

TITLE III
CHAPTER 3
YOUTH

Part 1

Purpose, Definitions, and Jurisdiction

3-3-101. Purpose. This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To preserve and retain the family unit whenever possible. To provide for the care, protection, and wholesome mental and physical development of youth offenders who are within the provisions of this code;
- (2) To recognize that alcohol and substance abuse among youths is a disease which is both preventable and treatable;
- (3) To provide a program of supervision, care and rehabilitation consistent with the protection of the reservation;
- (4) To achieve the purposes of this code utilizing the family unit whenever possible and to separate the youth from the family unit only when necessary for the youth's welfare or to protect public safety;
- (5) To clearly provide the juvenile offender with services under this code and to provide appropriate and distinct dispositional options for treatment and rehabilitation;
- (6) To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights are protected under the Indian Civil Rights Act of 1968 and statutory rights under the Law and Order Code of the Confederated Salish and Kootenai Indian Tribes of the Flathead Reservation, Montana;
- (7) To provide a continuum of services for youths and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and
- (8) To provide a forum where an Indian youth who is an enrolled or enrollable member of the Confederated Salish and Kootenai Tribes and is charged in other jurisdictions may be referred for adjudication and/or disposition.

3-3-102. Definitions. The following definitions shall apply to this Code. Where his or her is used in this Code it is meant to include both genders.

- (1) "Adjudicatory Hearing" means a proceeding in the Youth Court to determine whether a youth has committed a specific "youth offense" or is a "youth in need of supervision" as set forth in a petition.
- (2) "Adult" means an individual who is 18 years of age or older.
- (3) "Advocate" means an attorney or advocate.
- (4) "Alcohol or Substance Abuse Emergency Shelter or Halfway House" means an appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of youth with regard to alcohol and/or substance abuse problems.

(5) “Consent Decree”: At any time after the filing of a “youth offender” petition, and before the entry of a judgment, the Youth Court may, on motion of the youth presenter or that of counsel for the youth, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with the youth probation officer and agreed to by all parties affected. The Youth Court’s order continuing the youth under supervision under this section shall be known as a “consent decree”.

(6) “Counsel”: An attorney or advocate.

(7) “Court” or “Youth court”: See definition of Youth Court.

(8) “Custodian”: A person, other than a parent or guardian, to whom legal custody of the youth has been given.

(9) “Deferred agreement” means an agreement which suspends a “juvenile offender” or “youth in need of supervision” proceeding prior to filing a petition and continues the youth under supervision or probation under terms and conditions negotiated with the juvenile officer and agreed to by all parties.

(10) “Delinquent Youth” means a youth who:

(a) Has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) Having been placed on formal court probation as a delinquent youth or a youth in need of supervision, violates any conditions of his probation.

(11) “Detention” means exercising authority over a youth by physically placing them in any secure youth facility designated by the Youth Court where their movement is restricted.

(12) “Dispositional Hearing” means a proceeding in the Youth Court to determine how to resolve a case after the youth has been adjudicated a youth offender.

(13) “Domicile” means a person's permanent home, legal home or main residence. The domicile of a youth is generally that of the custodial parent or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.

(14) “Foster home” means placement with a family whose home has been licensed by Tribal Social Services to accept placement of youth.

(15) “Group home” means a residential facility which is licensed to care for youth.

(16) “Guardian” means a person, other than a parent, having the duty and authority to provide care, shelter, and control of a youth.

(17) “Guardian Ad Litem” means a person appointed at the discretion of the Youth Court or upon the recommendation of Juvenile Probation to represent and protect the legal rights and interests of a youth in a Youth Court proceeding when the youth has no parent or guardian appearing on his behalf or their interests conflict with those of the youth.

(18) “Indian Youth” means a youth who is an enrolled or enrollable member of the Confederated Salish and Kootenai Tribes; is an enrolled or enrollable member of a federally recognized tribe residing on the Flathead Reservation; or is a biological descendant of an enrolled member of a Federally Recognized Tribe residing on the Flathead Reservation and has significant ties to the Indian community.

(19) “Judge” when used without further qualifications, means the Judge of the Tribal Youth Court.

(20) “Juvenile officer” means the youth probation officer.

(21) “Legal Custody” means the legal status created by order of a court of competent jurisdiction that gives a person the duty to:

- (a) Have physical custody of the youth; and
- (b) Determine with whom the youth shall live and for what period; and
- (c) Protect, train, and discipline the youth; and
- (d) Provide the youth with food, shelter, education, and ordinary medical care.
- (e) An individual granted legal custody of a youth shall personally exercise his rights and duties as parents or guardian unless otherwise authorized by the Court entering the order.

(22) “Parent” includes a natural or adoptive parent.

(23) “Probation” means a legal status created by court order or under this code whereby an offender is under prescribed conditions and under the supervision of a person designated by the court. An offender on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

(24) “Protective supervision” means a legal status created by court order under which an offender is permitted to remain in his home or is placed with a relative or other suitable individual, where supervision and assistance is provided by the court. (A health or social services agency or some other agency designated by the court).

(25) “Restitution” means monetary payment to the victim or services provided to the victim or the general community, made pursuant to an informal adjustment, consent decree, deferred agreement, or other Youth Court order.

(26) “Secure Youth Detention Facility” means a facility which:

- (a) Contains locked cells or rooms;
- (b) Restricts the movement of those placed in the locked cells or rooms; and
- (c) Complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act. 42 U.S.C. 5601 et. seq.

(27) “Serious crime” means a crime committed by a youth, which if committed by an adult would be a felony and is an offense against a person, an offense against property or an offense involving dangerous drugs.

(28) “Status Offense” means a youth who commits an offense prohibited by law which if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

- (a) Violates any Tribal, Montana municipal, State, or federal law regarding use of alcoholic beverages or tobacco by minors, except that traditional cultural use of tobacco shall not be a youth offense;
- (b) Habitually disobeys the reasonable and lawful demands of his parents, or guardian or is ungovernable and beyond their control;
- (c) Being subject to compulsory school attendance, is habitually truant from school;
- (d) Runaway; or

(e) Curfew.

(29) “Transfer of Jurisdiction” means transferring a youth from the jurisdiction of the Tribal Youth Court according to chapter 1-3 of this code which results in the termination of the initial court’s jurisdiction over that offense.

(30) “Tribal Council” means the Tribal council of the Confederated Salish and Kootenai Tribes.

(31) “Tribal Court” means the adult court for the Confederated Salish and Kootenai Tribes.

(32) “Tribal Social Services” means the social services department of the Confederated Salish and Kootenai Tribes.

(33) “Youth” see “Indian Youth” definition.

(34) “Youth Court” means the Court established by the Confederated Salish and Kootenai Tribes, to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the Youth Court, the judge, and juvenile probation officers.

(35) “Youth facility” means any youth facility (other than school) that cares for youth or may restrict their movement, including secure youth detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, group homes, and shelter homes.

(36) “Youth in need of Care” means a youth who is dependent, abused or neglected.

(37) “Youth in need of Supervision” means a youth who commits an offense prohibited by law which if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) Violates any Tribal, Montana municipal, State, or federal law regarding use of alcoholic beverages or tobacco by minors, except that traditional cultural use of tobacco shall not be a youth offense;

(b) Habitually disobeys the reasonable and lawful demands of his parents, or guardian or is ungovernable and beyond their control;

(c) Being subject to compulsory school attendance, is habitually truant from school; or

(d) Has committed any of the acts of a delinquent youth but whom the Youth Court in its discretion chooses to regard as a youth in need of supervision;

(e) Runaway; or

(f) Curfew.

(38) “Youth Offender”: A youth who commits a “Youth Offense” or a “Status Offense” prior to the youth’s eighteenth (18th) birthday.

(39) “Youth Offense”: A violation of the law and order code of the Confederated Salish and Kootenai Tribes, or equivalent city, state or federal law, which is committed within the exterior boundaries of the Flathead Indian Reservation by a person who is under the age of eighteen (18) at the time the offense was committed.

(40) “Youth Presenter”: The youth presenter or youth presenting officer or youth petitioner or any other person who performs the duties and responsibilities set forth in his job description, in accordance with the Tribes' Personnel Rules, Regulations, and Procedures.

3-3-103. Jurisdiction of the Youth Court. The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation have established a court known as the Confederated Salish and Kootenai Tribal Youth Court. The court has exclusive original jurisdiction over all proceedings established in this code in which an Indian youth is residing in or domiciled on the reservation, alleged to be a “Youth Offender” or “Youth in Need of Supervision,” as defined in Section 3-3-102 of this Chapter, unless the Youth Court transfers jurisdiction to the Tribal Adult Court or a State District Youth Court according to this code. Youth Court does not have jurisdiction over traffic or fish and game offenders, these matters are referred to the appropriate Tribal Court division.

3-3-104. Severability. If any provision or application of this code is held invalid, such invalidity shall not affect the remaining code provisions or application thereof.

Part 2

Transfer to Adult Tribal Court or State District Youth Court

3-3-201. Transfer of Jurisdiction to Adult Tribal Court. The Youth presenter shall have discretionary authority to file the cause in Adult Tribal Court, based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

(1) A juvenile offender may be transferred to Adult Tribal Court only if:

- (a) the offender is sixteen (16) years of age or older,
- (b) is alleged to have committed a serious crime, and
- (c) is an enrolled member of the CS&KT or other federally recognized tribe.

(2) The Youth presenter shall consider the following factors to determine transfer.

- (a) the nature and seriousness of the alleged offense,
- (b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,
- (c) the youth's past record of offenses, and
- (d) the youth's contact with the Tribe.

(3) Transfer report. The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the motion of transfer.

3-3-202. Transfer of Jurisdiction to State District Youth Court.

The Youth presenter shall have discretionary authority to transfer a juvenile offender to State Youth District Court based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

(1) A juvenile offender may be transferred to State Youth District Court only if:

- (a) the offender is alleged to have committed a serious crime: and/or
- (b) transfer will access services or funding for the youth not available through the Tribe.

(2) The Youth presenter shall consider the following factors to determine transfer:

- (a) the nature and seriousness of the alleged offense,
- (b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,
- (c) the youth's past record of offenses,
- (d) availability of funding for treatment, and
- (e) services that are available through state youth district court that are not available through Tribal Youth Court.

(3) Transfer report. The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the motion of transfer.

Part 3

Youth Court Procedure

3-3-301. Non-criminal proceedings. Any adjudication regarding the status of any individual within the jurisdiction of the Youth Court is not criminal in nature and may not be deemed a criminal conviction unless the cause is transferred to the Adult Tribal Court pursuant to this Chapter.

3-3-302. Use in other proceedings. The adjudication, disposition, and evidence presented to the Youth Court is inadmissible as evidence against the youth in any proceeding in another court, including the Adult Tribal Court.

3-3-303. Rules of procedure. The Youth Court procedures are governed by the Tribal Court rules of procedure that do not conflict with this Chapter.

3-3-304. Confidentiality. (1) All juvenile proceedings held pursuant to this Code shall be closed to the public. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Youth Court shall be admitted.

(2) All petitions, pleading files, decrees, and orders, as well as medical and police reports, records, pre-dispositional studies and supervision records of probationers shall be closed to public inspection and accessed only by persons and for purposes authorized by the Court.

Part 4

Youth Court Authority.

3-3-401. Scope of Youth Court Authority. The Youth Court may:

- (1) cooperate fully with any federal, state, Tribal, public, or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the Tribal council;
- (2) utilize any social service that is furnished by any Tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense;
- (3) accept or decline transfers from other states or Tribal Courts involving alleged delinquent youth or alleged status offenders for the purposes of adjudication and/or disposition.

3-3-402. Powers and duties of the Youth Court. The Youth Court shall have the same powers and duties as the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants. The rules on disqualification or disability of a Youth Court judge shall be the same as those which govern Tribal Court judges.

3-3-403. Additional Youth Court personnel. The Youth Court may appoint additional Personnel including a Guardian Ad Litem or Court Appointed Special Advocates, or referees as it deems appropriate or upon recommendation by juvenile probation.

Part 5

Rights of Youth

When a youth is questioned by a Law Enforcement or Juvenile Officer upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision, the following requirements must be met.

3-3-501. Right against self-incrimination. (1) The youth must be advised of his right against self-incrimination and his right to counsel.

(2) The youth may waive these rights under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(c) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(3) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth, that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified. To determine placement, the youth may be questioned to determine the following:

(a) To determine his or her name;

(b) To determine the name of his/her parent, or legal custodian; or

(c) To conduct medical assessment and treatment for alcohol or substance abuse under Section 3-3-202 of this Chapter, when the youths health or well-being is in serious jeopardy.

3-3-502. Admissibility of evidence. In a proceeding on a petition alleging that a youth is a "youth offender" or a youth in need of supervision:

(1) An out-of-court statement that would be inadmissible in a criminal matter in Tribal Court shall not be received in evidence;

(2) Evidence seized or obtained in violation of youths recognized rights shall not be received in evidence to establish the allegations of a petition;

(3) Unless advised by counsel or an effective waiver was made by the youth, the statements of a youth while in custody of a juvenile officer, law enforcement officer, or defender, including statements made during a preliminary inquiry, shall not be received in evidence, in determining the truth of allegations of the petition;

(4) A valid out-of-court admission or confession by the youth is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence;

3-3-503. Fingerprints and photographs. (1) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

- (b) pursuant to a search warrant, supported by probable cause, issued by a Tribal Youth Court judge; or
 - (c) upon the order of the Tribal Youth Court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult; or
 - (d) upon order of Tribal Youth Court for minors who are habitual runaways for identification purposes only.
- (2) Fingerprint records and photographs may be used by Tribal juvenile probation and Tribal law and order for comparison and identification purposes in any other investigation.

3-3-504. Right to retain counsel. (1) In all “youth offender” cases the youth shall be represented by counsel at all stages of the proceedings.

(2) If counsel is not retained for the youth, or if it does not appear that counsel will be retained, the Youth Court shall appoint counsel for the youth.

3-3-505. Explanation of rights. At the youths initial appearance before the Youth Court, the Youth Court shall inform the youth alleged to be a “youth offender” or a youth in need of supervision and the youths parent, guardian or custodian of the following:

- (1) The allegations against him or her;
- (2) The right to an advocate or attorney, as set forth in Section 3-3-504;
- (3) The right to testify or remain silent and that any statement made may be used against him or her;
- (4) The right to cross examine witnesses;
- (5) The right to subpoena witnesses and to introduce evidence on his or her own behalf; and
- (6) The possible consequences if the allegations in the petition are found to be true.

Part 6

Procedure for Taking a Youth Offender into Custody

3-3-601. Taking a youth into custody. A law enforcement officer may take a youth into custody when:

- (1) The youth commits a “youth offense” in the presence of the officer; or
- (2) The officer has probable cause to believe a youth offense has been committed by the youth detained; or
- (3) An appropriate custody order or warrant has been issued by the Youth Court, or other appropriate court, with permission of the Tribal Youth Court, authorizing the taking of a particular youth.

3-3-602. Provision of rights. At the time the youth is taken into custody, the arresting officer shall give the following warning:

- (1) The youth has a right to remain silent;
- (2) Anything the youth says can be used against the youth in court;
- (3) The youth has a right to the presence of his or her parent, guardian, custodian and counsel during questioning.

3-3-603. Release or delivery from custody. A law enforcement officer shall have discretionary authority to do the following after taking a youth into custody prior to questioning:

- (1) Release the youth to the youth's parent or guardian;
- (2) Release the youth to a relative or other responsible adult designated by the juvenile probation officer, if the youths parent, guardian or custodian consents to the release or parent either isn't capable to consent or can't be located; or
- (3) Deliver the youth to a licensed youth facility as designated by the juvenile probation officer or to a medical facility if the youth is believed to need prompt medical treatment.

3-3-604. Review for need of continued custody. Prior to delivery of a youth to the youth facility, the juvenile officer or juvenile official (as designated by the Youth Court) shall review the need for continued custody, and release the youth to his parent, guardian or custodian with instructions to appear at the hearing on a date to be set by the Youth Court, unless;

- (1) The act is serious enough to warrant continued detention; and
- (2) There is probable cause to believe the youth has committed the offense(s) alleged; or
- (3) There is reasonable cause to believe the youth will commit a serious act causing damage to a person or property; or
- (4) The youth's parent or guardian is unsuitable for or is unwilling or unable to accept return custody of the youth.

3-3-605. Notifications to family. Upon taking a youth into custody, the juvenile officer or Law enforcement officer shall immediately notify the youths parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the youth into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment. If notification cannot be provided to the youths parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian, custodian or youths extended family.

3-3-606. Criteria for selecting a youth facility. If the juvenile officer or juvenile official determines that there is a need for continued custody of the youth in accordance with Section 3-3-604, the following criteria shall be used to determine the appropriate youth facility for the youth:

(1) A youth may be detained in a secure youth detention facility if:

(a) The youth is a fugitive from another jurisdiction wanted for a felony offense, with a copy of warrant or pick up and hold delivered immediately to the juvenile office; or

(b) The youth is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or

(c) The youth is charged with committing a “Serious Crime”, which would be an offense if the youth were an adult or equivalent state or federal offenses; or

(d) The youth is already detained or on conditional release for another “youth offense”; or

(e) The youth has demonstrated a recent record of willful failure to appear at Youth Court proceedings; or

(f) The youth requests in writing that he be given protection by being confined in a secure youth detention facility and there is a present and immediate threat of serious physical injury to the youth;

(g) The youth violates his formal probation.

(2) A youth may be housed in a youth facility (other than a secure detention facility) as designated by the Youth Court only if the following conditions exist:

(a) One of the conditions described in subsection (1) above exists; or

(b) The youth is unwilling to return home or to the home of an extended family member; or

(c) The youths parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the youth to return to their home.

Part 7

Youth Offender Detention Hearing.

3-3-701. Requirement of detention hearing. When a youth has been taken into continued custody as provided for under Section 3-3-604, a detention hearing shall be convened by the Youth Court within forty-eight (48) hours of the youths initial detention, inclusive of weekends and holidays. The detention hearing shall take place in person except in the following situation. In the event that the detention hearing occurs on a weekend or a legal holiday, the hearing may be conducted by telephone if other means of conducting the hearing are impractical. In the event that the initial detention hearing is conducted by telephone, the Youth shall have another detention hearing at which the Youth shall be personally present. This hearing shall be held on the morning or the next day that the Tribal Youth Court is in session.

3-3-702. Purpose of the detention hearing. The purpose of the detention hearing is to determine:

- (1) Whether probable cause exists to believe the youth committed the alleged “youth offense”; and
- (2) Whether continued detention is necessary pending further proceedings.

3-3-703. Notice of detention hearing. When a time for the detention hearing has been set, notice shall be immediately given to the youth, the youths counsel, and reasonable effort has been made to locate the youths parent, guardian or custodian. The notice shall contain:

- (1) The name of the Youth Court;
- (2) The title of the proceedings;
- (3) A brief statement of the “youth offense” the youth is alleged to have committed; and
- (4) The date, time, and place of the detention hearing.

3-3-704. Detention hearings. (1) Detention hearings shall be conducted by the Youth Court separate from other proceedings.

(2) As previously stated, the general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Youth Court shall be admitted.

3-3-705. Notification of rights at detention hearing. At the commencement of the detention hearing, the Youth Court shall notify the youth and the youths parent, guardian, or custodian of their rights under Part 5 of this Chapter.

3-3-706. Findings at detention hearing. The Youth Court shall issue a written finding stating the reasons for release or continued detention of the youth. If the Youth Court determines that there is a need for continued detention, the Youth Court shall specify where the youth is to be placed until the adjudicatory hearing.

3-3-707. Rehearing of detention matter. The Youth Court shall rehear a detention matter within ten (10) days or less if:

- (1) The youth is not released at the first detention hearing;
- (2) Counsel for the youth was not notified of the hearing and did not appear or waive appearance at the hearing; and
- (3) A motion for a rehearing and a declaration stating the relevant facts has been filed with the Youth Court.

Part 8

Initiation of Proceedings

3-3-801. Investigation by the juvenile officer. Within a reasonable time, exclusive of weekends and holidays, of the detention hearing or the release of the youth to his or her parent, guardian, or custodian, the juvenile officer shall make an investigation to determine whether the interests of the youth and the public require that further action be taken. Based on the investigation, the juvenile officer(s) shall:

- (1) Recommend that no further action be taken;
- (2) Suggest to the youth and the youths parent, guardian, or custodian that they appear for an informal adjustment conference under Sections 3-3-802 and 3-3-803;
- (3) Recommend that the youth presenter file a petition under this Chapter; or
- (4) Request the youth presenter begin a transfer under Section 3-3-201.

3-3-802. Informal Adjustment Conference.

- (1) During the course of the investigation under Section 3-3-801, the juvenile officer shall confer with the youth and the youths parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of a formal petition unnecessary.
- (2) The juvenile officer shall consider the following factors in determining whether to proceed informally or to file a petition:
 - (a) The nature and seriousness of the offense;
 - (b) Previous number of contacts with the police, juvenile officer, or the Youth Court;
 - (c) The age and maturity of the youth;
 - (d) The attitude of the youth regarding the offense;
 - (e) The willingness of the youth to participate in a voluntary program; and
 - (f) The participation and input from the youths parent, guardian or custodian.
- (3) After conducting a preliminary investigation, the juvenile officer shall hold an informal conference with the youth and the youths parent, guardian or custodian to discuss alternative courses of action.
- (4) The juvenile officer shall inform the youth, and the youths parent, guardian or custodian, of their basic rights under Part 5 of this Chapter.
- (5) Based on the information obtained during the preliminary investigation, the juvenile officer may enter into a written deferred agreement with the youth and the youths parent, guardian, or custodian, specifying the particular conditions to be observed during an informal adjustment period, not to exceed twelve (12) months. The youth and the youths parent, guardian or custodian shall be informed that the informal adjustment agreement is voluntary and they may terminate the adjustment process at any time and petition the Youth Court for a hearing in the case.
- (6) The youth shall be permitted to be represented by counsel at the informal conference.

(7) If the youth does not desire to participate in an informal adjustment agreement, the juvenile officer shall recommend that the youth presenter file a petition under Section 3-3-804.

(8) Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action will be taken.

(9) If the youth fails to successfully complete the terms of the informal adjustment agreement, the juvenile officer may recommend that a petition be filed under Section 3-3-804.

3-3-803. Filing and content of petition.

(1) Petition. Formal “youth offender” proceedings shall be initiated by a petition filed by the youth presenter on behalf of the Tribe and in the interests of the youth. The petition shall be entitled,

“In the matter of _____, a youth” and shall set forth with specificity:

- (a) The name, birth date, residence, and Tribal affiliation of the youth;
- (b) The names and residences of the youths parent, guardian or custodian;
- (c) A citation to the specific section(s) of this code which gives the court jurisdiction over the proceedings;
- (d) A citation to the criminal statute or other law or ordinance which the youth is alleged to have violated;
- (e) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred;
- (f) A statement alleging the youth to be a delinquent youth or a youth in need of supervision; and
- (g) Whether the youth is in custody and if so, the place of detention and time he was taken into custody.

(2) Petition - Additional required allegations for truancy. In addition to the allegations required under Section 3-3-804(1), a petition alleging that a youth is habitually and without justification absent from school, shall also allege the following:

- (a) That the school and a youths parent, guardian or custodian have held a meeting or the youths parent, guardian or custodian has refused to attend a meeting to discuss the youths habitual and unjustified absence from school;
- (b) That the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the youths problem and if the local school board or governing authority of a private school provides an alternative education program, that the youth has been provided with an opportunity to enroll in the alternative program;
- (c) That the school has conducted a review of the youths educational status which may include medical, psychological and/or educational testing of the youth in accordance with the school regulations to determine whether learning problems may be a cause of the youths absence from school and, if so, what steps have been taken to overcome the learning problems;
- (d) That the social worker or other appropriate official of the youths school has conducted an investigation to determine whether social problems may be a cause of the youths absence from school and, if so, that appropriate action has been taken; and
- (e) That the school has sought assistance from appropriate agencies and resources available to the local school board or private school, or has referred the matter to a local social services agency for the purpose of

utilizing and coordinating such agencies and resources.

(3) Time of filing.

(a) Upon the recommendation of the juvenile officer as provided for under Section 3-3-801(3), the youth presenter shall file a petition within forty-eight (48) hours, exclusive of weekends and holidays, if the youth is in custody.

(b) Upon the recommendation and receipt of the report of the juvenile officer as provided for under Section 3-3-801, the youth presenter shall file a petition within twenty (20) days if the youth has been previously released to a parent, guardian, custodian, relative, or responsible adult.

3-3-804. Issuance of summons. After a “youth offender” petition has been filed, the Youth Court shall direct the issuance of summons to:

(1) The youth; and

(2) The youths parent, guardian or custodian;

3-3-805. Content of the summons. The summons shall contain the name of the Youth Court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under Part 5 of this Chapter. A copy of the petition shall be attached to the summons.

3-3-806. Service of the summons. A law enforcement official or appointee of the Youth Court, shall serve summons upon the youth at least five (5) days prior to the hearing. If the summons cannot be delivered personally, to the youths parents, custodian or guardian, the Youth Court may deliver it by registered mail. A party, other than the youth, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Part 9

Youth Offender Consent Decree.

3-3-901. Availability of consent decree. At any time after the filing of a “youth offender” petition, and before the entry of a judgment, the Youth Court may, on motion of the youth presenter or that of counsel for the youth, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with the juvenile officer and agreed to by all parties affected. The Youth Court’s order continuing the youth under supervision under this section shall be known as a “consent decree”.

3-3-902. Objection to consent decree. If the youth objects to a consent decree, the Youth Court shall proceed to initial, adjudication and disposition of the case. If the youth does not object, but an objection is made by the youth presenter after consultation with the juvenile officer, the Youth Court shall, after considering the objections and the reasons given, determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

3-3-903. Failure to fulfill terms and conditions. If, either prior to discharge by the juvenile officer or expiration of the consent decree, the youth fails to fulfill terms of the decree, the youth presenter may file a petition to revoke the consent decree. Proceedings on the petition to revoke shall be conducted according to Part 10 of this Chapter. If it finds the youth has violated the terms of the consent decree, the Youth Court may:

- (1) Extend the period of the consent decree; or
- (2) Order the Youth Court presenter to proceed with adjudication.

3-3-904. New youth offense complaint. If a new “youth offender” complaint is filed against the youth before discharge or expiration of the consent decree and the juvenile officer has conducted a preliminary inquiry, and authorized the filing of a petition the youth presenter, upon a finding that informal adjustment is not in the best interest of the youth and public, may;

- (1) File a petition to revoke the consent decree in accordance with Section 3-3-903; or
- (2) File a petition on the basis of the new complaint which has been filed against the youth.

3-3-905. Dismissal of youth offender petition. A youth who is discharged or completes a period of supervision without reinstatement of the original “youth offense” shall not proceed again, in any court, for the same offense alleged in the petition or an offense based upon the same conduct. The original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the youth for damages arising from this conduct.

Part 10

Youth Offender Proceedings.

The following proceedings are subject to the Confidentiality provisions, previously set forth in Section 3-3-304.

3-3-1001. Initial Hearing. (1) The Youth Court shall conduct a separate hearing on “youth offender” petitions.

(2) The Youth Court shall conduct an Initial hearing for the purpose of advising the youth of his or her rights, ensuring that the youth understands his or her rights, reading of petition, ensuring that the youth understands the allegations contained in the petition, and for the youth to enter an admission or denial to the allegations in the petition.

(3) The initial hearing shall be held within ten (10) days of the filing of the Petition if the youth is in custody. If the youth was released from detention or the youth was never detained, the initial hearing shall be held within a reasonable time and shall be set by the court.

(4) Notice of the initial hearing shall be given to the youth and the youths parent, guardian or custodian, the youths counsel and any other person the Youth Court deems necessary at least five (5) days prior to the hearing in accordance with Part 8 of this Chapter.

(5) At this hearing, the youth and the youths parent, guardian or custodian shall have the applicable rights listed in Part 5 of this Chapter.

(6) Admission of allegations.

(a) If the youth admits the allegations of the petition, the Youth Court shall consider a disposition pursuant to Part 12 of this Chapter, only after a finding that:

(i) The youth fully understands his or her rights under Part 5 of this Chapter, and fully understands the consequences of his admission; and

(ii) The youth voluntarily, intelligently, knowingly, admits all facts necessary to constitute a basis for Youth Court action, and no facts are apparent to the court which if found to be true, would be a defense to the allegation.

(b) If the Youth Court finds that the youth has validly admitted the allegations contained in the petition, the Youth Court shall make and record its finding and schedule a disposition hearing in accordance with Part 12 of this Chapter. Additionally, the Youth Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the dispositional hearing.

(7) Denial of allegations. If the youth denies all or some of the allegations of the petition, the Youth Court may order any disposition as deemed appropriate under Part 12 of this Chapter or continue with the proceedings as set forth below.

3-3-1002. Scheduling Orders. Scheduling of further proceedings shall be done informally between the parties. If the youth is not in custody, a proposed order setting forth the witnesses of both parties, the date that discovery will be complete, and a date that all pretrial motions will be filed, shall be submitted to the Youth Court within thirty (30) days of the initial hearing. If the youth is in custody, the proposed order shall be submitted to the Youth Court within ten (10) days of the initial hearing. Upon receipt of the proposed order, the Youth Court shall set a date for the adjudicatory hearing as set forth in Section 3-3-1003.

3-3-1003. Adjudicatory Hearing. (1) If the youth remains in custody, the Youth Court shall hold the adjudicatory hearing within thirty (30) days of receipt of the proposed scheduling order.

(2) If the youth is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within a reasonable time and shall be set by the Youth Court.

(3) Except in cases of continued custody, notice of the adjudicatory hearing shall be given to the youth and the youths parent, guardian or custodian, the youths counsel and any other person the Youth Court deems necessary at least twenty (20) days prior to the hearing.

3-3-1004. “Youth offender” finding after adjudicatory hearing.

(1) If the Youth Court finds on the basis of proof beyond a reasonable doubt that the allegation contained in the petition are true, the Youth Court shall make a record of its finding and schedule a disposition hearing in accordance with Part 12 of this Chapter. Additionally, the Youth Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the dispositional hearing.

(2) If the Youth Court finds that the allegations of the “youth offender” petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the youth released from any detention imposed in connection with the proceedings.

Part 11

Youth Offender Predisposition Studies: Reports and Examinations

3-3-1101. Predisposition study and report. The Youth Court may direct the juvenile officer to prepare a written predisposition study and report for the Youth Court concerning the youth, the youths family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case when:

- (1) The youth has been adjudicated as a “youth offender”; or
- (2) When the youth has admitted the allegation of the petition; or
- (3) When juvenile probation is requesting long term placement.

3-3-1102. Contents of predisposition study and report. The report shall contain a specific plan for the youth, aimed at resolving 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 youth under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the youths freedom and are consistent with the interests of the community.

3-3-1103. Medical assessment and treatment. At any time the Youth Court may order a medical, psychological, or chemical dependency assessment of a youth arrested, detained or adjudicated for a “youth offense” to determine the mental or physical state of the youth so that appropriate steps can be taken to protect the youths health and well-being.

3-3-1104. Transfer for diagnosis. The Youth Court may order that a youth adjudicated as a “youth offender” be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis, with direction that the Youth Court be given a written report at the end of that period indicating the plan of intervention which appears most suitable.

3-3-1105. Submission of reports. Evaluation, assessment, dispositional reports and other material to be considered by the Youth Court in a youth hearing shall be submitted to the Youth Court no later than ten (10) days before the scheduled hearing date for disposition. Copies will be provided to Youth Court Presenter and Youths Counsel. The Court may exclude from the copies of the predisposition report which it distributes to the parties any information obtained under a promise of confidentiality, or any other information that if disclosed might result in harm to the defendant or other persons. In the event the Court excludes such information, however, the Court must inform the Youth in writing, at least five days before the disposition hearing, of the general nature of the information and the reasons for its exclusion from the report. Notwithstanding, the foregoing, the Youth shall have the right to the disclosure of the excluded information if:

- (1) the Court intends to rely in part on the information in making its decision on the disposition for the Youth; and
- (2) the Youth establishes that the disclosure of the information is essential to the presentation of Youth at disposition.

Part 12

Youth Offender Disposition Proceedings

3-3-1201. Purpose and conduct of disposition hearing. Unless the youth waives the right to a separate hearing the Youth Court shall hold disposition hearings separate from other proceedings. The disposition hearing shall be conducted to determine how to resolve a case after it has been determined that the youth has committed a specific “youth offense”. The Youth Court shall make and record its dispositional order in accordance with this Chapter. At the disposition hearing, the youth shall have the rights listed in Part 5 of this chapter, and the Confidentiality provisions set forth previously in Section 3-3-304 shall apply.

3-3-1202. Time limitations on disposition hearings. If the youth remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing unless directed by the Youth Court otherwise. If the youth is released from custody or was not taken into custody, then the disposition hearing shall be held within a reasonable time after the adjudicatory hearing.

3-3-1203. Notice of disposition hearing. Notice of the disposition hearing shall be given to the youth and the youths parent, guardian or custodian, the youths counsel and any other person the Youth Court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with Section 3-3-806.

3-3-1204. Evidence and reports. In the disposition hearing, the Youth Court may consider all relevant material information. The Youth Court shall consider any predisposition report, physician’s report or social study it may have ordered. The Youth Court shall afford the youth, the youths parent, guardian or custodian and the youths counsel an opportunity to controvert the factual contents and conclusions of the report. The Youth Court shall also consider any alternative predisposition report or recommendations prepared by the youth or the youths counsel.

3-3-1205. Disposition alternatives. When it finds a youth is a “youth offender” the Youth Court may make and record any of the following orders of disposition, subject to conditions and limitations the Youth Court may prescribe:

- (1) Permit the youth to remain with his or her parents, guardian, or custodian;
- (2) Place the youth in the legal custody of a relative or other suitable person;
- (3) Order the youth to pay restitution;
- (4) Place the youth in the protective supervision of juvenile probation (as defined in Section 3-3-102);
- (5) Place the youth on probation;
- (6) Place the youth in a youth facility designated by the Youth Court, including alcohol or substance abuse emergency shelter or half way house, foster home, group home, shelter home, or secure youth detention facility;
- (7) Impose a fine;
- (8) Order the youth to complete Community service;
- (9) Require the youth, the youth’s parents or guardians, or the persons having legal custody of the youth to receive counseling services;
- (10) Require the medical and psychological evaluation of the youth, the youth’s parents or guardians, or the persons having legal custody of the youth;
- (11) Any other disposition the court deems appropriate.

Part 13

Review, Modification, Revocation, Extension and Termination of Dispositional Orders

3-3-1301. Mandatory review of disposition order. The Youth Court shall hold a hearing to modify, revoke, or extend a disposition order upon the motion of:

- (1) The youth;
- (2) The youths parent, guardian, or custodian;
- (3) The youths counsel;
- (4) The youths counselor;
- (5) The juvenile officer;
- (6) The youth presenter;
- (7) The institution, agency, or person vested with the legal custody of the youth or responsibility for protective supervision; or
- (8) The Youth Court on its own motion.

3-3-1302. Hearing to modify, revoke, or extend disposition order. A hearing to modify, revoke, or extend the disposition order shall be conducted according to Part 12 of this Chapter.

3-3-1303. Automatic termination of disposition order. All disposition orders shall automatically terminate when the youth reaches eighteen (18) years of age. Unless otherwise ordered by the Youth Court the disposition order shall not, however, extend beyond the youths nineteen (19) birthday. The records concerning the youth shall be destroyed according to Section 3-3-1403.

Part 14

Youth Records.

3-3-1401. Youth Court records. A record of all hearings under this code shall be made and preserved. All Youth Court records shall be confidential and closed to inspection by the general public as set forth in Section 3-3-304. For the purposes of this Code, only the following persons are “authorized persons” and permitted access to the case files for authorized uses:

- (1) The Youth Court personnel directly involved in handling of the case;
- (2) The youth and his/her attorney or advocate; or
- (3) Any other person by order of the Youth Court; having a legitimate interest in the particular case or the work of the Youth Court.

3-3-1402. Law enforcement records. Law enforcement records and files concerning a youth shall be kept separate from the records and files of adults. All youth law enforcement records shall be confidential and shall not be open to inspection to any but the following:

- (1) Law enforcement personnel directly involved in the handling of the case;
- (2) The Youth Court personnel directly involved in handling of the case; or
- (3) Any other person by order of the Youth Court; having a legitimate interest in the particular case or the work of the Youth Court.

3-3-1403. Disposition of records. Youth Court and law enforcement records shall be sealed when the youth reaches the age of eighteen (18), unless the case is an on going case. Youth records shall be destroyed three (3) years after jurisdiction over the youth ends. After that time the Youth Court personnel shall respond to all record inquiries as if no records ever existed.

Part 15

Youth Appeals.

3-3-1501. Who can appeal. Any party to a Youth Court hearing may appeal a final Youth Court order, including all transfer, adjudication and/or disposition order, except that the Tribe cannot appeal an adjudication order.

3-3-1502. Stay of order or disposition by appeal. Upon application to the Youth Court, a final order or disposition of a hearing may be stayed by such appeal.

3-3-1503. Conduct of proceedings. All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure so long as those provisions are not in conflict with the provisions of this Chapter.