

WHITE MOUNTAIN APACHE

JUVENILE CODE



TABLE OF CONTENTS

CHAPTER ONE - DEFINITIONS

SECTION 1.1	DEFINITIONS	1
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CHAPTER TWO - THE JUVENILE COURT

SECTION 2.1	JURISDICTION OF THE JUVENILE COURT	3
SECTION 2.2	TRANSFER OF JUVENILE CASES TO THE JUVENILE COURT	3
SECTION 2.3	RETENTION OF JURISDICTION	3

CHAPTER THREE - GENERAL PROVISIONS

SECTION 3.1	PETITIONS	4
SECTION 3.2	SUMMONS	4
SECTION 3.3	SERVICE OF SUMMONS	4
SECTION 3.4	TIME LIMITATIONS	5
SECTION 3.5	CONTINUANCES	5
SECTION 3.6	CONTEMPT POWER	5
SECTION 3.7	SUBPOENAS	5

CHAPTER FOUR - CUSTODY OF MINORS IN GENERAL

SECTION 4.1	TAKING A CHILD INTO CUSTODY IN DELINQUENCY AND CHILD IN NEED OF SUPERVISION MATTERS	6
SECTION 4.2	CRITERIA FOR REMOVING A CHILD IN NEGLECT MATTERS	6
SECTION 4.3	NOTIFICATION TO PARENTS, GUARDIANS OR CUSTODIANS	6
SECTION 4.4	INITIAL TEMPORARY PLACEMENT FOR DELINQUENCY AND IN NEED OF SUPERVISION MATTERS	7
SECTION 4.5	PLACEMENT FOR NEGLECT MATTERS	7
SECTION 4.6	RELEASE TO PARENTS, GUARDIAN OR CUSTODIAN FROM TEMPORARY DETENTION OR SHELTER CARE	8
SECTION 4.7	PLACE OF DETENTION OR SHELTER	8
SECTION 4.8	RELEASE FROM DETENTION OR SHELTER CARE; HEARING	9
SECTION 4.9	EMERGENCY MEDICAL CARE AND EDUCATION	9

CHAPTER FIVE - RIGHTS OF PARTIES AT JUVENILE PROCEEDINGS

SECTION 5.1	RIGHT TO RETAIN COUNSEL	10
SECTION 5.2	ADMISSIBILITY OF PRELIMINARY STATEMENTS	10
SECTION 5.3	JUVENILE COURT PROCEEDINGS NOT CRIMINAL IN NATURE	10
SECTION 5.4	OTHER BASIC RIGHTS	10

CHAPTER SIX - PROCEEDINGS BEFORE THE JUVENILE COURT

SECTION 6.1	CONDUCT OF HEARINGS	11
SECTION 6.2	PREDISPOSITION STUDY AND REPORT	11
SECTION 6.3	HEARING; FINDINGS; DISMISSAL	11
SECTION 6.4	CONSENT DECREE; CONTINUED SUPERVISION WITHOUT ADJUDICATION	12

CHAPTER SEVEN - DISPOSITION

SECTION 7.1	DISPOSITION OF NEGLECTED CHILD	13
SECTION 7.2	DISPOSITION OF A DELINQUENT CHILD OR A CHILD IN NEED OF SUPERVISION	13
SECTION 7.3	MEDICAL RECORDS OF A COMMITTED CHILD	13
SECTION 7.4	ORDER OF ADJUDICATION, NONCRIMINAL	13
SECTION 7.5	LIMITATION OF TIME ON DISPOSITIONAL ORDERS	14
SECTION 7.6	MODIFICATION OF TERMINATION OF COURT ORDERS	14
SECTION 7.7	PETITION TO REVOKE PROBATION; DISPOSITION	14
SECTION 7.8	DISPOSITION OF MENTALLY ILL OR MENTALLY IMPAIRED CHILD	15
SECTION 7.9	APPOINTMENT OF GUARDIAN AD LITEM	15
SECTION 7.10	COURT COSTS AND EXPENSES	15

SECTION 7.11	SUPPORT OF COMMITTED CHILD	15
SECTION 7.12	PROTECTIVE ORDERS	16
SECTION 7.13	RECORDS; PUBLICATION PROHIBITED	16
SECTION 7.14	DESTRUCTION OF RECORDS	16

CHAPTER EIGHT - TERMINATION AND RESTORATION OF PARENTAL RIGHTS

SECTION 8.1	PREFERRED PARENTAL RIGHT TO CUSTODY	17
SECTION 8.2	PRESUMPTION AGAINST TERMINATION OF PARENTAL RIGHTS	17
SECTION 8.3	TERMINATION OF RESIDUAL RIGHTS AND RESPONSIBILITIES	17
SECTION 8.4	TERMINATION PROCEDURES	17
SECTION 8.5	GROUND FOR TERMINATION OF PARENTAL RIGHTS	17
SECTION 8.6	ORDER TERMINATING	18
SECTION 8.7	DISPOSITION AFTER ORDER	18
SECTION 8.8	REVOCATION OF TERMINATION ORDER	18

CHAPTER NINE - ADOPTION

SECTION 9.1	WHO MAY BE ADOPTED	19
SECTION 9.2	WHO MAY ADOPT	19
SECTION 9.3	ADOPTION ORDER REQUIRED	19
SECTION 9.4	PETITION FOR ADOPTION	19
SECTION 9.5	NOTICE OF HEARING ON PETITION	19
SECTION 9.6	CONSENT TO ADOPTION	20
SECTION 9.7	WITHDRAWAL OF CONSENT	20
SECTION 9.8	WAIVER OF CONSENT TO ADOPTION; EXCEPTION OF NATURAL PARENTS	20
SECTION 9.9	HOME STUDY	21
SECTION 9.10	HEARING; ATTENDANCE	21
SECTION 9.11	INTERVENTION	21
SECTION 9.12	ADOPTION PREFERENCES	21
SECTION 9.13	BEST INTEREST	22
SECTION 9.14	TERMINATION OF PARENTAL RIGHTS PROCEEDINGS	22
SECTION 9.15	COURT ORDER	22
SECTION 9.16	RIGHTS UNDER ADOPTION ORDER	22
SECTION 9.17	REVOCATION OF ADOPTION ORDER	23
SECTION 9.18	ADOPTION ORDER UNAFFECTED BY APPEAL	23
SECTION 9.19	FEES	23

CHAPTER TEN - INDIAN CHILD WELFARE ACT

SECTION 10.1	PURPOSE AND INTENT	24
SECTION 10.2	RECOGNITION OF INDIAN CHILD WELFARE ACT	24
SECTION 10.3	DEFINITIONS	24
SECTION 10.4	TRIBAL COURT AUTHORITY	24
SECTION 10.5	RELATIONSHIP WITH STATE COURTS	25
SECTION 10.6	SEVERABILITY	25

CHAPTER ELEVEN - DUTY TO REPORT NON-ACCIDENTAL INJURIES TO MINORS

SECTION 11.1	MANDATED REPORTING	26
SECTION 11.2	NOTICE TO CHILD WELFARE AGENCY	26
SECTION 11.3	PHOTOGRAPHS; MEDICAL EXAMINATIONS; HOLDING CHILD	26
SECTION 11.4	IMMUNITY FROM LIABILITY; PRIVILEGE NOT APPLICABLE	26
SECTION 11.5	VIOLATIONS; PENALTY	26

CHAPTER TWELVE - CURFEW OF MINORS

SECTION 12.1	CURFEW	27
SECTION 12.2	PARENTAL SUPERVISION	27
SECTION 12.3	VIOLATION; PENALTY	27

CHAPTER ONE - DEFINITIONS

SECTION 1.1 DEFINITIONS

In this Code, unless the context otherwise requires:

- A. **Abandonment** means a parent(s), guardian(s), or custodian(s) who chooses to willfully withhold physical, emotional, and financial support from a child or when the parent fails to fulfill their parental responsibilities and chooses not to have contact with the child.
- B. **Act of Delinquency** means an act which if committed by an adult would be punishable as an offense against the White Mountain Apache Tribe or against the State of Arizona.
- C. **Adult** means a person aged eighteen (18) years or more.
- D. **Child in need of supervision** means a child who:
1. Is habitually truant from school, as defined in the Tribe's Truancy Code;
 2. Habitually disobeys the reasonable and lawful demands of his parent(s), guardian(s) or custodian(s), and is ungovernable and beyond their control; or
 3. Has committed an offense not classified as criminal or one applicable only to children; and
 4. In any of the foregoing ways, is in need of care or rehabilitation.
- E. **Cognitive Disability** is a disability that affects a person's brain that diminishes their ability to independently care for themselves or others, or comprehend the consequences and implications of their actions.
- F. **Custodian** means a person other than a parent or guardian, to whom legal custody of the child has been given by court order.
- G. **Detention** means the temporary care of children who require secure custody pending court disposition or transfer to another jurisdiction for delinquent or in need of supervision matters.
- H. **Guardian** means a person, usually other than the child's biological or adoptive parents(s), to whom the court has given legal custody or duty over the minor to do any of the following:
1. Consent to child's marriage or to medical, psychiatric or surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
 2. Reasonable visitation, except to the extent that such right of visitation has been limited by court order; and
 3. Consent to the adoption of the minor and to make other decisions concerning him which his parents could make, when the rights of his parents, or only living parent, have been judicially terminated as provided for in this chapter to facilitate adoption, or when both of his legal parents are deceased.
- I. **Juvenile Court** means the Juvenile Court of the White Mountain Apache Tribe.
- J. **Physical Custody** means a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom they shall live and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the child and subject to any residual parental rights and responsibilities personally unless otherwise authorized by the Court.

K. **Legal Custody** means the legal right and responsibility to make all non-emergency legal decisions for a child, including but not limited to those regarding education, healthcare, religious training and personal care.

L. **Minor or child** means a person under the age of eighteen (18) years.

M. **Neglected child** means a child:

1. Whose parent(s), guardian(s), or custodian(s) have been alleged to violate Section 2.83 of the White Mountain Apache Criminal Code;
2. Who has been abandoned by their parent(s), guardian(s), or custodian(s);
3. Who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for their well-being because of the faults or habits of their parent(s), guardian(s) or custodian(s), or their neglect or refusal, when able to do so, to provide for them; or
4. Whose parent(s), guardian(s), or custodian(s) are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

N. **Parent(s)** means the biological or adoptive parent(s) of the child but does not include parent(s) whose rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

O. **Probation** shall mean a legal status created by court order following an adjudication of delinquency whereby a minor is permitted to remain in their home subject to supervision and return to the Juvenile Court for violation of their probationary terms.

P. **Protective Supervision** means a legal status created by court order in neglect cases whereby the minor is permitted to remain in their home under supervision, subject to return to the Court during the period of supervision.

Q. **Removal** means the transfer of physical custody of a child from the parent(s), guardian(s), or custodian(s) to that of law enforcement, the Court, or a person or organization appointed by the Court.

R. **Reservation** means the Fort Apache Indian Reservation.

S. **Runaway** means any child, not emancipated, who is intentionally absent from the care and physical custody of their parent, guardian or custodian, without the consent of the parent(s), guardian(s) or custodian(s), and does not intend to return.

T. **Shelter Care** means the temporary care of children who are removed from their parent(s), guardian(s), or custodian(s) for neglect matters.

U. **Tribe** means the White Mountain Apache Tribe.

CHAPTER TWO - THE JUVENILE COURT

SECTION 2.1 JURISDICTION OF THE JUVENILE COURT

A. The Juvenile Court shall have exclusive original jurisdiction over proceedings in which a child is to be adjudicated to be neglected, in need of supervision, or delinquent, proceedings for the termination of parental rights, proceedings for the adoption of a child, and for guardianships of minors, unless previously ordered by the Tribal Court.

B. Where the interests of justice require, and based upon the severity of the crime, the Juvenile Court may give jurisdiction over children sixteen (16) years of age or older and transfer the case to the Tribal Court for processing as a criminal case. The Juvenile Court shall not waive jurisdiction of a case where in need of supervision is charged.

C. In instances of proposed transfer under (B), the Tribal Court shall have the discretion to accept or reject the transfer. If it chooses to accept the matter, the Tribal Court shall have accept the transfer before the Juvenile Court shall dismiss the case.

SECTION 2.2 TRANSFER OF JUVENILE CRIMINAL CASES TO THE JUVENILE COURT

If it appears to a court in a criminal proceeding that the defendant was a minor at the time of the alleged offense, the Court shall transfer the case to the Juvenile Court for processing as a juvenile case. No compliance with this requirement is necessary where the Juvenile Court has waived its jurisdiction pursuant to Section 2.1B.

SECTION 2.3 RETENTION OF JURISDICTION

Jurisdiction obtained by the Juvenile Court shall be retained by the Juvenile Court until a child becomes eighteen (18) years of age, unless transferred to the Trial Court pursuant to Section 2.1B of this Code.

CHAPTER THREE - GENERAL PROVISIONS

SECTION 3.1 PETITIONS

- A. A Juvenile Court action is commenced by the filing of a petition with the Juvenile Court.
- B. When a child is in detention or temporary shelter care and a petition is not filed within seventy-two (72) hours, excluding Saturdays, Sundays and Tribal holidays, the child shall be released for failure to comply with time requirements, after issuance of an order of the Court on a habeas petition filed for that purpose.
- C. Petitions shall be entitled "In the matter of _____, a child".
- D. The petition shall specifically set forth:
1. Facts which bring the child within the jurisdiction of the Juvenile Court;
 2. The name, birth date and residential address of the child;
 3. The name and physical and mailing address of the parent(s), guardian(s), or custodian(s) of the child, and their spouse, if any, and if none of these persons can be found, the name and physical and mailing address of a known adult relative of the child within the Reservation;
 4. The place of detention and time the child was taken into custody, if he or she is in custody; and
 5. If any of these facts are unknown, the petition shall so state.

SECTION 3.2 SUMMONS

- A. After a petition has been filed, the Juvenile Court shall direct the issuance of summons:
1. To the child, if he or she is over the age of fourteen (14) years old or is alleged to be delinquent or in need of supervision; and
 2. To the parent(s), guardian(s), or other custodian(s);
- B. The persons summoned shall be required to appear before the Court at a designated time to answer the allegations of the petition.
- C. The summons shall advise the parties of their rights to retain counsel as provided in Section 5.1 of this Code. A copy of the petition shall be attached to each summons.
- D. The judge, on the summons, may order the person having custody or control of the child to bring the child to the hearing.

SECTION 3.3 SERVICE OF SUMMONS

- A. The summons shall be served either:
1. Personally, by an Officer of the Court or an Officer of the Juvenile Court;
 2. By registered or certified mail, with return receipt to be signed only by the addressee, in which case service shall be deemed effective upon delivery; or
 3. If a party who is domiciled on the Reservation cannot be located, or whose whereabouts are unknown, such party may be served by an officer of the Court leaving a copy of the summons and petition with an adult who is present at the usual place of abode; or
 4. Upon motion by the Juvenile Presenter, the Court may permit service by publication in the newspaper of common circulation of the Reservation, which shall be published for two consecutive weeks.

B. If it appears in the petition presented to the judge that the child requires placement in detention or shelter care pursuant to Section 4.1, the judge may issue an arrest warrant to take the child into custody and take to a place of detention or shelter care designated by the Court on the arrest warrant.

C. A party other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

SECTION 3.4 TIME LIMITATIONS

A. On motion by or on behalf of a child, a petition alleging that the child is delinquent or is a child in need of supervision shall be dismissed without prejudice where the allegations of the petition are not determined at a hearing within ninety (90) days after the filing of the petition.

B. Waiver of Time Limitation. The child, parent(s), guardian(s), or custodian(s), or their counsel, shall be deemed to have waived the time limitations by doing any of the following:

1. Failing to appear at any court proceeding in the Juvenile matter;
2. Requesting a continuance that is granted by the Juvenile Court
3. Entering into a consent decree as provided by Section 6.4; or
4. Requesting a visiting judge.

SECTION 3.5 CONTINUANCES

Continuances shall be granted by the Court only upon a showing of good cause and only for so long as is reasonably necessary. Tribal Prosecution shall have five (5) business days, excluding Saturdays, Sundays and Tribal holidays in which to file and serve a response to the motion for continuance. The Juvenile Court shall not rule on the motion until the five (5) business day time frame has expired, unless Tribal Prosecution files its response before the expiration of the time frame. The Juvenile Court may rule on the motion for continuance without a hearing.

SECTION 3.6 CONTEMPT POWER

The Juvenile Court may civilly-sanction a party to a Juvenile Court case for contempt of court pursuant to Section 2.20(B) of the White Mountain Apache Judicial Code for the enforcement of its orders.

SECTION 3.7 SUBPOENAS

Upon the request of a party the Juvenile Court shall issue, and the Court on its own motion may issue, subpoenas requiring the attendance of witnesses to testify and produce records, documents or other tangible objects at any hearing.

CHAPTER FOUR - CUSTODY OF MINORS IN GENERAL

SECTION 4.1 TAKING A CHILD INTO CUSTODY IN DELINQUENCY AND CHILD IN NEED OF SUPERVISION MATTERS

A law enforcement officer may take a child into custody:

- A. Pursuant to the order of the Juvenile Court under Section 3.3 (B) of this Code;
- B. When the law enforcement officer has probable cause to believe the child has committed an act of delinquency;
- C. When the law enforcement officer has reasonable grounds to believe:
 - 1. That the child is a runaway as defined by this Code;
 - 2. The child is truant as defined by the Truancy Code;
 - 3. The child has violated section 12.1 of this Code;
 - 4. The property or person of others, or of the child, is in need of protection; or
 - 5. The present circumstances of the child pose an imminent threat to the child's physical safety.

SECTION 4.2 CRITERIA FOR REMOVING A CHILD IN NEGLECT MATTERS

- A. Child abuse or neglect investigations shall be investigated by a Social Services Department or a law enforcement officer. If the person investigating the report of abuse or neglect finds grounds for removal pursuant to sub-section B, below, such person may remove the child from the home in which the child is residing and place the child in an appropriate placement.
- B. A law enforcement officer or a Social Services Worker may remove a child from the home of the child's parent(s), guardian(s), or custodian(s) when there are reasonable grounds to believe:
 - 1. Failure to remove the child may result in substantial risk of death, injury, or serious emotional harm;
 - 2. When the parent(s), guardian(s), or custodian(s) is absent and it appears from the circumstances that the child is unable to provide his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent(s), guardian(s), and custodian(s) to provide for such necessities, to include education;
 - 3. When the child has been abandoned by his or her parent(s), guardian(s), or custodian(s) as defined in section 1.1 A. of this Code;
 - 4. When the child is without proper parental care and control, or subsistence, education, medical or other custodian or control necessary for his or her well being because of the faults or habits of his or her parent(s), guardian(s), or custodian(s), or their neglect or refusal, when able to do so, to provide for the child; or
 - 5. When the parent(s), guardian(s), or custodian(s) are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

SECTION 4.3 NOTIFICATION TO PARENTS, GUARDIANS, OR CUSTODIANS

- A. Any law enforcement officer or Social Services worker who takes a child into custody shall immediately notify or attempt to notify the parent(s), guardian(s), or custodian(s). All reasonable efforts shall be made to advise the parent(s), guardian(s), or custodian(s) of the reason for taking the child into custody. When a child is taken into custody pursuant to Section 4.2 of this Code, the law enforcement officer or Social Services worker shall have discretion to disclose the placement of the child.

B. In all cases where the parent(s), guardian(s) or custodian(s) of a child taken into custody without a court order can be located and are willing and able to take the child under their care, the child shall be surrendered to their care pending any proceedings in the Juvenile Court except for a child taken into custody pursuant to Section 4.2 of this Code.

C. Where a child is taken into custody without a court order, the law enforcement officer or Social Services worker shall submit a police report or a Social Services Temporary Placement Report to Tribal Prosecution. Upon receipt of the police report or the Social Services Temporary Placement Report, Tribal Prosecution shall exercise its prosecutorial discretion to file a petition with the Juvenile Court. If a petition is not filed within seventy-two (72) hours, excluding Saturdays, Sundays and Tribal holidays, the child shall be released to the parent(s), guardian(s), or custodian(s) pursuant to Section 3.1 B. of this Code.

SECTION 4.4 INITIAL TEMPORARY PLACEMENT FOR DELINQUENCY AND IN NEED OF SUPERVISION MATTERS

A. *Initial Temporary Placement.* When the grounds for removal provided for by Section 4.1 are met, law enforcement may place the child, as appropriate, in any of the following, until review and an order by the Court:

1. A juvenile detention center;
2. A juvenile rehabilitative center where the child is already enrolled, an inpatient healthcare center where the child is already admitted, a licensed foster home, or with a relative who has been informed of the situation and has committed to assist the child with court-ordered intervention and remediation measures provided that the Social Services worker or law enforcement officer determines that the initial temporary placement appears to provide a safe immediate environment for the child(ren);

B. *Court-Ordered Placement.* As soon as practicable, but in no case longer than thirty (30) days after initial placement, the Court shall review the initial temporary placement by law enforcement and order that placement either continue, be transferred to another, or that the child be released.

C. *Review.* At any time, the child, through counsel, the Guardian ad Litem, the parent, guardian or custodian, or the Tribe may move the Court to review and modify the Court-ordered placement.

SECTION 4.5 PLACEMENT FOR NEGLECT MATTERS

A. *Initial Emergency Placement(Initial Hearing):* When the grounds for removal provided for by Section 4.2 are met, law enforcement or Tribal Social Services may place the child, as appropriate, in any of the following until review and an order by the Court:

1. Extended family members related by whole blood, half-blood, or adoption provided that the Social Services worker or law enforcement officer determines that the temporary placement appears to provide a safe immediate environment for the child(ren);
2. A Tribally approved Group Home; or
3. A foster home, pursuant to B., below.
4. Extended Placement (if placement continues after Initial hearing). The Court may place the child, as appropriate, in a home that meets the following criteria:
All persons in the home shall complete a favorable background clearance. No person living in the home may have a conviction for any of the following crimes for the previous ten (10) years:
 - a. Crimes against children:

- i. Endangering an unborn child,
 - ii. Failure to support,
 - iii. Failure to send child to school, or
 - iv. Endangering the welfare of a child;
- b. Domestic violence;
- c. Violent Crimes, including but not limited to:
 - i. Rape,
 - ii. Sexual assault,
 - iii. Homicide,
 - iv. Kidnapping,
 - v. Robbery, or
 - vi. Abduction;
- d. Assault;
- e. Drug related offense(s);
- f. Bootlegging;
- g. Theft from or financial exploitation of an individual entrusted to the care or protection of another;
- h. Involuntary manslaughter;
- i. Sex crimes;
- j. Contributing to the delinquency of a minor;
- k. Custodial Interference; or
- l. Incest;
- 5. There shall be no child abuse nor neglect history with Tribal Social Services;
- 6. Children cannot be placed in a home with a registered sex offender;
- 7. All persons in the home shall have no active warrants; and
- 8. There must be a favorable home study completed on the home by Tribal Social Services.

SECTION 4.6 RELEASE TO PARENTS, GUARDIAN OR CUSTODIAN FROM TEMPORARY DETENTION OR SHELTER CARE

Unless the child's placement in detention or shelter care appears required as provided in Section 4.1 of this Code, a law enforcement officer taking a child who is alleged to be delinquent or in need of supervision into temporary detention or shelter care without a Juvenile Court order shall, with all reasonable speed, release the child to the child's parents, guardian or custodian upon the parent or guardian's promise to bring the child before the Juvenile Court when requested by the Court.

SECTION 4.7 PLACE OF DETENTION OR SHELTER

A. A child alleged to be delinquent or in need of supervision may be detained or placed, following a court hearing, in any of the following locations:

- 1. A foster home or other home approved by Social Services;
- 2. A facility operated by a child welfare agency approved by Social Services;
- 3. A residential school; or
- 4. Any other suitable place designated by the Juvenile Court.

B. A child may be detained in a jail or other facility for the detention of adults only if the facilities provided for in Subsection A are unavailable and the detention is in a room separate and removed from adults, and so permitted by the detention facility's self-determination contract, if applicable.

C. A child alleged to be neglected may not be detained, long term, in a jail or other facility intended or used for the detention of adults charged with or convicted of criminal offenses or for children alleged to be delinquent.

SECTION 4.8**RELEASE FROM DETENTION OR SHELTER CARE; HEARING**

- A. When a child is not released under the provisions of Section 4.6, a petition shall be filed within seventy-two (72) hours, excluding Saturdays, Sundays and Tribal holidays, and a hearing shall be held by the end of the next business day from the time of the filing of the petition to determine whether continued detention or shelter care is required under Sections 4.1 and 4.2 of this Code.
- B. Written notice of the detention or shelter care hearing stating the time, place and purpose of the hearing shall be given to the parent(s), guardian(s) or custodian(s) if they can be found and to the child if he or she is charged with being delinquent or in need of supervision.
- C. At the commencement of a detention or shelter care hearing, the judge shall advise the parties of their right to retain counsel as provided in Section 5.1 of this Code. The parties shall be informed of the contents of the petition and shall be given an opportunity to admit or deny the allegations of the petition.
- D. When a judge finds that a child's full-time detention is not warranted, the Court shall order his or her release.
- E. If the parent(s), guardian(s), or custodian(s) of a child not released was not notified and was not present at a detention or shelter care hearing, the Court shall grant him a rehearing on their request and rehear the matter without unnecessary delay.

SECTION 4.9**EMERGENCY MEDICAL CARE AND EDUCATION**

When a child is held in detention or shelter care, the Juvenile Court shall include in its order language providing who shall have the authority to consent to emergency medical treatment for such child and who shall have the authority to enroll the child in school, pick up and drop off the child from school, and make all other necessary educational decisions on the child's behalf.

CHAPTER FIVE - RIGHTS OF PARTIES AT JUVENILE PROCEEDINGS

SECTION 5.1 RIGHT TO RETAIN COUNSEL

A. In delinquency cases, a child or their representative shall be advised by the Court at the initial hearing that the child may be represented by counsel at all stages of the proceedings at the parents' or guardians' expense. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the Court in its discretion may appoint counsel for the child.

B. In Child in Need of Supervision and neglect cases at the initial hearing, the parent(s), guardian(s), or custodian(s) shall be informed of their right to retain counsel at their own expense or the court in its discretion may appoint counsel to represent the parent(s), guardian(s) or custodian(s).

SECTION 5.2 ADMISSIBILITY OF PRELIMINARY STATEMENTS

Unless advised by counsel, the statements of a juvenile made during a predisposition study, shall not be used against the child in determining the allegations of the petition.

SECTION 5.3 JUVENILE COURT PROCEEDINGS NOT CRIMINAL IN NATURE

The proceedings of the Juvenile Court shall not be criminal in nature. An adjudication of delinquency or need of supervision by the Juvenile Court shall not be deemed a conviction nor shall a criminal or other juvenile proceeding based upon the allegations of the petition be instituted where the Juvenile Court has begun taking evidence or accepted a plea which admits to the allegations of the petition.

SECTION 5.4 OTHER BASIC RIGHTS

A. A child charged with being delinquent or child in need of supervision shall be accorded the privilege against self-incrimination. An extra judicial statement which would be inadmissible in a criminal proceeding shall not be received in evidence. Statements or admissions made by the juvenile subject of the delinquency petition in Juvenile Court proceedings shall be inadmissible against the juvenile in Criminal Court.

CHAPTER SIX - PROCEEDINGS BEFORE THE JUVENILE COURT

SECTION 6.1 CONDUCT OF HEARINGS

- A. Hearings under this chapter shall be conducted by the Juvenile Court without a jury and apart from other judicial proceedings.
- B. The proceedings may be recorded by a stenographer or by electronic means. If such methods cannot be used, the Court shall keep full and reasonably detailed minutes of the proceedings.
- C. The general public shall be excluded from all proceedings of the Juvenile Court. Only the parties, their counsel, witnesses and other persons requested by the parties or the Court shall be admitted.
- D. If the Court finds that it is in the best interest of the child, the child's presence may be temporarily excluded from the hearings, except while allegations of delinquency or a child in need of supervision are being heard, or the testimony of a child may be taken *in camera*.

SECTION 6.2 PREDISPOSITION STUDY AND REPORT

- A. After the filing of a petition, the Court shall direct that a predisposition study and report to the Court concerning the child, their family, environment, and other matters relevant to the disposition of the case be made by Tribal Social Services. The study and report shall be made prior to a finding with respect to the allegations in the petition unless a notice of intent to admit the allegations is filed and the party consents thereto.
- B. Where there are indications that the child may be mentally ill or mentally handicapped, the Court on its own motion or on motion by child's counsel, may order the child examined by a physician, psychiatrist or psychologist prior to a hearing on the merits of the petition. Such examinations made prior to hearing or as part of the study and report provided for in Subsection A shall be conducted on an outpatient 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, surgeon, psychiatrist or psychologist of a parent or custodian whose ability to care for or supervise a child is at issue before the Court.

SECTION 6.3 HEARING; FINDINGS; DISMISSAL

- A. The parties shall be advised of their rights under the law in their first appearance before the Court. They shall be informed of the specific allegations in the petition and be given an opportunity to admit or deny such allegations.
- B. If the allegations are denied, the Court shall proceed to hear evidence on the petition at an Adjudication Hearing held for that purpose. The Court shall record its findings on whether or not the child is a neglected or delinquent child or Child in Need of Supervision in an order.
- C. If the Court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or shelter care theretofore ordered in the proceeding.

D. During the Adjudication Hearing, if the Court finds on the basis of a valid admission or a finding on proof beyond a reasonable doubt that a child committed the acts by reason of which he or she is alleged to be delinquent, or in need of supervision, the Court may, in the absence of objection, proceed immediately to hear evidence as to whether the child is in need of further rehabilitation and to file its findings thereon.

SECTION 6.4 CONSENT DECREE; CONTINUED SUPERVISION WITHOUT ADJUDICATION

A. At any time after the filing of a delinquency or Child in Need of Supervision petition, but before entry of an adjudication order, the Court, on its own motion or on motion of counsel for the child or Tribe, may suspend the proceedings and continue the child under court-ordered supervision in the child's own home, under such terms and conditions as recommended by the Juvenile Advocate and agreed to by the parties affected.

B. Where the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition. Where the child does not object to the consent decree but other parties object, the Court shall proceed to determine whether it is appropriate to consider a consent decree.

C. A consent decree shall remain in force for six (6) months, and shall act as a waiver of the time limitations provided for by Section 3.4(A) unless the child is discharged for compliance from supervision by the Court sooner, or unless there has been substantial non-compliance by the child or guardian during the term of the consent decree, pursuant to (D), below.

D. If prior to discharge by the Court or expiration of the consent decree, a new delinquency or Child in Need of Supervision petition is filed against the child, or the Juvenile Advocate reports that the child or parent has failed to abide by the express terms and conditions of the consent decree, the original petition under which the child was continued under supervision may be reinstated in the discretion of the Juvenile Court and the child or parent may be held accountable as if the consent decree had never been entered.

E. A child who is discharged by the Court, or who completes the period of continuance under supervision without reinstatement of the original delinquency or Child in Need of Supervision petition, shall not again be proceeded against in any court for facts arising out of the same incident(s) alleged in the petition or for an offense based upon the same condition.

CHAPTER SEVEN -DISPOSITION

SECTION 7.1 DISPOSITION OF NEGLECTED CHILD

A. If a child is found by the Juvenile Court to be neglected, the Court may make any of the following orders of disposition to protect the welfare of the child:

1. Permit the child to remain with his or her parent(s), guardian(s) or other custodian(s), subject to such conditions and limitations as the Court may prescribe;
2. Place the child under protective supervision; or
3. Transfer legal custody of the child to any of the following:
 - a. A relative or other individual who, after study pursuant to Section 4.5(B) of this Code by a person designated by the Court, is found by the Court to be qualified to receive and care for the child;
 - b. A tribal, state, federal, or other public agency responsible for the care of neglected children, provided that the child remains exclusively subject to the orders of the Juvenile Court; or
 - c. A child-placing agency or other private organization or facility willing and able to assume the education, care and maintenance of the child, and which is licensed or otherwise authorized by law to receive and provide care for such child.

B. Unless a child found neglected shall also be found to be delinquent or in Need of Supervision, they shall not be committed to or confined in an institution established for the care and rehabilitation of delinquent children or children in need-of-supervision.

SECTION 7.2 DISPOSITION OF A DELINQUENT CHILD OR A CHILD IN NEED OF SUPERVISION

A. If a child is found to be delinquent or in Need of Supervision, the Court may make any of the following orders of disposition for their supervision, care and rehabilitation:

1. Any order which is authorized by Section 7.1 of this Chapter for the disposition of a neglected child;
2. An order transferring legal custody to a state or local public agency, provided that the child remain exclusively subject to the orders of the Juvenile Court; or
3. An order placing the child on probation under such conditions and limitations as the Court may prescribe.

SECTION 7.3 MEDICAL RECORDS OF A COMMITTED CHILD

When the Court vests physical custody of a child in an agency or institution, it shall transmit with the order copies of any clinical reports, predisposition study, and other information pertinent to the care and treatment of the child, and may also issue a written order granting said agency or institution the authority to make education and health care decisions on the child's behalf and to obtain the child's medical records.

SECTION 7.4 ORDER OF ADJUDICATION; NONCRIMINAL

A. An order of disposition or other adjudication in proceedings under this Chapter shall not be deemed a conviction of crime or impose any civil disability or operate to disqualify the child in any civil service or tribal employment application or appointment.

B. The disposition of a child and evidence given in a hearing in the Juvenile Court shall not be admissible against them in any case or proceeding in any other court whether before or after they have reached the age of majority.

SECTION 7.5 LIMITATION OF TIME ON DISPOSITIONAL ORDERS

A. An order vesting legal custody of a child in an agency or institution, if not entered for a specified length of time less than one year, shall remain in force for one (1) year from the date entered unless renewed by the Court or vacated, provided, however, that the child shall be released within the one (1) year period by the agency or institution when it appears that the purpose of the order has been achieved.

B. An order vesting legal custody of a child in an individual shall remain in force for one (1) year from the date entered unless sooner terminated by court order.

C. An order of probation or protective supervision shall remain in force for an indeterminate period not exceeding one (1) year from the date entered unless terminated sooner by court order.

D. When a child reaches eighteen (18) years of age, all orders affecting him or her shall terminate and they shall be released from legal custody, or supervision under such orders.

E. In delinquency cases only, the Juvenile Court may retain jurisdiction over a matter until the subject of the Petition turns nineteen (19), provided that the offense was committed before the subject's eighteenth (18) birthday.

SECTION 7.6 MODIFICATION OR TERMINATION OF COURT ORDERS

A. At any time prior to expiration, an order vesting legal custody or an order of protective supervision made by the Court in the case of a child may be modified, revoked, or extended on motion by:

1. A child whose legal custody has been transferred to an institution, agency, or person, moving the Court for a modification or termination of the order and alleging that they are no longer in need of commitment;
2. The parent(s), guardian(s), or other custodian(s) of such child;
3. The institution, agency or person vested with legal custody or responsibility for protective supervision; or
4. Tribal Social Services.

B. To effectuate the provisions of this section, the Juvenile Court when it grants legal custody or protective supervision of a child to an agency, institution or person shall order that Tribal Social Services make periodic reports to the Court on the welfare and progress of the child, the frequency of which shall be specified by the Court, provided that reports shall not be made less frequently than annually. Such reports may be submitted in writing, and need not be presented at a hearing, except in the case of an annual review.

SECTION 7.7 PETITION TO REVOKE PROBATION; DISPOSITION

A. A child on probation, incident to an adjudication as a delinquent child or Child in Need of Supervision, who violates a term of their probation may be subject to probation revocation, after a hearing for that purpose.

B. A proceeding to revoke probation shall be commenced by the filing of a motion entitled "Motion to Revoke Probation." Except as otherwise provided, the Motion to Revoke Probation shall be screened, referred and prepared in the same manner and shall contain the same information as provided in Sections 3.1 and 3.2 of this Code.

C. Probation shall not be revoked except upon a showing by clear and convincing proof that the child has violated a term of their probation. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to delinquency and in need of supervision cases contained in this Chapter.

D. If a child is found to have violated a term of their probation pursuant to a hearing to revoke probation, the Court may extend the period of probation or make any other order of disposition specified for a child adjudicated as delinquent or in need of supervision in Section 7.2 of this Chapter.

SECTION 7.8 DISPOSITION OF MENTALLY ILL OR MENTALLY IMPAIRED CHILD

If at a hearing under this Chapter, the evidence indicates that the child may be suffering from mental illness or impairment, the Court may commit the child for a period not exceeding thirty (30) days to an appropriate institution or agency for mental health evaluation and a report on the child's condition. If it appears that the child's condition requires inpatient care, the Court shall dismiss any delinquency or Child in Need of Supervision petitions pending against the child and release them to their parent(s), guardian(s), or custodian(s).

SECTION 7.9 APPOINTMENT OF GUARDIAN AD LITEM

A. The Juvenile Court, at any stage of the proceeding under this Chapter, may appoint a guardian ad litem for a child who is a party to the proceeding. A party or their representative or employee shall not be appointed.

B. No Tribal official nor employee of a Tribal department involved in the administration of this Code, or a person who is or may be vested with the legal custody of neglected or delinquent children or Children in need of supervision, shall be appointed as guardian ad litem.

SECTION 7.10 COURT COSTS AND EXPENSES

A. Except as provided in Subsection B, the following expenses shall be absorbed by the White Mountain Apache Tribe:

1. Reasonable compensation for services and related expenses for counsel in those cases where one is appointed by the Court for a party;
2. The expense of service of summons, notices, subpoenas, traveling expenses of witnesses, and other similar expenses incurred by the Tribe or by legal counsel or agencies or institutions appointed by the Tribe for the proceedings brought under this Chapter; and
3. Reasonable compensation for a guardian ad litem.

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 the parents or other persons legally obligated to support the children are financially able to pay all or part of the costs and expenses noted in Subsection A(1), it shall order them to pay such costs and expenses and may prescribe the manner of payment.

SECTION 7.11 SUPPORT OF COMMITTED CHILD

Whenever legal custody of a child is vested in an individual other than the parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the Court may order and decree that the parent or other legally obligated person shall pay in such a manner as the Court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person

willfully fails or refuses to pay such sum, the parent may be held in civil contempt by the Juvenile Court, charged in Tribal criminal court with the criminal offense of Disobedience to a Lawful Order of the Court, (Criminal Code Section 2.28), or the order may be sued upon to obtain a civil judgment in Tribal Court.

SECTION 7.12 PROTECTIVE ORDERS

In any proceeding commenced under this Chapter, upon application of a party or the court's own motion, the Court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction, if:

1. An order of disposition of a delinquent or neglected child or child in need of supervision has been made in a proceeding under this chapter;
2. The Court finds that the person's conduct is or may be detrimental or harmful to the child, and will tend to defeat the execution of the order of disposition; and
3. Due notice of the application or motion, the grounds therefore, and an opportunity to be heard thereon has been given to the person against whom the order is directed.

SECTION 7.13 RECORDS; PUBLICATION PROHIBITED

A. The records of proceedings of the Juvenile Court shall be kept in a docket separate from other proceedings, and shall not be opened for inspection or copied for anyone other than the parties to the proceedings or the representatives of the Court, except upon order of the Court.

B. No part of the record, excepting the information contained on a summons, shall be published by a newspaper or other agency disseminating news or information nor shall a newspaper or agency publish the name of a child charged in the Juvenile Court with being delinquent, in need of supervision, or neglected, except as provided by the Tribe's Truancy Code.

SECTION 7.14 DESTRUCTION OF RECORDS

When a person who has been before the Juvenile Court in a delinquency or in need of supervision proceeding attains the age of nineteen (19) and all matters involving them have reached disposition, the Court shall order the juvenile clerk to destroy all records of such proceedings.

CHAPTER EIGHT- TERMINATION OF PARENTAL RIGHTS

SECTION 8.1 PREFERRED PARENTAL RIGHT TO CUSTODY

If a Juvenile Court finds that a child is neglected, it shall not transfer custody of the child to another person, agency, or institution unless it finds from all the circumstances that the health, safety or welfare of the child requires such transfer.

SECTION 8.2 PRESUMPTION AGAINST TERMINATION OF PARENTAL RIGHTS

It is the policy of the Tribe that termination of parental rights should not be utilized except in the most extreme circumstances of neglect or abuse where permanent severance is in the clear best interests of the child and is the only appropriate and fitting remedy, unless the consent of the parent has been obtained. Rather, there shall be a rebuttable presumption that permanent guardianship until the child reaches the age of majority is the appropriate remedy.

SECTION 8.3 TERMINATION OF RESIDUAL RIGHTS AND RESPONSIBILITIES

All parental legal rights to a child not assigned to another person by the court shall constitute residual rights, and remain vested in the parent. The residual rights and responsibilities of a parent with respect to a child shall not be terminated except in the most extreme cases of neglect or other parental conduct or condition detrimental to the child's welfare. That a child is delinquent or in need of supervision shall not be grounds for termination of parental rights.

SECTION 8.4 TERMINATION PROCEDURES

- A. Residual parental rights and responsibilities shall not be terminated except when so ordered after a hearing has been held specifically for such purpose.
- B. An adult relative of the child, a person who has the care for such child, or Tribal Social Services may petition the Juvenile Court to terminate residual parental rights and responsibilities.
- C. The parent who is the subject of the termination proceeding and the other parent, if the other parent's rights were established and not previously terminated, shall both be given not less than ten (10) days advanced notice of the hearing by service of summons which shall contain a statement of the effect that the rights of the subject parent or both parents are proposed to be terminated at such hearing. Such summons shall be served as provided in Section 3.3 of this Code.
- D. At the termination hearing, the subject parent or parents shall be given full and fair opportunity to be heard and to controvert any evidence introduced.
- E. A party may be represented by counsel as provided in Section 5.1 of this Code.

SECTION 8.5 GROUND FOR TERMINATION OF PARENTAL RIGHTS

- A. The Juvenile Court may terminate the residual rights and responsibilities of a parent or parents if the Court finds that any of the following applies to the parent or parents of the child:
 - 1. Are unfit, lack physical or mental capacity, or are unwilling to care and provide for such child and no alternatives are feasible or available through which such care and provision could be supplied without terminating the parental rights; or
 - 2. Habitually engages in conduct detrimental to the health, safety or welfare of the child; or
 - 3. Have abandoned the child.

B. In addition to those grounds above, to terminate parental rights, the Court must also find that the parent has committed severe or chronic abuse or neglect to the child and that the permanent severance of the parent-child relationship is in the child's best interests, or that the natural parent has consented to the termination of parental rights.

C. The rights and responsibilities of one parent may be terminated without affecting the rights and responsibilities of the other parent.

SECTION 8.6 ORDER TERMINATING

Every order terminating the rights of one or both parents shall state the findings upon which the Juvenile Court bases its order. Such order shall be of an interlocutory nature for a period of one (1) year, subject to review or revocation by the Juvenile Court upon motion by the parent, as provided in Section 8.8, below within one (1) year, but may be appealed within ten (10) days by the parent(s). After the expiration of the one (1) year period provided by Section 8.8, the order shall become a final order, and the case closed.

SECTION 8.7 DISPOSITION AFTER ORDER

Upon the entry of the order terminating the rights and responsibilities of a parent(s), the Juvenile Court may:

- A. Place the child for adoption as provided under Chapter Nine of this Code; or
- B. Proceed under Section 7.1 Disposition of Neglected Child, of this Code.

SECTION 8.8 REVOCATION OF TERMINATION ORDER

- A. The parent(s), whose rights and responsibilities to a child have been terminated may, within one (1) year of the termination order, file with the Juvenile Court a Petition to Revoke the Termination of Parental Rights on the grounds that a substantial change of circumstances has occurred which requires such revocation and restoration and is in the best interest of the child.
- B. If the Juvenile Court determines that the alleged change in circumstances, if proved, would affect its order, the Court shall order a hearing upon due notice to all persons concerned. Thereafter, the Court may revoke its previous termination order.
- C. If the child has been adopted prior to the filing of the Petition to Revoke the Termination of Parental Rights, the parent or parents shall proceed under Section 9.17 of this Code.

CHAPTER NINE -ADOPTION

SECTION 9.1 WHO MAY BE ADOPTED

The Juvenile Court shall exercise jurisdiction over adoptions of children who fall under the Court's jurisdiction as provided by Section 2.1 of the Tribe's Judicial Code.

SECTION 9.2 WHO MAY ADOPT

A. Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of the married persons, except that if one of the spouses is the natural parent of the proposed adoptee, said natural parent shall not be required to join in the petition.

B. Only in extraordinary circumstances, and where the best interests of the White Mountain Apache Tribe and the child require it, may non-members adopt children who are enrolled members of the Tribe, or are eligible for enrollment in the Tribe.

SECTION 9.3 ADOPTION ORDER REQUIRED

No child shall be adopted except when so ordered by the Juvenile Court after an adoption hearing initiated by the filing of a petition for adoption.

SECTION 9.4 PETITION FOR ADOPTION

A. An adoption Petition shall include the following, to the best information and belief of the petitioner:

1. The full name, address, phone number, and tribal affiliation, if any, of the petitioner(s) and the relationship, if any, to the child;
2. The full name, sex, residence, date and place of birth and tribal affiliations, if any, of the proposed adoptee;
3. The name by which the proposed adoptee shall be known if the petition is granted;
4. The full names of the natural parents, including mother's maiden name, and physical and mailing addresses;
5. When the petitioner acquired custody of the child and from what person or agency custody was acquired, if applicable;
6. A full description and statement of the value of all property owned, possessed, or in which the child has an interest;
7. Any reason that consent to adopt need not be given; and
8. Any information which the petitioner determines should be brought to the attention of the Court pertinent to the adoption.

B. When any of the above facts is unknown, the petition shall so state.

C. Any written consent required under this chapter shall be attached to the petition or shall be filed with the Court at or prior to the adoption hearing.

SECTION 9.5 NOTICE OF HEARING ON PETITION

A. Upon the filing of a petition for adoption, the Juvenile Court Clerk shall set a time and date for a hearing by the Juvenile Court on the adoption. No adoption hearing shall be held less than thirty (30) days after the filing of the petition.

B. Notice of the adoption hearing shall be given:

1. To the Petitioner;
2. To the person, agency or institution having custody of the child, if not the Petitioner;
3. To Tribal Social Services who will be conducting the investigation ordered by the Court under Section 9.9 of this Code;
4. To any person required to give consent to adoption, unless consent is waived according to Section 9.8 of this Code; and
5. To the Office of the Attorney General of the White Mountain Apache Tribe if the child is an enrolled member of the White Mountain Apache Tribe or eligible for membership with the White Mountain Apache Tribe; and
6. If applicable, to any other tribe where the child is an enrolled member or eligible for enrollment.

SECTION 9.6 CONSENT TO ADOPTION

A. No adoption shall be ordered unless consent to adopt has been obtained in writing from the following:

1. The natural parents or surviving parent of the child, unless parental rights have been previously terminated by an order of the Court;
2. In cases where the mother of the child was not married at the time of the child's birth, and paternity has not been acknowledged nor established, only the consent of the mother shall be required;
3. A guardian of the child appointed in a separate proceeding, with authority to consent to adoption, if neither parent is living, or the parental rights of both parents have been terminated; or
4. A public or private child welfare agency vested with authority to consent to the adoption of the child.

B. Where the child is twelve (12) years of age or older, their adoption shall not be granted without their own consent, given knowingly and freely in open court.

C. Where a natural parent voluntarily consents to an adoption, such consent shall not be valid unless executed in writing and recorded before a Tribal Judge and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the natural parent(s). Any consent given prior to or within ten (10) days after birth of the child shall not be valid.

SECTION 9.7 WITHDRAWAL OF CONSENT

The consent of the natural parent(s) may be withdrawn for any reason at any time prior to the entry of a final decree of adoption and the child shall be immediately returned to the natural parent(s), unless the child is the subject of a dependency case or otherwise entrusted to the legal care of another.

SECTION 9.8 WAIVER OF CONSENT TO ADOPTION; EXCEPTION OF NATURAL PARENTS

The Court may waive the requirement of consent of any person, except a natural or adoptive parent, who is required to give consent, if after a hearing with all persons concerned, the Court determines that the interest of the child may be promoted thereby. In such cases, the Court shall make written findings of all facts upon which its order of waiver is based.

SECTION 9.9

HOME STUDY

A. *Contents.* Upon the filing of a petition for adoption and after a hearing date has been set, but before the hearing has been conducted, the Court shall order Tribal Social Services to conduct a home study with respect to the following:

1. Why the natural parents, if living, desire to be relieved of the care, support and guardianship of the child;
2. Whether the natural parents have abandoned the child or are unfit to have custody of the child;
3. Whether the proposed parents are financially able to assume the responsibilities of a parent to the child;
4. Facts relating to the physical and mental condition of the child;
5. Whether the proposed change of parents and custody are in the best interests of the child;
6. Facts or information relevant to the adoption of the child which would affect the decision to grant or deny adoption; and
7. Whether or not the home closely resembles that of the child's culture, identity, and when applicable, the child's tribal affiliation.

B. The Court shall not hold an adoption hearing until Tribal Social Services completes and files the home study with the Court. The home study shall be submitted to the Court no later than ten (10) days before the hearing.

SECTION 9.10

HEARING; ATTENDANCE

A. The petitioner, the spouse of the petitioner and such other persons as the Court may order, and the White Mountain Apache Tribe, or any other Tribe, if it files a Motion to Intervene in the adoption proceeding pursuant to Section 9.11 of this Code shall appear personally at the adoption hearing. Unless the Court otherwise orders, the child to be adopted shall also be present.

B. The hearing shall be conducted in the same manner as other proceedings of the Juvenile Court, as provided in Section 6.1 of this Code.

SECTION 9.11

INTERVENTION

The White Mountain Apache Tribe shall have the right to intervene in any Juvenile Court proceeding for the adoption of a child that is enrolled with the White Mountain Apache Tribe or is eligible for membership with the White Mountain Apache Tribe. If the White Mountain Apache Tribe intervenes in an adoption proceeding, it shall file a written motion with the Juvenile Court. If the White Mountain Apache Tribe intervenes in an adoption proceeding, it shall become a party to the case and it is entitled to notice and service of all motions and filings and it shall have access to previous court records and filings. If the White Mountain Apache Tribe intervenes in an adoption proceeding, it may monitor, participate in the proceedings, or withdraw from the case. The right to intervention shall also extend to any Tribe in which the child is eligible for membership.

SECTION 9.12

ADOPTION PREFERENCES

A. The preference of placement in adoption shall be in the following order unless the Court determines that the child's best interest requires deviation from the preference:

1. Extended family members related by whole blood, half-blood, or adoption;
2. A White Mountain Apache Tribal member or person eligible for Tribal membership;
3. Other Indian person(s); or
4. Any other person who meets the requirements of the child and can provide a suitable home.

B. The Court shall not deny an adoption Petition on the sole grounds that an adoptive home of a higher preference cannot be located.

SECTION 9.13 BEST INTEREST

A. In determining the best interest of the child, the Court shall examine:

1. Validity of consent;
2. Termination of parental rights order;
3. Length of time of the child's wardship by the Court;
4. Special conditions of the child;
5. Parent communications with the child;
6. Minor's consent to adoption, if he or she is over twelve (12) years of age;
7. Home studies or other reports;
8. Order of preference of placement; and
9. Other appropriate and applicable factors.

B. If the Court is satisfied that the adoption will not be in the child's best interest, or finds that all of the requirements to this Chapter have not been met, it may deny the petition and make any order it deems necessary for the care and custody of the child not inconsistent with this subchapter.

SECTION 9.14 TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

Proceedings for termination of the parent/child relationship and proceedings for adoption may be consolidated and determined at one hearing provided that all the requirements governing terminations are complied with fully.

SECTION 9.15 COURT ORDER

A. If, after hearing and considering all the evidence including reports ordered by the Court, the Juvenile Court is satisfied that the requirements of this Chapter have been fulfilled and that the adoption is in the best interest of the child, it shall enter an order granting the adoption. Such order may change the name of the child to that requested by the Petitioner.

B. Such order shall be in writing and shall recite the findings of fact upon which such order is based. Such order shall be of an interlocutory nature, subject to modification by the Juvenile Court at any time within six (6) months, except that where an adoption is ordered without consent, an aggrieved party shall have a right to appeal.

C. After six (6) months, the Court may enter a final adoption decree.

SECTION 9.16 RIGHTS UNDER ADOPTION ORDER

A. Upon entry of the order granting adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent(s). The child shall be considered as having been born to the adoptive parent(s) in every respect.

B. The adopted child shall be entitled to inherit real and personal property from and through the adoptive parent(s); the adoptive parent(s) shall be entitled to inherit real and personal property from and through the adopted child.

C. Upon entry of the decree of adoption, the relationship of parent and child between the adopted child and the persons who were his or her parents prior to the order granting adoption shall be completely severed. All the legal rights, privileges, duties, obligations and other legal consequences of the relationship if not previously terminated, shall cease to exist, including the right of inheritance. Where the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the decree of adoption.

D. The decree of adoption shall not destroy any rights of heritage due to national origin or any rights or privileges incident to the child's Indian heritage.

SECTION 9.17 REVOCATION OF ADOPTION ORDER

A. Within six (6) months after the entry of the order granting adoption, the Juvenile Court may revoke its order granting adoption for good cause. Such revocation may be granted by the Court on its own motion or on motion by the adoptive parent or parents, the child's former parent(s), the child, or Guardian ad Litem.

B. No revocation of an order granting adoption shall be ordered unless notice in writing had been served upon the adoptive parent(s) at least ten (10) days prior to the entry of the order revoking the order of adoption, unless if the motion for revocation was filed by the adoptive parent(s), in which case the ten (10) day notice requirement shall not apply.

C. Upon the revocation of an adoption order, the parent(s) of the child may proceed under Section 8.8 of this Code for the restoration of parental rights if such rights had previously been terminated.

D. This Section shall not be construed to preclude appeal to the Tribal Court of Appeals of any final order, judgment or decree of the Juvenile Court.

SECTION 9.18 ADOPTION ORDER UNAFFECTED BY APPEAL

The filing or pendency of an appeal from the Juvenile Court shall not suspend the order of the Court regarding the adoption order.

SECTION 9.19 FEES

The Juvenile Court may assess such fees as are necessary to cover the costs of services rendered in connection with adoption proceedings. Such fees may be lowered or waived when the payment would cause hardship to adoptive parent (s).

CHAPTER TEN -INDIAN CHILD WELFARE ACT

SECTION 10.1 PURPOSE AND INTENT

The purpose of this White Mountain Apache Tribe Indian Child Welfare Ordinance is to protect the best interests of the White Mountain Apache children and to promote the stability and security of the White Mountain Apache Tribe and the families constituting the Tribe. The Tribal Council hereby declares that it has always been the policy of the White Mountain Apache Tribe, both before the enactment of the Indian Child Welfare Act of 1978 and continuing thereafter, to protect the best interest of its children and to promote the stability and security of the Tribe and families. Furthermore, the Tribal Council hereby declares that there is no resource that is more vital to the continued existence and integrity of the White Mountain Apache Tribe than its children and families, and it is therefore enacting this ordinance in order to halt the number of Tribal families which are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies which place such children in non-Indian foster and adoptive homes and institutions; and further to halt and correct the failure of the various states of these United States, in the exercise of their jurisdiction over Indian child custody proceedings through their administrative and judicial bodies, to recognize the essential tribal relations of the White Mountain Apache people and the cultural and social standards prevailing in the White Mountain Apache Tribal community and its families.

SECTION 10.2 RECOGNITION OF INDIAN CHILD WELFARE ACT

The Tribal Council of the White Mountain Apache Tribe, hereby recognizes and supports Public Law 95-608, dated November 8, 1978 (95 Stat. 3069) cited as the "Indian Child Welfare Act of 1978", and further recognizes that the Act has conferred upon Indian Tribes certain authority and responsibilities relating to the welfare of children of the several tribes; and further recognizes that its responsibilities and concern for the welfare of the children of the Tribe would be best served through the Tribal Judicial system which can implement as it always has, the Indian Child Welfare Act of 1978 and the rules and regulations promulgated by the Secretary of the Interior in Title 25 CFR parts 13 and 23 as well as the recommended guide lines for state courts - Indian child custody proceedings, and all amendments to the Indian Child Welfare Act of 1978 as have been or may be enacted.

SECTION 10.3 DEFINITIONS

INDIAN CHILD WELFARE ACT - Indian Child Welfare Act when used in this Chapter refers to Federal Public Law 95-608, dated November 8, 1978 (95 Stat. 3069) cited as the "Indian Child Welfare Act of 1978" including those rules and regulations promulgated by the Secretary of the Interior as contained in Title 25 CFR parts 13 and 23 as well as the promulgated recommended guidelines for state courts-Indian child custody proceedings and all amendments to the Act as have been or may be enacted.

SECTION 10.4 TRIBAL COURT AUTHORITY

A. The Tribal Court of the White Mountain Apache Tribe is hereby delegated by the Tribal Council all authority and responsibility conferred upon the White Mountain Apache Tribe by the Congress of the United States under the Indian Child Welfare Act to administer said Act and the rules and regulations promulgated thereunder.

B. The exercise of the authority and responsibilities delegated by this Chapter, shall be under the jurisdiction of the Tribal Court sitting as a Juvenile Court, following the Juvenile Code provided, that the provision of the Indian Child Welfare Act of 1978 and the rules and regulations promulgated thereunder shall prevail.

C. The Tribal Court exercising the authority and responsibilities delegated by this Chapter shall use all of the resources of the Tribe, Federal Government and State or local agencies which are available, to contribute to the final decision upon which the future life of any child may depend in a child custody proceeding.

SECTION 10.5 RELATIONSHIP WITH STATE COURTS

The Office of the Attorney General may in its discretion and when it determines such action to be in the best interest of its children, may assist the Tribal Courts in their relationships with state courts and governments when necessary to carry out the purpose of this Chapter.

SECTION 10.6 SEVERABILITY

If any provision of this Chapter, or the application thereof, is held invalid, the remainder of this Chapter, or other applications of such provisions shall not be affected.

CHAPTER ELEVEN - DUTY TO REPORT NON-ACCIDENTAL INJURIES TO MINORS

SECTION 11.1 MANDATED REPORTING

A. Any medical personnel, school personnel, social worker, peace officer or any other person having responsibility for the care of children whose observation or examination of any minor discloses evidence of injury, sexual molestation, death, abuse, or physical neglect which appears to have been inflicted upon such minor by any other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to a Tribal Police Officer or to Tribal Social Services' Child Protective Services within twenty-four (24) hours. Such reports shall be made by telephone or in person, and shall be followed by a written report. Such reports shall contain:

1. The names and addresses of the minor and their parent(s) or person(s) having custody of such minor, if known;
2. The minor's age and the nature and extent of his or her injuries or physical neglect, including any evidence of previous injuries or physical neglect; and
3. Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.

SECTION 11.2 NOTICE TO CHILD WELFARE AGENCY

When such telephone or in-person reports are received by the Tribal Police Department, they shall immediately notify Tribal Social Services and make such information available to them.

SECTION 11.3 PHOTOGRAPHS; MEDICAL EXAMINATIONS; HOLDING CHILD

Any person required to receive reports pursuant to Section 11.1, may take or cause to be taken photographs of the subject child and the vicinity involved. Medical examinations, including but not limited to, radiological examinations of the child may be performed. When there is reason to believe that the child is in imminent danger if returned to the home, the Tribal Police or Tribal Social Services may place the child, or cause the child to be placed, in protective custody for up to seventy-two (72) hours, excluding weekends and Tribal holidays, or until a court hearing can be held (whichever comes first).

SECTION 11.4 IMMUNITY FROM LIABILITY; PRIVILEGE NOT APPLICABLE

A. Anyone participating in the making of reports required under the provisions of this Chapter, or anyone participating in a judicial proceeding resulting from such reports, shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice or unless such person has been charged with or is suspected of abusing or neglecting the child or children in question.

B. The physician patient privilege, husband-wife privilege, religious minister privilege, or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is an issue nor in any judicial proceeding resulting from a report submitted pursuant to this Chapter.

SECTION 11.5 VIOLATIONS; PENALTY

Any person required to make a report under this Chapter, who fails to comply with any provision of this Chapter upon a finding by the Tribal Court shall pay a civil penalty of not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750.00).

CHAPTER TWELVE - CURFEW OF MINORS

SECTION 12.1 CURFEW

It shall be unlawful for any minor under the age of eighteen (18) years to be upon the roadways, streets, alleys or public places within the exterior boundaries of the Fort Apache Indian Reservation between the hours of 9:00 P.M. and 5:00 A.M., Sunday through Thursday and 10:00 P.M. and 5:00 A.M. Friday and Saturday; unless such a minor is accompanied by his or her parent(s), guardian(s), or an adult approved by his or her parent(s) or guardian(s).

SECTION 12.2 PARENTAL SUPERVISION

A. It shall be unlawful for the parent(s) or guardian(s) of any minor to permit said minor to violate any part of this Chapter.

B. It shall not constitute a defense that such a parent or guardian did not have the knowledge of the presence of the minor upon the roadways, streets, alleys or public places in violation of this Chapter.

SECTION 12.3 VIOLATION; PENALTY

Any minor or the parent(s) or guardian(s) of any minor who shall violate the provisions of this ordinance shall be deemed guilty of an offense and, upon conviction thereof, maybe punished by a fine not less than Fifty Dollars (\$50.00) and not exceeding Three Hundred Dollars (\$300.00). There shall be a rebuttable presumption that parents of children under the age of thirteen (13) are responsible for their child's violations of curfew. This presumption may be rebutted by evidence that the child is willfully disobeying a directive from their parent.