



PUEBLO OF ISLETA

P.O. BOX 1270
ISLETA, NM 87022

PUEBLO OF ISLETA Resolution No. 2015 – 011

Amending the Children's Code to Add Language Regarding Grandparents' Rights

The following resolution was passed at a duly called meeting of the Tribal Council of the Pueblo of Isleta:

WHEREAS, the Pueblo of Isleta is a federally recognized Indian tribe with a written Constitution adopted pursuant to the Indian Reorganization Act and with inherent powers of self-government;

WHEREAS, Article V, Section 2(e), authorizes the Pueblo of Isleta to "enact ordinances to protect the peace, safety, property, health and general welfare of the members of the Pueblo of Isleta;"


WHEREAS, grandparents play an important role in the care and raising of their grandchildren and Pueblo of Isleta law should reflect this value;

WHEREAS, the Tribal Council finds it is in the best interest of the Pueblo of Isleta to amend the Children's Code to add language giving grandparents rights to access to their grandchildren.

NOW THEREFORE BE IT RESOLVED, that the Children's Code is amended as shown in the attached document.

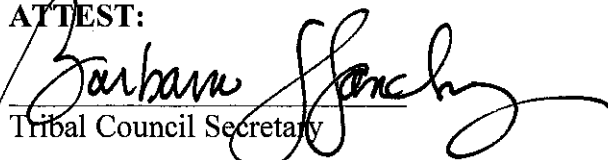
CERTIFICATION

We, the undersigned officials of the Pueblo of Isleta, hereby certify that the foregoing Resolution was duly adopted by the Pueblo of Isleta Tribal Council at a regular meeting held on the 13th day of February 2015, with a quorum present, with 6 voting for, 0 opposing, and 1 abstaining.


Tribal Council President


Pueblo of Isleta Governor

ATTEST:


Tribal Council Secretary

CHILDREN'S CODE

Pueblo of Isleta

32-01 ESTABLISHMENT AND JURISDICTION

32-01-01. Purpose.

It is the purpose of this Children's Code to secure for each child coming before the Tribal Children's Court such care, guidance, and control, preferably in his own home as will serve their welfare and the best interests of the Pueblo of Isleta Tribe; to preserve and strengthen family ties wherever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to secure for any child removed from their home the care, guidance and control as nearly equivalent as that which they should have been given by the parents to help them develop into responsible, well-adjusted adults, and to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking.

A. The Pueblo of Isleta is a federally recognized Tribe of Indians organized under a Constitution adopted in 1947, revised on February 23, 1970, and October 20, 1990, pursuant to the provisions of the Indian Reorganization Act of 1934, *48 Stat. 984, 25 U.S.C. §§ 461 et seq.*, as amended.

B. The Pueblo of Isleta recognizes that its children are its most important resource. It is the policy of the Pueblo of Isleta to prevent the break-up of families and provide for the specific welfare of the Community pursuant to its powers delegated under Article V, Section 2(e) of the Pueblo of Isleta Constitution through enactment of this Code.

32-01-02. Liberal Construction.

This Code shall be liberally construed to effect the purposes stated in the Indian Child Welfare Act of 1976, *P.L. 95-608, 25 U.S.C. §§ 1901, et seq.*

32-01-03. Children's Court.

A. There is established a Children's Court exercising jurisdiction over enrolled children or Indian children domiciled within the jurisdiction of the

Pueblo of Isleta. The Isleta Tribal Court shall constitute the Children's Court until such time that a specific and separate Court is fully established.

B. The Pueblo of Isleta Tribal Court shall exercise the powers of the Children's Court in special proceedings designated as: 'In the Interest of _____, an Indian Child.'

C. The Children's Court shall be organized pursuant to the provisions of this Code.

32-01-04. Jurisdiction of the Children's Court.

A. The Children's Court shall have exclusive, original jurisdiction of all proceedings brought under this Code for any Indian child within the jurisdiction of the Pueblo of Isleta.

B. The Children's Court shall have exclusive, original jurisdiction over the following proceedings:

1. Termination of parental rights;
2. Adoption of a Pueblo of Isleta Child;
3. To determine legal custody of any Pueblo of Isleta child or to appoint a guardian of the person or legal custodian of any child who comes within the Children's Court jurisdiction.
4. To determine whether a child is a Child in Need of Care.
5. To determine proper placement, if necessary, for a child adjudicated by the Court to be a Child in Need of Care.
6. To determine the proper care and services for a child adjudicated by the Court to be a Child in Need of Care.
7. For the placement or treatment of a developmentally disabled or mentally ill child who comes within this Court's jurisdiction
8. To determine the proper care and services for a child determined to be truant or habitually truant.

9. Proceedings transferred to the Tribe pursuant to the Indian Child Welfare Act, 25 U.S.C. 1901, *et seq*, hereinafter "ICWA."
10. Proceedings to determine whether a child is delinquent and the proper care and services needed for the child.

C. Jurisdiction obtained by the Children's Court over a child is retained until terminated by any of the following situations:

1. The child becomes an adult.
2. A Court Order expires.

32-01-05. Indian Child Welfare Act Transfers from State Courts.

Pursuant to ICWA, 25 U.S.C. §1911B., any state Court may transfer to the Children's Court herein, any proceeding for the foster care placement of, or termination of parental rights to, any Indian Child who is a member or eligible for membership in the Pueblo of Isleta, if Isleta Social Services finds that the transfer would not be detrimental to the best interests of the child.

32-01-06. Procedures for Transfer from Other Courts.

A. Notice. The tribal agents for service of Notice of other tribal and state Court child custody proceedings as required by the Indian Child Welfare Act shall be: the Social Services Director, his or her specific designee.

B. Intervention. The Tribe's representative responsible for ICWA, if directed by the Children's Court or a parent, shall move to intervene with the state or other Tribal Court without delay.

C. Investigation and Pre-transfer Report. The Social Services shall have the authority to investigate and advise as to whether an intervention and/or transfer is appropriate to protect the interests of the child or the Tribe.

D. Decision to Transfer. The Social Services shall make a written recommendation to the Tribe's Attorney or Advocate responsible for ICWA or shall petition the Court on its own on whether or not the Tribe should Petition for transfer from state or other tribal courts. The following factors shall be considered:

1. The best interests of the child;
2. The best interests of the Tribe;
3. The availability of services for the child and his/her family;
and
4. Whether any prospects for permanent placement of the child exist.

E. Petition for Transfer. The Tribe's Petition for Transfer shall be filed by the Tribe's Attorney, Advocate responsible for ICWA or Social Services Director without delay upon receipt of recommendations.

F. Acceptance of Transfer. The Children's Court has discretion whether to accept or deny Transfer and may accept a Transfer from other tribal or state courts if:

1. A parent or Indian custodian's Petition for Transfer to other tribal or state courts is granted;
2. The Tribe's Petition for Transfer to other tribal and/or state courts is granted.

G. Hearings. Upon receipt of Transfer of Jurisdiction from other tribal or state courts, the Pueblo of Isleta Children's Court shall hold appropriate hearings in accordance with this Code.

32-01-07. Personnel Responsible for Enforcement of this Code.

A. Attorney or Advocate responsible for Tribe: This individual shall represent the Tribe in all proceedings under this Code and such person shall be designated by the Office of the Governor unless the Tribal Council resolves otherwise;

B. Social Services Director: This individual or his or her designee shall be responsible for investigation of all matters within the purview of this Code and shall be the Tribe's Court Officer in court actions. This employee of the Tribe shall be responsible for providing quarterly reports to the Governor's Office regarding the general number of cases investigated, the disposition of cases, the available community resources, the need for additional resources, and

any other pertinent information necessary for the execution of this Code. This person may be required to appear as the Tribe's advocate as needed.

C. Truancy Officer: This individual or his or her designee shall be responsible for enforcement of compulsory education for children as enumerated in the authorization language for his or her position.

D. Children's Intervention Officer: This individual or his or her designee shall be responsible for enforcement of the delinquency portion of the Code as enumerated in the authorization language for the creation of his or her position.

E. Clerk of Court: The Clerk of Court of the Pueblo of Isleta shall be responsible for maintaining all records of the Children's Court separate from other Court records and such records shall remain sealed unless ordered by the Court to be opened.

F. In performing the duties set forth in this Code, all personnel shall identify, seek out, and recommend development of resources in the community for the Governor's Office and the Tribal Council.

32-01-08. Records.

A. The Clerk of Court shall be responsible for maintaining all records of the Children's Court separate from other Court records.

B. Records of the Children's Court shall remain sealed and confidential and the information contained within them shall not be released except upon Petition to the Court and a showing of good cause.

32-01-09. Position of Truancy Officer

A. The Pueblo of Isleta hereby establishes within the Department of Education the Position of Truancy Officer.

B. Such Truancy Officer shall be directly accountable to the Director of the Department of Education.

C. The Truancy Officer shall have the responsibilities and duties enumerated herein:

1. Enforce provisions of the compulsory school attendance laws for all children residing and going to school within the exterior boundaries of the Pueblo of Isleta Reservation and children who are enrolled members of the Tribe who reside within Bernalillo and Valencia Counties. Enter into contracts with students and parents to defer court referral.
2. Investigate cases of excused and excessive absences, tardy slips, and suspected dropouts. Investigation shall include conferring regularly with teachers, counselors, principals, and other staff to identify problems of tardiness, attendance, student truancy, and students at risk of dropping out, conduct home visits and parent conferences on student truancy and attendance problems, and require attendance at meetings at his or her office.
3. Issue warnings, file complaints against students, parents, or guardians in accordance with compulsory attendance laws and school board policies, make referrals for prosecution to Court as appropriate and represent the Tribe's interests in Court hearings and provide evidence at such proceedings as necessary.
4. Develop relationships with students and families and make reasonable effort to gain their cooperation to improve attendance, interpret and communicate compulsory attendance laws and school board policy to parents and students, and counsel students at risk of dropping out as well as their parents or guardians.
5. Maintain contact and act as liaison with the local School Districts and law enforcement agencies and Court within the areas herein enumerated.
6. Compile and maintain and file all physical and computerized reports, records, and other documents required including records of all cases investigated and reported.
7. Develop education plans and programs for children who have been expelled from school and enforce such plans as deemed necessary.

8. Enforce the Tribe's laws.
9. Enforce the Department of Education's agreements and policies.
10. Prepare reports to the Governor and the Tribal Council regarding the attendance records and the progress of the students within his or her purview.

32-01-10. Position of Children's Intervention Officer.

A. The Tribal Council hereby creates the position of the Children's Intervention Officer within the tribal court/children's court.

B. The Children's Intervention Officer shall exercise the following duties and responsibilities:

1. Make case referrals for services as appear appropriate or desirable.
2. Make pre-dispositional studies and assessments and submit reports and recommendations to the Court regarding all aspects of any disposition affecting a delinquent child.
3. Supervise and assist children placed upon Juvenile probation or otherwise under the supervision of the Court.
4. Notice children of the sealing of their juvenile delinquency record upon reaching the age of majority.
5. Identify an Indian child for the purposes of contacting the Indian child's tribe in delinquency cases and consulting and exchanging information with such tribe endeavoring to provide appropriate recommendations for supervision of the child or removal from the home environment.

C. The Children's Intervention Officer may take a child under his or her supervision into custody and/or place the child in detention if he or she has reasonable cause to believe a child has violated any laws, conditions of the child's dispositional order, or the child may leave the jurisdiction of the Court. Any such

infringement upon the child's liberty interest shall be subject to the procedures enumerated within this Code

32-01-11. Severance.

If any provision, paragraph, or Section of this Code is deemed unconstitutional, such provision, paragraph, or Section shall be severed and the remainder shall stand without such provision, paragraph, or Section.

32-01-12. Repeal and Rescission.

Any resolution, code, law, or statute which is inconsistent with this Code is hereby repealed.

32-01-13. Rules and Regulations.

The Tribal Council is authorized to promulgate rules and regulations to enforce this Code provided such rules and regulations are Noticed to the public for a thirty-day (30) comment period with publication in the Tribe's newspaper.

32-01-14. Budgeting of Funds.

The Tribal Council shall annually budget funds sufficient for the enforcement of this Code.

32-01-15. Closed Hearing.

The Fact-Finding Hearing and all hearings under this Code shall be closed to all persons except interested parties, attorneys, witnesses, and advocates.

32-02 DEFINITIONS

32-02-01. Definitions.

A. In this Children's Code, the following words are defined according to this Section:

1. **"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 the parental role for a period exceeding six (6) months.

2. “**Abuse**” means an act or omission that seriously threatens the health or welfare of a child in one of the categories as follows:
- (a) The physical, emotional, or psychological abuse of a child by a parent, guardian, or legal custodian;
 - (b) Physical injury inflicted on a child by other than accidental means. This may include but is not limited to skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death;
 - (c) Any case in which a child is subjected to criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law, assault, or molestation;
 - (d) Sexual exploitation by a parent, guardian, or legal custodian through allowing, permitting, or encouraging the child to engage in prostitution and/or allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming, or depicting a child for commercial purposes;
 - (e) That a child has been knowingly, intentionally, or negligently placed in a situation that may endanger the child's life or health;
 - (f) That a child has been knowingly or intentionally tortured, cruelly confined, or cruelly punished, provided that nothing in this subsection shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or tribal religious practices, by a duly accredited practitioner of the church or tribe is, for that reason alone, a victim of child abuse within the meaning of this subsection.

- (g) Any case in which the child's parents, guardians, or legal custodians fail to take appropriate actions to provide adequate food, clothing, shelter, or supervision;
 - (h) Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused, or been unable to ameliorate the symptoms.
3. **"Adult"** means a person eighteen (18) years of age or older.
 4. **"Capias"** means a writ commanding law enforcement to bring an individual to the Court for a specific case.
 5. **"Child"** means a person under the age of eighteen (18) years of age.
 6. **"Child in Need of Care"** means a child:
 - (a) Who has no parent, guardian, or custodian available or willing to care for him or her; or
 - (b) Who has not been provided with adequate food, shelter, clothing, medical care, or education necessary for the child's health or well being; or
 - (c) Whose parent, guardian, or custodian has knowingly, intentionally, or negligently subjected the child to cruel and inhumane treatment or placed the child in a situation that seriously endangers his or her life or health; or
 - (d) Who is without proper parental care and control or supervision because of the neglect, disappearance, or the prolonged absence of the child's parent, guardian, or custodian; or
 - (e) Whose parents, guardian, or custodian are unable to provide for the child because of their incarceration or hospitalization for a physical or mental condition; or

- (f) Who has been sexually abused by his or her parent, guardian, or custodian; or
 - (g) Who has been placed in custodial care for violation of the law resulting from parental pressure, guidance, or approval; or
 - (h) Who, being subject to compulsory school attendance, is habitually truant from school, or
 - (i) Who habitually disobeys the reasonable and lawful orders of his parent, guardian or custodian and is ungovernable and beyond their control, or
 - (j) Due to the child's mental state is a danger to him or herself or others.
7. **"Children's Court"** means the Pueblo of Isleta Tribal Court when exercising jurisdiction over children alleged to be Children in Need of Care/Services.
8. **"Social Services Intake Worker Investigator"** or Social Services Director means a person employed by the Pueblo of Isleta to carry out the duties, objectives, and provisions of the Children's Code. The Social Services Intake Worker Investigator shall work in the Social Services Department. Subject to the limitations of this Code, the Social Services Intake Worker Investigator shall have the authority and duty to:
- (a) Receive and examine complaints and allegations that a child is a Child in Need of Care for the purpose of determining the appropriate proceedings under the Children's Code;
 - (b) Make investigative reports and recommendations to the Court;
 - (c) Make appropriate referrals of cases to other agencies if the assistance of these agencies appears to be needed or desirable except that there shall be no referral to a state governmental agency without

advanced approval in writing from the Judge of the Children's Court.

- (d) Identify and develop resources in the community;
 - (e) Make pre-disposition reports and recommendations to the Court;
 - (f) Supervise and assist a child placed on probation;
 - (g) Shall not testify against a child in a proceeding under this Code or in any Adjudicatory Hearing;
 - (h) Shall not be employed as or perform duties of a prosecutor or a law enforcement official for the community or elsewhere while acting as a Social Services Intake Worker Investigator/Director.
9. **"Counsel"** means a person who has been recognized by the Children's Court as qualified to act as an advocate and represent individuals in proceedings before the Children's Court.
10. **"Custodian"** means a person other than a parent or legal guardian to whom legal custody has been given by Order of the Children's Court or any other court of competent jurisdiction.
11. **"Custody"** means the status created by Order of the Children's Court or any other court of competent jurisdiction that vests the following rights and responsibilities:
- (a) The right to have physical custody of the child. If physical custody is not with the person having legal custody, it shall be as determined by the Court;
 - (b) The right and the duty to protect, train, and discipline the child; and/or
 - (c) The responsibility to provide the child with food, shelter, education, and medical care provided that

such rights and responsibilities shall be exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person or subject to any existing parental rights and responsibilities if they have not been terminated by judicial decree. In an emergency, a custodian shall have the authority to consent to surgery or other medical care.

12. “**Delinquent Act**” means the status of having committed a violation of the Tribe’s Law and Order Code, the Traffic Code, or other violation of law by a child.
13. “**Delinquent Child**” means the status a minor receives after having been adjudicated to have committed a delinquent act.
14. “**Detention Facility**” means a place where a child may be detained under the Children’s Code pending a Court hearing and does not include a facility for the care and rehabilitation of an adjudicated child.
15. “**Dispositional Hearing**” means a hearing to determine what Order of Disposition should be made concerning a child adjudicated as a Child in Need of Services. A Dispositional Hearing follows the Preliminary Hearing if the parent, guardian, or custodian agrees to the allegations in the Petition. If the parent, guardian, or custodian does not agree to the allegations in the Petition, the Dispositional Hearing follows the Fact-Finding Hearing.
16. “**Emergency placement**” means a hospital, foster home, or other community placement that a child alleged to be a Child in Need of Services is placed in prior to a Dispositional Hearing on the Petition. A child may be placed in emergency placement with or without a Court Order.
17. “**Foster Care Home**” means a facility licensed and approved pursuant to Tribal requirements. If such a facility is located outside of the Tribe’s jurisdiction, it shall be

licensed or approved as required by the jurisdiction in which the facility is located.

18. **“Guardian”** means a person who legally has the care and management of the person or the estate or both, of a child during the child's minority.
19. **“Grandparent”** means a person who is:
- (a) Related to a child either biologically or through adoption, as
 - (1) The parent of the child's parent (grandparent);
 - (2) The great-grandparent of a child;
 - (3) The great-aunt or great-uncle of the child;
 - (b) The godparents of the child; or
 - (c) The witnesses at the traditional wedding of the child's parents.

The termination of a parent's parental rights does not affect the relationships defined above.

20. **“Guardian ad litem”** means a person assigned by the Court to represent the best interests of the child.
21. **“Immediate Family Member or Immediate Relative”** means a spouse, parent, child, sibling, grandparent, grandchild, whether by blood or adoption, legal relation, or household member.
22. **“Indian child”** means a child who is a member of a tribe or band that is acknowledged to exist as a tribe or a band by the United States Secretary of the Interior, or a child who is eligible for such membership or who is the natural child of at least one parent who is a member or eligible for membership under this Code.
23. **“Least restrictive alternative”** means a directive to the Children's Court to select 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. The policy of keeping the child in his/her domicile shall be favored, if possible, as it is the least restrictive alternative of all dispositional outcomes.

24. **"Neglected child"** means a child:

- (a) Whose parent, guardian, or legal custodian has abandoned him/her or whose parent, guardian, or legal custodian suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuses and prevented it from recurring;
- (b) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;
- (c) Whose environment is injurious to his/her welfare;
- (d) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his/her health, guidance, or well-being.

25. **"Non-marital child"** means a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but is not the issue of the marriage.

26. **"Parent"** means a person who is legally responsible for the control and care of the minor, including a birth or adoptive parent, but not including persons whose parental rights have been terminated, nor does it include the putative father whose paternity has not been acknowledged or established. A parent inherently has the powers of a custodian or guardian unless otherwise determined by the Court of the Pueblo of Isleta or other Court.

27. **“Parent/child relationship”** means and includes all rights, privileges, duties and obligations existing between the parent and child.
28. **“Protective supervision”** means a legal status created by Court Order under which the child is permitted to remain in his/her home or is placed with an extended family member or other suitable person and supervision and assistance is provided by the Court, the Tribal Social Services department, or any other agency designated by the Court.
29. **“Putative father”** means an un-adjudicated father of a child.
30. **“Restitution”** means monetary reimbursement to the victim of a delinquent child for the actual loss incurred. This does not include pain and suffering or mental anguish. This may include community service or other work of value.
31. **“Shelter care”** means a foster home or institution maintained by individuals or organization(s) licensed to receive and to care for or control children taken into protective custody or pending medical examination and Court disposition.
32. **“Substantiated”** means the information asserted is more probable than not and the information is reliable.
33. **“Termination of parental rights”** means the permanent elimination by Court Order of all parental rights and duties. Termination of Parental Rights shall be abbreviated as TPR.
34. **“Truant”** means a child who is absent from school in violation of this Code.
35. **“Unsubstantiated”** means the information asserted is not reliable and no corroborative information exists.
36. **“Ward of the Court”** means a status declared by the Court in the absence of the appointment of a guardian or custodian. The Court shall be possessed with those powers

over which a guardian or custodian possess according to this Code. The child shall only be deemed a Ward of the Court as a last resort and such status as a Ward of the Court shall be temporary.

32-02-02. General Provision of Language of the Children's Code.

Any term utilized which is not defined within this Section shall be defined by other Sections of the Code of the Pueblo of Isleta, the United States Code, and in the absence of a definition within one of those Codes, the New Mexico Statutes.

32-03 GENERAL PROCEDURES AND RIGHTS

32-03-01. Rights of the Parties.

- A. Individuals subject to this Code are entitled to all the Rights enumerated in the Pueblo of Isleta Constitution, Article III, and shall be advised of those Rights.
- B. Individuals subject to this Code are entitled to due notice of all hearings.
- C. No child suspected or alleged delinquent shall be interrogated or questioned without first advising the child of his or her Rights under the Pueblo of Isleta Constitution and an intelligent and knowing Waiver of Rights in writing.
- D. Before a child's confession is admissible in a Court proceeding, the Tribe must prove that the confession was knowingly, voluntarily, and intelligently given. The Court will consider the age and education of the child, the custody status of the child, the manner of the advising of Rights, the length of and circumstances surrounding the questioning, the room or place of questioning, the time of day and the treatment the child received at questioning, the mental and physical condition of the child at questioning, and whether an adult was present with him or her at the questioning.
- E. The child's confession is insufficient for a delinquency finding without external Evidentiary corroboration.

32-03-02. Contents of Petition.

A. Petitions initiating proceedings under the Children's Code shall contain the following:

1. The name of the person making the report;
2. A plain and concise statement of facts upon which the allegations are based, including the dates, times, and locations at which the alleged acts occurred;
 - (a) Children in Need of Care, TPR's, and Truancy actions must have a prima facie showing of proof of the cause of action; and
 - (b) Delinquency actions must have a probable cause showing of proof of a delinquent act.
3. An attached statement by Social Services or the person conducting the investigation as to the information gained upon investigation;
4. The child's name, date of birth, and present location; and
5. The names and physical and mailing addresses of the child's parent, grandparents as defined in this Ordinance, and guardian or custodian.

32-03-03. Filing of Petition.

The Social Services, Children's Intervention Officer, Truancy Officer, or other designated Tribal Advocate shall file the Petitions with the Clerk of Court.

32-03-04. Summons: Service.

A. After a Petition is filed, the Court shall fix a time for a hearing and shall direct the issuance of Summonses.

B. A Summons shall be issued to the child's parent(s), guardian, or custodian and, if the child is currently in an out-of-home placement, to the foster parent or shelter care facilitator, the child, or legal guardian. This Summons shall require each person to appear before the Court.

C. Any Notice for an Initial Hearing under this Chapter shall be by personal service or certified mail. All other Notices may be by standard mail.

D. If a parent is unable to be located under this Subsection, authorization to provide Notice by publication may be authorized by Children's Court.

E. Any party filing a Motion must provide service to the opposing party by mail in accordance with the time limits in this Code.

32-03-05. Contents.

A. The Summons shall direct the person to who it is addressed to appear at a date, time, and place specified by the Children's Court and shall:

1. Identify the nature of the hearing;
2. Include a prominent section stating that the hearing could result in the preliminary groundwork for a Termination of Parental Rights; and
3. Have a copy of the Petition attached to the Summons.

32-03-06. Timing of Service.

A. A Summons shall be served and received at least five (5) days before an Initial Hearing;

B. A Summons shall be served fourteen (14) days before hearing a Petition to Terminate Parental Rights; and

C. If service is by publication, the published notice shall appear in a newspaper where the respondent lives or in a newspaper in the county where the party's last known address was. The published Notice must appear two times within the fourteen days before the hearing.

D. A party may waive the Notice requirement on the record.

32-03-07. Notice of Hearing.

A. The Children's Court shall ensure that the following persons are notified of each hearing:

1. The parent or parents, grandparents as defined by this Ordinance;
2. The attorney for the parents;
3. The child's advocate or guardian-ad-litem;
4. If applicable, the legal guardian or custodian of the child;
5. The agencies involved with the child such as the Social Services Department; and
6. Any other person the Children's Court may direct to be notified.

32-03-08. When a Party Fails to Appear.

- A. When a party fails to appear in response to a Notice of Hearing, the Court may Order dependency by default.
- B. The Court may issue a Capias for the person who fails to appear.
- C. The Court may initiate an Order to Show Cause why such person should not be found in Contempt.

32-03-09. Waiver of Service.

A person may waive Notice of Hearing or Service of Process. The waiver shall be in writing or by verbal colloquy on the record of the proceedings.

32-03-10. Putative Fathers.

- A. When the Children's Court determines that the child has no adjudicated father, the Court shall take appropriate action as described in this Subsection.
- B. The Children's Court shall take initial testimony on the tentative identity and address of the birth father. Upon the conclusion of such testimony, the Children's Court shall direct that Notice be served upon that person in the manner provided in this Section. The Notice shall include the following information:

1. That a Petition has been filed with the Pueblo of Isleta Tribal Court;
2. The date, time, and place of the hearing at which the putative father is to appear; and
3. A statement that failure to attend the hearing will constitute a denial of interest in the minor, a Waiver of Notice for all subsequent hearings, a waiver of right to an appointment of an attorney, and could result in the termination of any parental right.

C. If the Court determines the putative father has been personally served or served in some other manner which the Court finds to be reasonably calculated to provide notice to the putative father, the Court may proceed in the absence of the putative father.

32-03-11. Evidentiary Matters.

A. Formal Rules of Evidence shall apply at procedures under this Code. The Tribe adopts the Federal Rules of Evidence. All relevant and material evidence, which is reliable and trustworthy may be admitted and may be relied upon by the Court to the extent of its probative value.

B. The Court shall rely on the Federal Rules of Evidence for all interpretive issues and standards to be applied.

C. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

32-03-12. Evidence for Dispositional Hearings.

A. All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of their probative value even though such evidence may not be admissible at trial. The Court shall consider the Case and Service Plans and any report by an agency responsible for the care and supervision of the child concerning reasonable efforts to prevent removal or to rectify conditions that caused the removal of the child from the home.

B. The parties shall be given an opportunity to examine and controvert written reports so received and may be allowed to cross-examine individuals making reports when such individuals are reasonably available.

C. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a Court-Ordered examination, interview, or course of treatment.

32-03-13. Burden of Proof for Proceedings Pursuant to this Code.

A. If the allegations in the Petition are sustained by a standard of clear and convincing evidence, the Children's Court shall find the child to be a Child in Need of Care or that the child is a Truant Child and schedule a Dispositional Hearing. The Court may also enter Orders of further discovery, evaluation and assessment, and other Orders to protect the child.

B. If the allegations in the Petition are sustained by a standard of beyond a reasonable doubt, the Children's Court shall find the child to be a Delinquent Child or that the parental rights shall be terminated and shall schedule a Dispositional Hearing. The Court may also enter Orders of further discovery, evaluation and assessment, and other Orders to protect the Child.

C. If the allegations of the Petition are not sustained, the Court shall dismiss the matter.

32-03-14. Guardian-Ad-Litem.

The best interests of the child shall be represented by a guardian-ad-litem appointed by the Court for Children in Need of Care and Termination of Parental Rights. The Guardian-Ad-Litem shall represent the best interests of the child.

32-03-15. Motions Before Fact-finding.

A. Any issue which may be determined prior to trial shall be brought prior to trial.

B. All defects and challenges to jurisdiction, proceedings, probable cause, insufficiency of the evidence, or invalidity of the case shall be raised at least twenty (20) days before fact-finding or be deemed waived.

C. All Motions in Limine and to suppress shall be brought at least two (2) days prior to fact-finding.

D. If the Court issues an Order to Dismiss a Petition, the child may be detained for up to seventy-two (72) hours pending the re-filing of a Petition.

E. Oral arguments on any Motion may be heard by telephone.

32-03-16. Plea Hearings.

A. All actions pursuant to this Code shall have a Plea Hearing at the Initial Appearance before the Court. If a person is in custody pursuant to this action, the Court must hold the plea hearing within ten (10) days of arrest.

B. All parties to the action must enter an admission or denial to the action. If all parties enter an admission, the matter shall proceed to Disposition within thirty (30) days of the admissions. If any party enters a denial, the matter shall be scheduled for fact-finding not more than sixty days from the date of arrest or from the date of Initial Appearance, whichever is earlier.

C. All parties to the action shall be advised of their rights at the Plea Hearing, including their rights to a jury trial for fact-finding and shall be advised of the time lines for demand of such jury trial and limitation on the scope of the jury trial.

32-03-17. Continuances and Delays of Proceedings.

A. Any time necessary to evaluate the mental health or the competency of a party to an action shall not be considered in the time calculations of any actions.

B. The Court may grant a continuance upon a pleading of good cause by any party, such good cause shall include the physical or mental health of any party the amount of discovery necessary in an action, or other community issues which may delay the action.

C. The unavailability or failure of a party to respond to a Summons shall toll the time limits in all actions pursuant to this Code.

32-03-18. Discovery.

A. The Tribe's counsel or other representative shall provide Discovery to the respondent at least twenty (20) days before trial. The Tribe's counsel or other representative shall provide the parties copies of all documentary evidence within his or her control. Such information shall include:

1. The names and addresses of all persons whom the Tribe will call as witnesses in the case-in chief together with their relevant written or recorded statements;
2. All statements of the parties, witnesses, or the alleged delinquent as recorded, written, or videoed;
3. The names and addresses of experts who have personally examined the respondent or any evidence in the particular case, together with the results of physical examinations and of scientific tests, experiments, or comparisons including all written reports and/or statements made by them in connection with the particular case;
4. A list of all papers, documents, photographs, or tangible objects which the Tribe will use at trial or which were obtained from, or purportedly belong to, a party;
5. All material or information.

B. **Possible Collateral Issues.** At the same time, the Tribe shall inform the parties and make available to any party for examination and reproduction any written or recorded material or information within his or her possession or control regarding:

1. Whether there has been any electronic surveillance of any conversations to which any party was a party or of his or her business or residence;
2. Whether a Search Warrant has been executed in connection with the case;
3. Whether or not the case has involved an informant, and if so, his or her identity; provided, however, that disclosure of the existence or identity of an informant who will not be called to testify shall not be required where disclosure or identification would result in substantial risk to the informant or to his or her operational effectiveness, unless the failure to disclose will infringe upon the rights of the

accused under the Tribe's Constitution or the Indian Civil Rights Act.

C. **Additional Disclosure Upon Request and Specification.** The Tribe shall disclose to the respondent a list of the prior criminal convictions of a specified witness which the Tribe will use to impeach the witness at trial and make available to the parties for examination, testing, and reproduction any specified items contained in the list submitted under this Section.

D. The Tribe may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this Section.

E. **Extent of Tribe's Duty to Obtain Information.** The Tribe's obligation under this Section extends to material and information in the possession or control of members of its staff and or any other persons who have participated in the investigation or evaluation of the case and who are under the Tribe's control.

F. **Disclosure by Order of the Court.** Upon Motion of a party and a showing of substantial need in the preparation of his or her case for additional material or information not otherwise covered within this Section and that the party is unable, without undue hardship, to obtain the substantial equivalent by other means, the Court, in its discretion, may Order any person to make the requested material or information available to the party. The Court may, upon the request of any person affected by the Order, vacate or modify the Order if compliance would be unreasonable or oppressive.

G. **Disclosure of Rebuttal Evidence.** Upon receipt of the Notice of Defenses required from a party under the Section entitled "Disclosure by the Parties," the Tribe shall disclose the names and addresses of all persons whom the Tribe will call as rebuttal witnesses together with their relevant written or recorded statements.

32-03-19. Disclosure by Parties.

A. **Notice of Defenses.** At least fifteen (15) days prior to trial, the respondents shall provide the Tribe with written Notice specifying all defenses as to which he or she will introduce evidence at trial, including, but not limited to: alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity and good character of the accused. The Notice

shall specify for each defense the persons whom the respondent will call as witnesses at trial in support thereof. The Notice shall be signed by the respondent, if pro se, or by defense counsel if the respondent is represented. A copy of the Notice shall be filed with the Court and served upon all the parties to the action.

C. **Disclosures by Respondent.** Simultaneously with the Notice of Defenses submitted under this Section, the respondent shall make available to the Tribe for examination and reproduction:

1. The names and addresses of all persons other than the respondent, whom the defense will call as witnesses at trial, together with all statements made by them in connection with the particular case;
2. The names and addresses of experts to be called by the respondent at trial, together with the result of physical examinations and of the scientific tests, experiments, or comparisons, including all written reports and statements made by them in connection with the particular case; and
3. A list of all papers, documents, photographs, and other tangible objects which the defense will use at trial.

D. **Additional Disclosure Upon Request and Specification.** The respondent, upon written request, shall make available to the Tribe for examination, testing, and reproduction any specified items contained within this Section.

E. **Extent of Respondent's Duty to Obtain Information.** The respondent's obligation under this Code extends to material and information within the possession or control of the respondent and his or her defense counsel and/or agents.

F. **Disclosure by Order of the Court.** Upon Motion of the Tribe showing that it has substantial need in the preparation of the case for additional material of information not otherwise covered by this Section, that it is unable, without undue hardship, to obtain that substantial equivalent by other means, and that disclosure thereof will not violate the respondent's rights under the Tribe's Constitution or the Indian Civil Rights Act, the Court, in its discretion, may order any person to make such material or information available to the Tribe. The Court may, upon request of any person affected by the Order, vacate or modify the Order if compliance would be unreasonable or oppressive.

32-03-20. Excision and Protection Orders.

A. Discretion of Court to Deny, Defer, or Regulate Discovery.

Upon Motion of any party showing good cause, the Court may, at any time, order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five (5) days prior to the date set for trial, or that any other disclosures required by this Code be denied, deferred, or regulated when it finds:

1. That the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and
2. That the risk of harm cannot be eliminated by a less substantial restriction of discovery rights.

B. Discretion of the Court to Authorize Excision. Whenever the Court finds, on Motion of any party, that only a portion of a document or other material is discoverable under this Code, it may authorize the party disclosing it to excise that portion of the material which is non-discoverable and disclose the remainder.

C. Protective and Excision Order Proceedings. On Motion of the party seeking a Protective Order or Excision Order, or a determination of the discoverability of any material information, the Court may permit the party to excise that portion of the material which is non-discoverable and disclose the remainder.

D. Protective and Excision Order Proceedings. On Motion of the party seeking a Protective Order or Excision Order, or a determination of the discoverability of any material information, the Court may permit the party to present the material or information or the inspection of the Judge outside of the presence of the jury. Counsel for all other parties shall be entitled to be present when such presentation is made.

E. Preservation of Record. If the Court enters an Order that any material, or any portion thereof, is not discoverable under this Code, the entire text of the material shall be sealed and preserved in the record to be made available to the Court of Appeals in the event of an appeal.

32-03-21. Continuing Duty to Disclose.

If at any time after a disclosure has been made, any party discovers additional information or material, which would be subject to disclosure had it

then been known, such party shall promptly notify all other parties of the existence of such additional material and make an appropriate disclosure.

32-03-22. Sanctions.

If, at any time during the course of the proceeding, it is brought to the attention of the Court that a party has failed to comply with any provisions of these discovery Rules or any other Orders issued pursuant thereto, the Court may impose any sanction which it finds just under the circumstances, including, but not limited to:

1. Ordering disclosure of the information not previously disclosed;
2. Granting a continuance;
3. Holding a witness, party, or counsel in Contempt of Court;
4. Precluding a party from calling a witness, offering evidence, or raising a defense;
5. Assigning cost to a party; and
6. Declaring a mistrial when necessary to prevent a miscarriage of justice.

32-03-23. Deferred Prosecution and Judgment Orders.

The Parties to any action pursuant to this Code may enter into deferred prosecution or judgment orders to fulfill the intent of the Code. The Court may enter any Order it deems serves the interests of justice.

32-03-24. Consent Decrees.

A. At any time after the filing of an action pursuant to this Code and before the entry of Judgment, the Court may suspend the action and permit the parties to enter into a Consent Decree. The Court may Order any provision it deems appropriate to fulfill the intent of the code and the best interest of the child.

B. The Consent Decree shall remain in effect for six (6) months unless extended upon Notice to the parties. The Court may revoke a Consent Decree if any party is failing to fulfill his or her duties under the Consent Decree. If the Consent Decree is revoked, the matter shall return to Court in the same procedural posture in which it was suspended.

32-03-25. Timing of the Fact-Finding Hearing.

A. The Children's Court shall conduct a Fact-Finding Hearing as enumerated by this Code to determine whether the allegations in the Petitions have been proven as required by the Burden of Proof Section of this Code.

B. The Fact-Finding may either be to the Court or a six-person jury at the Parties' request.

32-03-26. Continuance of Fact-Finding Hearing.

A. Continuances of Fact-Finding Hearings may be granted by the Court, but only:

1. Upon Stipulation of the parties;
2. Where Service of Process cannot be completed;
3. The Court finds that the testimony of a presently subpoenaed and unavailable witness is needed;
4. Upon a showing of good cause, one time only, for up to fourteen (14) days at a parents request so that the parent may obtain counsel; or
5. For other good cause shown.

32-03-27. Hearing Required for More Restrictive Placements.

If at any time a child subject to the jurisdiction of this Code is alleged to need more restrictive placement, the matter shall be set for hearing prior to the institution of the more restrictive placement.

32-03-28. Jeopardy.

A. Jeopardy attaches to actions pursuant to this Code when a witness is sworn at Fact-Finding or when the jury is sworn at Fact-Finding.

B. Jeopardy does not apply when the Court declares a mistrial.

32-03-29. Computation of Time.

A. In this Code, "Holiday" means any day which is designated a holiday by Tribal law.

B. When a period of time is referred to in this Code and the time prescribed or allowed is less than eleven (11) days, Saturdays, Sundays and Holidays shall be excluded from the computation.

C. When an act is required to be done at or within a specified time, the Judiciary (hereinafter referred to in this Code as the "Court") of the Tribe may order the period enlarged but only on Motion for Cause Shown and upon just terms. If the Motion is made after the expiration of the specified time, it shall not be granted unless the Court finds that the failure to act was the result of excusable neglect. The Order of Enlargement shall recite by its terms, or by reference to an affidavit in the record, the grounds for granting the Motion.

32-04 CHILDREN IN NEED OF CARE

32-04-01. Protective Custody Proceedings.

A. Charge to the Court. The Court may enter an Order directing that a child be removed from home if the Petition is filed with the Court alleging that the child is a Child in Need of Care and the Court finds probable cause to believe that the child is a Child in Need of Care.

B. Burden of proof for emergency removal of child. A child may be removed from home without a Court order by a Social Services Intake Worker Investigator, Truancy Officer or designee if there is probable cause to believe that the child is a Child in Need of Care and that:

1. Child abuse is occurring; or
2. The child is in imminent danger of abuse;
3. There is a likelihood that the child would be removed from the jurisdiction or hidden from the Court during the time it would take to secure a Court order;
4. The child is a danger to him or herself or others.

32-04-02. Taking a Child into Protective Custody.

A person who takes a child into protective custody pursuant to an emergency removal shall take the child to a hospital, foster home, or other community placement. The child shall remain in this emergency placement until such time that the Social Services or Truancy Officer or his or her designee finds more permanent protective custody for the child or the dispositional hearing occurs and a suitable placement is secured at that time and:

A. An initial hearing shall be set for no later than 72 hours after the child is taken into protective custody.

B. A person who takes a child into protective custody without a Court Order shall proceed as follows:

1. Unless the child necessitates immediate medical attention, the child is to be brought to the Social Service Office or the Police Department, depending on the availability of assistance.
2. The Social Services Worker shall screen the child for admission to foster care or other secure shelter care.
3. The Social Services Worker shall investigate the incident that led to the emergency removal of the child alleged to be in need of care. The Social Services Worker shall file a Petition or release the child from secure placement and file a Petition as needed within seventy-two (72) hours alleging that the child is a Child in Need of Care.
4. When appropriate, Restraining Orders shall be secured from the Tribe or the State in order to prevent contact between a parent and a child who is an alleged victim of abuse.
5. Appropriate referrals shall be made to Tribal, State and County law enforcement if any individual is suspected to be the abuser of a child alleged to be in need of care.

32-04-03. Criteria for Protective Custody.

A. Unless Ordered by the Court pursuant to the provisions of the Children's Code, a child placed into protective custody shall not be removed from the home placement prior to a Court disposition unless:

1. Probable cause exists to believe the child will commit injury to self, or subject injury to others, or cause damage to property of others; or
2. Probable cause exists to believe the child has no parent, guardian, or custodian able or willing to provide adequate supervision and care for him or her; or
3. Probable cause exists to believe the child will run away or be taken away so as to be unavailable for proceedings by the Court.

32-04-04. Hearing for Protective Custody.

A. If a child is brought into a protective placement or placed in shelter care, the Court shall hold a hearing on the removal of the child from his home within 72 hours of the out-of-home placement.

B. If the child's parent, guardian, or custodian is not present at the Hearing, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent or guardian. If it appears to the Court that further efforts are likely to produce the parent or guardian, the Court shall recess the case not more than 24 hours and direct the Social Services Worker or Truancy Officer or his or her designee to make continued efforts to obtain the presence of the parent, guardian, or custodian.

C. If the child is under 12 years of age, the child shall be provided with a guardian-ad-litem who shall advocate for the best interests of the child. If the child is at least 12 years of age, the child may be provided with counsel.

D. Before proceeding with a protective custody hearing, the Court shall:

1. Inform the child of the purpose of the hearing and determine whether the child understands the reason he or she is being placed out-of-home;

2. Explain the right to counsel to all parties substantially as follows: "You have a right to have an attorney represent you at your own expense;
3. Advise any parents, on the record, that such proceedings are the beginning of a process that may lead to a termination of parental rights.

32-04-05. Initiation of Proceedings.

A. Upon learning of the circumstances alleged in a report, the Social Services Worker or Truancy Officer or his or her designee shall initiate an investigation to substantiate the allegations.

B. An investigation may be initiated upon a report given by any person who has knowledge of the facts alleged or is informed of these facts and believes them to be true.

C. If the Social Services Worker or Truancy Officer or his or her designee learns that the allegations stated in the report are unsubstantiated, no Petition shall be filed regarding the children who are the subject of the report.

D. If the Social Services Worker or Truancy Officer or his or her designee discerns that the allegations stated in the report are substantiated and deems the child to be in need of services, he or she shall issue a Petition and file it with the Court.

E. In the event the Tribe utilizes a prosecutor for any action, the Social Services Worker or the Truancy Officer or his or her designee must refer the matter within thirty (30) days of the first report of incident to the prosecutor.

32-04-06. Prosecutorial Discretion.

A. The prosecutor has discretion whether to file Petitions forwarded.

B. A Petition must be filed within twenty (20) days of receipt of the request for Petition.

C. A Prosecutor may enter into a Deferred Prosecution Agreement with a party involved rather than file a Petition if the party is amenable to assistance.

D. The prosecutor may refer conduct for further investigation into the allegations stated in the Petition.

E. In the event that a request for Petition is referred back to the Social Services Worker or Truancy Officer or his or her designee this further investigation must be completed within twenty (20) days.

32-04-07. Timing and Purpose of Hearing.

A. If the child has been released to his/her parent or guardian, the Court shall conduct an initial appearance within twenty (20) days of the filing of the Petition.

B. If the child is placed in out-of-home placement or any protective custody, the Court shall conduct a Preliminary Hearing as soon as possible on the earliest date within ten (10) days following the placement for the purpose of determining:

1. Whether probable cause exists to believe that the child is a Child in Need of Care; and
2. Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, or mental well-being and whether any alternatives other than removal of the child are reasonably available to adequately safeguard the child from such risk;
3. Factors such as the outward signs of poverty shall not be used as evidence against the upbringing of a child;
4. To the extent possible, cultural differences in child-rearing practices shall be understood by Children's Court personnel and Child Protection Unit;
5. If the child's parent or guardian is not present at the preliminary hearing, the Children's Court shall make an inquiry into what efforts have been made to notify and obtain the presence of the parent or guardian. If it appears

that further efforts are likely to produce the child's parent or guardian, the Court shall recess the scheduled hearing for not more than ten (10) days and direct the Petitioner to make continued efforts to obtain the presence of the child's parent or guardian. The preliminary hearing may be conducted in the parent's absence if no parent appears.

32-04-08. Procedure.

A. The Social Services Worker, Truancy Officer or his or her designee, or Tribal Court Prosecutor shall read onto the record the allegations stated in the Petition in open Court, and shall advise the parent of the right to have counsel represent her/him, and the right to a fact-finding trial on the allegations of the Petition.

B. The Children's Court shall allow the parent to deny or admit the allegations and make a statement of explanation.

C. If the parents admit the allegations, a date for a dispositional hearing shall be set no later than twenty (20) days following the preliminary hearing.

D. If the parents deny the allegations, a Fact-Finding Hearing shall be set no later than thirty (30) days following the Preliminary Hearing.

32-04-09. Probable Cause Challenges.

A. The Court shall hear at the Initial Appearance testimony concerning the circumstances that gave rise to the Petition, and the need for continued placement or Court supervision.

B. If probable cause to believe that the child is a Child in Need of Care is not found, the Petition shall be dismissed.

C. If the Court finds that probable cause exists to believe that the child is a Child in Need of Care, the Court:

1. Shall Order either a Dispositional or a Fact-Finding Hearing pursuant to this Code and Order the parent, guardian, or custodian to appear on such a date and time as set by the Court.

2. May allow the parent, guardian, or custodian to resume living with the child under such terms and conditions as are necessary for either the physical or mental well-being of the child. Such conditions may include counseling, respite care, or any other social or family services the Court deems fit to Order the family to participate in.
3. May Order placement of the child with someone other than a parent, guardian, or custodian if the Court, after the hearing, determines that both of the following conditions are alleged:
 - (a) Custody of the child with a parent, guardian, or custodian presents a substantial risk of harm to the child's life, physical health, or mental well-being and no provision of services or other arrangements except removal of the child is reasonably available to adequately safeguard the child from such risk; and
 - (b) Conditions of custody of the child away from the parent, guardian, or custodian are adequate to safeguard the child's health and welfare.

32-04-10. Supplemental Orders.

The Court may, at any time after conducting a hearing at which reasonable cause to proceed upon Petition is alleged, Order any involved child, parent, guardian, or custodian to undergo a physical, mental, or psychological examination by a qualified mental health professional.

32-05 DISPOSITIONAL HEARINGS AND ORDERS

32-05-01. Purpose of a Dispositional Hearing.

A Dispositional Hearing is conducted to determine the measures to be taken by the Court with respect to a child properly within its jurisdiction, and, when applicable, against any adult who falls under the jurisdiction of this Code.

32-05-02. Timing.

The Dispositional Hearing may be held no later than twenty (30) days after admissions or a decision by the fact-finder, if the parent, guardian, or custodian admits the allegations in the Petition. If a Fact-Finding Hearing ensues, the Dispositional Hearing may be held immediately after the Fact-Finding Hearing. The interval, if any, between the Fact-Finding Hearing and the Dispositional Hearing is within the discretion of the Children's Court. When a child is in placement, the interval shall not be longer than ten (10) days except for good cause.

32-05-03. Proposed Case Plan.

A. The Social Services Worker or Truancy Officer or designee shall prepare a written report describing all reasonable efforts and appropriate alternative dispositions, including reports of law enforcement workers or behavior health specialist, or any other persons or agencies involved in the case. The report shall contain a specific plan for the care of and assistance to the minor and minor's parent(s), guardian, or custodian designed to resolve the problems present in the Petition.

B. The report shall contain a detailed explanation of the necessity for the proposed disposition and its benefits to the minor.

C. If the report recommends placement of the child somewhere other than with the child's parent, guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.

D. The Social Services Worker or Truancy Officer or designee shall present the Case Plan to the Court, the parent, or the parent's attorney, and the child at least three (3) days before the Dispositional Hearing.

32-05-04. Dispositional Order.

A. The Court shall enter an Order of Disposition after considering the Case Service Plan, may order compliance with all or part of the Case Service Plan, and may enter such Orders as it considers necessary and in the best interests of the child.

B. The Order of Disposition shall state what reasonable efforts were made to rectify the conditions that caused the child's removal from his or her home or the need for the Dispositional Order.

C. If a child has been found to be a Child in Need of Care, the Court may make the following dispositions, listed in the order of priority:

1. Permit the child to remain with his/her parents, guardians, or custodians subject to such conditions as the Court may prescribe;
2. Place the child with a relative within the primary service area of the Tribe subject to such conditions as the Court may prescribe. Grandparents as defined in this Ordinance shall receive preference over other relatives;
3. Place the child in a licensed Indian foster home within the primary service area of the Pueblo of Isleta subject to such conditions as the Court may prescribe;
4. Place the child in an Indian foster home or home of a relative outside the primary service area of the Tribe subject to such conditions as the Court may prescribe;
5. Place the child in an Indian group home or Indian residential care facility designated by the Court;
6. Place the child in a licensed, non-Indian foster home, in proximity to the child's home, subject to such conditions as the Court may prescribe; and
7. Direct the Social Services or prosecutor to file a Petition to Terminate Parental Rights for placement in permanent custody or guardianship under this Code.

D. The Court may include provisions requiring both parents to complete various assessments, classes, or behavioral health treatment and will include notices for violation of Orders for Contempt, both remedial and punitive.

E. If a child remains under the jurisdiction of the Children's Court, an Order may be amended or supplemented by the Children's Court upon the Motion of any party who receives leave of the Court, providing that proper Notice is served on all parties.

F. Such Dispositional Order shall be in writing and shall have a duration of equal to, or less than, one year.

32-05-05. Dispositional Review Hearing.

A. Following a determination that a child is a Child in Need of Care, the Children's Court is required to conduct regular hearings to assess the progress made in efforts to rehabilitate the family.

B. The Dispositional Order shall be reviewed at least every six (6) months but may be reviewed as often as every ninety (90) days upon Motion of one of the parties.

C. The Case Plan, which is developed and reviewed during the Dispositional Hearing, shall be the focus of the Dispositional Review Hearings.

32-05-06. Agency Reports.

At the hearing, the person or agency primarily responsible for providing services to the child shall file with the Court a written report stating to what extent the Dispositional Order has met the objectives of the Case Plan for the child's rehabilitation or care and treatment. Agency reports shall be filed with the Court within 48 hours of each Dispositional Review Hearing and distributed to all parties and involved agencies prior to each hearing.

32-05-07. Out-of-Home Placement.

A. If the child is placed outside the home, the report shall include the following:

1. A copy of the original report from the Social Services or Truancy Officer or his or her designee, and the response to this report from the social worker for the child.
2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amendments of the Permanency Plan, a description of the efforts to return the child to his or her home, including efforts of the parent, guardian, or custodian to remedy factors which contributed to the child's placement, and, if continued placement outside of the child's home is

recommended, an explanation of why returning the child to his or her home is not feasible.

B. If the child has been placed outside of his or her home for one (1) or more years, a statement of whether or not a recommendation has been made to terminate parental rights of the child. If a recommendation to terminate parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome such barriers, and an indication of when these steps will be completed and reasons why adoption would be in the best interest of the child. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why such a recommendation has not been made.

32-05-08. Notice of Dispositional Review Hearing.

Notice of the Dispositional Review Hearing shall be made according to the Notice provisions in this Code and must be provided prior to the expiration of the Order. Notice provisions shall be followed for all regularly scheduled Review Hearings and all irregularly scheduled Review Hearings.

32-05-09. Extension of Dispositional Orders.

- A. After the Dispositional Review Hearing, the Court shall either:
1. Extend the Court Order over the family and the child by declaring that the child continues to be a Child in Need of Care, delinquent, or truant. Such an Order can only be extended at a Review Hearing and may not be extended without a hearing;
 2. Modify the Case Plan to make it more appropriate if evidence indicates that the Dispositional Order does not meet the child's current needs; or
 3. Enter a new Dispositional Order if the child is moved to an out-of-home placement or is moved from an out-of-home placement back to the primary residence but where the Court still declares that the child is a Child in Need of Care.

32-05-10. Procedure at Review Hearing.

A. At a Dispositional Review Hearing, the Court shall review on the record the compliance with the Case Service Plan prepared pursuant to the previous Orders of the Court, including:

1. Services provided or offered to the child and his or her parent, guardian, or custodian and whether the child, parent, guardian, or custodian has complied with and benefited from such services; and
2. If the child is in an out-of-home placement, the frequency and success of visitation sessions.

B. After review of the Case Service Plan, the Children's Court shall determine the amount of progress made in alleviating or mitigating the conditions that caused the child to become and/or remain a Child in Need of Care. The Court may modify any part of a Case Plan including, but not limited to, the following:

1. Prescribing additional services that are necessary to rectify the conditions that caused the child to become or remain a Child in Need of Care;
2. Prescribing additional action to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to become or remain a Child in Need of Care; and
3. Reducing the services on the Case Plan that are not available, have proved to be inappropriate, or are unworkable for any other reason except for the reason that the parent, guardian, or custodian is not availing himself or herself of such service.

32-05-11. Dispositional Review When the Child is Placed Outside the Home.

The Children's Court favors in-home dispositions whenever possible. If a child is in an out-of-home placement during the time of the Dispositional Review Hearing, the Court shall determine the continuing necessity and propriety of the child's current placement and shall Order the return of the child to his or her primary residence if out-of-home placement is no longer necessary.

32-05-12. Scheduled Hearings.

A. At the initial Dispositional Hearing, and at each Dispositional Review Hearing, the Court shall set a date for the next regularly scheduled Review Hearing.

B. The Court may also provide leave for parties to Petition the Court for irregularly scheduled hearings. In deciding whether to shorten the interval between the Review Hearings, the Court shall, among other factors, consider:

1. The ability and motivation of the parent, guardian, or custodian to make the changes needed to provide the child with a suitable home environment; and
2. The reasonable likelihood that the child will be ready to return home earlier than the next regularly scheduled Dispositional Review Hearing.

32-05-13. Permanency Planning Hearing: Purpose Of.

When a Child in Need of Care within the jurisdiction of the Pueblo of Isleta Children's Court under this Code remains in any placement outside the primary residence for longer than one (1) year and when parental rights to the child have not been terminated, the Court shall conduct a Post-Dispositional Permanency Planning Hearing.

32-05-14. Permanency Plan Required.

A. For each Child in Need of Care who is ordered to an out-of-home placement, including but not limited to, foster home, group home, residential treatment facility, juvenile detention center, or shelter care facility, the agency primarily responsible for providing services to the child shall prepare a written Permanency Plan if one of the following conditions exist:

1. The child is being held in physical custody;
2. The child is in the legal custody of the Indian Child Welfare office;

3. The child is under the supervision of the agency pursuant to a Children's Court Dispositional Order or an Indian Child Welfare Case Plan; or
4. The child is under the guardianship of the agency that is housing the child.

B. Timing. The agency shall file the Permanency Plan with the Court within 364 days after entry of the original Order of Disposition. The Children's Court may combine the Permanency Planning Hearing with a Dispositional Review Hearing.

32-05-15. Contents of Plan.

A. The Permanency Plan shall include a description of all of the following:

1. The services offered and any services provided in an effort to prevent holding or placing the child outside of his or her home and to make it possible for the child to return home;
2. The basis for the decision to hold the child in an out-of-home placement or in secure custody;
3. A showing that the Indian Child Welfare Act was followed, particularly in terms of placement of the child with relatives before looking for other placements;
4. A showing that the placement preferences under this Code were followed, as are specified in Section 4 of this Chapter, with an explanation of why this particular placement was chosen;
5. The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed;
6. If the child is living more than sixty (60) miles from his or her home, documentation that placement within sixty (60) miles of the child's home is neither available nor appropriate;

7. The propriety of the placement and of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child, or, if the services were available, why such services are not appropriate;
8. The services that will be provided to the child, the child's family, and the child's foster parent to carry out the Dispositional Order, including services planned to accomplish all of the following:
 - (a) Ensure proper care and treatment of the child and promote stability in the placement;
 - (b) Meet the child's physical, emotional, social, educational, and vocational needs;
 - (c) Improve the conditions of the home of the parent, guardian, or custodian to facilitate the return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child;
 - (d) The conditions, if any, upon which the child will be returned to his or her home, including any changes required in the parent's conduct or the child's conduct.

32-05-16. Permanency Plan Review.

The Social Services Department and the child's Social Worker shall review the Permanency Plan every six (6) months from the date that the child began living in a placement outside of the child's home. The Indian Child Welfare Worker shall present the written summary and results of this review at the Permanency Plan.

32-05-17. Permanency Plan Hearing.

A. At the Permanency Plan Hearing, the Children's Court shall determine each of the following:

1. The continuing necessity for and the appropriateness of the placement;
2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child and the child's guardian, if any;
3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents;
4. The progress made toward eliminating the causes of the child's placement outside of his or her home and toward returning the child to his or her home or obtaining a permanent placement for the child;
5. The date by which it is likely that the child will be returned to his or her home, placed for adoption, placed under legal guardianship, or otherwise permanently placed;
6. If the child has been placed outside of his or her home for longer than one (1) year, the appropriateness of the Permanency Plan and the circumstances which prevent the child from:
 - (a) Being returned to his or her home;
 - (b) Being placed in the home of a relative of the child or another appropriate home in compliance with the Indian Child Welfare Act and this Code;
 - (c) Having a Petition for the Involuntary Termination of Parental Rights filed on behalf of the child;
 - (d) Being placed for adoption under this Code; or
 - (e) Being placed in some other sustained care situation such as a licensed Indian foster care home;

- (f) Whether reasonable efforts were made by the agency to make it possible for the child to return to his or her home.

32-06 TERMINATION OF PARENTAL RIGHTS

32-06-01. Preferred Right of Parents.

A. Before depriving any parent of custody of his/her child, the Court shall give due consideration to the preferred right of parents to the custody of their children, and it shall not transfer custody to another person unless the Court finds, after examining all of the circumstances, that the welfare of the child or the best interest of the child requires such action.

B. The Court may decree a permanent Termination of Parental Rights as provided herein concerning a child for whom the jurisdiction of the Court has been invoked under this Code. The rights of one parent may be terminated without affecting the rights of the other.

32-06-02. Voluntary Consent to Termination of Parental Rights.

A. The Children's Court may terminate parental rights of a parent only after the parent has given his or her consent as is specified in this Section. The Court may accept a voluntary consent to termination of parental rights only as follows:

1. The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The Children's Court may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary; and
2. If the Court finds that it would be difficult or impossible for the parent to appear in person given the great distance the parent lives from the Pueblo of Isleta Tribal Court, the Court may accept the written consent of the parent given before a judge in a foreign country, state, or tribal court. This written consent shall be accompanied by the signed findings of the official or judge from the foreign

jurisdiction who accepted the parent's consent. These findings shall recite that the official or judge, or an attorney who represents any of the parties in the foreign jurisdiction, has questioned the parent and found that the consent was informed and voluntary before the official or judge accepted the consent of the parent.

B. A person who may be, but has not been adjudicated as, the father of a non-marital child, may consent to the termination of any parental rights that he may have by appearing personally at the hearing or by signing a written, notarized statement which recites that he has been informed of, and understands the effect of an Order to Terminate Parental Rights and that he voluntarily disclaims any rights that he may have to the child, including the right to Notice of Proceedings under this Code.

C. If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the Petitioner is the child's stepparent or in which the child's birthparent is a resident of a foreign jurisdiction, the child's birthparent may consent to the termination of any parental rights that he or she may have as is outlined in this Section.

D. Hearings for the termination of parental rights regarding a child who is also the subject of an Adoption Petition may not occur on the same day as the hearing regarding the adoption.

E. Consent under this Section must be made in writing and filed in the Children's Court file.

32-06-03. Involuntary Termination of Parental Rights.

A. Who May File. Any person who has a legitimate interest in the welfare of a child, including but not limited to a grandparent as defined in this Ordinance, and who is under the jurisdiction of the Court may file a Petition for the Involuntary Termination of Parental Rights if one or more of the following grounds exist:

1. The parent or parents have abandoned the child and the parent or parents have made no effort to maintain a parental relationship. It shall be prima facie evidence of abandonment that the parent or parents, although having legal custody of the child, have surrendered physical custody of the child without adequate provisions for the

care of the child and for a period of six (6) months following such surrender have not manifested by some affirmative act to the child or to the person having the physical custody of the child, an intent to resume physical custody or to make arrangements for the care of the child; or

2. That the parent receiving services under this Code has inflicted or attempted to inflict further injury or punishment upon the child or has continued to refuse or neglected to provide the child with necessary food, clothing, shelter, medical care, or education;
3. That a parent subject to an Order issued under this Code has refused to comply with the requirements prescribed by the Court and there is reasonable cause to believe that the parent will not, even if given more time, comply with the requirements;
4. That the parent has negligently or willfully subjected the child to sexual or physical abuse.
 - (a) Physical or sexual abuse shall be proved by showing that the parent exposed the child to behavior that is a substantial threat to the child who is the subject of the Petition.
 - (b) Nothing in this Code shall preclude the Tribe, the Social Service Intake Investigator, the Police Department, or any other person from referring any child abuse or suspected child abuse case to the State District Attorneys' office or county law enforcement for prosecution.
5. That the parent is convicted of a felony in any jurisdiction that proves unfitness of the parent to have future custody of the child such as the intentional or reckless homicide of the other parent or another child living in the household, or if the parent is imprisoned for at least two (2) years and the parent has not provided for the proper care and custody of the child and there is no reasonable expectation that the

parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

32-06-04. Constructive Service.

A. If, with reasonable diligence, a party under 32-03-07 cannot be served under paragraph 32-03-06 service shall be made by publication of the Notice.

B. If the child is a non-marital child who is not adopted or whose parents do not subsequently intermarry and paternity has not been adjudicated, the Court may, as provided in this Section, Order publication of a Notice.

C. Notice published under this Subsection shall be published in the Tribe's newspaper or in a newspaper which is likely to give Notice. The petitioner or Court shall consider, if known, the last-known residence of the party; the residences of the party's relatives and closest friends.

D. Contents of the Notice. The Notice shall include the date of the hearing, the address of the Pueblo of Isleta Children's Court, the case file number, the name, address, and telephone number of the petitioner's attorney, the name of the party or parties to whom Notice is being given, a description of the party or parties, the former address of the party or parties, the approximate date and place of conception of the child, and the date and place of the birth of the child. The Notice shall also inform the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;
2. Of the party's right to have an attorney present and to contest the Termination of Parental Rights;
3. That if the Children's Court terminates parental rights, a Notice of Intent to Pursue Relief From the Judgment must be filed with the Children's Court within thirty (30) days after Judgment is entered for the right to pursue such relief to be preserved.
4. Notice shall not include the name of the mother unless the mother consents in writing. The Notice shall not include the name of the child unless the Court finds that inclusion of the child's name is essential to give effective notice to the father.

32-06-05. Hearing on a TPR Petition.

A. If, at the initial hearing, the Petition is contested, the Court shall set a date for a Fact-Finding Hearing on the Petition to be held within forty-five (45) days of the Initial Hearing.

B. If the Petition is not contested, the Court shall hear testimony in support of the allegations in the Petition, including testimony from any party, witness, or agency.

C. If the child is a non-marital child who is not adopted and whose parents do not subsequently intermarry and paternity has not been established, the Court shall hear testimony concerning the paternity of the child. Based on the testimony, the Court shall determine whether all interested parties, who are known have been properly notified, and, if the Court ascertains that they have not been notified, the Court shall adjourn the hearing and Order appropriate Notice to be given.

D. If the Court determines that an unknown person may be the father of the child, the Court may decide whether Constructive Notice by Publication will increase the chances of that unknown person receiving Notice of the hearing. If the Court decides that Constructive Notice will increase the chances of the unknown person receiving notice, the Court shall adjourn the hearing for thirty (30) days until such Notice is given. If the Court determines that Constructive Notice will not substantially increase the likelihood of notice to that person, the Court shall Order that the hearing proceed.

E. If paternity is adjudicated under this Section, and paternal rights are not terminated, the Court may make and enforce such Orders for the suitable care, custody, and support of the child. The Court may also determine that the child is a Child in Need of Care and therefore make a Dispositional Order under this Code.

32-06-06. Addressing the Parties to the TPR at final hearing.

A. Before accepting an admission of the alleged facts in the Petition for the Termination of Parental Rights, the Children's Court shall:

1. Address all parties present and determine that the admission is made voluntarily with understanding of the

nature of the acts alleged in the Petition and the potential dispositions.

2. Make such inquiries as to satisfactorily establish that there is a factual basis for the admission.

B. If the Petition for the Termination of Parental Rights is filed by an agency, the Court shall Order that agency to submit a report to the Court, which shall include:

1. The social history of the child, to include interviews with the grandparents of the child, as defined in this Ordinance;
2. The Tribal affiliation or affiliations of the child;
3. A medical record of the child which shall include the medical and genetic history of the parents and any genetic information furnished to the agency about the child's grandparents, siblings, aunts or uncles, a report describing the child's prenatal care and medical condition at birth, the medical and genetic history of the child;
4. A statement of the facts supporting the need for termination;
5. If the child has previously been adjudicated to be a Child in Need of Care, a statement of the steps the agency or person responsible for the provision of services has taken to remedy the conditions leading up to the Children's Court intervention and the parents' response to, and cooperation with, these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned to the family, and the steps the agency or person has made to attempt and effect this return;
6. A statement of the appropriate services, if any, which might allow the child to return to the home of the parent;
7. If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of

the likelihood that the child will be adopted in accordance with the Tribal preferences contained within this Code and the Indian Child Welfare Act.

8. If the report determines that the child will not likely be adopted, or that adoption is not in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting in accordance with the Tribal preferences in this Code and in the Indian Child Welfare Act.
9. The Court may waive the agency report if the Termination of Parental Rights is voluntary, however, medical information shall still be brought before the Court to facilitate the child and any future family of the child with information pertaining to medical and genetic history.

C. If the Petition is not filed by an agency, the person who files the Petition must furnish the Court with the child's medical and genetic family history.

32-06-07. Right to Counsel.

The Court shall advise any party who is not represented, that he or she should be represented by counsel. The Court may reschedule the hearing to allow any party reasonable time to obtain counsel, but may not adjourn for more than fifteen (15) days from the date of the original hearing. If a party cannot afford counsel, the Court may, under its discretion, appoint counsel to represent the party. The Court may or may not order the party to reimburse the Court for the cost of the representation.

32-06-08. Standards and Factors.

A. In making a decision regarding the appropriate disposition for a child under a Termination of Parental Rights disposition, the Court shall consider the following standards and factors:

1. Standard. The best interests of the child and the Tribe shall be the prevailing standard considered by the Court in determining the disposition of all proceedings under this Chapter.

2. Factors. In considering the best interests of the child and the Tribe under this Chapter, the Court shall consider, but not be limited to, the following:
- (a) The likelihood of the child's adoption after termination;
 - (b) The age and health of the child;
 - (c) Whether the child has substantial relationships with the parent(s), grandparents as defined by this Ordinance, other family members, or members of the Child's Tribe;
 - (d) Whether Tribal Social Services has found suitable adoptive homes in accordance with the Indian Child Welfare Act and the preferences outlined in this Code;
 - (e) The wishes of the child;
 - (f) The duration of the separation of the parent(s) from the child;
 - (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination.

32-06-09. Dispositions for a TPR.

A. Dispositions shall be decided at either the Dispositional Hearing which is held no later than thirty (30) days from the time of filing the Petition for Termination of Parental Rights, or at a Fact-Finding Hearing, if a Fact-Finding Hearing becomes necessary. Upon determining the disposition of the child and the parents, the Children's Court may view any evidence, oral or written, that is brought before it by any party. In addition, the Court shall permit any foster family member to make a written or oral statement during the hearing.

B. The Court may Order the following dispositions:

1. The Children's Court may dismiss the Petition if it finds that the evidence does not warrant the Termination of Parental Rights.
2. The Court may enter an Order Terminating the Parental Rights of one or both parents.

C. If the rights of both parents, or the only living parent, are terminated by the Court, and if a guardian has not been appointed, the Court shall transfer guardianship and custody of the child pending adoptive placement to one of the following, in this order:

1. The grandparents, as defined by this Ordinance;
2. Another relative of the child;
3. A foster parent who is an enrolled member of the Pueblo of Isleta;
4. A foster parent who is an enrolled member of another Indian Tribe; or
5. The Pueblo of Isleta via the Indian Child Welfare Office for the sustained care of the child until adoptive proceedings have been completed.

32-06-10. Notice of Appellate Rights Recited to Parent(s).

If an Order is entered terminating parental rights, the Court shall inform each parent whose rights have been terminated of their right to an Appeal. In addition, the Court shall forward to the office having supervision of the Child, the following:

- A. The name and date of the child whose birth parents' rights have been terminated.
- B. The names and current addresses of the child's birth parents, guardians, and legal custodians.
- C. The medical and genetic information of the child.

32-06-11. Order for TPR.

A. Every Order terminating the rights of one or both parents shall be in writing and shall recite the facts upon which the Court bases its jurisdiction over the child and shall include the findings upon which the decree is based.

B. An Order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties, and obligations with respect to each other except the status of the child as a member of the Tribe and his or her legal right to Tribal benefits, privileges, rights, and responsibilities shall not be affected.

C. The Court shall enter a Judgment setting forth its findings and disposition in an Order implementing the disposition chosen. If the Court dismisses the Petition, the Order shall contain the reasons for the dismissal. If the disposition is for the Termination of Parental Rights, the Orders shall contain all of the following:

1. The identity of the agency or individual who has received guardianship of the child, or who will receive guardianship or custody of the child upon termination, and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.
2. If the child will be in need of continued care and treatment after termination, the names of the agencies and persons responsible.
3. If Tribal Social Services receives temporary custody of the child after parental rights are terminated, a copy of the Permanency Plan that the agency has established for the child

D. A certified copy of the Order shall be given to whomever takes guardianship or custody of the child after termination.

32-07 ADOPTION

32-07-01. Who May Be Adopted.

Any child who is subject to the jurisdiction of the Pueblo of Isleta Children's Court, and for whom the jurisdiction of the Children's Court has been invoked, may be adopted.

32-07-02. Who May Adopt.

A. Any adult who is subject to the jurisdiction of the Pueblo of Isleta Tribal Court is eligible to adopt a child.

B. A husband and wife may jointly adopt children, but a person may not adopt a child without the approval of the adopting person's spouse, except as provided for in this Chapter.

32-07-03. Adoption Preferences.

In every adoption proceeding under this Chapter and in accordance with the Indian Child Welfare Act, a preference shall be given in the following order:

- A. To the child's extended family. Extended family means any grandparent as defined by this Ordinance, aunt or uncle (whether by blood or by marriage), brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, stepparent, or adopted extended family, as defined by Tribal law or custom who is over the age of eighteen (18).
- B. To a Pueblo of Isleta member residing on the Reservation or near an area where the child has significant personal contacts;
- C. To an Indian family from another Tribe and approved by the Children's Court.

32-07-04. Appointment of Guardian for Child Without Living Parent or Whose Parental Rights Have Been Terminated.

A. A guardian shall be appointed by the Children's Court while the child is awaiting adoption. The guardianship shall be terminated upon adoption of the child.

B. Tribal Social Services may act as the guardian of the child while the child is awaiting adoptive placement. Tribal Social Services may also place a child for adoption under this Code.

32-07-05. Pre-Adoption Certification: Investigation.

A. Before any person may adopt a child, the person shall be certified by the Court and approved to adopt a child. Such a certification shall be issued only after an investigation conducted by an officer of the Court or person or agency designated by regulation and approved by the Court.

B. The investigation shall consider all relevant and material facts dealing with the prospective adoptive parents' fitness to adopt children and shall include, but not be limited to, the following factors:

1. Social history;
2. Moral fitness;
3. Religious and community background;
4. Mental and physical conditions;
5. Financial situation; and
6. All other factors that may have bearing on the fitness of the prospective adoptive parents and all members of the prospective parents' household.

32-07-06. Non-Pueblo of Isleta Applicants for Adoption.

If the applicant is not a member of the Tribe, the investigation shall also include the reasons that the non-member should be considered suitable to adopt a member of the Tribe.

32-07-07. Procedure Upon Location of a Potential Adoptable Child.

As soon as the identity of the child to be adopted is known, the investigation shall also include:

- A. Whether the biological parents, if living, are voluntarily terminating their parental rights in this or any other jurisdiction;

- B. Whether the biological parents are under a Dispositional Order for a Child in Need of Care under this Code or in any other jurisdiction;
- C. Whether the grandparents, as defined by this Ordinance, are willing and capable of adopting the child, as determined by the Court;
- D. The ancestry of the child;
- E. The child's mental and physical condition;
- F. Whether the adoption between this child and the family under investigation is a suitable match; and
- G. The wishes of the child, if the child has reached the age of fourteen (14). This shall be a factor considered, although it shall not be the controlling factor.

32-07-08. Duties of the Adoption Investigator.

A. At no time shall the investigator or Court official reveal to the prospective parents the identity of the child unless this is already known to them; nor shall the investigator or court official reveal to the child the identity of the prospective adoptive parents.

B. The investigator shall conclude his or her report within ninety (90) days after receiving the initial application. The report shall include a definite recommendation for or against the placement of the child with the applicant, and the reasons therefore.

32-07-09. Court Procedure for Investigative Report.

A. The Court, upon receiving an investigation report, shall certify within thirty (30) days whether the applicant is acceptable to adopt the child in question. If the adoption is not ultimately ordered, the certification shall remain in effect for one (1) year from the date of its issuance and may be extended for additional one-year periods if, after review, the Court finds that there have been no material changes in the living conditions of the applicant.

B. Prior to final adoption, the Court may require additional investigation if it finds that the welfare of the child would be served thereby.

C. Any applicant who has been certified as non-acceptable may petition the Court to review such certification. Notice shall be given to all interested parties and the matter shall be heard before the Court to affirm or reverse the certification.

D. If an applicant is not certified by the Court, the applicant must wait until one year has elapsed from the denial of certification prior to reapplying.

32-07-10. Consent to Adoption: Who Shall Adopt: Waiver.

A. No adoption shall be granted unless consent or relinquishment to adopt has been obtained and filed with the Court from the following:

1. From both biological parents, if living, except the following:
 - (a) Parents who have been declared incompetent by a court of competent jurisdiction, and it appears to the Children's Court, based upon reliable medical evidence, that the incompetence is permanent.
 - (b) Parents who have had their parental rights terminated by the Children's Court or by a court of competent jurisdiction.
 - (c) From the guardian of the child or any official appointed by a court of competent jurisdiction and given authority by it to consent to the child's adoption.
 - (d) From an agency which has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under paragraph (1) of this Section, or which has been given authority in other legal proceedings to place the child for adoption.

B. If the child is fourteen (14) years of age or older, the child shall not be adopted without its consent. Such consent shall be recorded on the record and the Children's Court shall have the opportunity to question the child regarding this consent.

C. The Court may waive any requirement for the consent of any person, except for the biological parent or the child, if, after a hearing, the Court determines that the interests of the child will be promoted thereby. In such a case, the Court shall make written findings of all facts upon which its orders are founded.

32-07-11. Consent to Relinquishment or to Terminate Parental Rights.

A. All consents to adoption shall be in writing, signed by the party giving the consent, and witnessed by two or more witnesses who are at least eighteen (18) years of age, and who sign their names in the presence of the person giving consent.

B. A consent given less than ten (10) days after the birth of a child is invalid.

C. A consent shall indicate the date and hour signed and shall positively identify the party giving consent as well as the child who is the subject of the consent.

D. The consent shall designate either of the following:

1. Any other person or agency authorized to place the child for adoption;
2. Any person designated by the person giving consent to adopt the child.

32-07-12. Petition for Adoption.

A. A Petition for adoption shall be signed by the petitioner(s) and shall specify:

1. The full name, age, and place of residence of the petitioner(s), and, if married, the date and place of marriage or an indication that the Petitioners were married by Indian custom.
2. The relationship, if any, between the petitioner(s) and the child to be adopted.

3. The fact that a certificate of acceptability to adopt the child has been issued by the Children's Court in favor of the petitioner(s) and the date of its issuance.
4. The date, if applicable, when the petitioner(s) acquired custody of the child and from what person or agency.
5. The name, date, and place of birth of the child, if known to the Petitioner. If this information is to be held confidential from the petitioner, the Court shall include such information in a separate, sealed report within the file.
6. The adoptive name of the child if a change of name is desired.
7. A statement indicating that it is the desire of the petitioner(s) to adopt the child.
8. If known, a full description and statement of the value of all of the property owned or possessed by the child.
9. Data on consent which has been given or any reason why consent need not be given, or a death certificate from either biological parent.
10. Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.

B. Any written consent required by this Section may be attached to the Petition or may be filed with the Court separately.

32-07-13. Investigation and Report.

The investigation and certification reports required by this Section must be included with the Petition at filing. The Court has the discretion to require additional investigation as it deems necessary.

32-07-14. Notice of Hearing on Petition for Adoption: Service.

A. After a Petition to Adopt has been filed, the Court shall set a time and place for hearing and shall cause Notice thereof to be given by Service as provided by this Code.

B. Notice shall be given to:

1. The petitioner;
2. The temporary guardian of the child or the person having custody of the child;
3. The person conducting the pre-adoptive investigation required by this Section;
4. Any non-marital fathers, or, if the father is unknown, any persons that could be the father of the child being placed for adoption; and
5. Any person required by this Section to give consent unless such consent has been filed prior to the Court's setting of the hearing.

32-07-15. Probationary Period.

The hearing on the Petition shall not be held until at least three (3) months after the Petition has been filed, during which time the investigation required by this Section shall be completed, except said time period may be waived in relative adoptions.

32-07-16. Hearing.

A. Informal. Petitions filed under this Chapter shall be heard by the Court and such hearing shall be as informal as the requirements of due process and fairness permit.

B. Who Shall Attend. The petitioner(s) and the child to be adopted shall be required to attend unless the Court orders otherwise.

C. Closed Hearing. Only those individuals who have a direct interest in the case before the Court shall be admitted to hear this case in the Children's

Court. The Court has the discretion to require the attendance of other witnesses as the Court deems necessary.

32-07-17. Order.

A. The Court shall issue an Order granting the adoption if the Court is satisfied that the requirements of this Chapter are met and that the adoption is in the best interests of the child and the Tribe.

B. The Children's Court Order shall be in writing and shall recite the findings upon which such Order is based, including findings pertaining to the Court's jurisdiction. Such Order shall be effective and binding on all persons from the date of entry.

32-07-18. Rights Under Adoption Decree.

A. Upon entry of the Decree of Adoption, the relationship of parent and child and all of the legal rights, privileges, duties, obligations, and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent in the identical manner as though the child were born biologically to the adoptive parents.

B. The adopted child shall be entitled to inherit real and personal property through the adoptive parents. However, if an adopted child or adoptive parent is not a member of the Tribe, then that child or parent shall not be eligible to inherit any interest which the deceased Tribal member's estate may have to any Tribal privilege, right, land, or property of any kind.

C. Upon entry of the Decree of Adoption, the relationship of parent and child between the adopted child and any persons other than that child's adoptive parents by this particular adoption shall be completely terminated and all legal rights, privileges, duties, obligations, and other consequences of such relationship shall cease to exist, including the right to inheritance except that when the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the Decree of Adoption.

D. Notwithstanding anything in this Section to the contrary, the Decree of Adoption shall not extinguish any status, rights, or privileges to the child's Pueblo of Isleta Indian ancestry, heritage, or Tribal membership.

32-07-19. Withdrawal or Denial of Petition: Custody.

A. Under this Code, the Children's Court may deny a Petition for Adoption or the petitioner may withdraw the Petition at any time.

B. If the Petition is denied or withdrawn, if applicable, the Court shall Order the removal of the child from the proposed adoptive home

Annotations

A. The Isleta Pueblo Tribal Council enacted the foregoing Ordinance at a duly called meeting on February 13, 2015 by a vote of six (6) in favor, zero (0) opposed, and one (1) abstaining, by Resolution No. 2015-_____, Amending the Children's Code to Add Language Regarding Grandparents' Rights. This amendment made the following substantive changes:

1. Adding the definition of "Grandparent" at 32-02-01, A, 19, on page 14;
2. Substituting "physical and mailing addresses" for "locations" in paragraph 32-03-02, A, 5, on page 18;
3. Adding "grandparents as defined in this Ordinance" in paragraph 32-03-02, A, 5, on page 18;
4. Adding "grandparents as defined in this Ordinance" in paragraph 32-03-07, A, 1, on page 20;
5. Adding "Grandparents as defined in this Ordinance shall receive preference over other relatives" in paragraph 32-05-04, C, 2, on page 38;
6. Adding "including but not limited to a grandparent as defined in this Ordinance, and who . . ." in paragraph 32-06-03, A, on page 47;
7. Adding "to include interviews with the grandparents of the child, as defined in this Ordinance" in paragraph 32-06-06, B, 1, on page 51;
8. Adding "grandparents as defined in this Ordinance" in paragraph 32-06-08, A, 2, (c), on page 53;

9. Adding “grandparents as defined in this Ordinance” in paragraph 32-06-09, C, 1, on page 54;
10. Adding “another” and omitting “A foster parent who is an enrolled member of the Pueblo of Isleta” in paragraph 32-06-09, C, 2, on page 54;
11. Adding “the Pueblo of Isleta” to paragraph 32-06-09, C, 3, on page 54;
12. Adding “A foster parent who is an enrolled member of . . .” to paragraph 32-06-09, C, 4, on page 54;
13. Adding “as defined by this Ordinance” in paragraph 32-07-03, A, on page 56; and
14. Adding “Whether the grandparents, as defined in this Ordinance, are willing and capable of adopting the child, as determined by the Court” as paragraph 32-07-07, C, on page 58.