petition.

F. Where appointment of counsel for the child is made, the Court shall appoint counsel from the members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless compensation is authorized by the Court.

§ 1205. Temporary Protective Custody

A. A child may be temporarily taken into protective custody:

1. By a Law Enforcement officer or the Division when they have reasonable grounds to believe that the child has run away from his/her parent(s), guardian(s) or custodian(s); or

2. By Law Enforcement officer or the Division if there exists reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary; or

3. By Law Enforcement officer or the Division if there exists reasonable grounds to believe the child is a danger to him/herself and/or to others; or

4. Pursuant to an order of the Court issued due to a parent(s), guardian(s) or custodian(s) failure when requested to bring the child before the Court after having promised to do so at the time the child was released from detainment. In addition, the parent(s), guardian(s) or custodian(s) can be cited for contempt of court for failing to comply with the order of the Court.

B. Protective Custody of a child without a Court order shall not exceed seventy-two (72) hours, excluding Saturdays, Sundays and Court holidays.

§ 1206. Release or delivery from Protective Custody

A. A person taking a child into protective custody temporarily shall as soon as possible:

1. Release the child to the child's parent(s), guardian(s) or custodian(s) and issue verbal counsel or warning as may be appropriate; or

2. Release to the child's parent(s), guardian(s) or custodian(s) upon a written promise to bring the child before the Court when requested by the Court; or

3. Deliver to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis. Upon receiving proper clearance from the medical facility the child shall be released pursuant to (1) or (2) above.

B. A child taken into protective custody shall not be placed in a jail or other facility intended or used for the incarceration of adults or for the detention of delinquent children, but shall be taken into protective custody in the following shelter care facilities:

1. A licensed foster home, or a home otherwise authorized by the Division, including relative placement; or

2. A facility operated by a licensed child welfare services agency and a contracted provider of the Navajo Nation; or

3. Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Court and certified by the appropriate authority.

C. When a child is delivered to an appropriate shelter care facility, the Division shall review the need for continued protective custody within twenty-four (24) hours after delivery of the child to the facility and shall release the child from protective custody or continue protective custody pursuant to the criteria in § 1207(F), herein.

D. If a child is taken into protective custody and is not released to the child's parent(s), guardian(s) or custodian(s), the person taking the child into protective custody shall give written notice i.e. temporary custody notice), within seventy-two (72) hours of taking the child into protective custody, to the child's parent(s), guardian(s) or custodian(s) and to the Court together with a statement providing the reason for taking the child into protective custody.

E. In all cases when a child is taken into protective custody, the child shall be released to his/her parent(s), guardian(s) or custodian(s) in accordance with any written conditions of release and with the time limits set forth in this Section.

§ 1207. Protective Custody Hearing; Court Determination

A. Where a child has been taken into protective custody:

1. A petition shall be filed by the Prosecutor within forty-eight (48) hours excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released pursuant to § 1206, herein.

2. A protective custody hearing shall be held within twenty-four (24) hours of the filing of the petition, excluding Saturdays, Sundays and Court holidays to determine whether continued protective custody is required pursuant to Subsection (F) herein.

B. Written notice of the hearing shall be served to the child's parent(s), guardian(s) or custodian(s), and to the child pursuant to Navajo Nation Rules of Civil Procedure. Parties, counsel and child may appear electronically for this hearing.

C. The Court may appoint a hearing officer for the purpose of holding protective custody hearings under the supervision of a judge.

D. At the commencement of the hearing, the Court shall advise the parties, including the minor child, of their basic rights pursuant to § 1204 herein, and shall appoint counsel and/or a guardian ad litem, if appropriate.

E. At the hearing all relevant and material evidence helpful in determining the need for protective custody may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

F. If the Court finds, based on probable cause, that the child's protective custody is necessary pursuant to one of the criteria below, the Court shall issue an order of protective custody to an appropriate facility.

1. The child will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. The child's parent(s), guardian(s), custodian(s) or other person cannot provide adequate supervision and care for the child; or

3. The child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

G. The judge shall order the release of the child with one or more of the following conditions:

1. The child is placed in the custody of a parent(s), guardian(s), custodian(s), relative, or under the supervision of an agency agreeing to supervise the child.

2. The child's travel, association with other persons or place of residence during the time of release is restricted.

3. Any other condition deemed necessary and consistent with this Chapter.

§ 1208. Preliminary Hearing

A. Purpose of the Preliminary Hearing is to determine probable cause that the child is in need of supervision and will proceed as follows:

1. Advise the child and parties of their basic rights, pursuant to § 1204, herein.

2. Appoint a guardian ad litem or counsel, if appropriate.

3. Inform parties as to the contents of the petition and the possible disposition.

4. The child will admit or deny the allegations stated in the petition.

B. At the conclusion of the preliminary hearing, the Court shall set the matter for:

1. An adjudicatory hearing if a denial is entered; or

2. A dispositional hearing if an admission is entered, or when allegations in the petition are minor the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

§ 1209. Continuance under supervision without judgment; Consent decree; Disposition

A. At any time after the filing of a child in need of supervision petition, and before the entry of a judgment, the Court may, on motion of the Prosecutor or counsel for the child or the child, suspend the proceedings and continue the child under supervision in his/her own home under terms and conditions negotiated by the parties including use of available diversion programs and supervised by probation services. The Court order continuing the child under supervision pursuant to this Section shall be known as a "consent decree" and shall be voluntary by all the parties.

B. A consent decree shall remain in force for a period not to exceed six (6) months unless a motion for a hearing is filed by either the Prosecutor or the child's counsel or the child to extend, or revoke the consent decree, or terminate court supervision.

C. Upon completion of the provisions of the consent decree or expiration, a party shall motion to dismiss the original petition with prejudice.

§ 1210. Adjudicatory Hearings; Findings; Dismissal

A. Hearing on petitions shall be conducted by the Court separate from other proceedings and without a jury. The proceedings shall be recorded. The Court shall advise the parties of their basic rights pursuant to § 1204, herein.

B. All hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party and approved by the Court may be present at a closed hearing, and on the condition that they respect the confidentiality of the proceedings.

C. Those persons or parties who intentionally divulge information in violation of Subsection (B) of this Section shall be guilty of an offense. Persons found guilty of violating the provisions of this Section shall be subject to pay a civil fine not to exceed five hundred dollars ($500.00).

D. The Court after hearing all of the evidence shall make and record its findings on whether or not the child is in need of supervision by clear and convincing evidence, in the absence of such findings the Court shall dismiss the petition without prejudice and shall order release of the child.

E. The Court shall schedule a dispositional hearing and order predisposition study and report if that document has not been prepared and received. Such hearing shall be scheduled within thirty (30) days. The Court shall make an appropriate order for protective custody, if necessary.

§ 1211. Predisposition Studies; Reports and Examination

A. If the Court finds that the child is in need of supervision the Court shall order Probation Services, or if necessary the Division, prepare a predisposition report, which shall include evaluations, assessments, dispositional reports, a family assessment, and other material to be considered by the Court. The report shall be submitted no later than five (5) working days before the scheduled hearing. If the report will not be submitted before the deadline then an affidavit providing reasons why a report will not be completed shall be filed with the Court no later than five (5) working days before the scheduled hearing date.

B. The predisposition study shall contain the following information:

1. A statement of the specific harm to the child that intervention is designed to alleviate;

2. If continued protective custody is recommended, a statement of the likely harm the child will suffer as a result of protective custody, including emotional harm resulting from separation from his/her parent(s), guardian(s) or custodian(s);

3. A case plan consisting of:

a. A description of the specific progress needed to be made by the parent(s), guardian(s) or custodian(s) and the child in order to prevent further harm to the child; a specific plan setting out the steps to be taken by the parent(s), guardian(s), custodian(s), and social worker; and a timetable for their completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the assigned agencies overall plan for insuring that the services will be delivered;

b. A description of the family environment;

c. A description of the behavior that will be expected before a determination is made to end Court supervision.

C. The Court may order that an adjudicated child be transferred to an appropriate facility for a period of not more than thirty (30) calendar days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

§ 1212. Disposition

A. In the dispositional hearing, the Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value.

B. The Court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for a dependent child; or

2. Transfer legal custody to an agency responsible for the care of children in need of supervision; or

3. Place the child under Court supervision.

C. Unless a child found to be in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children or an adult criminal facility.

D. Whenever the Court vests custody in an agency or institution it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

E. Whenever the Court orders the child to be taking into protective custody and it is necessary to remove the child from that initial placement, Probation Services or the Division, prior to removing the child, shall contact the Prosecutor in writing to file a notice of change of placement to the Court, or to request a hearing if the situation warrants. In cases of emergency, a child can be removed prior to making contact with the Prosecutor. However, Probation Services or the Division shall contact the Prosecutor to file notice of change of placement or request a hearing as soon as possible after the removal.

§ 1213. Contempt

A. A child allegedly violating a valid order of the Court shall be subject to an order to show cause hearing, where the court will make a determination of whether the allegation(s) are true. If the Court finds that the allegation(s) are true the Court shall examine all possible options to address the child's compliance with the Court order, including other alternatives and resources available, which shall not include detention.

B. If the child continues to violate the orders of the Court and all possible options to address the issues of noncompliance have been considered, the Prosecutor may consider a delinquency proceeding and it shall proceed in accordance with the Delinquency provisions herein.

TITLE 9. DOMESTIC RELATIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S CODE
SUBCHAPTER 4. DELINQUENCY PROCEEDINGS

§ 1301. Taking Into Temporary Custody

A. A child may be taken into temporary custody by Law Enforcement:

1. Pursuant to an order of the Court issued because a parent(s), guardian(s) or custodian(s) failed when requested to bring the child before the Court after having promised to do so at the time the child was released from custody.

2. When there are reasonable grounds to believe that the child has run away from his/her parent(s), guardian(s) or custodian(s).

3. If reasonable grounds exist to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.

4. Pursuant to the laws of arrest, without warrant, when probable cause exists to believe that the child committed a delinquent act(s). Law Enforcement shall immediately inform the child of his/her basic rights pursuant to § 1310, herein.

B. In any of the situations above Law Enforcement shall be required to take the child to be medically cleared before incarcerating the child in a youth detention facility.

C. The Law Enforcement officer taking the child into custody shall notify the parent(s), guardian(s) or custodian(s) as soon as possible but no later than twenty-four (24) hours.

D. The above grounds shall govern the decision to determine whether or not further detainment is appropriate prior to Court intervention.

§ 1302. Release or Delivery from Temporary Custody

A. A Law Enforcement officer taking a child into temporary custody shall, with all reasonable speed:

1. Release the child to parent(s), guardian(s) or custodian(s) and issue verbal counsel or warning as may be appropriate; or

2. Release the child to the parent(s), guardian(s) or custodian(s) upon a written agreement to bring the child before the Court when requested; or

3. Deliver the child to the probation office or to a detention facility.

B. If the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment and/or diagnosis, the child shall be transported to a medical facility.

C. If a child is taken into custody and is not released, Law Enforcement shall give written notice to the parent(s), guardian(s) or custodian(s) by delivering notice to the child's normal place of residence, no later than seventy-two (72) hours, and shall provide reason(s) for taking the child into custody.

D. An alleged delinquent child may be detained:

1. In a detention facility approved by the Court; or

2. Any suitable place designated by the Court that meets the standards for detention facilities under this Chapter.

E. Law Enforcement shall deliver the alleged delinquent child either to the probation office or to a place of detention designated by the Court, a probation officer, prior to placing the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court. If detention appears inappropriate, the probation officer shall request the presenting officer to petition the Court for a review of its decision.

F. A child alleged to be delinquent shall not be detained in a jail or other facility intended or used for the incarceration of adults.

G. A child under the age of eight (8) years of age shall not be committed to a detention facility but shall be delivered to the on-call probation officer who shall assess the child based on his/her observations for the following:

1. The child's home environment for the ability of a responsible adult person.

2. The current emotional stability of the child.

3. The physical condition(s) of the child.

4. The nature of the allegation(s).

5. The suitable place to alleviate placement in a detention facility.

6. Determine whether or not dependency action is appropriate.

7. Potential for violent behavior by the child.

§ 1303. Commencement of Proceedings by Petition

A. Proceedings under this Subchapter shall be initiated by the filing of a petition signed by the Prosecutor.

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a Law Enforcement official upon information and belief, may cause a petition to be initiated by the Prosecutor.

§ 1304. Preliminary Inquiry and Referral

A. Allegations that a child is a delinquent child shall be referred to the Prosecutor, who shall conduct a preliminary inquiry. Upon completion of the inquiry the Prosecutor shall:

1. File a petition pursuant to § ~~1304~~ 1305, herein, or

2. Refer the matter within ten (10) calendar days from the day of declination to another appropriate agency.

B. Referral by Law Enforcement

1. Law Enforcement officers taking a child into custody and not released on allegations that the child committed a delinquent act shall refer the arrest report to the Prosecutor within forty-eight (48) hours excluding Saturdays, Sundays and Court holidays.

2. If the child is not detained or is released after initial detainment, the Law Enforcement officer shall refer the police report to the Prosecutor within seventy-two (72) hours excluding Saturdays, Sundays and Court holidays.

C. During the preliminary inquiry of the law enforcement referral, the Prosecutor shall coordinate with the probation officer in cases where the child is detained.

§ 1305. Petition Filing and Dismissal

A. A petition shall be filed by the Prosecutor with the Court within forty-eight (48) hours of receiving the arrest report from Law Enforcement, excluding Saturdays, Sundays and Court holidays, and, if not filed within the stated time, the child shall be released.

B. If a child is detained and further detainment is sought, the petition shall be filed with the Court within twenty-four (24) hours from receipt of the arrest report.

C. Once the Court determines a petition alleging delinquent act(s) was filed beyond the thirty (30) calendar day preliminary inquiry, the petition shall be dismissed with prejudice unless upon a proper showing of due diligence of timely filing by the Prosecutor, then the Court may authorize the petition to be re-filed within twenty (20) calendar days from the date of dismissal.

§ 1306. Petition; Form and Content

A petition initiating any proceeding under this Subchapter shall be captioned "In the Court of the Navajo Nation, Judicial District of(judicial district)", and entitled, "In the Matter of a child, tribal enrollment number: DOB: and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Court.

B. A statement that the child has engaged in a delinquent act(s) and is in need of care or rehabilitation.

C. There shall be one petition filed for each alleged violation citing the appropriate Section of the Criminal or Motor Vehicle Code.

D. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.

E. The name, birth date, physical and mailing address of the child.

F. The names and physical and mailing addresses of parent(s), guardian(s), custodian(s) and spouse, if any, of the child; and if none of the parent(s), guardian(s), custodian(s) or spouse, if any, reside or can be found within the Navajo Nation, or if their physical or mailing addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the Court.

G. The name of the Prosecutor presenting the petition and the date and time presented.

H. Whether the child is in custody, and if so, the place of detention and the time the child was taken into custody.

I. Assertion that Petition is filed within the thirty (30) calendar days of preliminary inquiry or pursuant to § 1303(B).

J. Name and address of any witness(es) on behalf of the Navajo Nation.

K. If any matters required to be set forth by this Section are not known, a statement that they are not known should be made.

§ 1307. Preliminary Diversion

In lieu of filing a petition, the Prosecutor, the probation officer, the child and the parent(s), guardian (s) or custodian(s) may participate in a diversion program; such program shall be monitored by Probation Services.

A. The diversion agreement shall include the following:

1. The name, birth date, physical and mailing address of the child.

2. The name, physical and mailing addresses of parent(s), guardian(s), custodian(s) and/or spouse, if any, of the child.

3. The name of the alleged offense.

4. The basic rights of the minor child.

5. The role of the probation officer in monitoring the diversion agreement.

6. Resources identified and sought for the child shall address the underlying problem related to the alleged delinquent act(s). Such resources may include but are not limited to:

a. Peacemaking and cultural resources;

b. Appropriate counseling and/or prevention programs;

c. Law Enforcement Explorers Program (Career Intervention Program);

d. Traffic Survival School;

e. Defensive Driving School;

f. Youth development services;

g. First offender and teen court programs;

h. Rehabilitation and support programs.

7. Payment of restitution, nályéé́h, if appropriate.

8. Maintain school attendance, enroll in a GED program, or participate in vocational education, including any educational related services.

9. Community Service.

10. A provision for tolling the filing of the petition

B. A child's participation in any diversion shall:

1. Be voluntary and binding.

2. Require the consent of the parent(s), guardian(s) or custodian(s).

3. Be dismissed upon successful completion with no petition being filed and shall not be used against the child in any further proceedings.

C. A child deemed to have committed a violent or serious act or is a chronic offender, shall not be eligible for the diversion program.

D. In the event of any violation of the diversion program, the probation officer shall refer the matter to the Prosecutor and a petition may be filed with the Court.

§ 1308. Preliminary Hearing

A. A petition alleging that a child is an alleged offender shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten (10) calendar days from the date the petition is filed when a child is in custody; or

2. Twenty (20) calendar days from the date the petition is filed, when a child is not in custody or is released from custody.

B. The Hearing may be continued upon motion of the Prosecutor or upon the Court's own motion for any of the following:

1. By reason of the unavailability of material evidence and/or witness(es), a continuance will be granted only upon a showing of due diligence by the Prosecutor in his/her attempts to secure the evidence and/or attendance of witness(es). If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

2. If service of process has not been accomplished, then the Prosecutor must show due diligence that service of process was attempted.

3. To allow legal representation to be secured for the child.

C. A continuance shall not exceed ten (10) calendar days, if the child is in custody, or twenty (20) calendar days if the child is not in custody.

D. At the conclusion of the preliminary hearing, the Court shall set the matter for:

1. An adjudicatory hearing if a denial is entered; or

2. A dispositional hearing if an admission is entered, or when allegations in the petition are minor the Court may then proceed immediately or schedule a hearing to dispose of the case pursuant to recommendations from the predisposition studies.

§ 1309. Consent Decree

A. At any time after the filing of a petition, and before the entry of a judgment, the Court may, on motion of the Prosecutor, the child, and/or counsel for child suspend the proceedings and continue the child under supervision in his/her own home under terms and conditions negotiated by the parties and supervised by Probation Services. The Court order continuing the child under supervision pursuant to this Section shall be known as a "consent decree". The consent decree shall also include a provision for tolling.

B. If the child does not agree to enter into a consent decree the Court shall proceed to findings, adjudication and disposition of the case.

C. A consent decree shall remain in force for a period not to exceed six (6) months unless the decree is discharged by Court pursuant to recommendation by the Probation Officer. Prior to the expiration of the six (6) month period, and upon the application of probation services or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional three (3) months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his/her counsel and he/she shall have thirty (30) calendar days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.

D. If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree, the Prosecutor shall file a motion to vacate or extend the consent decree. After a hearing and findings of whether or not the child is found to have violated the terms of the consent decree, the Court may:

1. Extend the period of the consent decree; or

2. Make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by Probation Services or who completes a period under supervision without reinstatement of the original delinquency judgment shall not be in jeopardy again in any Court for the same offenses or conduct. Nothing in this Section precludes a civil suit against the child and his/her parent(s) for damages arising from his/her conduct.

F. A judge who elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegation(s) of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency petition if a consent decree is:

1. Denied and the allegation(s) in the petition remains to be decided in a hearing where the child denies his/her guilt; or

2. Granted but the petition is subsequently reinstated.

§ 1310. Basic Rights

A. In all proceedings alleging the delinquency of a child under this Chapter, the child has a right to be represented by legal counsel. Indigency shall be calculated using the income of the parent(s) unless the parent(s) is/are the victim(s) of the alleged delinquent act. Pursuant to guidelines utilized by the Navajo Nation Courts for criminal appointments, the Court shall appoint counsel from the Office of Navajo Public Defender or members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless otherwise authorized by the Court.

B. The Court shall advise the child before the Court of his/her basic legal rights under this Chapter at each separate appearance and advise the child of their continuing rights for the duration of the Court proceedings, including peacemaking.

C. A child alleged to be a delinquent child shall, from the time of being detained and/or taken into custody be advised of his/her right to remain silent. The child shall not be questioned except to determine identity and to determine the name of the child's parent(s), guardian(s) or custodian(s). While the child is in a detention facility, he/she shall not be questioned without the presence of a parent(s), guardian(s), custodian(s), and/or legal counsel.

D. In a proceeding on a petition, a child is entitled to the opportunity to introduce evidence and be heard, to confront and cross-examine witness(es) testifying against him/her, and to admit or deny the allegations in the petition.

E. In a proceeding on a petition:

1. An out of Court statement that would be inadmissible in a criminal matter shall not be admitted into evidence upon objection by the child.

2. Evidence seized or obtained illegally shall not be admitted into evidence to prove the allegations against a child upon objection by the child.

3. An admission or confession made by the child is insufficient to support a finding that the child committed the act(s) alleged in the petition unless it is corroborated by other evidence or stipulated admission.

F. A child shall not be fingerprinted, photographed, genetically tested for criminal identification purposes except by order of the Court. If ordered, the fingerprints or photographs, or genetic test shall be used only as specified by the Court. Any person who willfully violates the provisions of this Section shall be subject to sanctions by the Court, including fines not to exceed five hundred dollars ($500.00).

G. In all proceedings on a petition alleging delinquency in those instances specified under other provisions of this Chapter, the Court shall make a preliminary finding on the issue of whether the child's interests are not adequately represented by the parties and shall appoint a guardian ad litem to represent the interests of the child.

H. The Court, at any state of a proceeding shall appoint a guardian ad litem for a child if the child has no parent(s), guardian(s) or custodian(s) appearing on behalf of the child or if his/her interests conflicts with those of his/her parent(s), guardian(s) or custodian(s). A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.

I. The Court shall appoint a temporary guardian for a child if the Court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee or an agency that is vested with legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

J. Any offense similarly alleged in a petition for criminal proceedings or other actions in the adult Court are barred if the Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A civil proceeding or peacemaking may be subsequently initiated to address nályéél.

§ 1311. Detention hearing required for detained child; Court Determination and Disposition

A. Where a child who has been detained and is not released a hearing shall be held within twenty-four (24) hours, excluding Saturdays, Sundays and Court holidays from the filing of a petition to determine whether continued detention is required.

B. Written notice of the hearing stating the time, place and purposes shall be given to the person designated by the Court and served to the child's parent(s), guardian(s), custodian(s) or spouse, if any, and the child who is alleged to have committed the delinquent act(s).

C. At the commencement of the hearing, Court shall advise the child of their basic legal rights pursuant to § 1310, herein.

D. At the hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the Court even though it would be otherwise inadmissible in a hearing on the petition.

E. If the Court finds the child's detention is appropriate the child shall not be released and shall remain in detention. Law Enforcement or the detention officer shall immediately return the child to a juvenile detention facility.

F. Detention shall be ordered based on the existence of probable cause, pursuant to the following criteria, the child:

1. Will commit injury to persons or property of others, or cause injury to himself/herself or be subject to injury by others; or

2. Has no parent(s), guardian(s), custodian(s) or other person able to provide adequate supervision and care for the child; or

3. Will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

G. If the Court finds that detention of the child is not appropriate the Court shall order the immediate release of the child, but in so doing, may order one or more of the following conditions:

1. The child shall be returned to the parent(s), guardian(s), custodian(s) or relative, or under the supervision of an agency agreeing to supervise the child.

2. Place restrictions on the child's travel, association with other persons or place of residence during the time of release.

3. Impose any other conditions deemed reasonably necessary and consistent with this Chapter, including a condition requiring that the child return to custody if required.

H. An order releasing a child on any condition in this Section may at any time be amended by Court order to impose additional or different condition(s) of release or to return the child to custody or detention for failure to conform to the conditions originally imposed. The release agreement to have the child returned to the Court when requested shall be signed by the child, parent, guardian or custodian.

§ 1312. Transfer to Adult Court; Hearing

A. After a petition has been filed alleging a delinquent act, the Court may, before a hearing on the merits, transfer the matter for Prosecution to the adult Court after a transfer hearing, if:

1. The Prosecutor files a motion to transfer to the adult Court, upon the filing of the motion the child shall immediately be appointed legal counsel;

2. The child was sixteen (16) years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act(s) would be a crime if committed by an adult and consider the following:

a. Threats the child may pose to other children in a juvenile detention facility;

b. Whether or not the child is a danger to the public;

c. The severity of the alleged delinquent act(s) and delinquent history or past conduct of the child;

d. Compare the availability of treatment in the adult and juvenile systems;

e. The child is not amenable to treatment designed to serve children.

3. Written notice of the time, place and purpose of the hearing is given to the child, parent(s), guardian(s) or custodian(s) at least three (3) working days before the hearing;

4. The Court at the hearing finds there are reasonable grounds to believe that:

a. A delinquent act(s) has been committed and the child may have committed the alleged delinquent act(s); and

b. The child is not amenable to treatment or rehabilitation as a child through available resources; and

c. The child has a history of delinquent offenses or history or probation violations or a record of felony offenses; and

d. The child is not committable to an institution for the mentally disabled or mentally ill; and

e. The child is a danger to the public or him/herself and transfer to the adult Court would be in the child's best interest.

B. A hearing on whether the transfer should be made is held in conformity with the rules of evidence and the burden of proof is clear and convincing. The hearing will be to the Court without a jury.

C. A written transfer order containing specific findings and reasons for the order terminates the proceedings under this Subchapter over the child with respect to the delinquent act(s) alleged in the petition.

D. Prior to the hearing, the probation officer shall prepare for the Court and make available copies to the child, child's counsel or parent(s), guardian(s) or custodian(s), a pre-dispositional report relevant to the issues described in Subsection (A)(4)(a) through (e) of this Section and the Court shall hear evidence and make specific findings in regards thereto. Gathering of such information for the pre-dispositional report shall not include any interviews with the child regarding the merits of the alleged offense.

E. If transfer is ordered and continued detention is required pending the proceedings in the adult Court, the child shall be detained in a juvenile facility.

F. No child found guilty of any Motor Vehicle Code violation may be incarcerated in an adult facility.

§ 1313. Adjudicatory Hearings; Findings; Dismissal

A. Hearing on petitions shall be conducted by the Court separate from other proceedings without a jury. The proceedings shall be recorded.

B. All hearings shall be open to the general public except after a finding of exceptional circumstances the Court in its discretion deems it appropriate to conduct a closed delinquency hearing. Any person who intentionally or recklessly divulges information obtained from a closed hearing may be subject to civil fine, not to exceed five hundred dollars ($500.00).

C. The Court shall determine if the allegation(s) of the petition are admitted or denied. If the allegation(s) are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegation(s) of delinquency shall make and record its findings on whether or not the act(s) subscribed to the child were committed by the child. If the Court finds that the allegation(s) on the petition have not been established, it shall dismiss the petition with prejudice and order the child released from any detention.

D. If the Court finds, on the basis of a valid admission(s) or on the basis of proof beyond a reasonable doubt that the child committed the act(s), the Court shall make a written record of its findings.

E. Findings of a child in need of care and rehabilitation will be as follows:

1. With the concurrence of the parties, the Court may proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation; unless the act constitutes a felony which creates a rebuttable presumption that the child is in need of care or rehabilitation. The Court shall make written findings.

2. If no concurrence or felony rebuttal, then a hearing will be scheduled to hear evidence of need of care and rehabilitation prior to any disposition.

§ 1314. Predisposition studies; reports and examination

A. The Court shall order probation services to prepare a predisposition study including evaluations, assessments, and dispositional reports, which shall be submitted to all parties five (5) working days prior to the hearing. Such report shall include information of the child, his/her family, home environment and academic needs. A party failing to timely file such documents, in absence of just cause, may be sanctioned at the Court's discretion.

B. Where there is an indication that the child may be mentally ill or mentally disabled, the Court or any party may motion for an order that the child be examined by a psychiatrist or psychologist prior to a hearing as part of the predisposition study and report.

C. The Court may order that an adjudicated delinquent child be transferred to an appropriate facility for no more than thirty (30) calendar days for purposes of diagnosis; and such written report shall be filed with the Court with recommended disposition.

D. In the dispositional hearing, the Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.

E. By motion of a party or the Court, the hearing may be continued for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The Court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuance under this Section, the Court shall make an appropriate order for detention or legal custody.

§ 1315. Disposition

A. The Court may impose a fine and/or sentence not to exceed the fine and/or sentence which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child:

1. Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;

2. Place the child on probation under such conditions and limitations as the Court may prescribe.

B. A child shall not be committed or transferred to an adult detention facility.

C. Whenever the Court vests custody in an agency, institution or department it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

D. The Court may exercise jurisdiction over a child until they reach twenty-one (21) years of age if the Court deems it is in the child's best interest.

§ 1316. Damages to or destruction of property by child; parental liability; costs and attorney's fees; damages and restitution

A. Any person may recover damages in a civil action, from the parent(s), guardian(s) or custodian(s) of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action and that the parent(s), guardian(s) or custodian(s) failed to provide adequate supervision of the child.

B. Recovery of damages under this Section is limited to actual damages proved in the action, taxable Court costs, and, in the discretion of the Court, reasonable attorney's fees to be fixed by the Court.

C. Nothing contained in this Section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by a child.

§ 1317. Motor Vehicle Code Violations

A. The following Motor Vehicle Code violations are deemed a delinquent act:

1. Driving while under the influence of intoxicating liquor or drugs;

2. Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;

3. Reckless driving;

4. Homicide by vehicle.

B. All traffic violations including civil infractions involving children other than those listed in Subsection (A) shall be heard under this Chapter pursuant to the children in need of supervision Subchapter.

C. Any Motor Vehicle Code violation by a child, including those specified in Subsection (A) shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of this Chapter.

D. No court may incarcerate a child in an adult facility that has been found guilty of any of the above Motor Vehicle Code violations.

§ 1318. Probation Revocation; Disposition

A. A child on probation who violates a term of the probation is subject to a probation revocation proceeding.

B. Revocation of probation shall be an original proceeding styled as a "Petition to Revoke Probation" with reference to the initial proceeding. The petition shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

C. The standard of proof in these proceedings shall be evidence beyond a reasonable doubt.

D. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition.

E. If a finding of probation violation is made, the Court may extend the period of probation, not to exceed ninety (90) calendar days, or make any other judgment or disposition consistent with that of the original disposition of the case.

§ 1319. Limitations on dispositional judgments; modification, termination or extension of court orders

A. No child shall be ordered for more than one (1) year to an institution for the housing of delinquent children without further order of the Court. A judgment transferring custody of a delinquent child to an agency responsible for the custody and rehabilitation of delinquent children is subject to monitoring by Probation and Parole Services independent of the Court supervision and:

1. The agency to which legal custody is transferred may recommend parole or release of the child;

2. The supervision of a child after release under Subsection (A)(1) may be conducted by the agency in conjunction with the Probation and Parole Services;

3. A child or his parent(s), guardian(s) or custodian(s) may motion the Court for parole or release.

B. A judgment of probation shall remain in force for a period not to exceed one (1) year from the date entered unless terminated or extended by order of the Court.

C. A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the one (1) year period.

D. Prior to the expiration of a judgment of probation, the Court may extend the judgment for an additional period of one (1) year if it finds at a hearing beyond reasonable doubt that the extension is necessary to protect the community or to safeguard the welfare of the child.

E. When a child reaches twenty-one (21) years of age all judgments affecting the child then in force automatically terminate.

§ 1320. Judgment; non-criminal nature; non-admissibility

The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under this Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Navajo Nation program or obtaining Navajo Nation employment. The disposition of a child and any evidence given in a hearing in Court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching the age of majority.

TITLE 9. DOMESTIC RELATIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S CODE
SUBCHAPTER 5. TERMINATION OF PARENT-CHILD RELATIONSHIP

§ 1401. Philosophy

Termination of parental rights is not the custom or tradition of the Navajo people. At times it is necessary to sever that parent-child relationship when it is in the child's and families' best interest. Therefore, severance of the parent-child relationship can be sought as a last resort and after all other options, including customary adoptions, are considered by the party requesting the termination of the parent/child relationship.

§ 1402. Involuntary Termination

A. Any person or agency that has a legitimate interest in the welfare of a child, including the Division may cause a petition to be filed for the termination of the parent-child relationship alleging one of the following grounds, that the parent:

1. Has abandoned the child for more than six (6) months, or

2. When there is a judicial determination that the child is an abandoned infant, or

3. Has seriously neglected or willfully abused the child, or

4. Is unable to discharge parental responsibilities because of a determination of a mental condition or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period, or

5. Is deprived of his/her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.

B. When the Division recommends the filing of a termination of parental rights, the petition shall be filed by the Office of the Prosecutor.

C. Evidence sufficient to justify the termination of the parent-child relationship shall be by clear and convincing proof.

D. The Court shall appoint legal counsel for the parent(s) and if necessary, may appoint a guardian ad litem for the child.

§ 1403. Voluntary Relinquishment

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to a parent(s), a relative, foster parent, or a privately licensed child welfare agency, may cause a petition to be filed for the voluntary termination of the parent-child relationship alleging grounds that the parent(s) have voluntarily relinquished their rights to a child or have consented to adoption.

B. When the Division recommends the filing of a termination of parental rights, the petition shall be filed by the ~~Office of the Prosecutor~~ Department of Justice.

C. Any petition for termination of parental rights filed pursuant to this Section shall include documentation of the parent's voluntary consent and/or consent to adoption, such consent shall be no less than ten (10) calendar days after the child's birth.

§ 1404. Petition

A. A petition for the termination of the parent-child relationship filed pursuant to this Subchapter shall include:

1. The name, address and physical residence of the petitioner;

2. The name, sex, date and place of birth, census number, if any, and residence including current placement of the child;

3. Maternal and paternal clans of the child, if known;

4. The basis for the Court's jurisdiction;

5. The relationship of the petitioner to the child or the fact that no relationship exists;

6. The names, addresses, physical residence, domicile and dates of birth, clans and census numbers of the legal parents, if known;

7. The names and addresses of the persons having legal custody or guardianship of the child or acting in loco parentis to the child, or child welfare agency having legal custody or providing care for the child;

8. The grounds on which termination of the parent-child relationship is sought; and

9. Names and addresses of potential guardian/adoptive parent if different from above.

10. Documentation that all permanency options were exhausted prior to filing the petition.

11. In a voluntary termination proceeding, a copy of the parental consent to relinquish shall include documentation and verification of waiver of service of process, notice and/or appearance.

B. The Office of the Prosecutor will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

1. Whose child has been in foster care for fifteen (15) of the most recent twenty-two (22) months. The petition must be filed by the end of the child's fifteenth (15th) month in foster care.

2. Whose child has been determined by a court of competent jurisdiction to be an abandoned infant. The petition to terminate parental rights is made within sixty (60) calendar days of the judicial determination that the child is an abandoned infant; or

3. Within sixty (60) calendar days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

C. The Navajo Nation may elect not to file or join a petition to terminate the parental rights of a parent if:

1. The child is being cared for by a relative pursuant to a Court order;

2. The Division has documented in the case plan and presented to the Court a compelling reason for determining that filing such a petition would not be in the best interests of the individual child; or

3. The Division has not provided to the family, consistent with the time period in the case plan, services that the Division deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

D. When the Navajo Nation files or joins a petition to terminate parental rights, it concurrently begins to identify, recruit, process and approve a qualified adoptive family for the child.

§ 1405. Service; Notice; Waiver

A. Service

1. Service of process of the petition shall conform to the Navajo Rules of Civil Procedure.

2. Upon verification of service, a hearing shall be scheduled pursuant to the Navajo Rules of Civil Procedure.

B. Notice

1. Notice of the final hearing on the petition shall be sent to the child's parent(s), the Division, the agency, the legal custodian(s), and the caretaker of the child.

2. The hearing notice sent by certified mail to the parents shall be sufficient verification that the notice is deemed complete. Upon a proper showing by the petitioner that reasonable efforts were made to notify the parents of the final hearing, the final hearing may proceed and if failing to do so shall not be continued more than once.

C. Waiver

1. Waiver means that the parent(s) will not be a party to the proceedings, which would have entitled them to receive a copy of the petition, an opportunity to respond, receive hearing notices, and participate in the proceedings. A parent(s) shall have the right to withdraw the waiver in writing or in open court at any time prior to or at the final hearing.

2. A parent may waive service of process in a voluntary proceeding in writing notarized or attested to by two credible witnesses eighteen (18) years of age or older.

3. A parent properly served may waive notice and appearance in open court; or in writing, notarized or attested to by two credible witnesses who are eighteen (18) years of age or older.

§ 1406. Investigative report prior to disposition; Contents

A. An investigative report shall be completed by the Division, an agency or other person selected by the Court and submitted to the Court prior to a final hearing, unless it was previously submitted.

B. This report shall include:

1. The circumstances of the petition, the social history, the present condition of the child and parent(s), permanency plan for the child, and such other facts as may be pertinent to the parent-child relationship;

2. Include reasons and recommendations whether or not to terminate the parent-child relationship;

3. A summary of whether the conditions necessary for termination of parental rights under this Subchapter have been met, including but not limited to an evaluation of whether the services necessary to reunite the child with the parent(s), guardian(s) or custodian(s) and alleviate the necessity for termination of parental rights have been offered, accepted, and if accepted, whether such services were completed or successful.

C. The Court may order any additional studies it deems necessary.

D. The Court may waive the requirement of the investigative report when the Court finds that it is in the best interest of the child, and/or when a valid consent has been received from the parent(s).

§ 1407. Hearing

A. All Hearings shall be closed. Only persons found to have a direct interest in the case or in the work of the Court shall be admitted. The contents of the hearing shall not be disclosed. The Court may require the presence of any party and witness it deems necessary to the disposition of the petition, except for a parent(s) who has executed a valid waiver.

B. Motion Hearing for Temporary Custody

1. Motion for temporary custody shall be filed with the petition and served pursuant to the Navajo Rules of Civil Procedure including any valid consent for temporary placement.

2. The motion shall state the child's current home environment, the qualifications of the temporary custodian(s), and the reasons why such placement is deemed necessary.

3. A custody hearing shall be scheduled not less than fifteen (15) calendar days from the date of the filing of the petition, unless the hearing has been waived.

4. The Court may waive a hearing on the motion and issue a temporary custody order when a valid consent for temporary placement has been filed with the motion.

C. Petition Hearing

1. The Court shall conduct a final hearing on the petition upon completion of service of process, but not to exceed a period of six (6) months from the date of filing.

2. If no service of process or hearing is held within the above time period the petitioner or the court on its own shall request a status conference for reasons why the petition should not be dismissed.

§ 1408. Court Order; Form; Contents

A. Temporary Custody Order

1. The Court shall issue specific findings for the granting of the motion pending a final hearing on the petition.

2. The order shall vest temporary custody of the child with an appropriate agency or custodian as identified in the motion or as determined at a hearing.

B. Termination of Parental Rights Decree

1. The Court shall issue specific findings terminating the parent-child relationship and take one of the following courses of action:

a. Transfer legal custody to a potential adoptive parent(s) pending the issuance of an adoption decree, or

b. Transfer legal custody to an individual or an authorized agency that shall identify an adoptive parent(s) pending the issuance of an adoption decree, and

c. If no adoption decree has been issued within six (6) months, the Court shall conduct a review hearing and thereafter every six (6) months until an adoption decree is issued.

2. Such order shall be conclusive and binding on all persons from the date of entry.

3. The Court shall fix responsibility for the child's financial support pending the issuance of an adoption decree.

C. Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, unless the Court finds that in the best interests of the child it is necessary to issue an order for the petitioner to file the appropriate pleadings to address other permanency options for the child.

§ 1409. Effect of Court Order

A. An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent(s). This right of support shall be terminated by a final adoption decree.

B. The parent-child relationship may be terminated with respect to one parent(s) without affecting the relationship of the other parent(s).

C. The order shall not divest the clans of the biological parent(s) to the child.

TITLE 9. DOMESTIC RELATIONS
CHAPTER 11. NAVAJO NATION CHILDREN'S CODE
SUBCHAPTER ~~136~~ 1501. INDIAN CHILD WELFARE ACT PROVISIONS

§ ~~1401~~ 1501. Application of the Indian Child Welfare Act in Family Court

The ~~Family~~ Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., where they do not

conflict with the provisions of this ~~C~~Subchapter. The procedures for state courts in the Indian Child Welfare Act shall not apply in the ~~Family~~ Courts of the Navajo Nation unless specifically provided for in this ~~C~~Subchapter.

§ ~~1402~~ 1502. ~~Full faith and credit~~ Comity; ~~c~~ Conflict of ~~l~~ Laws

A. State child custody orders involving Navajo children may be recognized by the ~~Family~~ Court only after a full independent review of such state Court proceeding has determined:

1. The state court had jurisdiction over the Navajo child;

2. The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., were properly followed;

3. Due process was provided to all interested persons participating in the state proceeding; and

4. The state court proceeding ~~does~~ did not violate the public policies, customs, or common law of the Navajo Nation.

B. Tribal child custody orders involving Navajo children shall be recognized by the ~~Family~~ Court after the Court has determined:

1. That the ~~T~~tribal ~~c~~Court exercised proper subject matter and personal jurisdiction over the Navajo parties; and

2. Due process was accorded to all interested parties participating in the ~~T~~tribal ~~c~~Court proceeding.

C. ~~Because of~~ Due to the vital interest of the Navajo Nation in its children and those children who may become members of the Navajo Nation, the statutes, regulations, public policies, customs and common law of the Navajo Nation shall control in any proceeding involving a Navajo child.

§ ~~1403~~ 1503. ~~[Reserved]~~ Voluntary Placement

A. A voluntary placement or custody, temporary or permanent, of a Navajo child subject to a foreign jurisdiction may be judicially determined by the Navajo Courts where the parent consents to such placement.

B. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be filed by the Navajo Department of Justice and approved by the Court. Such petitions shall conform to 9 N.N.C. § 1404.

C. The Court may require that the priority preference placement provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913, be followed where the child is to be placed outside of Navajo Indian Country, unless the best interests of the child require otherwise.

~~**§ 1404. Voluntary placement**~~

~~The Family Court shall have exclusive jurisdiction over voluntary placements, both temporary and permanent, of Navajo children who are domiciled or reside within Navajo Indian Country. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be approved by and filed with the Family Court. The Family Court may require that the voluntary placement provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913, be followed where the child is to be placed outside of Navajo Indian Country and the best interests of the child require.~~

§ ~~1405~~ 1504. ~~Family~~ Court ~~w~~Wardship

Any Navajo child who is domiciled or resides within Navajo Indian Country and is voluntarily placed outside of Navajo Indian Country shall be made a ward of the ~~Family~~ Navajo Court. A copy of any consent executed by the parents of such Navajo child and the location of the placement shall be filed ~~with the Family Court~~ ; including an annual report on the location of the child. ~~A report on the location of the child shall be filed annually with the Family Court.~~ Wardship attaches to the child when ~~he or she~~ he/she physically leaves Navajo Indian Country. Any placement of a Navajo child in violation of this Section may be invalidated upon petition to the ~~Family~~ Court and the Court shall make such orders at that time as will protect the Court's wardship over the child's best interests.

****

Section 5. Effective Date

The amendments enacted herein shall become effective ~~October 1, 2011~~ January 02, 2012 pursuant to 2 N.N.C. §221(B).

Section 6. Codification

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 7. Saving Clause

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions of the Act which are not determined invalid shall remain the law of the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 19 in favor and 0 opposed, this 19th day of October 2011.

Johnny Naize, Speaker
Navajo Nation Council

Oct. 26, '11
Date

Motion: Alton Joe Shepherd
Second: Russell Begaye

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C)(10), on this 31 day of Oct. 2011.

Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2011 for the reason(s) expressed in the attached letter to the Speaker.

_____

Ben Shelly, President
Navajo Nation

The Legislative Branch
The Navajo Nation

Johnny Naize
Speaker of the Navajo Nation Council

22nd NAVAJO NATION COUNCIL – FIRST YEAR 2011

The **HEALTH, EDUCATION AND HUMAN SERVICES COMMITTEE OF THE NAVAJO NATION COUNCIL** to whom has been assigned:

LEGISLATION NO. 0250-11

Has had it under consideration and report the same with the recommendation that it **DO PASS** with the following amendments:

1. On page two, line 17: Correct typographical error by deleting "ad" and inserting "and".

2. On pages 45, 60,76,86,103: The subheadings delete "Children's Code" and insert "Álchíní Bi Beehaz'áannii".

And therefore referred the same to the **LAW AND ORDER COMMITTEE OF THE NAVAJO NATION COUNCIL.**

Jonathan Hale, Chairperson
Health, Education and Human Services Committee

Dated: July 13, 2011
Motioned by: Honorable Joshua Butler
Seconded by: Honorable Dwight Witherspoon
Vote: 5 in Favor, 0 Opposed and 0 Abstain

LAW AND ORDER COMMITTEE
22nd NAVAJO NATION COUNCIL

FIRST YEAR 2011

COMMITTEE REPORT

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

NAVAJO LEGISLATIVE NO. 0250-11

AN ACTION RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER; AND NAABIK'ÍYÁTI'; REPEALING TITLE 9, §§1051 – 1307; AND AMENDING AND ENACTING TITLE 9, §§1001 - 1504 TO ENACT THE NAVAJO NATION ÁLCHÍNÍ BI BEEHAS' ÁANNII ACT OF 2011. *(Sponsored by Katherine Benally)*

Has had it under consideration and report the same with a recommendation that it **DO PASS** with no amendments

and therefore referred to **NAABIK'ÍYÁTI' COMMITTEE.**

Respectfully submitted,

Edmund Yazzie
Presiding Chairperson

Date: July 25th, 2011

The vote was 3 in favor and 0 opposed
Motion: Alton Shepherd
Second: Elmer Begay

NAABIK'IYATI' COMMITTEE REPORT
22ND NAVAJO NATION COUNCIL – First Year 2011

Mr. Speaker:

The **NAABIK'IYATI' COMMITTEE**, to whom has been assigned:

LEGISLATION NO. 0250-11
Introduced by Hon. Katherine Beanlly

AN ACTION

Relating to Health, Education and Human Services; Law and Order and Naabik'iyati; Repealing Title 9, §§ 1051 – 1301; and Amending and Enacting Title 9, §§ 1001 – 1504 to Enact the Navajo Nation Álchíní Bi Beehaz'Áannii Act of 2011

has had it under consideration and reports the same with a **DO PASS** with ONE AMENDMENTS;

1. On Page Two, Line 17: Correct typographical error by deleting "ad" and inserting "and";
2. On Pages 45, 60, 76, 86, 103: the subheadings delete "Children's Code" and insert "Álchíní Bi Beehaz'Áannii";

and thence referred to the **Navajo Nation Council**.

CERTIFICATION

I, hereby certify that the foregoing legislation was duly considered by the Naabik'iyati' Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed with a vote of **13 in favor and 0 opposed** this 12th day of August 2011.

Mr. Johnny Naize, Chairperson
Naabik'íyáti' Committee

MOTION: Dwight Witherspoon
SECOND: Walter Phelps