

CHAPTER 5-2 JUVENILES

PURPOSE AND CONSTRUCTION

5-2-1

Purpose and Construction

It is the purpose of this Chapter to secure for each child coming before the Tribal Juvenile Court such care, guidance, and control, preferably in his own home, as will serve his welfare and the best interests of the Colville Confederated Tribes; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to secure for any child removed from his home that care, guidance, and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to his delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking. To this end, this Chapter shall be liberally construed.

DEFINITIONS

5-2-30

Definitions

For the purposes of this Chapter, the following words and phrases shall have meanings as set forth in this section:

(a) "Abandon" means when a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume his parental role(s) for a period exceeding one (1) year.

(b) "Adult" means a person eighteen (18) years of age or older, or a person otherwise emancipated.

(c) "Custodian" means one who has physical custody of a minor and who is providing food, shelter, and supervision to him.

(d) "Delinquent Act" means an act, which, if committed by an adult, is designated a crime under the Colville Tribal Law and Order Code.

(e) "Detention" means the placement of a minor in a physically restrictive facility.

(f) "Guardian" means a person other than the minor's parent who is by law responsible for that minor.

(g) "Juvenile Court" means the Colville Tribal Court when exercising jurisdiction under this Chapter.

(h) "Juvenile Court Judge" means any judge of the Colville Tribal Court when exercising jurisdiction under this Chapter.

(i) "Juvenile Offender" means a person who commits a delinquent act prior to his eighteenth (18) birthday.

(j) "Least Restrictive Alternative" means the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.

(k) "Minor" shall mean:

(1) A person under eighteen (18) years of age who is not emancipated;

(2) A person eighteen (18) years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his eighteenth (18th) birthday; or

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(3) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Juvenile Court.

(l) "Minor-in-need-of-care" shall mean a minor who has:

(1) No parent, guardian or custodian available and willing to care for him; or

(2) Been subjected to injury, sexual abuse, or negligent treatment or maltreatment by a person who is legally responsible for the minor's welfare under circumstances which indicate that the minor's health, welfare and safety are harmed thereby. "Negligent treatment or maltreatment" shall mean an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the minor's health, welfare and safety; or

(3) Not been or cannot be provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being; or

(4) Been committing delinquent acts as a result of parental pressure, guidance, or approval; or

(5) Been committing status offenses.

(Amended 11/20/86, Resolution 1986-595)

(Amended 12/21/82, Resolution 1982-775)

(m) "Negligent treatment or maltreatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the minor's health, welfare and safety.

(n) "Peacemaker" means a person duly chosen or approved by the Colville Business Council to a peacemaking position. Such person shall have a knowledge of the community's customs and traditions; a reputation for integrity, honesty, humanity; an ability to resolve local problems; and be known as deserving of respect.

(Amended 2/17/05, Resolution 2005-108)

(Certified 3/1/05)

(o) "Peacemaking Circle" means a non-adversarial tribal process using peacemakers to help and encourage parties to resolve disputes which they are unable to resolve themselves. Peacemaking Circle may involve persons not directly involved in the dispute including, but not limited to, members of the extended family of the parties to the dispute. Peacemaking Circle may also involve religious ceremonies and religious leaders to help resolve disputes. Peacemaking Circle may be used to facilitate the fair resolution of any or all disputes in a juvenile proceeding brought in the courts of the Tribes, including any disputes over procedure, or any part of a juvenile proceeding.

Agreements reached in the Peacemaking Circle shall be memorialized in writing, signed by the parties, and dated during the proceeding in which the agreement is reached. AGREEMENTS MADE BETWEEN PARTIES IN THE PEACEMAKING CIRCLE SHALL BE ENFORCEABLE IN TRIBAL COURT.

(Amended 2/17/05, Resolution 2005-108)

(Certified 3/1/05)

(p) "Probation Officer" means a person or position directed by the Business Council to perform the functions specified by this Chapter.

(Amended 12/16/04, Resolution 2004-799)

(Certified 12/28/04)

5-2-31

Time

In computing any period of time prescribed under this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

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5-2-32

Other Terms

Any term not defined in this Chapter shall be understood to have the meaning ascribed to it in the Definitions section of the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. §1901, et seq.

THE COURT SYSTEM

5-2-70

Establishment

There is hereby established for the Colville Confederated Tribes of the Colville Indian Reservation a Court to be known as the Colville Juvenile Court.

5-2-71

Judges

The Colville Tribal Juvenile Court shall consist of judges who shall be appointed by the Chief Judge from among all the judges of the Tribal Court.

5-2-72

Powers and Duties

No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of crime, unless the Juvenile Court refers the matter to the adult Tribal Court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

5-2-73

Authority of Court

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, 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 Chapter.

5-2-74

Appointment of Probation Officers

The Tribal Council shall appoint such probation officers, clerks and other persons as may be required to carry out the work of the Court. Probation officers of the adult Tribal Court may serve also for the Juvenile Court, or other persons so appointed may be appointed to serve with or without pay.

5-2-75

Duties and Powers of Probation Officers

The probation officer shall make preliminary inquiries and social studies, and such other investigations as the judge may direct, and shall keep written records of such investigations or studies, and shall make reports to the Peacemaking Circle or judge as provided in this Chapter or as directed by the Peacemakers or judge. Upon the placing of any person upon probation or under protective supervision, the probation officer shall explain to the child, if old enough, and the parents and other persons concerned, what the meaning and conditions of the probation or protective custody are and shall give them the necessary instructions. The probation officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Peacemaker or judge as directed. Probation officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or conditions, and shall perform such other duties in connection with the care, custody or transportation of children as the Peacemakers or Court may require. Probation officers shall have the powers of police officers for purposes of this Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular police officer is not immediately available.

(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-76

Tribal Officer

Any tribal police or law enforcement officer may carry out the duties of "officer" under this Chapter. An officer shall represent the people of the Colville Tribes at all proceedings herein.

5-2-77

Guardian Ad Litem

The Juvenile Court, under the proceeding authorized by this Chapter shall appoint, for the purposes of that proceeding, a guardian ad litem for a minor where the Court finds that the minor does not have natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

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5-2-78

Spokesman

Under any proceeding authorized by this Chapter and for which there is a right to counsel, a minor shall be represented by a member of the Tribal Legal Services Office, provided, however, that if the Tribal Legal Services Office has represented in the past or will be representing the parent, guardian, or custodian of the minor and if the Legal Services Office believes there to be a potential conflict of interest, the Legal Services Office may represent the parent, guardian or custodian in the proceeding, and the Court shall appoint another person to act as spokesman for the minor for such proceeding.

5-2-79

Juvenile Recording Tape Retention

Tapes used in the recording of juvenile matters shall be retained by the Colville Tribal Court until the juvenile(s) reaches the age of eighteen (18), except for adoption proceedings. If a juvenile file involves more than one minor, the related tape shall be retained until the youngest minor involved reaches the age of eighteen (18).

Tapes used in the recording of adoption proceedings shall be retained indefinitely. Upon the sealing of an adoption file, section 5-2-377, the related tape(s) shall be sealed with the contents of the adoption file and shall be available only upon an order issued by a duly qualified judge of the Colville Tribal Court for the reasons specified in section 5-2-377.

(Adopted 1/23/84, Resolution 1984-72)

SHELTER CARE AND DETENTION FACILITIES

5-2-110

Standards

The Juvenile Court judge shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. The Juvenile Court judge may assign the responsibility to another qualified Tribal agency. The rules and regulations shall include, but are not limited to, the following:

- (a) Cleanliness standards;
- (b) Heat, water, and light standards;
- (c) Personnel standards;
- (d) Visitation privileges;
- (e) Occupancy standards;
- (f) Provisions for medical and dental care; and
- (g) Provision for food, furnishings, clothing and toilet articles.

5-2-111

Care and Treatment in Shelter Care and Detention Facilities

The Juvenile Court judge shall prescribe and enforce policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall reflect the need to maintain proper educational and religious needs of the minor involved.

JURISDICTION

5-2-140

Original Jurisdiction

The Colville Tribal Juvenile Court has exclusive, original jurisdiction of the following proceedings:

- (a) Proceedings in which an Indian minor who resides or is domiciled within the Colville Indian Reservation is alleged to be a minor-in-need-of-care;
- (b) Termination of parental rights as to an Indian minor who resides or is domiciled within the Colville Indian Reservation;

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(c) Adoption proceedings under this Chapter in which the minor child to be adopted resides or is domiciled within the Colville Indian Reservation and is a member of the Colville Confederated Tribes or the biological child of a member of the Colville Tribes and is eligible for membership in the Colville Confederated Tribes.

(Amended 6/6/02, Resolution 2002-351)

(Amended 2/4/99, Resolution 1999-69)

(Certified 2/24/00)

5-2-141 Concurrent Jurisdiction

The Colville Tribal Juvenile Court shall have concurrent jurisdiction over all other proceedings under this Chapter not covered in section 5-2-140.

(Amended 6/6/02, Resolution 2002-351)

5-2-142 Transfer to Adult Court

The presenting officer or the minor may file a petition requesting the Juvenile Court to transfer the minor to adult Tribal Court if the minor is fourteen (14) years of age or older and is alleged to have committed an act that would have been considered an offense under this Code, if committed by an adult.

5-2-143 Hearing

The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to adult Tribal Court. The transfer hearing shall be held not more than ten (10) days after the petition is filed. Written notice of the transfer hearing shall be given to the minor and the minor's parent, guardian or custodian at least seventy-two (72) hours prior to the hearing.

5-2-144 Factors Considered

The following factors shall be considered when determining whether to transfer jurisdiction of the minor to adult Tribal Court:

(a) The nature and seriousness of the offense with which the minor is charged.

(b) The nature and condition of the minor, as evidenced by his age, mental and physical condition; past record of offenses; and response to past Juvenile Court efforts at rehabilitation.

5-2-145 Circumstances for Transfer

The Juvenile Court may transfer jurisdiction of the minor to adult Tribal Court if the Juvenile Court finds clear and convincing evidence that both of the following circumstances exist:

(a) There are no reasonable prospects for rehabilitating the minor through resources available to the Juvenile Court; and

(b) The offenses allegedly committed by the minor evidence a pattern of conduct which constitutes a substantial danger to the public.

5-2-146 Order

When a minor is transferred to adult Tribal Court, the Juvenile Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

5-2-147 Transfer from State Court

The Juvenile Court shall have jurisdiction over any matter transferred to it by any state court pursuant to the Indian Child Welfare Act, 20 U.S.C. §§1901, et seq. It shall not be necessary for a new petition or complaint to be filed if the pleadings filed in the state court action are sufficient to give notice of the matter therein involved.

5-2-148 Indian Child Welfare Act

It is intended that the provisions of this Chapter be consistent with and carry out the purposes of the Indian Child Welfare Act, 25 U.S.C. §§1901, et seq. All applicable provisions of that Act shall be deemed to be incorporated by reference in this Chapter and in the event of conflict between provisions of that Act and this Chapter, provisions of that Act shall apply.

JUVENILE OFFENDER PROCEDURE

(September 2010 version of Chapter 5-2)

5-2-180 Complaint

A complaint may be filed in accordance with the Subchapter on Criminal Procedure, Generally under Chapter 2-1 of this Code by a probation officer. The complaint shall contain:

- (a) A citation to the Tribal Code provision which the minor is alleged to have violated;
- (b) Name, age and address of the minor who is the subject of the complaint, if known;
- (c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

5-2-181 Warrant and Other Procedures

The Juvenile Court may issue a warrant in accordance with the Subchapter on Criminal Procedure, Generally of Chapter 2-1 of this Code directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint. The procedures set out in Chapter 2-1 of this Code may be utilized by the Juvenile Court and Tribal officers wherever necessary, unless such procedures would conflict with the provisions of this Chapter.

5-2-182 Custody

A minor may be taken into custody by a Tribal officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
- (b) A warrant has been issued for the minor.

5-2-183 Tribal Officer's Duties

A Tribal officer who takes a minor into custody pursuant to this Chapter shall proceed as follows:

- (a) An arresting officer shall inform the minor of his rights prior to any questioning in custody;
- (b) An arresting officer shall release the minor to the minor's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary;
- (c) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter, care or detention is determined;
- (d) If the minor is not released, the minor shall be taken immediately to the Juvenile Court judge or probation officer by the arresting officer.

5-2-184 Determination of Need for Detention

The Juvenile Court or the probation officer shall not place a minor in detention unless a complaint is filed in accordance with this Chapter, or the Court orders that a minor be taken into custody pursuant to this Chapter. If the minor's parent, guardian or custodian has not been contacted, the Juvenile Court or the probation officer shall make immediate and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian or custodian unless detention or shelter care is immediately necessary. If the minor is not released to his parent, guardian or custodian, the Juvenile Court or the probation officer shall place the minor in detention or shelter care pending the custody hearing.

5-2-185 Detention and Shelter Care

If a minor is not released to his parent, guardian or custodian, the probation officer shall immediately

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explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

5-2-186 Approved Facilities—Below Sixteen (16) Years

A minor alleged to be a juvenile offender may be detained, pending Court hearings, in the following places:

- (a) A foster care facility on the Reservation approved by the Tribes;
- (b) A juvenile detention facility on the Reservation approved by the Tribes; or
- (c) A private family home on the Reservation approved by the Tribes.

5-2-187 Approved Facilities—Sixteen (16) Years or Older

A minor who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

- (a) A facility under the previous section is not available or would not assure adequate supervision of the minor;
- (b) Detention is in a cell separate but not removed from sight and sound of adults whenever possible; and
- (c) Adequate supervision is provided twenty-four (24) hours a day.

5-2-188 Custody Hearing

If a minor is placed in detention or shelter care pursuant to the above sections, the Juvenile Court shall conduct a custody hearing within forty-eight (48) hours for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian or custodian has still not been contacted, or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and direct the probation officer to make continued efforts to obtain the presence of a parent, guardian or custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian or custodian as soon as the time for the hearing has been established.

5-2-189 Procedure at Custody Hearing

- (a) The Juvenile Court shall inform the minor, his parent, guardian or custodian of their right to retain counsel at their own expense, and the judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.
- (b) The Juvenile Court shall inform the minor that he need not be a witness against himself or otherwise incriminate himself.
- (c) The minor, his counsel, and his parent, guardian or custodian shall have the opportunity to be heard on his and their own behalf.

5-2-190 Continued Custody

The minor shall be released to his parent, guardian or custodian and ordered to appear at the hearing on a date to be set by the Court, unless:

- (a) The act is serious enough to warrant continued detention or shelter care; and
- (b) There is a reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or

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(c) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

The Juvenile Court may release a minor under this Chapter to a relative or other responsible adult tribal member if the parent or guardian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

The Juvenile Court shall order the further detention or shelter care for the minor upon consideration of the recommendations of the probation officer regarding alternative pre-adjudication custody arrangements.

5-2-191 Investigation by Probation Officer

The probation officer shall make an investigation within three (3) days of the custody hearing or the release of the minor to his parent, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the probation officer shall:

(a) Recommend that no further action be taken; or

(b) Refer the matter to the Peacemaking Circle.

(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-192 Peacemaking Circle

(a) The probation officer shall refer all cases in which a minor is involved under this Chapter to the Colville Tribal Peacemaking Circle.

(b) Notice of the date, time and place of the Peacemaking Circle shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.

(Amended 12/16/04, Resolution 2004-799)
(Certified 12/28/04)
(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-193 Peacemaking Circle—Evidence

No statement made or evidence received during the Peacemaking Circle may be admitted into evidence at an adjudicatory hearing or any proceeding against the minor under this Chapter.

(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-194 Peacemaking Circle —Disposition

At the Peacemaking Circle, the peacemakers have the authority to:

(a) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance;

(b) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform;

(c) Accept an offer of restitution if voluntarily made by the minor;

(d) Request that the Court enforce any agreement entered into between the parties in the Peacemaking Circle;

(e) Recommend that the prosecuting attorney file a petition pursuant to this Chapter; or

(f) Order any other remedy the Peacemaker deems just, including any traditional remedy.

(Amended 12/16/04, Resolution 2004-799)
(Certified 12/28/04)
(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-195 Peacemaking Circle—Post Disposition

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The probation officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The probation officer shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the officer concludes that positive results are not being achieved, the officer shall request that the Peacemaking Circle reconvene.

(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-196

Petition

Adjudicatory proceedings under the Juvenile Code shall be instituted by a petition filed by the prosecuting attorney on behalf of the Tribe and in the interest of the minor. The petition shall state:

- (a) The name, birth date, and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;
- (c) A citation to the Tribal Code provision which the minor is alleged to have violated; and
- (d) If the minor is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-197

Setting of Hearing

Upon receipt of the petition, the Juvenile Court shall set a date for the hearing which shall not be more than twenty (20) days after the Juvenile Court receives the petition from the prosecuting attorney. In all cases where the Peacemaking Circle has not been attempted the Juvenile Court shall immediately refer the matter to a Peacemaking Circle upon receipt of the petition.

- (a) The hearing is continued upon motion of the minor;
- (b) The hearing is continued upon motion of the prosecuting attorney by reason of the unavailability of material evidence or witnesses and the Juvenile Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available; or
- (c) The hearing is continued upon the written recommendation of the Peacemaking Circle that there is good cause and that continuing the adjudicatory hearing is in the best interest of the minor as well as the community.

(Amended 12/16/04, Resolution 2004-799)
(Certified 12/28/04)
(Amended 2/17/05, Resolution 2005-108)
(Certified 3/1/05)

5-2-198

Summons

At least five (5) days prior to the adjudicatory hearing, the Juvenile Court shall issue summons to:

- (a) The minor;
- (b) The minor's parent, guardian or custodian;
- (c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and
- (d) Any person the minor believes necessary for the proper adjudication of the hearing.

The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by certified mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of Court.

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- 5-2-199 Adjudicatory Hearing**
The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.
- 5-2-200 Rights of Parties**
The parties shall have all rights secured to them by federal or tribal law including, but not limited to:
- (a) Right to counsel at their own expense;
 - (b) Right not to incriminate themselves;
 - (c) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.
- 5-2-201 Admission to Allegations**
If the minor admits the allegations of the petition, the Juvenile Court shall proceed to the disposition stage only if the Court finds:
- (a) The minor fully understands his rights under federal and tribal law and fully understands the potential consequences of his admission;
 - (b) The minor voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and
 - (c) The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- 5-2-202 Adjudicatory Hearing—Proof**
The Juvenile Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Juvenile Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing. A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.
- 5-2-203 Predispositional Report**
The probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives which are listed in this Chapter and select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian. The probation officer shall present the predispositional report to the Juvenile Court, the person selected by the minor to represent him and the prosecuting attorney at least one (1) day before the dispositional hearing.
- 5-2-204 Predispositional Hearing**
A dispositional hearing shall take place not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of proper disposition.
- 5-2-205 Notice**
Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their legal counsel at least forty-eight (48) hours before the hearing.
- 5-2-206 Rights of Parties**
The rights of the parties shall be the same as in an adjudicatory hearing.

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5-2-207

Dispositional Finding

At the dispositional hearing, the Juvenile Court shall consider the predispositional report submitted by the probation officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Juvenile Court shall also consider the alternative predispositional report prepared by the minor and his attorney, if any. The dispositional order constitutes a final order for purposes of appeal.

5-2-208

Dispositional Alternatives

(a) If a minor has been adjudged a juvenile offender, the Juvenile Court may make the following dispositions:

(1) Place the minor on probation subject to conditions set by the Juvenile Court;

(2) Place the minor in an institution or agency designed by the Juvenile Court.

(b) The dispositional orders are to be in effect for the time limit set by the Juvenile Court, but no order shall continue after the minor reaches the age of eighteen (18) years of age.

(c) The dispositional orders are to be reviewed at the Juvenile Court's discretion, but at least once every six (6) months.

5-2-209

Modification of Dispositional Order

A dispositional order of the Juvenile Court may be modified upon a showing of change of circumstances. The Juvenile Court may modify a dispositional order at any time upon the motion of the following:

(a) The minor;

(b) The minor's parent, guardian or custodian; or

(c) The probation officer.

If the modification involves a change of custody, the Juvenile Court shall conduct a hearing to review its dispositional order.

5-2-210

Notice—Rights

Notice in writing of the hearing shall be given to the minor, the minor's parent, guardian, or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

5-2-211

Modification Hearing

The Juvenile Court shall review the performance of the minor, the minor's parent, guardian or custodian and the probation officer and other persons providing assistance to the minor and the minor's family. In determining modification of disposition, the procedures for a dispositional hearing shall apply. If the request for a review of disposition is based upon an alleged violation of a court order, the Juvenile Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

MINOR-IN-NEED-OF-CARE

5-2-240

Complaint

The Child Welfare officer has seventy-two (72) hours, exclusive of the definition of time under section 5-2-42, from the time of taking the minor from the home and into custody to determine if it would be in the best interests of the minor(s) to return the minor(s) to the home, or file a complaint with the Court. The Child Welfare officer shall not remove the minor(s) unless the minor(s) is (are), in the determination of the Child Welfare officer, a minor-in-need-of-care.

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If the Child Welfare officer decides to file a complaint, it shall contain:

- (a) Name, age and address of the minor(s) who is (are) the subject of the complaint, if known; and
- (b) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the facts occurred.

If the Child Welfare officer does not file a complaint, she must still file a written report with the prosecutor stating her reasons for removal, to be filed the next working day.

(Amended 11/15/82, Resolution 1982-723)

5-2-241 Voluntary Placement

The Child Welfare officer shall place the minor(s) in foster care if the placement is voluntarily consented to in writing by the following persons:

- (a) Both parents if the minor(s) lives in the home with both parents;
- (b) The custodial parent if the one parent received custody of the minor(s) pursuant to a divorce decree; or
- (c) The legal guardian or custodian.

The person(s) giving consent to place can withdraw their consent to place at any time, and if consent is withdrawn, the minor(s) shall be immediately returned to their parent(s), guardian or custodian. At the time such consent is given the person(s) giving consent shall be given a copy of this section.

This voluntary placement shall not exceed three months in duration.

(Adopted 12/21/82, Resolution 1982-775)

5-2-242 Warrant and Other Procedures

The Juvenile Court may enter an order called a warrant, directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor is a minor-in-need-of-care. The procedures set out in Chapter 2-1 of this Code may be utilized by the Juvenile Court and Tribal officers wherever necessary, unless such procedures would conflict with the provisions of this Chapter.

5-2-243 Custody

A minor may be taken into custody by a Tribal officer or Child Welfare officer if:

- (a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his surroundings and that his removal is necessary; or
- (b) A warrant pursuant to this Chapter has been issued for the minor.
- (c) A Child Welfare officer may take a minor into custody under these same provisions if a Tribal officer is unavailable and the safety of the Child Welfare officer is not in question.

(Adopted 10/12/07, Resolution 2007-567)
(Certified 11/15/07)

5-2-244 Tribal Officer's Duties

A Tribal officer who takes a minor into custody pursuant to this Chapter shall proceed as follows:

- (a) Release the minor to the minor's parent, guardian or custodian and issue a verbal counsel or warning as may be appropriate;
- (b) If the minor is not released, an officer shall make immediate and recurring efforts to notify the minor's

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parent, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until the need for shelter care is determined;

(c) If the minor is not released, the minor shall be taken immediately to the Juvenile Court judge or Child Welfare officer by the arresting officer.

5-2-245 Determination of Need for Detention

The Juvenile Court or the Child Welfare officer shall not place a minor in shelter care unless a complaint is filed in accordance with this Chapter, or the Court orders that a minor be taken into custody pursuant to this Chapter. If a minor's parent, guardian or custodian has not been contacted, the Child Welfare officer shall make immediate, and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian or custodian unless shelter care is immediately necessary. If the minor is not released to his parent, guardian or custodian, the Juvenile Court or the Child Welfare officer shall place the minor in shelter care pending the custody hearing.

(Amended 12/12/82, Resolution 1982-775)

5-2-246 Detention and Shelter Care

If a minor is not released to his parent, guardian or custodian, the Child Welfare officer shall immediately explore alternative preadjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

5-2-247 Approved Facilities

A minor alleged to be a minor-in-need-of-care may be detained pending Court hearings, in the following places:

- (a) A family home of a member of the child's extended family;
- (b) A foster care facility on the Reservation approved by the Tribe;
- (c) A shelter care facility on the Reservation approved by the Tribe;
- (d) A private Indian family home on the Reservation approved by the Tribe;
- (e) A private non-Indian family on the Reservation approved by the Tribe; or
- (f) A tribal or state licensed facility off the Reservation.

(Amended 12/21/82, Resolution 1982-775)

5-2-248 Custody Hearing

If a minor is placed in shelter care pursuant to the above sections, the Juvenile Court shall conduct a custody hearing within forty-eight (48) hours for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the minor's parent, guardian or custodian has still not been contacted, or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and direct the Child Welfare officer to make continued efforts to obtain the presence of a parent, guardian or custodian. Notice of the custody hearing shall be given to the minor and his parent, guardian or custodian as soon as the time for the hearing has been established.

5-2-249 Procedure at Custody Hearing

(a) The Juvenile Court shall inform the minor, his parent, guardian or custodian of their right to retain counsel at their own expense, and the judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.

(b) The Juvenile Court shall inform the minor that he need not be a witness against himself or otherwise

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incriminate himself.

(c) The minor, his counsel, and parent, guardian or custodian shall have the opportunity to be heard on his and their own behalf.

5-2-250

Continued Custody

The minor shall be released to his parent, guardian or custodian and ordered to appear at the hearing on a date to be set by the Court, unless:

(a) There is a reasonable cause to believe that the minor is in immediate danger from his parent, guardian or custodian and that his removal from them is necessary;

(b) There is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or

(c) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

The Juvenile Court may release a minor under this Chapter to a relative or other responsible adult Tribal member if the parent, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

The Juvenile Court shall order the further detention or shelter care for the minor upon consideration of the recommendations of the Child Welfare officer regarding alternative preadjudication custody arrangements.

5-2-251

Investigation by Child Welfare Officer

The Child Welfare officer shall make an investigation within three (3) days of the custody hearing or the release of the minor to his parent, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the Child Welfare officer shall:

(a) Recommend that no further action be taken;

(b) Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to this Chapter; or

(c) Recommend that the prosecuting attorney file a petition pursuant to this Chapter in the Juvenile Court to initiate further proceedings. The petition shall be filed within three (3) days if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

5-2-252

Informal Hearing

The Child Welfare officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

(a) The admitted facts bring the case within the jurisdiction of the Juvenile Court;

(b) An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and

(c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established. This does not authorize the Juvenile Court's Child Welfare officer to compel any person to appear at any conference, produce any papers or

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visit any place.

5-2-253 Informal Hearing—Evidence

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding under this Code.

5-2-254 Informal Hearing—Disposition

At the informal hearing, the probation officer may:

- (a) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
- (b) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform; or
- (c) Recommend that a prosecuting attorney file a petition pursuant to this Chapter. Any informal adjustment period shall not exceed six (6) months.

5-2-255 Informal Hearing—Post Disposition

The Child Welfare officer shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The Child Welfare officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the officer concludes that positive results are not being achieved, the officer shall recommend that a petition be filed pursuant to this Chapter.

5-2-256 Petition

Proceedings under this Chapter shall be instituted by a petition filed by the prosecuting attorney on behalf of the Tribe and in the interests of the minor. The petition shall state:

- (a) The name, birth date, and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;
- (c) Allegations as to the facts that would make the minor a minor-in-need-of-care; and
- (d) If the minor is in shelter care, the place of shelter care and the time he was taken into custody.

5-2-257 Setting of Hearing

Upon receipt of the petition, the Juvenile Court shall set a date for the hearing which shall not be more than twenty (20) days after the Juvenile Court receives the petition from the prosecuting attorney. If the adjudicatory hearing is not held within twenty days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

- (a) The hearing is continued upon motion of the minor; or
- (b) The hearing is continued upon motion of the prosecuting attorney by reason of the unavailability of material evidence or witnesses and the Juvenile Court finds the prosecuting attorney has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

5-2-258 Summons

At least five (5) days prior to the adjudicatory hearing, the Juvenile Court shall issue summons to:

- (a) The minor;
- (b) The minor's parent, guardian or custodian;

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(c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and

(d) Any person the minor believes necessary for the proper adjudication of the hearing. The summons shall contain the name of the Court, the title of the proceedings, and the date, time, and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by certified mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

5-2-259 Adjudicatory Hearing

The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of care. The hearing shall be private and closed.

5-2-260 Rights of Parties

The parties shall have all rights secured to them by federal or tribal law, including, but not limited to:

(a) Right to counsel at their own expense;

(b) Right not to incriminate themselves;

(c) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

5-2-261 Adjudicatory Hearing—Proof

The Juvenile Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof that is clear, cogent, and convincing, the Juvenile Court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing. A finding that a minor is a minor-in-need-of-care constitutes a final order for the purpose of appeal.

5-2-262 Predispositional Report

The Child Welfare officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain specific plans for the care of and assistance to the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives which are listed in this Chapter and select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian. The Child Welfare officer shall present the predispositional report to the Juvenile Court, the person selected by the minor to represent him and the prosecuting attorney at least one (1) day before the dispositional hearing.

5-2-263 Dispositional Hearing

A dispositional hearing shall take place not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of proper disposition.

5-2-264 Notice

Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

5-2-265 Rights of Parties

The rights of the parties shall be the same as in an adjudicatory hearing.

5-2-266 Dispositional Finding

At the dispositional hearing, the Juvenile Court shall consider the predispositional report submitted by the Child Welfare officer and afford the parents an opportunity to controvert the factual contents and

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conclusions of the reports. The Juvenile Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any. The dispositional order constitutes a final order for purposes of appeal.

5-2-267

Dispositional Alternatives

(a) If a minor has been adjudged a minor-in-need-of-care, the Juvenile Court may make any of the following dispositions which are listed by priority:

- (1) Permit the minor to remain with his parents, guardian or custodian subject to such limitations and conditions as the Court may prescribe;
- (2) Place the minor with a relative within the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe;
- (3) Place the minor in a foster home within the external boundaries of the Reservation which has been approved by the Tribes subject to such limitations and conditions as the Court may prescribe;
- (4) Place the minor in shelter care facilities designated by the Court; or
- (5) Place the minor in a foster home or a relative's home outside the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe; or
- (6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the Reservation, the Court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the Court upon order of the Court.

(c) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the minor reaches the age of eighteen (18) years; and

(d) The dispositional orders are to be reviewed at the Juvenile Court's discretion, but at least once every six (6) months.

5-2-268

Modification of Dispositional Order

A dispositional order of the Juvenile Court may be modified upon a showing of change of circumstances. The Juvenile Court may modify a dispositional order at any time upon the motion of the following:

- (a) The minor;
- (b) The minor's parent, guardian or custodian; or
- (c) The Child Welfare Officer.

If the modification involves a change of custody, the Juvenile Court shall conduct a hearing to review its dispositional order.

5-2-269

Notice—Rights

Notice in writing of the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

5-2-270

Modification Hearing

The Juvenile Court shall review the performance of the minor, the minor's parent, guardian or custodian and the Child Welfare officer and other persons providing assistance to the minor and the minor's family.

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In determining modification of the disposition the procedures for a dispositional hearing shall apply. If the request for review of disposition is based upon an alleged violation of a Court order, the Juvenile Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

5-2-271 Report of Child Abuse

Any medical personnel, school personnel, mental health personnel or social worker who has reasonable cause to believe that a minor has been abused or neglected as defined in section 5-2-41(b), (c), or (d) shall be required to report such incident to the Colville Confederated Tribes Child Welfare Services or Tribal Police.

JUVENILE CURFEW

5-2-300 Curfew Established—Minor Under Sixteen (16) Years

It shall be unlawful for any minor under sixteen (16) years of age, without good cause, to be in or on any street, road, highway, alley, or other public place on the Colville Indian Reservation between the hours of 11:00 p.m. and 5:00 a.m. on any night without the permission of the minor's parent, guardian or employer, or unless accompanied by the parent, guardian or an adult twenty-one (21) years of age or older, who has been given permission by the parent, guardian or employer to accompany the minor.

5-2-301 Penalty—Minor

Any minor who shall be in violation of any of the above sections shall be taken into custody by a tribal officer and returned to the home of the parent or guardian and returned to the custody of the parent or guardian. If such minor has been found to have been in violation of this Subchapter during the previous one (1) year period, then the tribal officer shall take the minor into custody and deliver the minor to the Tribal Court either under the Juvenile Offender or Minor-in-Need-of-Care subchapters of this Chapter.

5-2-302 Penalty—Parent, Guardian or Employer

Any parent, guardian or employer of such minor child, who shall knowingly allow or permit such child to be in violation of any of the provisions of this subchapter shall be deemed to be guilty of a Class C offense and subject to the penalties under the Subchapter on Penalties under Chapter 3-1 of this Code.

TERMINATION OF PARENTAL RIGHTS

5-2-330 Purpose

Parental rights to a child may be terminated by the Juvenile Court according to the procedures in this subchapter.

5-2-331 Petition

Proceedings to terminate parental rights shall be instituted by a petition filed by a Child Welfare officer on behalf of the Tribe or by the parents or guardian of the child. The petition shall state:

- (a) The name, birth date and residence of the minor;
- (b) The names and residences of the minor's parent, guardian or custodian;
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody;
- (d) Reasons for requesting termination.

5-2-332 Setting of Hearing

Upon receipt of the petition, the Juvenile Court shall set a date for the termination hearing which shall be not more than twenty (20) days after the Juvenile Court receives the petition from the officer. The hearing may be continued upon motion of the officer by reason of the unavailability of material evidence

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or witnesses and if the Juvenile Court finds the officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

5-2-333 Pre-Termination Report

Upon filing of the petition, the Child Welfare officer shall begin the preparation of a pre-termination report. The Child Welfare officer shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parent, guardian or custodian to determine whether termination of parental rights is consistent with the best interests of the child. The counselor may also review any of the minor's previous Juvenile Court records. The Child Welfare officer shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The report shall be presented to the Juvenile Court at least two (2) days before the termination hearing.

5-2-334 Summons

At least ten (10) days prior to the termination hearing, the Juvenile Court shall issue summons to:

- (a) The minor;
- (b) The minor's parent, guardian or custodian; and
- (c) Any person the Juvenile Court believes necessary for the proper adjudication of the hearing.

The summons shall contain the name of the Court, the title of the proceedings, and the date, time, and place of the hearing. A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by certified mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court. Upon a showing to the Court that diligent efforts were made to serve the summons and petition on the minor's parents, and that for sufficient reasons service could not be made, the judge may allow service to be made by publication under the provisions of section 2-2-71 of this Code. In such case, the date of the hearing shall not be less than thirty (30) days from the date of first publication.

5-2-335 Termination Hearing

The Juvenile Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated.

5-2-336 Rights of Parties

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- (a) Right to counsel at their own expense;
- (b) Right not to incriminate themselves or be witnesses against themselves.

5-2-337 Termination Hearing—Proof

The Juvenile Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights. The Juvenile Court may terminate the parental rights of the parent(s) to the child if it finds, beyond a reasonable doubt, that:

- (a) The child has been removed from the custody of the parent for a period of at least six (6) months pursuant to a finding that the child is a minor-in-need-of-care;
- (b) The conditions which lead to the removal still persist;
- (c) There is little likelihood that those conditions will be remedied so that the child can be returned to the parent in the near future;

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(d) Continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home;

(e) If the finding that a child is a minor-in-need-of-care has been pursuant to section 5-2-41(b), (c), or (d), necessary services have been provided or offered to the parent to facilitate a reunion and the parent has substantially failed to accept such services; and

(f) If the parent is subject to an order of disposition pursuant to a finding that the child is a minor-in-need-of-care, the parent has substantially failed to comply with the order.

5-2-338 Dispositional Alternatives

If parental rights to a child are terminated, the Juvenile Court shall place the minor in a foster care of shelter care facility which has been approved by the Tribe, and take whatever action is necessary to begin adoption proceedings in the appropriate forum.

5-2-339 Other Dispositions

If parental rights to a child are not terminated, the Juvenile Court may make a disposition in accordance with the provisions in this Chapter regarding a minor adjudged to be a minor-in-need-of-care.

5-2-340 Enrollment Status Unaffected

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

ADOPTION

5-2-370 Jurisdiction Over Adoption

(a) The Colville Tribal Juvenile Court shall have exclusive, original jurisdiction in adoption matters where the minor child to be adopted resides or is domiciled within the Colville Indian Reservation and is:

(Amended 2/4/99, Resolution 1999-69)
(Certified 2/24/00)

(1) A member of the Colville Confederated Tribes; or

(2) The biological child of a member of the Colville Confederated Tribes and eligible for membership in the Colville Confederated Tribes.

(Amended 2/4/99, Resolution 1999-69)
(Certified 2/24/00)

(b) The Colville Tribal Juvenile Court shall have concurrent jurisdiction over all other adoption matters including those where the minor child to be adopted is a descendent of the Colville Confederated Tribes.

(Amended 6/6/02, Resolution 2002-351)

5-2-371 Adoption Generally

Any minor child subject to the jurisdiction of the Colville Confederated Tribes may be adopted by any adult person under this Chapter, provided, however, that a married person, not lawfully separated from his or her spouse, cannot adopt a child without the consent of such spouse, if such spouse is legally capable of giving such consent. In any adoption, preference shall be given, in the absence of good cause to the contrary, to:

(a) A member of the child's family;

(b) A member of the child's extended family;

(c) Members of the Colville Confederated Tribes; or

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(d) Other Indian families.

5-2-372

Consent to Adoption

A child cannot be adopted without the consent of both parents, if living, unless parental rights have been terminated. A child who has a guardian of its person other than a parent cannot be adopted without the consent of such guardian, provided, however, that an adoption of such child may be accomplished without such consent if the Court finds that the adoption will be in the child's best interest. The consent of a child over the age of twelve (12) years is necessary to its adoption. Consent of a parent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of consent were fully explained in detail and were fully understood by the parent. Such court shall also certify that the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood. Any consent given prior to, or within ten (10) days after birth of the child shall not be valid. The consent of the parent may be withdrawn for any reason at any time prior to entry of a final order of adoption; provided, however, that if within six (6) months from the date of consent it can be shown beyond a reasonable doubt that the consent to adoption was given as a result of fraud, coercion or duress, such consent may be withdrawn during such period.

5-2-373

Petition to Adopt

A person or persons wishing to adopt a child shall file a petition which shall contain the following information:

(a) The full names, addresses and ages of the adopting parents, plus the names and ages of all other children living in their household, if any;

(b) The full name, residence, sex and birth date of the child whose adoption is sought, plus documentary proof of the child's date and place of birth, if available;

(c) Proof of parent or guardian consent to the adoption or of the termination of the natural parental rights;

(d) A statement by the adopting parents that it is their desire to adopt the child and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability if the adoption is granted.

5-2-374

Investigation Report

Within twenty (20) days after the filing of the petition for adoption, the Child Placement Agency will file an investigation report on the suitability of the child for adoption and the financial, moral and physical fitness and general background of the adoptive parents and their home, together with a recommendation regarding the proposed adoption.

5-2-375

Adoption Hearing

Within five (5) days after the written investigation report is received or within a reasonable time, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. The judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption or may place the child in the legal custody of the petitioners for a period of not more than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied and the child's guardian instructed to arrange suitable care for the child, and the Court may request the tribal agencies, federal agencies, or other agencies authorized to provide such services to assist in the placement and care of the child.

5-2-376

Report and Final Decree of Adoption

If the Court does not enter a final Decree of Adoption at the time of the hearing for adoption, but places

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the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Child Placement Agency shall file a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide such services to assist in the placement and the care of the child.

5-2-377 Adoption Records

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court and shall not be available for release or inspection. Information contained in such records may be released upon petition to the court by the adopted person after reaching legal majority, or otherwise upon order of the Court upon good and sufficient cause shown.

5-2-378 Contents of Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the court upon the evidence adduced at the hearings. Within five (5) days after the final Decree of Adoption has been entered by the Court, the Bureau of Vital Statistics of the Washington State Department of Social and Health Services shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, sex, birth date, names of natural parent(s) and full names of adoptive parent(s) so that a new record of birth in the new name and with the name or names of the adopting parents is recorded, and provided with certified true and correct copy of the final Decree of Adoption.

5-2-379 Name and Legal Status of Adopted Child

Minor children adopted by order of the Court shall assume the surname of the person by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons and property as children or heirs of the persons adopting them. Adoption shall not affect tribal membership status or any rights incident thereto.

5-2-380 Rights and Liabilities of Natural Parents

The natural parents of an adopted child are, from the time of the final Decree of Adoption, relieved of all parental duties toward, and, all responsibility for the child so adopted, and shall have no further rights over him.

GENERAL PROVISIONS

5-2-410 Court Records

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

- (a) The minor;
- (b) The minor's parent, guardian, custodian or counsel;
- (c) The Child Welfare officer or probation officer; or
- (d) The prosecuting attorney.

5-2-411 Law Enforcement Records

Law enforcement records and files containing a minor shall be kept separate from the records and files of

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adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:

- (a) The minor;
- (b) The minor's parent, guardian, custodian or counsel;
- (c) The Child Welfare officer or probation officer; or
- (d) The prosecuting attorney.

5-2-412

Expungement

When a minor who has been the subject of any proceedings before the Juvenile Court attains his twenty-first (21) birthday, the Chief Judge of the Tribal Court shall order the Clerk of the Court to destroy both the Court records and the law enforcement records. This section shall not apply to adoption records.

5-2-413

Appeal

For purposes of appeal, a record of the proceedings shall be made available to the minor, his parent, guardian, custodian or counsel. Costs of obtaining this record shall be paid by the party seeking the appeal. Any party to a Juvenile Court hearing may appeal a final order or disposition pursuant to the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-650)

5-2-414

Contempt of Court

Any willful disobedience or interference with any order of the Juvenile Court constitutes contempt of court in accordance with this Code.

5-2-415

Support of Minors

When temporary custody of a minor is vested by the Court in an individual or agency other than his parents or juvenile detention facility, the Court may in the same or any subsequent proceeding inquire into the ability of the parents or any other person who may be obligated to support the minor and to pay any other expenses of the minor, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the Court. The Court may, after due notice and a hearing on the matter require the parents or other person to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their financial resources and other demands on their future.

(Chapter enacted-original code 5/7/79)