

PUEBLO OF ACOMA LAWS 2003 (2019 REPLACEMENT)

**TITLE 4
CHILDREN AND FAMILY LAW**

This Replacement includes laws enacted since the Pueblo of Acoma Laws 2003 pursuant to Tribal Council Resolutions dated January 1, 2017 through December 31, 2018.

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These laws may be cited by Title, Chapter, Section and Year
as "Section or § _-_- Pueblo of Acoma Laws 2003 (2019 Replacement)"

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**TITLE 4
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TABLE OF CONTENTS

<u>Chapter</u>		<u>Page</u>
1.	Purpose of Title	4-1
4-1-1	Title	4-1
4-1-2	Basic Rights of Children	4-2
4-1-3	Evidence to be Considered	4-2
4-1-4	Duties of employees	4-2
4-1-5	Severability.....	4-2
2.	Children and Family Act	4-2
4-2-1	Adoption of the Family Services Act	4-2
4-2-2	Purpose of the Act.....	4-2
4-2-3	Definitions	4-3
	A. Abandonment	4-4
	B. Abuse	4-4
	C. Abused Child	4-4
	D. Abuser	4-5
	E. Acoma Community	4-5
	F. Active Efforts	4-5
	G. Adult	4-5
	H. Aggravated Circumstances	4-5
	I. Best Interests of the Child	4-6
	J. Caretaker	4-6
	K. Case Management	4-7
	L. Case Plan	4-7
	M. Cessation of Parental Rights	4-7
	N. Child	4-7
	O. Child Assistance	4-7
	P. Children's Court Attorney	4-7
	Q. Child In Need of Services	4-7
	R. Child Maltreatment	4-8
	S. Child Welfare Case Worker	4-8
	T. Clear and Convincing Evidence	4-8
	U. Contempt of Court	4-8
	V. Court	4-8
	W. Court-appointed Special Advocate	4-8
	X. Custodian	4-9
	Y. Customary Adoption	4-9
	Z. Disproportionate Minority Contact	4-9
	AA. Dispositional Hearing	4-9
	AB. Delinquent Act	4-9
	AC. Delinquent Child	4-10
	AD. Delinquent Offender	4-10

AE. Detention Facility	4-10
AF. Domicile	4-10
AG. Elder	4-10
AH. Emergency	4-10
AI. Emergency Placement	4-11
AJ. Essential Needs	4-11
AK. Expert Witness	4-11
AL. Extended Family	4-11
AM. Family Assessment	4-11
AN. Family in Need of Court-ordered Services	4-11
AO. Family Services	4-12
AP. Family Violence	4-12
AQ. Felony	4-12
AR. Good Faith	4-12
AS. Great Bodily/Physical Harm	4-12
AT. Great Physical Harm	4-12
AU. Guardian	4-12
AV. Guardian ad Litem	4-13
AW. ICWA	4-13
AX. Indian Child.....	4-13
AY. Indian Child’s Tribe	4-13
AZ. Indian Tribe	4-13
BA. Intimate Partner Violence (IPV)	4-13
BB. Judge	4-13
BC. Lay Advocate	4-14
BD. Least Restrictive	4-14
BE. Legal Custody	4-14
BF. Malicious Reporting	4-14
BG. Member	4-14
BH. Misdemeanor	4-14
BI. Neglect	4-15
BJ. Neglected Child	4-15
BK. Non-Emergency and Non-Routine Medical or Personal Care ...	4-16
BL. Parent or Parents	4-16
BM. PASS means Pueblo of Acoma Social Services	4-16
BN. Permanency Plan	4-16
BO. Person	4-16
BP. Placement	4-16
BQ. Pre-Adoptive Parent	4-17
BR. Protective Supervision	4-17
BS. Residence	4-17
BT. Residential Care	4-17
BU. Resource Family	4-17
BV. Restitution	4-17
BW. Reunification	4-17
BX. Safety Assessment	4-17
BY. Serious Youthful Offender	4-17
BZ. Sexual Abuse	4-18
CA. Sexual Exploitation	4-18

	CB. Supervised Release	4-18
	CC. Suspension of Parental Rights	4-18
	CD. Transition Plan	4-18
	CE. Trial Court	4-18
	CF. Tribal Court Order (TCO)	4-19
	CG. Tribunal	4-19
	CH. Victim	4-19
	CI. Voluntary Placement	4-19
	CJ. Youthful Offender	4-19
4-2-4	Establishment and Jurisdiction of the Children’s Court	4-20
4-2-5	Pueblo of Acoma Social Services	4-22
4-2-6	Authorized PASS Programs	4-22
4-2-7	Community Protection Team	4-23
4-2-8	PASS Petitions; who may sign; form & content	4-23
4-2-9	Summons; Service	4-24
3.	Family Services Act	4-25
4-3-1	Purpose of the Family Services Act; Interpretation	4-25
4-3-2	Request for Family Services; Withdrawal of Request; Presumption of Good Faith	4-26
4-3-3	Referrals.....	4-26
4-3-4	Informal Voluntary Placement of Child Outside home.....	4-27
4-3-5	Voluntary Placement of Child Outside Home; Documentation	4-27
4-3-6	Voluntary Placement; Rights of Parent	4-28
4-3-7	Right to Regain Custody.....	4-29
4-3-8	Voluntary Placement; Time Limitation	4-29
4-3-9	Emergency Placement; Criminal History Record Check; Hearing.....	4-29
4-3-10	Duty to File a Petition	4-31
4-3-11	Procedures for Child or Family in Need of Services Petitions	4-31
3A.	Family in Need of Court Ordered Services	4-32
4-3A-1	Purpose [and Interpretation] of [Chapter]	4-32
4-3A-2	Protective Custody; Interference with Protective Custody; Penalty	4-32
4-3A-3	Protective Custody; Restrictions; Time Limitations	4-33
4-3A-4	Notification to Family; Release from Protective Custody.....	4-34
4-3A-5	Place of Custody	4-35
4-3A-6	Child Placement Preferences	4-36
4-3A-7	Custody Hearings; Time Limitations; Intervention.....	4-36
4-3A-8	Change in Placement	4-39
4-3A-9	Petition; Endorsement of Petition; Allegations	4-39
4-3A-10	Adjudicatory Hearing; Time Limitations	4-40
4-3A-11	Conduct of Hearings; Penalty	4-40
4-3A-12	Findings; Dismissal; Dispositional Matters.....	4-41
4-3A-13	Plan for Family Services.....	4-42
4-3A-14	Dispositional Judgment	4-43
4-3A-15	Disposition of a Child with a Developmental Disability or Mental Disorder; Involuntary Placement Proceedings	4-45
4-3A-16	Dispositional Judgments; Time Limitations; Modification, Termination or Extension of Court Order.....	4-47

4-3A-17	Periodic Review of Dispositional Judgments	4-48
4-3A-18	Confidentiality; Records; Penalty	4-50
4.	Child Maltreatment	4-52
4-4-1	Purpose[; Interpretation]	4-52
4-4-2	Duty to Report Child Maltreatment; Responsibility to Investigate Child Maltreatment; Penalty	4-53
4-4-3	Malicious Reports and Physical Harm Inflicted Upon a Child Case Worker	4-55
4-4-4	Complaints; Referral; Preliminary Inquiry	4-55
4-4-5	Admissibility of Report in Evidence; Immunity of Reporting Person; Investigation of Report; Child Interviews	4-56
4-4-6	Taking into Custody; Penalty	4-57
4-4-7	Release or delivery from custody	4-58
4-4-8	Place of Temporary Custody	4-59
4-4-9	ICWA; Preferences and Active Efforts	4-59
4-4-10	Basic Rights	4-60
4-4-11	Use Immunity	4-61
4-4-12	Protective Orders; Hearings	4-61
4-4-13	Contempt Power	4-62
4-4-14	Change in Placement	4-62
4-4-15	Petition; Authorization to File	4-62
4-4-16	<i>Ex Parte</i> Custody Orders	4-62
4-4-17	Summons; Content	4-63
4-4-18	Custody Hearings; Time Limitations; Notice; Probably Cause	4-63
4-4-19	Adjudicatory Hearings; Time Limitations	4-63
4-4-20	Conduct of Hearings; Findings; Dismissal; Dispositional Matters; Penalty	4-64
4-4-21	Child Maltreatment Predisposition Studies, Reports and Examinations	4-65
4-4-22	Disposition of Adjudicated Victim of Child Maltreatment	4-67
4-4-23	Disposition of a Child with a Mental Disorder or a Development Disability in a Proceeding Under this Chapter	4-70
4-4-24	Limitations on Dispositional Judgment; Modification, Termination or Extension of Court Orders	4-71
4-4-25	Periodic Review of Dispositional Judgments	4-71
4-4-25.1	Permanency Hearings; permanency Review Hearings	4-74
4-4-25.2	Transition Services	4-76
4-4-25.3	Discharge Hearing	4-77
4-4-26	Parental Responsibility	4-78
4-4-27	Intervention; Persons Permitted to Intervene	4-78
4-4-28	Suspension of Parental Rights; Customary Adoption Decree	4-79
4-4-29	Termination Procedure; Customary Adoption Option	4-80
4-4-30	Attorney Fees	4-80
4-4-31	Confidentiality; Records; Penalty	4-80
4-4-31.1	Records Release When a Child Dies	4-82
5.	Delinquency	4-84
4-5-1	Purposes of [Chapter]; Interpretation	4-84

4-5-2	Detention Facilities; Standards; Reports; Appeals	4-85
4-5-3	Adult Jails and Lockups used a Temporary Holding Facilities; Reports	4-85
4-5-4	Juvenile Probation Services; Establishment; Juvenile Probation and Parole Officers; Powers and Duties	4-85
4-5-5	Complaints; Referral; Preliminary Inquiry; Notice; Time Waiver	4-87
4-5-6	Petition; Authorization to File	4-88
4-5-7	Taking into Custody	4-89
4-5-8	Release or Delivery from Custody	4-89
4-5-9	Criteria for Detention of Children	4-90
4-5-10	Placement or Detention	4-91
4-5-11	Detention Hearing Required on Detained Children; Probable Cause Determination; Court Determination; Disposition	4-92
4-5-12	Basic Rights	4-94
4-5-13	Conduct of Hearings; Findings; Dismissal; Dispositional Matters; Penalty	4-97
4-5-14	Predisposition Studies; Reports and Examinations	4-99
4-5-15	Judgment; Noncriminal Nature; Non-admissibility	4-100
4-5-16	Disposition of an Adjudicated Delinquent Offender	4-101
4-5-17	Disposition of a Youthful Offender and Serious Youthful Offender	4-104
4-5-18	Disposition of a Child with Mental Disorder or Developmental Disability in a Delinquency Proceeding	4-106
4-5-19	Continuance Under Supervision Without Judgment; Consent Decree; Disposition	4-107
4-5-20	Probation Revocation; Disposition	4-108
4-5-21	Sealing of Records	4-109
4-5-22	Injury to Person or Destruction of Property; Liability; Costs and Attorney Fees; Restitution	4-111
4-5-23	Parental Responsibility	4-111
4-5-24	Confidentiality; Records	4-112
6.	Protection of People at Risk	4-113
4-6-1	Procedures to Protect People at Risk	4-113
4-6-2	Emergency Procedures	4-115
4-6-3	Procedures in the Absence of an Emergency	4-117
4-6-4	Protection Orders or Temporary Restraining Orders	4-121
7.	Domestic Relations and Probate	4-128
4-7-1	Jurisdiction	4-128
4-7-2	Marriages	4-128
4-7-3	Legal Separation Procedures	4-129
4-7-4	Determination of Heirs	4-132
4-7-5	Approval of Wills	4-133
4-7-6	Paternity	4-133
8.	Customary Adoption Including Suspension of Parent Rights	4-137
4-8-1	Purpose and Interpretation	4-137
4-8-2	Definitions	4-138
	A. Adoptee	4-138
	B. Adoptive Parent	4-138

	C. Best Interests of the [Pueblo]	4-138
	D. Birth Parent	4-138
	E. Family Member	4-138
	F. Enrolled Member	4-138
	G. Final Decree of Customary Adoption	4-138
	H. Final Order Suspending Parental Rights	4-138
	I. Member (Pueblo of Acoma Member)	4-139
	J. Pueblo	4-139
	K. State Court	4-139
	L. Suspension of Parental Rights	4-139
	M. Termination of Parental Rights	4-139
4-8-3	Civil Jurisdiction	4-139
4-8-4	Rights of Parties in Suspension or Termination of Parental Rights Proceedings	4-140
4-8-5	Petition to Suspend or Terminate Parental Rights	4-141
4-8-6	Notice of Hearing on Petition to Suspend or Terminate Parental Rights	4-144
4-8-7	Hearing	4-145
4-8-8	Final Order for Suspension of Parental Rights	4-148
4-8-9	Customary Adoption	4-149
4-8-10	Adoption Preferences	4-150
4-8-11	Petition for Customary Adoption	4-151
4-8-12	Investigative Report	4-152
4-8-13	Notice of Hearing on Petition for Customary Adoption	4-153
4-8-14	Hearing on Petition for Customary Adoption	4-153
4-8-15	Final Order for Customary Adoption	4-156
4-8-16	Certification of a Customary Adoption	4-156
4-8-17	Enforcement	4-157
4-8-18	Appeals	4-157
4-8-19	Right of Access to Records	4-157
9.	Child Support	4-157
4-9-1	Purpose - Child Support	4-157
4-9-2	Jurisdiction	4-157
4-9-3	Definitions – Child Support	4-157
	A. Alleged Father	4-157
	B. Basic Visitation	4-157
	C. Child	4-158
	D. Children of the Parties or Parents	4-158
	E. Child Support	4-158
	F. Child Support Guidelines and/or Schedule	4-158
	G. Court	4-158
	H. Custodial Parent	4-158
	I. Employer	4-158
	J. Noncustodial Parent	4-158
	K. Obligor	4-158
	L. Obligee	4-158
	M. Parenthood	4-159
	N. Pueblo	4-159

	O. Shared Responsibility	4-159
	P. TANF	4-159
4-9-4	Statute of Limitations	4-159
4-9-5	Procedure for Child Support Proceedings.....	4-159
4-9-6	Confidentiality.....	4-159
4-9-7	Petition for Child Support.....	4-160
4-9-8	Notice to State of New Mexico Human Services Department	4-162
4-9-9	Setting the Initial Child Support Hearing	4-163
4-9-10	Agreed Child Support Order	4-163
4-9-11	Child Support Hearing	4-163
4-9-12	Child Support Order	4-163
4-9-13	Default Child Support Order	4-164
4-9-14	Modification of Child Support Orders.....	4-164
4-9-15	Enforcement of Child Support Orders.....	4-165
4-9-16	Calculation of Child Support Guidelines and Schedule	4-166
4-9-17	Sovereign Immunity and Pre-eminence of [Acoma Law].....	4-169
10.	Child Custody.....	4-169
4-10-1	Jurisdiction	4-169
4-10-2	Commencement of a Child Custody Proceeding – Notice – Intervention	4-170
4-10-3	Child Custody Procedure.....	4-170
4-10-4	Relevant Factors in Awarding Custody	4-171
4-10-5	Duties of Custodian	4-171
4-10-6	Temporary Custody Order.....	4-172
4-10-7	Requirements for Temporary Custody Order.....	4-172
4-10-8	Parenting Plan Proceedings.....	4-172
4-10-9	Default on Petition for Parenting Plan.....	4-173
4-10-10	Modification of Parenting Plan or Custody Decree.....	4-173
4-10-11	Relocation	4-176
4-10-12	Military Service or Traditional Obligations	4-181
4-10-13	Third Party Visitation Rights	4-182
4-10-14	Child Support	4-182
4-10-15	Court-appointed Attorney or GAL to Represent Interests of Child.....	4-182
4-10-16	Payment of Costs and Attorney’s Fees	4-183
4-10-17	Uniform Child-Custody Jurisdiction and Enforcement	4-183
11.	Extended Family Guardianship.....	4-183
4-11-1	Policy; Purpose	4-183
4-11-2	Jurisdiction	4-184
4-11-3	Definitions	4-184
	A. Caregiver	4-184
	B. Child	4-184
	C. Extended Family or Kinship	4-184
	D. Parent	4-184
	E. Relative	4-184
4-11-4	Petition; Who May File; Contents	4-185
4-11-5	Service of Petition; Notice; Parties	4-186
4-11-6	Temporary Guardianship Pending Hearing	4-187

4-11-7	Permanent Guardianship of a Child	4-188
4-11-8	Hearing; Elements of Proof; Burden of Proof; Judgment; Child Support	4-188
4-11-9	Guardian Ad Litem; Appointment	4-190
4-11-10	Guardian Ad Litem; Powers and Duties	4-190
4-11-11	Revocation of Guardianship	4-191
4-11-12	Rights and Duties of Guardian	4-191
4-11-13	Continuing Jurisdiction of the Court	4-192
4-11-14	Caregiver's Affidavit	4-192
12.	Procedures for Implementing the Indian Child Welfare Act	4-195
4-12-1	Purpose and Policy	4-195
4-12-2	Authorized Representative of the Pueblo	4-196
4-12-3	Receipt of Referrals.....	4-196

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Pueblo of Acoma Laws 2003 (2019 Replacement)

Title 4 Children and Family Law

Origins: Tribal Council Resolution No. 2018-041 adopted on November 2, 2018 amended and restated Title 4, Family Law, naming it Children and Family Law.

Annotations: All material in brackets reflects changes to harmonize this amended and restated with other existing Pueblo of Acoma law and formatting, to correct misspellings, and correct grammatical errors.

Chapter 1. PURPOSE OF TITLE

4-1-1 Title.

A. The previous Family Law Title 4, Enacted by Tribal Council Resolution No. TC-JUL-31-01-4 and its predecessors is repealed by the adoption of this restatement of Title 4.

B. Construction of this Title. This Title shall be liberally interpreted to fulfill its purpose.

4-1-2 Basic rights of Children

A. A child subject to the provisions of [this Title] is entitled to the same basic rights as an adult, except as otherwise provided in the [this Title].

B. In proceedings on a petition alleging a family in need of court-ordered services, the Court may appoint counsel or a lay advocate at the expense of the Pueblo if appointment of counsel or lay advocate would serve the interests of justice.

C. In proceedings on a petition alleging a family in need of court-ordered services, the Court shall appoint a guardian ad litem for a child under the age of [fourteen] (14) and the Court shall appoint an attorney or lay advocate for a child [fourteen] (14) years of age or older at the inception of the proceedings.

D. When a child reaches [fourteen] (14) years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the Court shall appoint a different attorney or lay advocate for the child if:

1. the child requests a different attorney or lay advocate;
2. the guardian ad litem requests to be removed; or
3. the Court determines that the appointment of a different attorney or lay advocate is appropriate.

E. The Court shall appoint a guardian ad litem, lay advocate or attorney who is knowledgeable about the child's cultural background. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

F. A person afforded rights pursuant to the provisions of [this Title] shall be advised of those rights at that person's first appearance before the Court on a petition filed under [this Title].

G. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a Court order.

4-1-3 Evidence to be considered: In that part of the hearings held under this Title on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

4-1-4 Duties of employees: All employees of the Pueblo of Acoma shall be trained in protection of the rights of children and families under this Title and the federal Indian Civil Rights Act [of 1968, 25 U.S.C. §§ 1301-1304, as amended] from the initial time of contact, during the investigation and throughout the duration of any court order entered by an Acoma court.

4-1-5 Severability: If any part or application of this Title is held invalid, the remaining chapters and sections shall not be affected.

CHAPTER 2. CHILDREN AND FAMILY ACT

4-2-1 This Chapter constitutes the Children and Family Act adopted by the Pueblo of Acoma Tribal Council.

4-2-2 Purpose of the Act: The Pueblo of Acoma recognizes that the future of our people rests with our children and protecting and promoting the

families that raise them. It hereby enacts this [Chapter] to establish policies and procedures to protect the interests of its children; families; the Pueblo; its customs and traditions, laws and culture.

The Pueblo of Acoma Council adopts this [Chapter] in order to implement the following policies with regard to the welfare of children; prevent the unwarranted breakup of families, maintain the connection of children to their families and Pueblo and promote the safety, well-being and stability of the Pueblo:

- A. Recognize that an Indian family's best interests may be inextricably connected to that of the tribe by recognizing the importance of tradition and custom, including the traditional roles of the extended family in the child-rearing practices;
- B. Provide child welfare services to children and families that are in accord with the customs, traditions, laws and cultural values of the Pueblo of Acoma;
- C. Preserve and strengthen the child's individual, cultural and Pueblo identity, so that children and families may become healthy and productive adult members of the Pueblo of Acoma community, making participants in Children's Court more aware of the social impact of their actions;
- D. Secure for each child and family before the Court the safety, well-being and stability that is in the best interest of the child;
- E. Whenever possible, preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted community member;
- F. Foster cooperative intergovernmental relations between the Pueblo of Acoma and the federal government, the State of New Mexico, other states and other Tribes, with regard to the welfare and best interests of children and families;
- G. Protect the rights of Acoma parents and the sovereign and traditional right of the Acoma Pueblo to determine the best interests of children and families.

4-2-3

Definitions: These definitions shall be used in this Chapter. Nothing in these definitions shall be used to interfere with or prohibit the cultural and spiritual development of the child or family, nor shall these definitions be

used to interfere with traditional child-rearing practices of the child's family or tribe.

A. "abandonment" means the failure of a parent, guardian, or custodian to provide reasonable support, maintain contact or care for a child as determined by the Court. Custody provided with extended family members through mutual consent to short-term placement does not constitute abandonment. However, the failure to provide reasonable support, maintain contact or care for a child for a period of [six] (6) months shall be prima facie evidence of abandonment. Abandonment is child maltreatment.

B. "abuse" means:

1. the infliction or allowing of physical harm, battery, impairment, sexual abuse or disfigurement;
2. the infliction or allowing of emotional damage that causes severe anxiety, depression, withdrawal, or extreme aggressive behavior, or harm that results in a condition as defined by the Diagnostic Statistics Manual and diagnosed by a medical doctor or psychologist; or
3. the intentional infliction of severe physical pain causing injury that require[s] serious medical intervention and long-term healing processes.
4. An act which would constitute sexual abuse, sexual contact with a minor, sexual exploitation, or rape under tribal law and custom, the laws of the Pueblo of Acoma and the State of New Mexico.

C. "abused child" means a child:

1. who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;
2. who has suffered physical abuse, emotional abuse, psychological abuse, as well as severe humiliation, embarrassment, shame and trauma inflicted or caused by the child's parent, guardian or custodian;
3. who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

4. whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
 5. whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;
 6. who is a victim of child maltreatment.
- D. “abuser,” “perpetrator,” “batterer,” or “offender,” means a person who has committed or has been accused of committing an act of child maltreatment or family violence.
- E. “Acoma community” means all persons temporarily or permanently residing within the exterior boundaries of Acoma Pueblo lands, including members and those enrolled members.
- F. “active efforts” means actions taken to engage affected families in activities and services designed pursuant to a reasonable plan to keep the family intact.
- G. “adult” means a person who is at least eighteen (18) years of age, who does not suffer from incapacity, in which case a person is an adult who is at least twenty-one (21) years of age.
- H. “aggravated circumstances” includes those circumstances in which the parent, guardian or custodian has:
1. attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
 2. attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;
 3. attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or
 4. had parental rights over a sibling of the child terminated involuntarily.

- I. “best interests of the child” means the preservation of the connection, or the creation of such a connection if one does not currently exist, between a Pueblo of Acoma child and the child’s family, culture, or the Pueblo in a setting that is stable, secure, safe, and healthy, where a child may receive enrichment emotionally, spiritually, socially, and intellectually, while considering the special needs of that child. It shall mean that actions and decisions under the authority of this [Chapter] shall be implemented according to the following principles:
1. a child’s need for love, nurturing, protection, and stability. A child must have a safe and nurturing home environment offering emotional support and comfort; the essential needs of food, clothing and shelter; reasonable medical care and protection from exposure to dangerous situations, violence, or to harmful conduct including domestic violence and substance or alcohol abuse.
 2. a child’s need for family. A child must have connection to loving family members for guidance and nurturing. Although not all children have the benefit of family care, nothing can replace the primary role of loving parents and family in a child’s life.
 3. a child’s need for identity and development. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child’s cultural community. This is done by participation in cultural activities, speaking one’s native language, and having opportunities and encouragement to pursue education and enrichment. An Indian child’s best interests may be inextricably connected to that of his or her tribe.
 4. a child’s need for happiness. A child cannot be happy unless his or her primary needs are met; but a child also needs opportunities for play and recreation, leisure time and other activities the child enjoys, and possession of toys and other personal items of importance to the child.
- J. “Caretaker” means:
1. a person who is required by tribal law or custom to provide services or resources to another person.

2. a person who voluntarily undertakes to provide care or resources to another person.
 3. an institution or agency which voluntarily provides or is required by tribal law or custom, or other applicable law, to provide services or resources to a person, including, but not limited to, the duty to follow up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; [or]
 4. an employee or agent of any institution or agency described in paragraph 3 of this Subsection.
- K. “case management” means the activity of a child welfare case worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, and providing other direct services such as accountability of funds, data collection, and documenting activities in the case file.
- L. “case plan” means a written plan with time-limited goals which is developed and signed by a client and a child welfare case worker. The case plan will include documentation of referral and disapproval of eligibility for other services.
- M. “cessation of parental rights” means the permanent severance of the legal relationship between the parent and child, commonly referred to as a termination of parental rights in other jurisdictions.
- N. “child” means a person who is less than eighteen [(18)] years old.
- O. “child assistance” means financial assistance provided on behalf of an Indian child who has special needs, requires residential care or treatment, or has needs while awaiting permanent placement determinations.
- P. “Children’s Court Attorney” means the legal representative for P[ueblo of] A[coma] S[ocial] S[ervices] (“PASS”).
- Q. Child In Need of Services (“CHINS”) or Family In Need of Services (“FINS”) means:
1. a family whose child’s behavior endangers the child’s health, safety, education or well-being and intervention of the Court

- is essential to provide the treatment, rehabilitation or services needed by the child or his family;
2. a family whose child is absent from the child's place of residence for [twenty-four] (24) hours or more without the consent of the parent, guardian or custodian;
 3. a family in which the parent, guardian or custodian of a child intentionally refuses to permit the child to live with the parent, guardian or custodian; and
 4. a family whose child, while subject to compulsory school attendance, is habitually and without justification absent from school;
 5. the child or his family are in need of treatment, rehabilitation or services not presently being received and the intervention of the Court is essential to provide the treatment, rehabilitation or services.
- R. "child maltreatment" means abuse, neglect, or abandonment of a child as defined [in] this Section.
- S. "child welfare case worker" means a PASS employee who reports to the Court and performs the duties under this [Chapter] for a Child-In-Need-of-Services or Family-In-Need-of-Services.
- T. "clear and convincing evidence" means that the evidence must establish the fact to be proved by more than just a belief that it is more likely true than not true. For evidence to be clear and convincing, it must create a strong conviction that the fact is true by evidence.
- U. "contempt of Court" means the willful disobedience or interference with any order of the Court, as defined in [Pueblo of Acoma Laws (2003), as amended].
- V. "Court" means the Pueblo of Acoma Children's Court, unless otherwise specified.
- W. "Court-appointed Special Advocate" or "CASA" means a person appointed [by the Court to] assist the Court in determining the best interests of the child by investigating the case and submitting a report to the Court.

- X. “custodian” means an adult with whom the child lives who is not a parent or guardian of the child and it may be one who exercises physical control, care or custody of a child, including an employee of a residential facility.
- Y. “customary adoption” means a permanent custody alternative in accordance with Indian culture. This option is similar to adoption, with the caveat that the parent shall not be required to relinquish or [the Court] terminate legal parental rights.
- Z. “disproportionate minority contact” means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower than that group’s proportion in the general population.
- AA. “dispositional hearing” means a hearing to determine the most appropriate form of treatment or custody for a child. The purpose of a dispositional hearing shall be rehabilitation rather than punishment.
- AB. “delinquent act” means an act committed by a child that would be designated as a crime under the law if committed by an adult, including any of the following offenses:
 - 1. Violations of the Acoma Pueblo traffic [laws set out in Title10A of Acoma Laws 2003, as amended] or receiving or transferring of a stolen vehicle or motor vehicle; [or]
 - a. injuring or tampering with a vehicle;
 - b. altering or changing of an engine number or other vehicle identification numbers;
 - c. altering or forging of a driver’s license or permit or any making of a fictitious license or permit;
 - d. driving with a suspended or revoked license; or
 - 2. buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, such as a bar or club, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child’s parent, guardian, custodian, caretaker or adult spouse; [or]

3. a violation of regarding the illegal use of a glue, aerosol spray product or other illegal chemical substance as defined under Acoma law, Federal law and/or New Mexico state law;
4. a violation of the [Pueblo of Acoma, federal or] New Mexico law concerning controlled substances;
5. escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by PASS by a child who has been adjudicated a delinquent child;
6. a violation regarding unauthorized graffiti on personal or real property; or
7. a violation of an order of protection issued pursuant to the provisions of the Family Violence.

AC. “delinquent child” means a child who has committed a delinquent act.

AD. “delinquent offender” means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender.

AE. “detention facility” means a place where a child may be detained under the [this Chapter] pending a Court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child.

AF. “domicile” means a person's permanent home, legal home or main residence. The domicile of a child is generally that of the parent, custodian or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

AG. “elder” means anyone who is sixty-five [65] years or older, or any adult who is in the care or guardianship of another adult or adults.

AH. “emergency” means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control. The affected individuals or families suffer from fire, flood, or other destruction to their home and loss or damage to personal possessions.

- AI. "emergency placement" refers to those limited instances when PASS is placing a child in the home of private individuals, including neighbors, friends or relatives, as a result of sudden unavailability of the child's primary caretaker.
- AJ. "essential needs" means shelter, food, clothing, and utilities.
- AK. "expert witness" means:
1. a member of the Acoma or other Indian community who is an acknowledged expert on the cultural or spiritual traditions of the child's Tribe;
 2. a professional person having a recognized education in medical, social, spiritual or other fields which the Court may determine relevant in child custody proceedings or who has special expertise in Native American culture.
- AL. "extended family" means any person related by blood or marriage to the child having significant contacts with the child and who is viewed as an extended family member in accordance with the traditional customs of the Pueblo of Acoma or [an] [Indian] child's tribe, including biological, traditional, cultural, or clan relatives.
- AM. "family assessment" means a PASS assessment of a family's history and present abilities and resources to provide the necessary care, guidance and supervision for [a] CHINS or FINS.
- AN. "family in need of court-ordered services" means the child or the family has:
1. refused family services or PASS has exhausted culturally appropriate and available family services, and
 2. Court intervention is necessary to provide family services to the child or family and the following circumstances exist;
 - a. a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than [ten] (10) days during a school year;
 - b. a family whose child is absent from the child's place of residence for a time period of twelve [(12)] hours or

more without consent of the child's parent, guardian or custodian;

- c. a family whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to the parent, guardian or custodian; or
- d. a family in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging child maltreatment.

AO. "family services" means services that address specific needs of the child or family usually administered by [PASS] including culturally appropriate remedial services before a placement occurs.

AP. "family violence" means any act, or threatened act, of violence, including any forceful detention of a person which results, or threatens to result, in physical or mental injury and is committed by a person against another person to whom such person is, or was, related by blood or marriage or otherwise legally related under the laws of the Pueblo or with whom such person is, or was, residing or is otherwise considered a member of family through [Acoma customary or common law].

AQ. "felony" means an act that would be a felony under the Pueblo of Acoma [Laws, 2003, as amended] or a felony as defined by federal law and/or New Mexico state law if committed by an adult.

AR. "good faith" means an honest belief or purpose and the lack of intent to do harm; whereas "bad faith" shall mean acting dishonestly with malicious intent or purpose.

AS. "great bodily/physical harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body.

AT. "great psychological harm" means harm that causes mental or emotional incapacity for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require intense spiritual, psychological, or psychiatric care.

AU. "guardian" means a person appointed as a guardian by a court of competent jurisdiction or Indian tribal authority or a person

authorized to care for a child or elder by a parental power of attorney as permitted by law.

- AV. “guardian ad litem” means an attorney appointed by [an Acoma] court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as guardian ad litem.
- AW. “ICWA” means Indian Child Welfare Act, 25 U.S.C. §1901—1963, [as amended]. The procedures for state courts in ICWA shall not be binding upon the Court except where specifically provided in this Chapter.
- AX. “Indian child” means an unmarried person who is:
1. less than eighteen [(18)] years old;
 2. a member of an Indian tribe or is eligible for membership in an Indian tribe; and
 3. the biological child of a member of an Indian tribe.
- AY. “Indian child’s tribe” means:
1. the Indian tribe in which an Indian child is a member or eligible for membership;
 2. in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts; or
 3. any Indian tribe recognized by the Pueblo of Acoma to which the child belongs.
- AZ. “Indian tribe” means a federally recognized Indian tribe, community or group pursuant to 25 U.S.C. § 1903(1) or any tribe recognized by the Pueblo of Acoma.
- BA. “intimate partner violence” or “IPV” means violence inflicted upon a spouse or person with whom the perpetrator has a romantic or sexual relationship.
- BB. “Judge” when used without further qualification, means the judge of the Court.

- BC. “lay advocate” means a non-attorney who is authorized to practice before the Acoma courts; availability of a lay advocate is subject to availability of funding.
- BD. “least restrictive” means treating children and families in a manner least restrictive of a child’s or family’s freedom. Although a family’s rights may be restricted by the Court for legitimate purposes, such restriction must be no greater than necessary to achieve the purposes of this Chapter in §4-2-2, Pueblo of Acoma Laws, 2003, as amended.
- BE. “legal custody” means a legal status created by order of the Court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications; and the right to consent to the child’s enlistment in the armed forces of the United States.
- BF. “malicious reporting” [is making] an allegation of child maltreatment reported in bad faith where the information collected during the investigation does not support a finding that the child was abused, neglected, or is in need of services as defined in [this Chapter] because of the alleged conduct [of] a parent, guardian, foster parent, pre-adoptive parent or treatment foster parent, or that such a person failed to protect the child from maltreatment as defined by [this Chapter].
- BG. “member” (or “Pueblo of Acoma member”) means any individual who is descended from a biological parent who is an Acoma Pueblo member or enrolled member or otherwise recognized by Tribal Government as a member. In the case of a child, it is a child whose biological parent or parents are Pueblo members, including those enrolled in Acoma.
- BH. “misdemeanor” means an act that would be a misdemeanor or petty misdemeanor if committed by an adult under the Pueblo of Acoma Laws, 2003, as amended and [would] be sentenced pursuant to the provisions of §5-4-1(A), Pueblo of Acoma Laws, 2003, as amended.

Bl. "neglect" means:

1. the habitual or intentional failure to provide such non-emergency and non-routine medical or personal care shall constitute neglect under the law;
2. failure to take reasonable steps to protect a child from foreseeable harm; or
3. failure to report knowledge of physical or sexual abuse of a child.

BJ. "neglected child" means a child:

1. who has been abandoned by the child's parent, guardian or custodian;
2. who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them; provided that nothing in [this Chapter] shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of [this Chapter]; and further provided that no child shall be denied the protection afforded to all children under [this Chapter];
3. who has been abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;
4. whose parents, guardians, custodians or caretakers have exposed the child to instances of family violence, or alcohol abuse or substance abuse;
5. who has been placed for care or adoption in violation of the law; or

6. who is a victim of child maltreatment.
- BK. “non-emergency and non-routine medical or personal care” means the provision of care that a parent or custodian is able to furnish such as food, clothing, shelter, medical attention, hygiene, education, including keeping in contact with the child, good-faith compliance with family services plans or participation in the active efforts of PASS to prevent abuse and/or neglect. The habitual or intentional failure to provide such non-emergency and non-routine medical or personal care shall constitute neglect under the law.
- BL. “parent” or “parents” includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child. It does not include persons whose parental rights have ceased pursuant to order of the Court.
- BM. “PASS” means Pueblo of Acoma Social Services.
- BN. “permanency plan” means a determination by the Court that the child’s interest will be served best by:
1. reunification;
 2. placement for adoption or customary adoption after the parents’ rights have been relinquished, suspended or terminated or after a motion has been filed to terminate parental rights;
 3. placement with a person who will be the child’s permanent guardian pursuant to a legal guardianship;
 4. placement in the legal custody of PASS with the child placed in the home of a fit and willing relative; or
 5. placement in the legal custody of PASS under a planned permanent living arrangement.
- BO. “person” means an individual or any other form of entity recognized by law.
- BP. “placement” means [a] suitable accommodations based on case management, case plan and permanency goals after removal.

- BQ. “pre-adoptive parent” means a person with whom a child has been placed for adoption or customary adoption.
- BR. “protective supervision” means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child.
- BS. “residence” means the place where the child is presently living (place of residence can differ from place of domicile).
- BT. “residential care” means the residential care of children in a shelter care facility or group home approved by PASS.
- BU. “resource family” means a person, including a relative of the child, licensed or certified by PASS to provide care for children in the custody of PASS or agency.
- BV. “restitution” means financial reimbursement by [a] delinquent child to the victim or community service imposed by the Court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. “Restitution” does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. “Restitution” does include remedies such as community service for any damage to the Pueblo of Acoma community or its traditions, as determined by the Court based upon evidence provided by the Tribal Sheriffs or other Traditional leaders or Clan Elders.
- BW. “reunification” means either a return of the child to the parent, family of origin, or to the home from which the child was removed or a return to the noncustodial parent.
- BX. “safety assessment” means a determination by PASS as whether the child or family is safe.
- BY. “serious youthful offender” means an individual fifteen [(15)] to eighteen [(18)] years of age who is charged with and indicted or bound over for trial for first degree murder. A “serious youthful offender” is not a delinquent child as defined in [this Chapter].

- BZ. “sexual abuse” includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by the Pueblo of Acoma, [the s]tate of New Mexico or federal law.
- CA. “sexual exploitation” includes but is not limited to:
1. allowing, permitting or encouraging a child to engage in prostitution;
 2. allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
 3. filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by the Pueblo of Acoma, State of New Mexico or federal law.
- CB. “supervised release” means the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by a juvenile probation officer until the term of commitment has expired, and may be returned to custody for violating conditions of release.
- CC. “suspension of parental rights” means the temporary or indefinite severance of the legal relationship between parent and child.
- CD. "transition plan" means an individualized written plan for a child, based on the unique needs of the child that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation.
- CE. “Tribal Court” means:
1. the tribal court for the Pueblo of Acoma unless otherwise stated and then it may refer to a court established and operated pursuant to a written law or custom of an Indian tribe; or
 2. any administrative body of an Indian tribe that is vested with judicial authority.

- CF. “Tribal court order” or “TCO” means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court’s jurisdiction.
- CG. “tribunal” means any judicial forum other than the Court.
- CH. “victim” means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities.
- CI. “voluntary placement” means a decision in which there has been participation by PASS resulting in the temporary placement of a child away from the home of the child’s parents or Indian custodian in the home of a family member, other tribal member, foster home, tribally-approved institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.
- CJ. “youthful offender” means a delinquent child subject to adult or juvenile sanctions who is fourteen to eighteen [(14-18)] years of age at the time of the offense, and:
1. who is adjudicated [as committing] at least one of the following offenses:
 - a. second degree murder;
 - b. assault with intent to commit a violent felony;
 - c. kidnapping;
 - d. aggravated battery with a deadly weapon or where great bodily harm results;
 - e. aggravated battery against a household member, with a deadly weapon or where great bodily harm results;
 - f. aggravated battery upon a peace officer;
 - g. shooting at a dwelling or occupied building or shooting at or from a motor vehicle;
 - h. dangerous use of explosives;

- i. criminal sexual penetration;
 - j. robbery;
 - k. aggravated burglary;
 - l. aggravated arson; or
 - m. abuse of a child that results in great bodily harm or death to the child; [or]
- 2. who is adjudicated for any felony offense and who has had three [(3)] prior, separate felony adjudications within a three [(3)]-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or
 - 3. who is adjudicated for first degree murder and is a “serious youthful offender”.

4-2-4

Establishment and Jurisdiction of the Children’s Court

- A. Establishment and delegation of authority. There is hereby established for the Pueblo of Acoma a court to be known as the Pueblo of Acoma Children's Court. The primary function of the [C]hildren's Court [(“Court”)] shall be to foster the well-being of all children and families within the Pueblo of Acoma in accord with the purposes stated in this Chapter.
- B. Original Jurisdiction of Court. Except as may otherwise be provided in [Acoma Laws, 2003, as amended], the Court has original jurisdiction over all proceedings brought under this Chapter, and any other proceeding for the commitment of a minor, or the appointment of a guardian or custodian or similar arrangements for the care, custody, protection or best interests of a minor, whether or not arising from a proceeding under this Chapter. The Court’s jurisdiction shall include but is not limited to:
 - 1. All children within the exterior bounds of the Pueblo of Acoma;

2. Children who are members of the Pueblo of Acoma. Children who are members of the Pueblo of Acoma shall be afforded domicile and considered members of the Acoma Community.
3. Indian children over whom the Pueblo of Acoma has jurisdiction pursuant to ICWA, and
4. Children by the consent of the parties with custody of such children.
5. Child custody proceedings transferred from state proceedings, pursuant to ICWA, and the rules and regulations promulgated by the Secretary of the Interior in Title 25, C.F.R. Parts 13 and 23, as amended, where they do not conflict with the provisions of the [Pueblo of Acoma Laws 2003, as amended]. The procedures for state courts in ICWA shall not be binding upon the Court except where specifically provided in this Chapter.
6. Transfer to state court or other tribal court. In any proceeding before the Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the Court determines that a state or other [Indian] tribe has a significant interest in the well-being of the child and the transfer would be in the best interests of the child.
7. Transfer from other court. The Court may accept or decline, under the procedures set forth in this chapter, transfers of child welfare cases from federal, international, state and tribal courts.
8. Notwithstanding anything in this [Chapter], the Court shall not have exclusive jurisdiction over matters relating to children who engage in behavior that would otherwise constitute a violation of the Pueblo of Acoma Law[s 2003, as amended]. Such cases may be adjudicated in the Acoma tribal courts pursuant to the [Pueblo of Acoma Laws (2003), as amended].
9. Continuing jurisdiction. The Court may exercise continuing jurisdiction to further the best interest of children and their extended families who, while subject to the Court[’s] jurisdiction, leave the [the exterior boundaries of Acoma Pueblo lands].

10. Jurisdiction over extended family:
 - a. Where the Court exercises exclusive jurisdiction over a child under this [Chapter], the Court shall also have civil jurisdiction over the child's extended family residing in the household whenever the Court deems it appropriate.
 - b. The Court shall have jurisdiction over any adult whose behavior causes or tends to cause [a] child to come within the jurisdiction of the Court. Such person shall be provided notice and opportunity for hearing.
11. Comity. The Court shall exercise comity with regard to state, pueblo, tribal or other foreign child custody orders, where such orders are consistent with the public policy of the Pueblo, the intent of [ICWA], due process, and the laws and customs of the Pueblo of Acoma.

4-2-5 Pueblo of Acoma Social Services: The Tribal Council, having determined that it is in the best interests of the people of Acoma to provide for the delivery of social services to the people of Acoma and having determined that it is in the best interest of tribal government for the Pueblo to perform this function [], created [the] Pueblo of Acoma Social Services (“PASS”).

- A. It shall be the responsibility of PASS to provide for the delivery of social services to the people of Acoma. These services and PASS’s actions may be subject to federal requirements.
- B. In providing for the delivery of social services to the people of Acoma, PASS shall proceed with the objectives and purposes specified in this Chapter, to strengthen the family and community, to prevent the breakup of Acoma families, and to make active efforts towards the goal of reunification whenever possible.

4-2-6 Authorized PASS Programs

- A. PASS shall act under the purposes set forth in this Chapter and shall be responsible for the development and implementation of social programs and services to achieve enforcement goals of this Title. PASS shall have the power to assess needs and coordinate the delivery or referral of social services programs to the Acoma community [as set forth in this Title], including but not limited to: case management, case plans, family services, adult care

assistance, child welfare and protection services, assistance transitioning from welfare systems to full employment, exercise ICWA powers and responsibilities, provide for child placement costs, administer resource [foster] family program, disaster and emergency assistance, in-home services, parenting classes, and counseling or therapeutic treatment programs.

- B. Duties of employees. All employees of PASS shall be trained in protection of the rights of children and families under this Title from the initial time of contact, during any investigation, [Court process] and throughout any treatment.

4-2-7 Community Protection Team

- A. The Acoma [Community] Protection team shall be composed at least five (5) members as chosen by PASS and approved by Tribal Administration.

4-2-8 PASS Petitions; who may sign; form & content

- A. A petition initiating proceedings pursuant to the provisions of [this Chapter] shall be signed by the Court attorney or PASS legal representative.
- B. An affidavit for an ex-parte custody order may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.
- C. A petition initiating proceedings pursuant to the provisions of [this Chapter] shall be entitled, "In the Matter of _____, a child", and shall set forth with specificity:
 - 1. the facts necessary to invoke the jurisdiction of the [C]ourt;
 - 2. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;
 - 3. the name, birth date and residence address of the child;
 - 4. the name and residence address of the parents, guardian, custodian or spouse, if any, of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the Pueblo of Acoma or [the s]tate of New Mexico, [or] if a residence address is unknown, the name of any known adult relative residing within the Pueblo of Acoma

or [the s]tate of New Mexico or, if there be none, the known adult relative residing nearest to the [C]ourt;

5. whether the child is in custody or detention pursuant to [Chapter 5 of this Title] and, if so, the place of custody or detention and the time the child was taken into custody;
6. if any of the matters required to be set forth by this Section are not known, a statement of those matters and the fact that they are not known.

4-2-9

Summons; Service

- A. After a petition has been filed, summonses shall be issued and served.
- B. The summons shall require the persons to whom directed to appear personally before the Court at the time ordered by the summons to answer the allegations of the petition. The summons shall advise the parties of their basic rights to legal representation under this [Chapter] and shall have attached a copy of the petition.
- C. The Court may endorse upon the summons an order directing the parent, guardian, custodian or other person having the physical custody or control of the child to bring the child to the hearing.
- D. If it appears from any sworn statement presented to the Court that the child needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the child into custody and take the child to the place of detention designated by the Court, subject, however, to all of the provisions of this [Title] relating to detention criteria and post-detention proceedings and the rights of the child in regard thereto.
- E. A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel or lay advocate, with the consent of the parent, guardian or custodian, may waive service of summons in the child's behalf.
- F. Service. If a party to be served with a summons can be found within the [Pueblo of Acoma], the summons shall be served upon the party at least forty-eight [(48)] hours before the hearing, except that for a child party to an action pursuant to [§§4-4-1 et seq.,] service

shall be on the child's guardian ad litem, attorney, or lay advocate and not personally.

- G. If a party to be served is within the [Pueblo of Acoma] and cannot be found but the party's address is known, service of the summons may be made by mailing a copy of the summons to the party by certified mail at least ten [(10)] calendar days before the hearing.
- H. If after reasonable effort a party to be served cannot be found, or address ascertained, within or without the [Pueblo of Acoma], the Court may order service of the summons by publication, in which event the hearing shall not be less than five (5) days after the date of last publication.

Chapter 3. FAMILY SERVICES ACT

4-3-1 Purpose of the Family Services Act; Interpretation

- A. The Pueblo of Acoma recognizes that the future of our people rests with our children and protecting, empowering and promoting the welfare of the families that raise them and it hereby adopts the "Family Services Act," which shall be interpreted and construed to effectuate the following purpose[s]:
 - 1. To recognize that many instances of a child's behavior are symptomatic of a family in need of family services[("FINS")];
 - 2. To provide prevention, diversion and intervention services for a child or family;
 - 3. To protect the rights of Indian children to be loved, raised, and to receive physical, spiritual and emotional nourishment, whenever feasible, in their families and communities of origin by implementing polices of PASS, while maintaining an Indian child's sense of community and connection to his or her cultural heritage;
 - 4. To reaffirm the value of Indian family life and to recognize that placing an Indian child outside his or her community absent culturally relevant safeguards is to deny that child's rights otherwise recognized by his or her community. When family problems can be mitigated through family services, such services shall be offered in support of family unity and reunification. Removal shall not be an option if a family agrees to participate in voluntary services, unless in

circumstances where serious abuse is imminent and likely to result in substantial harm as determined by PASS.

5. To recognize the importance of customary law, cultural relevance and traditional roles of the extended family in the child-rearing practices of a child's family or tribe, when determining appropriate placement of children and families in need of care or services.

[B. Interpretation

The definitions set forth in §4-2-3 [of this Title], as amended, shall apply to this Chapter. Nothing in these definitions shall be used to interfere with or prohibit cultural and spiritual development of the child or family, nor shall these definitions be used to interfere with traditional child-rearing practices of a child's family or Indian tribe.]

4-3-2 Request for family services; withdrawal of request; presumption of good faith

- A. Any child, parent, or relative who believes that their own family or child might be in need of family services may request family services from PASS;
- B. Any person who believes in good faith that a child or family is in need of family services may submit a referral to PASS;
- C. A family that requests or accepts family services may withdraw its request or decline family services at any time during services, even after such service has been accepted.
- D. A person who refers a child or family for family services is presumed to be acting in good faith and shall be immune from civil or criminal liability, unless the person acted in bad faith or with malicious purpose.

4-3-3 Referrals

- A. PASS shall, subject to the availability of resources, design and implement a referral process to assist a child or family in accessing appropriate services.
- B. If the child involved in the referral process is an Indian child, the assessment and referral process shall include contact with the

Indian child's tribe for the purpose of consulting and exchanging information.

4-3-4 Informal voluntary placement of child outside home

- A. Informal voluntary placement occurs when a parent, custodian or guardian makes a decision on their own to place a child outside the home without formally notifying PASS or an [Acoma] tribal court, this decision is binding if the family can prove such decision was made in mutual good faith, in the best interest of the child and family, and that the parent maintains continuous contact with the family and child.

4-3-5 Voluntary placement of child outside home; documentation

- A. Upon written application by a parent, guardian or custodian, and if good cause is shown, PASS may accept custody of a minor child for temporary voluntary placement outside the home.
- B. Prior to accepting custody of any child for voluntary placement, PASS shall fully explain and document the following to the extent that it applies:
1. the active efforts made by PASS to notify and consult the child's extended family about the child's welfare, as well as PASS's efforts to exhaust all opportunities for placement with extended family or other tribal members and in consideration of cultural and familial values under ICWA;
 2. the active efforts made by PASS to ascertain, consider, accommodate or comply with the wishes of the parents and children to the extent feasible;
 3. the active efforts made by PASS to provide or arrange for resources and services by other public or private agencies that would alleviate the conditions leading to the placement request;
 4. the active efforts made by PASS to notify, inform or advise parents of their legal rights so that they fully understand the intent and terms of voluntary placement, and advise parents about their rights under this section;
 5. the active efforts made by PASS to notify the child's parents, custodian, or guardian about all relevant procedural events,

hearings and circumstances in which petitions may be filed by PASS;

6. any determination that the services are not available;
7. any reasons given by the parent, guardian or custodian for refusal of the services; and
8. the fact that conditions leading to the placement request could not be alleviated by services aimed at keeping the child in the home.

[C]. If PASS accepts custody of a child, PASS shall provide the child with shelter in an appropriate facility, pursuant to §4-[3]A-5 of [this Title] located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children.

4-3-6

Voluntary placement; rights of parent: Any parent, guardian or custodian whose child is in voluntary placement shall have the following rights with respect to the child:

- A. the right of reasonable visitation and communication with the child;
- B. the right to participate in decisions and activities that impact the child's physical, educational, emotional and spiritual wellbeing, such as church, ceremonies, cultural events, counseling and therapy, etc.
- C. the right to be informed of changes in the child's school, day care, caretakers, religion, medical records, mental health records, doctors, or of changes in the child's placement by PASS; and
- D. the right to participate in decisions regarding all non-emergency and non-routine medical or personal care, as well as routine medical and mental health care provided for the child.
- E. the right to choose whom the child will be placed with as long as such decision is in alignment with cultural practices.
- F. the right to end voluntary placement at the parent's, guardian's or custodian's request.

4-3-7 Right to regain custody: A parent, guardian or custodian may at any time demand and obtain the return of a child voluntarily placed outside the home. The child shall be returned within seventy-two [(72)] hours of the demand; however, PASS may prevent the immediate return by:

- A. filing a petition alleging maltreatment, and that such maltreatment is likely to result in significant harm or detriment to the child's health or welfare; and
- B. obtaining temporary custody of the child before the expiration of the seventy-two [(72)] hours.

4-3-8 Voluntary placement; time limitation

- A. No child shall remain in voluntary placement, including informal voluntary placement, for longer than [six] (6) months or for more than [six] (6) months in any calendar year; provided that a child may remain in voluntary placement up to an additional [six] (6) months upon order of the Court after the filing of a petition by PASS for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.
- B. Except in the event of an extreme emergency, no event child shall remain in voluntary placement for a period in excess of two [(2)] years in any three [(3)] -year period.
- C. Any placement described in this section shall not be considered abandonment or neglect by a parent, guardian or custodian or other family member.

4-3-9 Emergency placement; criminal history record check; hearing

- A. In an emergency placement situation, when a child must be immediately removed and placed in a home due to the sudden absence of parents or custodians, PASS shall request a valid criminal history record check of each adult residing in the home. The results of the name-based check shall be provided to PASS, and within [fifteen] (15) days from the date that the name-based check was conducted.
- B. The Pueblo of Acoma Public Safety Division shall positively identify the fingerprint subject, if possible, and forward the fingerprints to the Federal Bureau of Investigation within [fifteen] (15) calendar days from the date that the name-based search was conducted. The child may be removed from the home immediately if any adult

resident fails to provide fingerprints or written permission to perform a federal criminal history record check when requested to do so.

- C. When placement of a child in a home is denied as a result of a name-based criminal history record check of a resident and the resident contests that denial, the resident shall, within five [(5)] business days, submit to PASS a complete set of the resident's fingerprints with written permission allowing PASS to forward the fingerprints to the Pueblo of Acoma Public Safety Division for submission to the Federal Bureau of Investigation.
- D. Any placement described in this section shall not initially be considered abandonment or neglect by a parent, guardian or custodian.
- E. In the event that the parents, guardian or custodian become available, a hearing shall be conducted within ten [(10)] business days and the parents, guardian, or custodian shall be notified with all reasonable and immediate speed, no later than five [(5)] days before the hearing [of]:
 - 1. the nature of any allegations if PASS intends to file a petition alleging that the child or family is in need of services;
 - 2. the factual basis for the allegations;
 - 3. the present custodial situation;
 - 4. any relief requested by PASS;
 - 5. the right to be represented legal counsel at their own expense and the right to request a lay advocate at the Pueblo's expense if the parent, guardian or custod[ian] cannot afford representation and if an advocate is available;
 - 6. the right to request an informal resolution of the proceeding. If an informal resolution is requested and consent is given, the Court may suspend further proceedings pending the informal resolution. PASS may elect to return the child to the custody of the parents, custodian or guardian before the hearing if an informal resolution is going to be requested, and if PASS determines reunification is in the best interest of the child.

4-3-10 Duty to file a petition: PASS shall immediately file a petition alleging that the child needs court-ordered family services when a child has remained in voluntary placement for longer than one [(1)] year in any two [(2)] -year period, or the parent, guardian or custodian of the child:

- A. refuses to provide reasonable care and support, including essential needs and non-emergency medical or personal care, so that such failure to provide care is likely to result in significant harm or detriment to the child's health or welfare as determined by the Court through testimony of appropriate medical or professional persons, and
- B. refuses to accept the child back into the parent's, guardian's or custodian's custody.

4-3-11 Procedures for child or family in need of services petitions: All Court proceedings initiated by a petition under Chapters 3 and 3A [of this Title] shall be prepared and filed by PASS. The petition shall contain the following information:

- A. The name and birth date of the child;
- B. The name of the mother, parents or custodian of the child;
- C. The name of the child's [Indian] tribe if the child is an Indian child;
- D. The basis of the Court's jurisdiction;
- E. An allegation that the child or family is in need of services, and a plain statement of facts supporting the allegation (i.e., if voluntary placement lasts longer than one [(1)] year; refusal to provide essential needs; abuse, abandonment or neglect; etc.);
- F. Any facts relevant to the present physical or legal custody of the child;
- G. A summary of any efforts which have been made by PASS or others to divert the case from the Court system to extended family, or community leaders and advisors;
- H. Whether temporary custody of the child is requested by PASS; and
- I. A statement of any other relief requested by PASS, including cessation of any parental or custodian rights.

Chapter 3A. FAMILY IN NEED OF COURT ORDERED SERVICES

4-3A-1 Purpose [and Interpretation] of [Chapter]

- A. This Chapter shall be interpreted and construed to effectuate the following expressed purposes:
1. to create safety, well-being and stability for families experiencing violence and/or maltreatment through Court intervention, to provide services for a family in need of services when voluntary services have been exhausted under Chapter 3 of [this Title]; and
 2. to recognize that many instances of truancy and running away by a child are symptomatic of a family in need of services and that in some family situations the child and parent are unable to share a residence.
 3. to act in the best interest of the child and family and provide for stability by developing a permanency plan in accordance with tribal law and the purposes of [Chapter 3 of this Title].

[B. Interpretation

The definitions set forth in §4-2-3, as amended, shall apply to this Chapter. Nothing in these definitions shall be used to interfere with or prohibit cultural and spiritual development of the child or family, nor shall these definitions be used to interfere with traditional child-rearing practices of a child's family or Indian tribe.]

4-3A-2 Protective custody; interference with protective custody; penalty

- A. A child may be taken into protective custody by a law enforcement officer without a Court order when the officer has reasonable grounds to believe that [the child]:
1. has run away from the child's parent, guardian or custodian;
 2. subject to a custody order issued by the Court, is leaving the jurisdiction of the Court or being taken from this jurisdiction without permission of his or her parent, guardian or custodian in violation of such custody order;
 3. without parental supervision is suffering from illness or injury;

4. has been abandoned or [is] a victim of child maltreatment; or
 5. is in danger of serious and imminent physical or emotional harm by his or her surroundings and removal from those surroundings is necessary to ensure the child's safety.
- B. A child may be taken into protective custody pursuant to a court order issued after an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement.
- C. When a child is taken into protective custody, PASS shall make active efforts to determine whether the child is an Indian child.
- D. Any person, other than the child taken into protective custody, who interferes with placing the child in protective custody is guilty of a simple misdemeanor offense and shall be sentenced pursuant to the §5-4-1(A) of Pueblo of Acoma Laws (2003) as amended.

4-3A-3

Protective custody; restrictions; time limitations

- A. A law enforcement officer who takes a child into protective custody shall immediately and with all reasonable speed:
1. inform the child of the reasons for the protective custody;
 2. notify the child's parents, guardian or custodian of the protective custody and the reasons therefore; in the event that attempts to notify the child's parents are unsuccessful, then best efforts shall immediately be made to notify the child's nearest family members; and
 3. place the child with PASS.
- B. When PASS is contacted by a law enforcement officer who has taken a child into protective custody, PASS shall:
1. return the child to the child's parent, guardian or custodian if the child's safety is assured, or:
 2. if the child's safety cannot be assured, PASS shall accept custody of the child and designate an appropriate home or facility in which to place the child under §4-3A-5.

- C. When a child is taken into protective custody, active efforts shall [be made to] treat the child [not] like a delinquent child, [nor] place the child under arrest, [nor] handcuff, [nor] restrain, nor subject a child to shame, humiliation, intimidation or harmful circumstances, unless probable cause exists to believe a crime has been committed and the child committed the crime.
- D. If circumstances exist in which a child is transported in a law enforcement vehicle:
 - 1. the officer shall make reasonable efforts to ensure the safety and comfort of the child within the law enforcement vehicle, and
 - 2. the child shall not be placed in any vehicle that contains an adult placed under arrest.
- E. A child taken into protective custody shall not be held involuntarily for more than [forty-eight] (48) hours, unless a petition to extend the custody is filed pursuant to §4-3-11.
- F. When a petition is filed or any time thereafter, the Court may issue an *ex-parte* custody order, or in circumstances where the child is in immediate danger of abuse, an order based upon a sworn written statement of facts by a child case worker or law enforcement officer, showing that probable cause exists to believe that protective custody of the child is necessary.
- G. The protective custody order shall be served on the respondent by a person authorized to serve arrest warrants and shall direct the law enforcement officer to take custody of the child and deliver the child to a place designated by the Court.
- H. Rules of evidence do not apply to the issuance of an *ex-parte* [protective] custody order.

4-3A-4

Notification to family; release from protective custody

- A. When a child is taken into protective custody, placed with PASS and the child is not released to the child's parent, guardian or custodian, PASS shall provide written notice as soon as possible, and in no case later than [twenty-four] (24) hours, to the child's parent, guardian or custodian, with a statement of the reasons for taking the child into protective custody.

- B. When PASS releases a child placed in protective custody to the family, PASS shall refer the family for voluntary family services.
- C. When PASS releases a child from protective custody and the child's parent, guardian or custodian refuses to allow the child to return home, PASS shall file a petition pursuant to §4-3-11 [of this Title] or in the case of abuse.
- D. If PASS is not releasing the child to the parent, guardian or custodian within three [(3)] days, PASS shall notify [an Indian] child's tribe.

4-3A-5

Place of custody: Unless a child from a family in need of services who has been placed in [PASS] custody is also alleged or adjudicated delinquent, the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be placed in the following secure homes or shelter-care facilities listed in order of priority:

- A. an available home belonging to a member of the child's extended family, relatives, other members of a Indian child's tribe, when the relative [or other member of an Indian child's tribe] provides PASS with a sworn statement that the relative [or other member of a Indian child's tribe] will not return the child to the dangerous surroundings that prompted protective custody for the child.
- B. a licensed foster-care home or any home authorized by PASS for the provision of foster care, group care or use as a protective residence; or
- C. a facility operated by a licensed child welfare services agency or by an Indian organization which has a program suitable to meet the child's needs.
- D. a child shall not be placed in a detention facility or other environment where the child is in contact with persons in such a facility for the reason of having been accused or convicted of a crime or delinquent act, unless such a placement is determined, by a Court judge to be necessary for the benefit of the child or to insure the child's continued presence in the area.

4-3A-6

Child placement preferences

- A. [A] child in PASS custody shall be placed in the least restrictive setting that most closely approximates a family in which the child's special needs, if any, may be met. The child shall be placed within reasonable proximity to the child's home, taking into account any special needs of the child. Preference shall be given to placement, in the following order, with:
1. a member of the child's extended family;
 2. an Acoma resource family or foster care home licensed, approved and specified by PASS or [an Indian] child's tribe;
 3. an Indian foster care home licensed or approved by another [Indian] tribe's authorized licensing authority or an authorized non-Indian licensing authority; or
 4. a culturally-sensitive institution for Indian children approved by the Indian child's tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.
- B. When the placement preferences set forth in Subsection A of this section are not followed or if the Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural and community ties are protected and fostered.

4-3A-7

Custody hearings; time limitations; intervention

- A. When PASS petitions the Court for protective custody of a child, a custody hearing shall be held within [ten] (10) business days from the date the petition is filed to determine if the child should remain with the family or be placed in the custody of PASS pending adjudication. The hearing may be held earlier, but in no event shall the hearing be held sooner than two (2) days after the date the petition was filed.
- B. The parent, guardian or custodian of the child, and other persons as the Court may direct, shall be given reasonable notice of the time and place of the hearing no less than [three] (3) days before the hearing. A copy of the petition shall also be served no later than five (5) days prior to the hearing by the Court. Reasonable efforts shall be made to serve the petition upon the parents, guardians or custodians of the child. If the parent, guardian or

custodian is not served prior to the custody hearing, the Court shall determine if reasonable efforts to serve the petition were made. If the Court finds reasonable efforts to serve the petition were made, the Court shall proceed with the custody hearing.

C. When the custody hearing is conducted, the Court shall release the child to his parent[(s)], guardian or custodian unless probable cause exists to believe that:

1. the child is suffering from an illness or injury, and the parent[(s)], guardian or custodian is not providing adequate care for the child;
2. the child is in immediate danger from the child's surroundings, and removal from those surroundings is necessary for the child's safety or well-being;
3. the child will be subject to child maltreatment by others if not placed in the custody of PASS;
4. a parent, guardian or custodian of the child or any other person is unable or unwilling to accept custody or unwilling to provide adequate supervision and care for the child, including a refusal to provide essential needs, or non-emergency and non-routine medical or personal care.

D. Intervention of interested parties shall be allowed as follows:

1. Any extended family member may submit a motion to the Court, requesting permission to intervene as an interested party. Motions will be granted or denied at the discretion of the judge.
2. Any extended family members may also present themselves to the Court and state why they wish to participate as interested parties. The Court shall make a determination based on the best interests of the child.
3. If a child is a member of another [Indian] tribe, the [Indian] tribe in which the child is a member may intervene unless the court finds such intervention is not in the child's best interest.
4. Notice of intervention shall be served by mail, by the clerk of the Court, upon all parties to the proceeding within a reasonable time prior to the hearing. Such notice may be

waived by the Court if the Court determines that lack of notice has not detrimentally affected the other parties and the case. If the Court finds such detrimental effect, the Court may deny intervention, or continue the hearing date for an appropriate time.

- E. At the conclusion of the custody hearing, if the Court determines that protective custody pending adjudication is appropriate, or if the court determines that probable cause exists pursuant to Subsection C of this Section, the Court may:
 - 1. return the child to the child's parent, guardian or custodian, subject to conditions that will reasonably assure the safety and well-being of the child, including protective supervision by PASS; or
 - 2. award custody of the child to PASS.

- F. At the conclusion of the custody hearing, if the court determines that probable cause does not exist pursuant to Subsection C of this Section, the Court shall:
 - 1. retain jurisdiction and, unless the Court permits otherwise, order that the respondent and child remain in the jurisdiction of the Court pending the adjudication;
 - 2. return legal custody of the child to the child's parent[(s)], guardian or custodian with conditions to provide for the safety and well-being of the child, including protective supervision by PASS; and
 - 3. order that the child's parent[(s)], guardian or custodian allow the child necessary contact with the child's guardian ad litem or attorney.

- G. In addition to any disposition made by the Court pursuant to Subsection E of this Section, the Court may order the child and family to participate in an assessment and referral process. If probable cause does not exist, the court may order the respondent or the alleged victim of child maltreatment, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic examination or evaluation reports ordered by the Court shall be provided to the parties at least five (5) days before

the adjudicatory hearing is scheduled. The diagnostic examination and evaluation reports shall not be sent to the Court.

- H. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.
- I. The Court's rules of evidence shall not apply to protective custody hearings conducted pursuant to this Section.

4-3A-8 Change in placement

- A. Whenever a child's placement must change, including a return to the child's home, written notice of the factual grounds supporting the change in placement shall be sent to the child's guardian ad litem or attorney, all parties, the child's lay advocate, the child's resource family and the Court at least ten (10) days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.
- B. If the child's guardian ad litem, attorney, or lay advocate, contests the placement change, a motion shall be filed and a hearing requested on the proposed change in placement. PASS shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.
- C. When a child's placement is changed without prior notice as provided for in Subsection A of this Section, written notice shall be sent to the child's guardian ad litem or attorney, all parties, the child's lay advocate, the child's resource family, [an Indian] child's tribe if applicable, and the court within three (3) days after the placement change.
- D. Written notice need not be given to the parties, other than the child, or to the court for removal of a child from temporary emergency care, resource family care, respite care or voluntary placement. Notice of the removal shall be given to the child and the child's guardian ad litem, lay advocate or attorney.

4-3A-9 Petition; endorsement of petition; allegations

- A. A petition regarding an alleged family in need of court-ordered services shall not be filed unless the Court, after consultation with PASS, determines and endorses upon the petition that filing is in the best interests of the child and family.

- B. A petition to initiate a proceeding regarding an alleged family in need of court-ordered services shall include the following allegations:
 - 1. that the child and/or the family [is] in need of court-ordered family services;
 - 2. that the child and the family participated in or refused to participate in a plan for family services and that PASS has exhausted appropriate and available services; and
 - 3. that Court intervention is necessary to assist PASS in providing necessary services to the child and/or the family.
- C. In addition to the allegations required pursuant to the provisions of Subsection [B] of this Section, a petition that alleges a child's chronic absence from school shall be accompanied by an affidavit filed by a school official.

4-3A-10 Adjudicatory hearing; time limitations

- A. An adjudicatory hearing for an alleged family in need of court-ordered services shall be commenced within [sixty] (60) days after the date of service on the respondent.
- B. The Court attorney or lay advocate shall represent PASS at the adjudicatory hearing.
- C. If the adjudicatory hearing is not commenced within the time limits specified in this Section or within the period of any extension of those time limits, the petition shall be dismissed with prejudice.

4-3A-11 Conduct of hearings; penalty

- A. All hearings shall be recorded by stenographic notes, or by electronic, mechanical or other appropriate means.
- B. All hearings regarding a family in need of court-ordered services shall be closed to the general public, except the parties, the parties' counsel, family members, spiritual & community leaders and advisors, witnesses and other persons [that the Court finds to have a proper interest in the case of the work of the Court]. Persons that the Court finds to have a proper interest in the case or in the work of the Court may be admitted by the Court to closed hearings on

the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

- C. A child may be excluded from a hearing only if the Court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.
- D. A person or party granted admission to a closed hearing who intentionally divulges information concerning the hearing in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the [§5-4-1(A)] Pueblo of Acoma Laws (2003) as amended.

4-3A-12 Findings; dismissal; dispositional matters

- A. The Court shall determine if the allegations of the petition are admitted or denied by the parent[(s)] or child. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence regarding an alleged family in need of court-ordered services, shall make and record its findings.
- B. If the Court finds, on the basis of a valid admission of or a plea of no contest to the allegations set forth in the petition or on the basis of clear and convincing evidence that is competent, material and relevant in nature, that the child is a child of a family in need of court-ordered services, the Court may proceed immediately or at a postponed hearing to make disposition of the case.
- C. If the Court does not find that the child is a child of a family in need of court-ordered services, the Court shall dismiss the petition.
- D. In that part of a hearing regarding dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the Court and may be relied upon to the extent of its probative value, even though not competent had it been offered during the part of the hearings regarding adjudicatory issues.
- E. On the Court's motion or motion of a party, the Court may continue the dispositional hearing on the petition to receive reports and other evidence regarding disposition. The continuance will be for a reasonable time not to exceed [one hundred and eighty] (180) days from the time the petition was filed by PASS. The Court shall continue the hearing pending the receipt of the plan for family

services if that document has not been prepared and received. During any continuance granted pursuant to this Subsection, the Court shall make an appropriate order for legal custody of the child.

4-3A-13 Plan for family services

- A. Prior to holding a dispositional hearing, the Court shall direct PASS to prepare a written family services plan for submission to the Court.
- B. The plan for family services shall contain the following information:
 - 1. a statement of the problem;
 - 2. the needs of the child;
 - 3. the needs of the family;
 - 4. a description of the specific progress needed to be made by both the parent[(s)] and the child, the reasons why the plan is likely to be useful, the availability of any proposed services and PASS's overall plan for ensuring that the services will be delivered;
 - 5. if removal from the child's home or continued residence outside the home is recommended for the child, a statement of the likely harm the child will suffer as a result of removal from the home, including emotional harm resulting from separation from the child's parent[(s)];
 - 6. if removal from the child's home or continued residence outside the home is recommended for the child, a description of any previous efforts to work with the parent[(s)] and the child in the home and a description of any in-home treatment programs that have been considered and rejected;
 - 7. a description of the steps that will be taken to minimize any harm to the child that may result if separation from the child's parent[(s)] occurs or continues;
 - 8. if removal from the home or continued residence outside the home is recommended for the child and the child is [sixteen]16 years of age or older, a description of the specific skills the child requires for successful transition into

independent living as an adult, what programs are necessary to develop the skills, the reasons why the programs are likely to be useful, the availability of any proposed programs, and PASS's overall plan for ensuring that the child will be adequately prepared for adulthood; and

9. when the child is [an Indian] child, [not of the Acoma community], contact shall be made with the child's Indian tribe for the purpose of consultation and exchange of information and the plan shall indicate the person contacted in the child's Indian tribe and the results of that contact.
 10. a description of the cultural appropriateness of the plan if the child is an Indian child,
- C. A copy of the plan shall be provided by PASS to all parties at least five (5) days before the dispositional hearing.
- D. If the child is a member of an adjudicated family in need of court-ordered services, any temporary custody orders shall remain in effect until the Court has received and considered the plan at the dispositional hearing.

4-3A-14 Dispositional judgment

- A. At the conclusion of the dispositional hearing, the Court shall set forth its findings on the following issues in the dispositional judgment:
1. the ability of the parent[(s)] and child to share a residence;
 2. the interaction and interrelationship of the child with the child's parent[(s)], siblings, members of the child's extended family or clan, and any other person who may significantly affect the child's best interest;
 3. the child's adjustment to home, school and community;
 4. whether the child's educational needs are being met;
 5. the mental and physical health of all individuals involved;
 6. the preference of the child as to the child's custodian;

7. the preference of the child's parent[(s)], guardian or custodian as to the child's custody;
 8. whether there exists a relative of the child or any other individual who, after study by PASS, is found to be qualified to receive and care for the child;
 9. the availability of services recommended in the treatment plan;
 10. PASS's efforts to work with the parent[(s)] and child in the home and a description of the in-home treatment programs that PASS has considered and rejected;
 11. whether the placement preferences pursuant to §4-3A-6 [of this Chapter] have been incorporated into the plan, an[d an] explanation shall be clearly stated and supported; and
 12. whether the plan provides for maintaining [an] Indian child's cultural access and community ties.
- B. When there is an adjudication regarding a family in need of court-ordered services, the Court shall enter judgment and make any of the following dispositions:
1. permit the child to remain with the child's parent[(s)], guardian or custodian, subject to conditions and limitations the Court may prescribe;
 2. place the child under the protective supervision of PASS;
 3. transfer legal custody of the child to:
 - a. a member of the child's extended family, other tribal member or person who, after study by PASS or other agency designated by the Court, is found by the Court to be qualified to receive and care for the child with protective supervision by PASS;
 - b. to [a] noncustodial parent, if that is found to be in the child's best interests;
 - c. an Indian foster care home licensed or approved by an authorized non-Indian licensing authority if the child is an Indian child; or

- d. a foster care home licensed, approved and specified by the Indian child's tribe;
 - e. PASS, subject to the provisions of this Subsection; or
 - f. an institution for children approved by [an Indian] child's tribe or operated by an Indian organization that has a program suitable to meet the child's needs;
4. if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within [forty-five] (45) days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.
- C. Unless a child of an adjudicated family in need of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children.
- D. When the child is an Indian child, the child's cultural needs shall be considered during dispositional judgment and access to cultural practices and traditional treatment shall be provided to the Indian child.

4-3A-15 Disposition of a child with a developmental disability or mental disorder; involuntary placement proceedings

- A. If during any stage of a proceeding regarding a family in need of court-ordered services petition the evidence indicates that the child has or may have a developmental disability or a mental disorder, the Court may order PASS to:
- 1. secure an assessment of the child;
 - 2. prepare appropriate referrals for services for the child; and
 - 3. initiate proceedings for the involuntary placement of the child, if necessary,

- B. When a child in [PASS] custody needs involuntary placement for residential mental health or developmental disability services, PASS shall file a motion for that child's placement.
- C. A guardian ad litem appointed pursuant to [this Chapter] shall serve as the guardian ad litem for a [child] deemed to be mentally ill or developmentally disabled.
- D. Notice. A Court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to [this Chapter], may be heard by the Court as a part of the family in need of Court-ordered services proceedings or may be heard in a separate proceeding. All parties to the family in need of court-ordered services proceedings shall be provided with proper notice of the involuntary placement hearing.
- E. The child has the following rights with regard to involuntary placement hearings:
 - 1. the right to be represented in the proceedings by counsel or lay advocate appointed by the Pueblo of Acoma;
 - 2. the right to present evidence and cross examine witnesses; and
 - 3. the right to access the complete [Court] record and any applicable appeals.
- F. An order issued by the Court for involuntary placement shall be based on the following:
 - 1. a qualified health care provider or medical person's testimony of:
 - a. [the] child symptoms or behavior;
 - b. [an] examination of alternatives and where applicable, why involuntary placement is the best alternative,
 - 2. [an] examination of the legal custodian's opinion, however if the legal custodian's opinion is not examined, the order must include the active efforts to obtain a legal custodian's opinion or explanation why such a statement is not in the best interest of the child.

3. clear and convincing evidence that as a result of the child's mental disorder or developmental disability:
 - a. the child needs treatment and is likely to benefit from the treatment proposed;
 - b. the involuntary placement is consistent with the child's treatment needs;
 - c. the proposed involuntary placement is consistent with the least restrictive means principle [defined at §4-2-3 of this Title].

- G. When a child is subject to [this Chapter] and is receiving residential treatment rehabilitation services, any documentation shall be filed with the Court as part of the family in need of court-ordered services proceeding.

- H. The Court will review the child's involuntary or voluntary placement not to exceed a period of every [sixty] (60) days. If the involuntary or voluntary placement exceeds one [(1)] year the reviews shall be held within [ninety] (90) days.

- I. The clerk of the Court shall maintain a separate section within a child's family in need of court-ordered services file for documents pertaining to actions taken under [this Section].

4-3A-16

Dispositional judgments; time limitations; modification, termination or extension of Court order

- A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding three [(3)] years from the date entered. The Court shall review the Order at least every six [(6)] months.

- B. A judgment vesting temporary legal custody of a child in an individual, other than the child's parent, shall remain in force unless terminated sooner by Court order. The Court shall review the Order at least every six [(6)] months.

- C. A judgment vesting legal custody of a child in the child's parent[(s)] or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by Court order or until the child reaches the age of majority.

- D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party, including the child by and through the child's guardian ad litem, attorney, or lay advocate.
- E. Prior to the expiration of a judgment transferring legal custody to an agency, the Court may extend the judgment for additional periods of one [(1)] year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.
- F. When a child reaches eighteen (18) years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services.

4-3A-17 Periodic review of dispositional judgments

- A. Within six [(6)] months of any original disposition order and within six [(6)] months of any subsequent continuation of the order, PASS shall petition the Court for a review of the disposition order. The review may be carried out by either of the following a judicial review hearing conducted by the Court.
- B. The Court shall give twenty (20) days' written notice to all parties of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this Section.
- C. At any judicial review hearing held pursuant to Subsection A of this Section, PASS and all persons who were present at prior hearings shall be given notice of the judicial review and shall have the opportunity to present evidence and to cross-examine witnesses.
- D. At the hearing, PASS shall not only show that it has made active efforts to implement the plan for family services approved by the Court in its dispositional order, but shall also present an updated plan for any period of extension of the dispositional order.
- E. The parent[(s)], guardian or custodian of the child shall demonstrate to the Court the family's effort to comply with the plan for family services approved by the Court in its dispositional order and, if applicable, that the family made a diligent, good-faith effort to maintain contact and provide the child with non-emergency and non-routine medical or personal care, given the family's circumstances and abilities.

- F. Rules of evidence shall not apply to hearings held pursuant to this Section.
- G. At the conclusion of any hearing held pursuant to this Section, the Court shall make findings of fact and conclusions of law.
- H. The Court shall determine, during a review of a disposition or continuation order, whether the placement preferences [in] the Pueblo of Acoma's laws and customs or the placement preferences of [an] Indian child's tribe have been followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been incorporated into an order, good cause for noncompliance shall be clearly stated and supported.
- I. Based on its findings, the Court shall order one or more of the following dispositions:
 - 1. permit the child to remain with the child's parent[(s)], guardian or custodian, subject to conditions and limitations the Court may prescribe, including protective supervision of the child by PASS;
 - 2. transfer to or continue legal custody of the child [in]:
 - a. a member of the child's extended family, clan, other tribal member or person who, after study by PASS or other agency designated by the Court, is found by the Court to be qualified to receive and care for the child with protective supervision by PASS;
 - b. to [a] noncustodial parent, if that is found to be in the child's best interests;
 - c. an Indian foster care home licensed or approved by an authorized non-Indian licensing authority if the child is an Indian child; or
 - d. a foster care home licensed, approved and specified by the ~~Indian~~ child's Indian tribe if the child is an Indian child;
 - e. PASS, subject to the provisions of this Subsection;

- f. an institution for children approved by [an] Indian child's tribe or operated by an Indian organization that has a program suitable to meet the child's [needs];
 3. dismiss the action and return the child to the child's parent[(s)] without supervision;
 4. continue the child in the legal custody of PASS with or without any required parental involvement in a treatment plan;
 5. make additional orders regarding the treatment plan or placement of the child to protect the child's best interests, if the Court determines PASS has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child;
 6. if at any review [hearing] the Court finds that the child's parent[(s)], guardian or custodian has not complied with the court-ordered treatment plan, the Court may order the child's parent[(s)], guardian or custodian to show cause why the parent(s), guardian or custodian should not be held in contempt of Court and subject to sanctions;
 7. provide for a culturally appropriate treatment plan, access to cultural practices and traditional treatment for an Indian child;
 8. direct PASS to show cause why a child maltreatment action has not been filed; or
 9. if another local agency has been made a party, direct the local education agency to show cause why it has not met the child's needs.
- J. Disposition orders entered pursuant to this section shall remain in force for a period of no more than six (6) months.

4-3A-18 Confidentiality; records; penalty

- A. All records or information concerning a family in need of court-ordered services, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a statement of child maltreatment or medical

reports, obtained as a result of an investigation in anticipation of or incident to a family in need of court-ordered services proceeding shall be confidential and closed to the public.

- B. The records described in Subsection A of this Section shall be disclosed only to the parties and to:
1. Court personnel;
 2. Court appointed special advocates;
 3. the child's guardian ad litem, attorney or lay advocate;
 4. the child's attorney or lay advocate representing the child in a child maltreatment action, a delinquency action or any other action, including a public defender;
 5. [PASS] personnel;
 6. law enforcement officials;
 7. attorneys acting as prosecutor for the Pueblo of Acoma;
 8. a federal, state or tribal government social services agency;
 9. those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to ICWA or any regulations promulgated thereunder;
 10. tribal juvenile justice system [or] social service representatives;
 11. a foster or resource parent, if the records are those of a child currently placed with that foster [or resource] parent or of a child being considered for placement with that foster [or resource] parent and the records concern the social, medical, psychological or educational needs of the child;
 12. school personnel involved with the child, if the records concern the child's social or educational needs;
 13. health care or mental health professionals involved in the evaluation or treatment of the child, the child's parent[(s)], guardian or custodian or other family members;

14. any other person or entity, by order of the Court, having a legitimate interest in the case or the work of the Court.
- C. Whoever intentionally and unlawfully releases any information or records that are closed to the public pursuant to the provisions of [this Chapter] or releases or makes other unlawful use of records in violation of [this Chapter] is guilty of a petty misdemeanor.
- D. PASS shall promulgate rules for implementing disclosure of records pursuant to this Section and in compliance with [Acoma], state and federal law and the Court Rules.

Chapter 4. CHILD MALTREATMENT

4-4-1 Purpose[; Interpretation]

- A. The Pueblo of Acoma recognizes that the future of our people rests with our children and makes their safety a priority, and it hereby adopts [this Chapter],” which shall be interpreted and construed to effectuate the following purpose:
 1. To maintain the safety, well-being and stability of children and families by implementing legal processes and systems that properly intervene, address, prevent and reduce instances of child maltreatment.
 2. To reaffirm the value of Indian family life and to recognize that any type child maltreatment shall not be accepted as a cultural norm in the Acoma community, and that [Acoma] will make active efforts to protect a child’s right to safety, well-being, stability, and access to cultural resources.
 3. To protect the rights of children to be loved, raised, and to receive physical, spiritual, educational and emotional nourishment, whenever feasible, in their families and communities of origin by implementing policies of PASS, while maintaining a child’s sense of community and connection to his or her cultural heritage.
 4. To recognize the importance of customary law, cultural relevance and traditional roles of the extended family in the child-rearing practices of a child’s family or [Indian] tribe, and that an Indian child’s best interests may be inextricably connected to that of the [Indian child’s] tribe and maintaining the unity of the extended family.

- [B. Interpretation. The definitions set forth in §4-2-3, as amended, shall apply to this Chapter. Nothing in these definitions shall be used to interfere with or prohibit cultural and spiritual development of the child or family, nor shall these definitions be used to interfere with traditional child-rearing practices of a child's family or Indian tribe.]

4-4-2 Duty to report child maltreatment; responsibility to investigate child maltreatment; penalty

- A. Every and any person who knows or has a reasonable suspicion of child maltreatment shall report the matter immediately to:
1. PASS; or
 2. tribal law enforcement;
 3. any tribal employee; or
 4. mandated reporters with duties to report abuse under [Acoma], state [or] federal law.
- B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to PASS and shall transmit the same information in writing with all due immediate speed, not to exceed [twenty-four] (24) hours. PASS shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information with all due immediate speed, not to exceed [thirty-two] (32) hours.
- C. PASS has the authority to screen and investigate reports of child maltreatment. A written PASS intake report shall contain the child's parent[(s)]', and/or guardians' names, the date and time the report was taken, the child's age, the child's primary language, the contact information of the alleged victim, the type of alleged maltreatment, the nature and extent of the child's injuries, including any specific allegation, the location where the alleged child maltreatment occurred, any evidence or reports of previous injuries, all children and/or adults residing in the child's home, information identifying the child's caretaker and any information regarding the alleged perpetrator, and all other information that the maker of the report

believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries.

- D. PASS has the discretion to assess safety in each individual case and shall assign priority to intake reports of child maltreatment as follows:
1. **Emergency-Priority.** If the report is assigned “Emergency-Priority,” PASS shall take immediate steps to investigate within [three] (3) hours and make a decision that ensure[s] a child’s safety and well-being. The child case worker must have a reasonable belief that the child is in immediate danger of substantial harm or injury to qualify for emergency-priority.
 2. **Level -1-Priority.** If the intake report is assigned as Level -1-Priority, or “P1,” PASS shall act on the report within [twenty-four] (24) hours and make a decision that provides for an alleged victim’s safety and well-being. The child case worker must believe that the child is in imminent danger of physical harm or injury to qualify for [Level-1-]Priority status.
 3. **Level-2-Priority.** If the intake report is assigned as Level -2-Priority, or “P2,” PASS shall investigate the intake report and make a decision within [five] (5) days that responds in a way to provide for a child’s safety and well-being. The child may not be in imminent or immediate danger of physical harm or injury to qualify for Level-2-Priority status. Families may still be offered services to participate in voluntarily.
 4. An intake report can be screened out if the allegations reported do not rise to the level of the priorities set out above; the child does not reside [within the]exterior boundaries [of Acoma lands]; or information was reported maliciously.
- E. The recipient of a report under Subsection A of this Section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health, safety and well-being of the alleged victim of child maltreatment, as well as that of any other child under the same care who may be in danger of child maltreatment. A local law enforcement officer trained in the investigation of child maltreatment is responsible for investigating reports of alleged child maltreatment at schools, daycare facilities or child care facilities.

- F. If an alleged victim of child maltreatment is in the care or control of or in a facility administratively connected to PASS, the report shall be investigated by a local law enforcement officer trained in the investigation of child maltreatment. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged victim of child maltreatment, as well as that of any other child under the same care who may be in danger of child maltreatment.
- G. A law enforcement agency or PASS shall have access to any of the records pertaining to a child maltreatment case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in [this Chapter].
- H. A person who violates the provisions of Subsection A of this Section is guilty of a misdemeanor.

4-4-3 Malicious reports and physical harm inflicted upon a child case worker

- A. A misdemeanor charge may be filed against any person who makes a malicious report. A report is malicious if the report is false and that information is materially false and reported with bad faith.
- B. A person who knowingly violates the provisions of Subsection A of this Section is guilty of a misdemeanor.
- C. A misdemeanor or other criminal charges as appropriate may be filed against anyone who inflicts, or threatens to inflict, physical harm upon a child case worker.

4-4-4 Complaints; referral; preliminary inquiry

- A. PASS shall investigate any reports of child maltreatment, whatever the source of the referral, to determine the best interests of the child and family with regard to case management and any other action to be taken. The name and information regarding the person making the report shall not be disclosed absent the consent of the informant or a Court order.
- B. A representative of PASS shall, at the initial time of contact with the party subject to the investigation, advise the party of the reports or allegations made. [Any party subject to the investigation] shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any

place. The investigation shall be timely completed given the nature of the circumstances from the date the report was made. In all cases, a preliminary report is due within ten [(10)] days.

- C. After completion of the investigation on a child maltreatment report, PASS shall either recommend or refuse to recommend the filing of a petition. PASS shall document the outcome of the investigation and its reasons for its decision to either recommend or refuse to recommend the filing of a petition.
- D. When a child is taken into custody pursuant to this [Chapter], PASS shall file a petition within three [(3)] business days. If a petition is not filed in a timely manner, the child shall be released to the child's parent[(s)], guardian or custodian.

4-4-5 Admissibility of report in evidence; immunity of reporting person; investigation of report; child interviews

- A. In any proceeding alleging child maltreatment resulting from a report required by this Chapter, or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of any patient-physician privilege.
- B. Anyone reporting an instance of alleged child maltreatment or participating in a judicial proceeding brought as a result of a report required in this Chapter is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted maliciously.
- C. A public official, any school personnel or other person who has the duty to report child maltreatment pursuant to this Chapter, shall permit a member of a law enforcement agency, including Acoma police officers, an Acoma prosecutor, a Court attorney, or an employee of PASS, to interview a child with respect to a report without the permission of the child's parent[(s)] or guardian. Any person permitting an interview pursuant to this Subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in violation of this Chapter.

- D. An investigation may be conducted by law enforcement, an Acoma prosecutor, and PASS. Interviews shall be conducted in a manner and place that protects the child and family from unnecessary trauma, shame, humiliation or embarrassment. The investigating entity shall conduct the investigation in a manner that will protect the privacy of the child and the family, with the priority being the safety of the child. All interactions with child victims and child witnesses shall be conducted in a child-sensitive or victim-oriented manner, taking into consideration the special needs of the child and the child's abilities, age and intellectual maturity. The interviews shall be conducted in a place where the child feels secure and in a language that the child uses and understands.

4-4-6

Taking into custody; penalty

- A. A victim of child maltreatment may be held or taken into custody pursuant to §§ 4-3A-2 and 4-3A-3 when:
1. a [peace] officer has evidence and reasonable grounds to believe that child maltreatment has occurred and that there is an immediate threat to the child's safety if:
 - a. the child's parent[(s)], guardian, caretaker or custodian has attempted, conspired to cause, allowed or caused great bodily harm to the child or great bodily harm or death to the child's sibling;
 - b. the child's parent[(s)], guardian, caretaker or custodian has attempted, conspired to cause, allowed or caused great bodily harm or death to another parent, guardian or custodian of the child;
 - c. the child has been abandoned;
 - d. the child is in need of emergency medical care;
 - e. PASS is not available to conduct a safety assessment in a timely manner; or
 - f. the child is in imminent risk of abuse;
 2. medical personnel have reasonable grounds to believe that the child has been injured as a result of child maltreatment and that the child may be at risk of further injury if the child is returned to the child's parent[s], guardian, custodian, or

caretaker. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child pursuant to Paragraph (1) of Subsection A of this Section.

- B. When a child is taken into custody by [a peace officer], PASS is not compelled to place the child in an out-of-home placement and may release the child to the child's parent[(s)], guardian, caretaker or custodian.
- C. When a child is taken into custody, PASS shall make active efforts to determine whether the child is a member of the Acoma Community or other [Indian] tribe.
- D. If a child taken into custody is an Indian child, [and the Indian child's tribe is] other than the Pueblo of Acoma, and [the child] is a victim of child maltreatment, PASS shall give notice to the Indian child's tribe in accordance with ICWA.
- E. Any person who intentionally interferes with protection of a child as provided by Subsection A of this Section, is guilty of a misdemeanor.

4-4-7

Release or delivery from custody

- A. A person who has authority to take a child into custody pursuant to §4-4-6 and has taken a child into custody shall, with all reasonable speed either:
 - 1. release the child to the child's parent[(s)], guardian, caretaker or custodian and issue verbal counsel or warning as may be appropriate; or
 - 2. deliver the child to PASS or, in the case of a child who requires prompt investigation upon reasonable belief or evidence that the child is an alleged victim of child maltreatment and is in danger of further substantial harm;
 - 3. deliver the child to a medical facility if the alleged victim of child maltreatment is believed to be suffering from a serious physical or mental condition or illness that requires prompt investigation, treatment or diagnosis. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify PASS that the child has been placed in PASS's legal custody.

- B. When an alleged victim of child maltreatment is delivered to PASS, a case worker shall conduct a review and document any reason for the need to place the child in custody. PASS shall release the child from custody unless PASS intends to file a petition pursuant to §4-3-11 or [a] protective custody placement has been ordered by the Court.
- C. If a child is placed in the legal custody of PASS and is not released to the child's parent[(s)], guardian or custodian, PASS shall immediately give written notice, preferably within [twenty-four] (24) hours, to the child's parent[(s)], guardian or custodian together with a clear statement of the reason for taking the child into custody.
- D. Active efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent[(s)], guardian or custodian, unless PASS files a petition pursuant to §4-3-11, within forty-eight (48) hours from the date that the child was taken into custody.
- E. PASS may release the child at any time within the forty-eight (48) hours period after the child was taken into custody if it is determined by PASS that release is appropriate or if release has been ordered by the Court.

4-4-8 Place of temporary custody

- A. Unless an alleged victim of child maltreatment is also alleged or adjudicated delinquent, §4-3-5 [of this Title] shall apply when an alleged victim of child maltreatment is placed into temporary custody.

4-4-9 ICWA; preferences and active efforts

- A. A child accepted by PASS for placement in a resource family or pre-adoptive placement or customary adoption shall be placed in the least restrictive, culturally-appropriate setting that most closely approximates the child's family of origin. In any resource family care, customary adoption, or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

1. a member of the child's immediate family[or] extended family; or
 2. a resource family licensed, approved and specified by PASS;
 3. an Indian foster care home licensed or approved by an authorized tribal or state licensing authority;
 4. a non-Indian family licensed, approved and specified by PASS or
 5. an institution for children approved by PASS, the child's [Indian] tribe, or operated by an Indian organization that has a program suitable to meet the child's needs.
- B. When the placement preferences in Subsection A of this Section are not followed or if the child is placed in an institution, a case plan and the child's case management shall be developed to ensure that the child's cultural ties are protected and fostered.
- C. Before placement, PASS shall make active efforts to provide services to the child to prevent removal of an Indian child from his or her parent[(s)], extended family or Indian custodian. PASS shall make active efforts to provide services to reunify an Indian child with his or her parent[(s)] or Indian custodian after removal.

4-4-10

Basic rights: [In addition to those Basic Rights set out in Chapter 1 of this Title]

- A. At the inception of a child maltreatment proceeding, counsel or a lay advocate may be appointed for the parent[(s)], guardian or custodian of the child. At the inception of a child maltreatment child maltreatment proceeding, the Court may appoint a guardian ad litem for a child.
- B. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed as guardian ad litem, lay advocate or attorney for the child.
- C. The Court shall assure that the child's guardian ad litem, lay advocate or attorney zealously represents the child's best interest.

4-4-11

Use immunity

- A. At any stage of a proceeding under [this Chapter], a respondent's counsel or lay advocate may apply for use immunity for statements made during the actual course of a court-ordered psychological evaluation or treatment program to a professional designated by PASS in furtherance of the court's order. Use immunity shall not apply to statements made to other PASS employees, agents or other representatives in the course of the alleged child maltreatment.
- B. The in-court testimony of an immunized respondent shall not be used against that respondent in a criminal prosecution; provided, however, that the respondent may be prosecuted for perjury that occurs during the respondent's testimony in Court.
- C. Respondent's counsel or lay advocate shall request a hearing on any application for immunity and shall give reasonable notice to all parties and to the prosecutor. The prosecutor shall have standing to object to the order for immunity.

4-4-12

Protective orders; Hearings

- A. A protective order shall apply to any person, except as designated by Court order. The purpose of the protective order is to allow the respondents to engage in evaluation and treatment programs as ordered by the Court and to ensure that any statement by the respondents will remain privileged and confidential and will not be divulged to any other person, including law enforcement officers and the prosecutor.
- B. At any stage of a proceeding under [this Chapter] and upon the request of the respondent's attorney or lay advocate, the Court may issue a protective order restricting the release of immunized testimony, immunized verbal statements for the purpose of psychological evaluation or treatment, or records, documents or other physical objects produced by an immunized respondent pursuant to a Court order.
- C. The respondent's attorney shall apply for the protective order, request a hearing, and give reasonable notice to all parties and to the prosecutor. The prosecutor shall have standing to object to the protective order.

- D. After the hearing, the Court may issue a protective order, if issuance of the order will reasonably assist in the delivery of diagnostic and therapeutic services to the respondent and the respondent is otherwise likely to refuse to make statements on the basis of [any] privilege against self-incrimination.

4-4-13 Contempt power

- A. At any stage of a proceeding under [this Chapter], the Court shall have the power and authority to issue orders to compel the appearance of witnesses, the giving of testimony and production of evidence by witnesses. Production of evidence includes an order to a respondent to undergo a psychological diagnostic evaluation and treatment.
- B. Failure or refusal to obey the Court's order may be punished by the court as contempt. A claim that giving testimony or producing evidence might tend to incriminate the person who is the subject of the order shall not excuse the person from complying with the Court's order if immunity has been granted.
- C. The Court attorney or any other party's attorney shall make application to the Court to compel compliance with the orders of the Court.

4-4-14 Change in placement: A change in placement under [this Chapter] shall occur in accordance with §4-3A-[6 or §4-4-9].

4-4-15 Petition; authorization to file: A petition alleging child maltreatment shall not be filed unless PASS has determined and endorsed upon the petition that the filing of the petition is in the best interests of the child. PASS shall, upon request of a person authorizing the filing of a petition, furnish legal services in connection with the authorization and preparation of the petition and the representation of the petitioner if the petitioner so requests.

4-4-16 Ex-parte custody orders

- A. At the time a petition is filed or any time thereafter, the Court may issue an *ex-parte* custody order upon a sworn written statement of facts showing probable cause exists to believe that an act of child maltreatment occurred and that custody under the criteria set forth in [this Chapter] is necessary.

- B. The *ex-parte* custody order shall be served on the respondent by a person authorized to serve arrest warrants. If the child is not in PASS custody, the *ex-parte* custody order shall direct the officer to take custody of the child and deliver [the child] to a place designated by the Court.
- C. The rules of evidence do not apply to the issuance of an *ex-parte* custody order.

4-4-17 Summons; content: In addition to the requirements set forth in § 4-2-9 of this Title, the summons for a child maltreatment proceedings shall clearly state that the proceeding could ultimately result in removal of the child from the parent[(s)]', guardian's or custodian's custody; suspension of parental rights and/or termination of parental rights.

4-4-18 Custody hearings; time limitations; notice; probable cause

- A. When an alleged victim of child maltreatment has been placed in the legal custody of PASS or PASS has petitioned the Court for temporary custody, a custody hearing shall be held in accordance with §4-3A-7.
- B. Notwithstanding any other provision of law, a party aggrieved by an order entered pursuant to this Section shall be permitted to file an immediate appeal as a matter of right.
- C. Nothing in this Section shall be construed to abridge the rights of children pursuant to ICWA.
- D. Nothing in this Section shall be construed to conflict with traditional culture or customary law of the Pueblo of Acoma.

4-4-19 Adjudicatory hearings; time limitations

- A. [An adjudicatory hearing is where the judge determines whether the facts as stated in the petition or warrant are true.] The adjudicatory hearing in a child maltreatment proceeding shall commence within sixty (60) days after the conclusion of the custody hearing.
- B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

- C. When the adjudicatory hearing on any petition is not commenced within the time period specified in Subsection A of this Section or within the period of any extension granted, the petition shall be dismissed with prejudice.

4-4-20

Conduct of hearings; findings; dismissal; dispositional matters; penalty

- A. The conduct of hearings shall be consistent with the provisions of §4-3A-11.
- B. All child maltreatment hearings shall be closed to the general public.
- C. Only the parties, the parties' counsel, family members, spiritual & community leaders and advisors, and other persons approved by the Court to intervene may be present at the hearing. Those other persons the Court finds to have a proper interest in the case or in the work of the Court may be admitted by the Court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.
- D. The resource or foster family, or [extended family member] providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase.
- E. The Court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegations of child maltreatment, shall make and record its findings on whether the child is [abandoned,] neglected, and/or abused. If the petition alleges that [a] parent, guardian or custodian has subjected the child to aggravated circumstances, then the Court shall also make and record its findings on whether the aggravated circumstances have been proven.
- F. If the Court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is a victim of child maltreatment, the Court shall enter an order finding that the child is [abandoned], neglected or abused and may proceed immediately or at a postponed hearing to make disposition of the case. If the Court does not find that the child is [abandoned],

neglected or abused, the Court shall dismiss the petition and may refer the family to PASS for appropriate services.

- G. A party aggrieved by an order entered pursuant to Subsection [F] of this Section may file an immediate appeal as provided for in the laws of the Pueblo of Acoma.
- H. On the Court's motion or that of a party, the Court may continue the hearing on the petition for a period not to exceed thirty (30) days to receive reports and other evidence in connection with disposition. The Court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this Subsection, the Court shall make an appropriate order for legal custody.

4-4-21

Child maltreatment predisposition studies, reports and examinations

- A. [A dispositional hearing is where the Court determines the most appropriate form of custody and/or treatment for the child]. Prior to holding a dispositional hearing, the Court shall direct that a predisposition study and report be submitted in writing to the Court by PASS.
- B. The predisposition study shall contain the following information:
 - 1. a statement of the parent[(s)]'s ability to care for the child in the parent[(s)]'s home without causing harm to the child;
 - 2. a statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent[(s)]'s home, including emotional harm that may result due to separation from the child's parent(s), and a statement of how the intervention plan is designed to place the child in close proximity to the parent[(s)]'s home without causing harm to the child due to separation from parent[(s)], siblings or any other person who may significantly affect the child's best interest;
 - 3. the wishes of the child as to the child's custodian if the child is over twelve (12) years of age;

4. whether the child has a family member who, subsequent to study by PASS, is determined to be qualified to care for the child;
5. a description of services offered to the child, the child's family and the child's resource or foster family and a summary of active efforts made to prevent removal of the child from the child's family or active efforts made to reunite the child with the child's family;
6. a description of the home or facility in which the child is placed and the appropriateness of the child's placement;
7. the results of any diagnostic examination or evaluation ordered at the custody hearing;
8. a statement of the child's medical and educational background;
9. whether the placement preferences of the Pueblo were followed and whether the child's treatment plan provides for maintaining the child's cultural ties;
10. a treatment plan that sets forth steps to ensure that the child's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parent[(s)] to facilitate permanent placement of the child in the parent[(s)]'s home;
11. for children [sixteen] (16) years of age and older, a plan for developing the specific skills the child requires for successful transition into independent and productive living as an adult, regardless of whether the child is returned to the child's parent[(s)]'s home; and
12. a treatment plan that sets forth steps to ensure that the child's educational needs are met and, for a child fourteen [(14)] years of age or older, a treatment plan that specifically sets forth the child's educational and post-secondary [school] goals; and
13. a description of the child's foster care placement and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child

to remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

- C. A copy of the predisposition report shall be provided by PASS to counsel for all parties five [(5)] days before the dispositional hearing.
- D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the Court has received and considered the pre-dispositional study at the dispositional hearing.

4-4-22

Disposition of adjudicated victim of child maltreatment

- A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within fifteen [(15)] days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the Court shall make and include in the dispositional judgment its findings on the following:
 - 1. the interaction and interrelationship of the child with the child's parent[(s)], siblings and any other person who may significantly affect the child's best interest;
 - 2. the child's adjustment to the child's home, school and community;
 - 3. the mental and physical health of all individuals involved;
 - 4. the wishes of the child as to the child's placement;
 - 5. the wishes of the child's parent[(s)], guardian or custodian as to the child's custody;
 - 6. whether there exists a relative of the child or other individual who, after study by PASS, is found to be qualified to receive and care for the child;
 - 7. the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of [§21 of this Chapter].
 - 8. the ability of the parent[(s)] to care for the child in the home so that no harm will result to the child;

9. whether active efforts were used by PASS to prevent removal of the child from the home prior to placement in substitute care and whether active efforts were used to attempt reunification of the child with the natural parent;
 10. whether active efforts were made by PASS to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings; and
 11. whether the placement preferences set forth in §4-3A-6 [or §4-4-9] of this Title have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's tribal and cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.
- B. If a child is found to be [abandoned], neglected or abused, the Court may enter its judgment making any of the following dispositions to protect the welfare of the child:
1. permit the child to remain with the child's parent[(s)], guardian or custodian, subject to those conditions and limitations the court may prescribe;
 2. place the child under protective supervision of PASS; or
 3. transfer legal custody of the child to any of the following:
 - a. the noncustodial parent, if it is found to be in the child's best interest;
 - b. an agency responsible for the care of neglected or abused children; or
 - c. a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

- C. If a child is found to be [abandoned], neglected or abused, in its dispositional judgment the Court shall also order PASS to implement, and the child's parent[(s)], guardian or custodian to cooperate, with any treatment plan approved by the Court. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The Court may determine that active efforts are not required to be made when the Court finds that:
1. the efforts would be futile; or
 2. the parent[(s)], guardian or custodian has subjected the child to aggravated circumstances.
- D. Any parent, guardian or custodian of a child who is placed in the legal custody of PASS or other person pursuant to Subsection B of this Section shall have reasonable rights of visitation with the child as determined by the Court, unless the Court finds that the best interests of the child preclude any visitation.
- E. The Court may order reasonable visitation between a child placed in the custody of PASS and the child's siblings or any other person who may significantly affect the child's best interest, if the Court finds the visitation to be in the child's best interest.
- F. Unless a child found to be [abandoned], neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.
- G. When the Court vests legal custody in an agency, institution or department, the Court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.
- H. Prior to a child being placed in the custody or protective supervision of PASS, PASS shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this Subsection, PASS may appear as a party.
- I. When a child is placed in the custody of PASS, PASS shall investigate whether the child is eligible for enrollment as a member of Acoma or any Indian tribe and, if so, PASS shall pursue the enrollment on the child's behalf.

- J. When the Court determines pursuant to Subsection C of this Section that no active efforts at reunification are required, the Court shall conduct, within thirty (30) days, a permanency hearing as described in §4-4-25.1 [of this Chapter]. Active efforts shall be made to implement and finalize the permanency plan in a timely manner.

4-4-23

Disposition of a child with a mental disorder or a developmental disability in a proceeding under this Chapter

- A. If in a hearing, at any stage of a proceeding on a child maltreatment petition, the evidence indicates that a child has a mental disorder or a developmental disability, the Court shall adjudicate the issue of child maltreatment under this [Chapter].
- B. When a child in PASS custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, PASS shall petition for that child's placement pursuant to the provisions of §4-3A-16.
- C. Any child in PASS custody who is placed for residential treatment or habilitation pursuant to the provisions of the §4-3A-16 shall remain in the legal custody of PASS while in residential treatment or habilitation or until further order of the Court.
- D. A Court hearing for consideration of an involuntary placement of a child for residential treatment or habilitation, when the child is subject to the provisions of this Chapter, may be heard by the Court as part of the child maltreatment proceedings or may be heard in a separate proceeding. All parties to the child maltreatment proceedings shall be provided with notice of the involuntary placement hearing.
- E. A guardian ad litem appointed pursuant to this Chapter shall serve as a guardian ad litem for a child for the purposes of involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability. When a child is fourteen (14) years of age or older, the child shall be represented by an attorney or lay advocate.
- F. When a child is subject to the provisions of this Chapter and is receiving residential treatment or habilitation services, any documentation regarding the child's progress or status, shall be

filed with the Court as part of the child maltreatment proceeding. A review of the child's placement in a residential treatment or habilitation program shall occur in the same manner and within the same time requirements as provided §4-3A-16.

4-4-24 Limitations on dispositional judgments; modification, termination or extension of Court orders

- A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two (2) years from the date entered.
- B. A judgment vesting legal custody of a child in an individual, other than the child's parent[(s)] or permanent guardian, shall remain in force for two (2) years from the date entered, unless sooner terminated by Court order.
- C. A judgment vesting legal custody of a child in the child's parent[(s)] or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.
- D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by any party, including the child by and through the child's guardian ad litem.
- E. Prior to the expiration of a judgment transferring legal custody to an agency, the Court may extend the judgment for additional periods of one (1) year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.
- F. When a child reaches eighteen (18) years of age, all [child maltreatment] orders affecting the child then in force automatically terminate except for a child receiving treatment for mental or developmental disability. The termination of the orders shall not disqualify a child from eligibility for transitional services.

4-4-25 Periodic review of dispositional judgments

- A. The initial judicial review shall be held within sixty (60) days of the disposition. At the initial review, the parties shall demonstrate to the Court efforts made to implement the treatment plan approved by the Court in its dispositional order. The Court shall determine the extent to which the treatment plan has been implemented and

make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child.

- B. Subsequent periodic reviews of dispositional orders shall be held within [six] (6) months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within [six] (6) months of the decision on that motion and every six [(6)] months thereafter. The review shall be carried out by the Court [in a hearing]. A permanency hearing conducted pursuant to §4-4-25.1 constitutes a review under this Section.
- C. The Court shall give notice to all parties, including the child by and through the child's guardian ad litem, lay advocate or attorney, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this Section.
- D. At any judicial review hearing held pursuant to Subsection B of this Section, PASS, the child's guardian ad litem, lay advocate or attorney and all parties given notice pursuant to Subsection C of this Section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, PASS shall show that it has made active efforts to implement any treatment plan approved by the Court in its dispositional order and shall present a treatment plan consistent with the purposes of this Title for any period of extension of the dispositional order. The respondent shall demonstrate to the Court that efforts to comply with the treatment plan approved by the Court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The Court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.
- E. The Court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.
- F. At the conclusion of any hearing held pursuant to this Section, the Court shall make findings of fact and conclusions of law.
- G. The Court shall determine during review of a dispositional order whether the placement preferences set forth in §4-3A-6 if §4-4-9 were followed and whether the child's treatment plan provides for

maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this Section, the Court shall order one of the following dispositions:

1. dismiss the action and return the child to the child's parent[(s)] without supervision if the Court finds that conditions in the home that led to [child maltreatment] have been corrected and it is now safe for the return of the child;
2. permit the child to remain with the child's parent[(s)], guardian or custodian subject to those conditions and limitations the Court may prescribe, including protective supervision of the child by PASS;
3. return the child to the child's parent[(s)] and place the child under the protective supervision of PASS;
4. transfer or continue legal custody of the child to:
 - a. [a] noncustodial parent, if that is found to be in the child's best interests;
 - b. a relative or other individual who, after study by PASS or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or
 - c. PASS, subject to the provisions of Paragraph [5] of this Subsection;
5. continue the child in the legal custody of PASS with or without any required parental involvement in a treatment plan. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the Court finds that such efforts are not required. The Court may determine that active efforts are not required to be made when the Court finds that:
 - a. the efforts would be futile; or

- b. the parent[(s)], guardian or custodian has subjected the child to aggravated circumstances;
- 6. make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the Court determines PASS has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or
- 7. if during a review [hearing] the Court finds that the child's parent[(s)], guardian or custodian has not complied with the Court-ordered treatment plan, the Court may order:
 - a. the child's parent[(s)], guardian or custodian to show cause why the parent[(s)], guardian or custodian should not be held in contempt of court; or
 - b. PASS to pursue action in support of suspending or of terminating parental rights.
- I. Dispositional orders entered pursuant to this section shall remain in force for a period of [six] (6) months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.
- J. When the Court determines, pursuant to Paragraph (H)(5) of this Section, that no active efforts at reunification are required, the Court shall conduct, within thirty (30) days, a permanency hearing as described in §4-4-25.1. Active efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

4-4-25.1 Permanency hearings; permanency review hearings

- A. A permanency hearing shall be commenced within six [(6)] months of the initial judicial review of a child's dispositional order or within twelve (12) months of a child entering a resource family or foster care pursuant to Subsection D of this Section, whichever occurs first.
- B. At the permanency hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the

conclusion of the permanency hearing, the Court shall order one of the following permanency plans for the child:

1. reunification;
 2. placement for adoption after the parents' rights have been suspended, relinquished or terminated or after a motion has been filed to suspend or terminate parental rights;
 3. placement with a person who will be the child's permanent guardian;
 4. placement in the legal custody of PASS with the child placed in the home of a fit and willing relative; or
 5. placement in the legal custody of PASS under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.
- C. If the Court adopts a permanency plan of reunification, the Court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three (3) months. If the child is reunified, the subsequent hearing may be vacated.
- D. If the Court adopts a permanency plan other than reunification, the Court shall determine whether PASS has made active efforts to identify and locate all [extended family members]. The Court shall also determine whether PASS has made active efforts to conduct home studies on any appropriate relative expressing an interest in providing permanency for the child. The Court must ensure the consideration has been given to the child's familial identity and connections. If the Court finds that active efforts have not been made to identify or locate [extended family members] or to conduct home studies on appropriate and willing relatives, the court shall schedule a permanency review within sixty [(60)] days to determine whether an appropriate relative placement has been made. If a relative placement is made, the subsequent hearing may be vacated.
- E. At the permanency review hearing, all parties and the child's guardian ad litem or attorney shall have the opportunity to present evidence and cross-examine witnesses. Based on the evidence, the Court shall:

1. change the plan to one of the alternative plans provided in Subsection B of this Section;
 2. dismiss the case and return custody of the child to the child's parent[(s)], guardian or custodian; or
 3. return the child to the custody of the child's parent[(s)], guardian or custodian, subject to any conditions or limitations as the Court may prescribe, including protective supervision of the child by PASS and continuation of the treatment plan for not more than six [(6)] months, after which the case shall be dismissed. PASS may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under [§6 of this Chapter] during the period of protective supervision if the child's best interest requires such action. When a child is removed in this situation, a permanency hearing shall be scheduled within thirty (30) days of the child coming back into PASS's legal custody.
- F. The Court shall hold permanency hearings every twelve [(12)] months when a child is in the legal custody of PASS.
- G. The Court's attorney shall give notice to all parties, including the child by and through the child's guardian ad litem or attorney, the child's CASA, and the child's resource parent or substitute care provider of the time, place and purpose of any permanency hearing or permanency review hearing held pursuant to this Section.
- H. The rules of evidence shall not apply to permanency hearings. The Court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination.

4-4-25.2 Transition services

- A. Prior to a child's reaching seventeen (17) years of age, PASS shall meet with the child, the child's attorney and others of the child's choosing, including biological family members, to develop a transition plan. PASS shall assist the child in identifying and planning to meet the child's needs after the child's eighteenth (18th) birthday, including housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.

- B. PASS shall present the child's proposed transition plan to the Court at the first hearing scheduled after the child's seventeenth (17th) birthday.
- C. The Court shall order a transition plan for the child. The transition plan approved by the Court shall be reviewed at every subsequent review and permanency hearing.

4-4-25.3 Discharge hearing

- A. At the last review or permanency hearing held prior to the child's eighteenth (18th) birthday, the Court shall review the transition plan and shall determine whether PASS has made active efforts to implement the requirements of Subsection B of this Section.
- B. The Court shall determine:
 - 1. whether written information concerning the child's family history, the whereabouts of any sibling if appropriate and education and health records have been provided to the child;
 - 2. whether the child's social security card, certified birth certificate, state-issued identification card, death certificate of a parent and proof of citizenship or residence have been provided to the child;
 - 3. whether assistance in obtaining Medicaid has been provided to the child, unless the child is ineligible for Medicaid; and
 - 4. whether referral for a guardianship or limited guardianship if the child is incapacitated has been made.
- C. If the Court finds that PASS has not made active efforts to meet all the requirements of Subsection B of this Section and that termination of jurisdiction would be harmful to the young adult, the Court may continue to exercise its jurisdiction for a period not to exceed one (1) year from the child's eighteenth (18th) birthday. The young adult must consent to continued jurisdiction of the Court. The Court may dismiss the case at any time after the child's eighteenth (18th) birthday for good cause.

4-4-26

Parental responsibility

- A. The Court shall order the parent[(s)] to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be a victim of child maltreatment and the Court orders the child placed with an agency or individual other than the parent. The Court may use the child support guidelines [referred to in §4-9-16] to calculate a reasonable payment.
- B. The Court may enforce any of its orders issued pursuant to this section by use of its contempt power.

4-4-27

Intervention; persons permitted to intervene

- A. At any stage [in] a child maltreatment proceeding, a person described in this Subsection may be permitted to intervene as a party with a motion for affirmative relief:
 - 1. a foster parent whom the child has resided with for at least six (6) months;
 - 2. a[n extended family] member with whom the child has resided;
 - 3. a stepparent with whom the child has resided; or
 - 4. a person who wishes to become the child's permanent guardian.
- B. When determining whether a person described in Subsection A of this Section should be permitted to intervene, the Court shall consider:
 - 1. the person's rationale for the [proposed] intervention; and
 - 2. whether intervention is in the best interest of the child.
- C. If the Court determines that intervention pursuant to Subsection A of this Section is within best interest of the child, the Court may permit intervention. The Court shall not permit intervention when the party opposing an intervention can demonstrate that a viable plan for reunification with the respondent[(s)] is in progress and that an intervention could impede the progress of the reunification plan.

- D. The child's parent[(s)] and PASS shall be permitted to intervene during any stage of a child maltreatment proceeding.
- E. The resource parents, or foster parents, shall be permitted to intervene when:
 - 1. the resource family or foster parent desires to adopt the child;
 - 2. the child has resided with the resource family or foster parent for at least six (6) months within the year prior a termination of parental rights;
- F. The foster parent, pre-adoptive parent or relative providing care for the child shall be given notice of, and an opportunity to be heard in, any review or hearing with respect to the child.

4-4-28

Suspension of parental rights; Customary adoption decree

- A. In proceedings to suspend or terminate parental rights, the Court shall give primary consideration to the physical, mental and emotional welfare and needs of the child, including the likelihood of the child being customarily adopted.
- B. The court shall proceed with the goal of Customary Adoption when:
 - 1. there has been an abandonment of the child by his parents;
 - 2. the child has been a neglected or abused child as defined in this Chapter and the Court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite active efforts by PASS or other appropriate agency to assist the parent[(s)] in adjusting the conditions that render the parent[(s)] unable to properly care for the child.
- C. PASS shall not file a motion, and shall not join a motion filed by another party, to suspend or terminate parental rights when the sole factual basis for the motion is that a child's parent is incarcerated.
- D. The termination of parental rights shall be a last resort and PASS shall make active efforts for customary adoption.

4-4-29 Termination procedure; Customary Adoption option.

- A. PASS shall make active efforts to reunite a family, however, in cases where such efforts have been futile, customary adoption [as set forth Chapter 8 of this Title] shall be a priority.
- B. Termination of parental rights shall be a last resort. If termination of parental rights is found to be the only feasible option, the filing party shall use the provisions set for[th] in [Chapter 8 of this Title].

4-4-30 Attorney fees: The Court may order PASS to pay attorney fees for the child's guardian ad litem or attorney if:

- A. the child is in the legal custody of PASS;
- B. the child's guardian ad litem or the child, through the child's attorney:
 - 1. requests in writing that PASS move for the [suspension or] termination of parental rights;
 - 2. gives PASS written notice that if PASS does not move for termination of parental rights, the guardian ad litem or the child, through the child's attorney, intends to move for the [suspension or] termination of parental rights and seek an award of attorney fees;
 - 3. successfully moves for the [suspension or] termination of parental rights; and
 - 4. applies to the Court for an award of attorney fees; and
- C. PASS refuses to litigate the motion for the [suspension or] termination of parental rights or fails to act in a timely manner.

4-4-31 Confidentiality; records; penalty

- A. All records or information concerning a party to a child maltreatment proceeding, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a child maltreatment proceeding or that were produced or obtained during an investigation in anticipation of or incident to a child maltreatment proceeding shall be confidential and closed to the public.

- B. The records described in Subsection A of this Section, except as may be limited by federal law, shall be disclosed only to the parties and:
1. Court personnel;
 2. Court-appointed special advocates when, in the opinion of PASS, it is in the best interest of the child;
 3. the child's guardian ad litem;
 4. the attorney or lay advocate representing the child in an child maltreatment action, a delinquency action or any other action under this Title;
 5. PASS personnel;
 6. any local substitute care review board or any agency contracted to implement local substitute care review boards;
 7. [peace officers], except when use immunity is granted pursuant to §4-4-11;
 8. Court attorneys except when use immunity is granted pursuant to §4-4-11;
 9. any state [or tribal] government social services agency when, in the opinion of PASS, it is in the best interest of the child;
 10. a foster or resource parent, if the records are those of a child currently placed with that foster [or resource] parent or of a child being considered for placement with that foster [or resource] parent and the records concern the social, medical, psychological or educational needs of the child;
 11. school personnel involved with the child if the records concern the child's social or educational needs;
 12. health care or mental health professionals involved in the evaluation or treatment of the child, the child's parent[(s)], guardian, custodian or other family members;

13. children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or PASS; and
 14. any other person or entity, by order of the Court, having a legitimate interest in the case or the work of the Court.
- C. A parent, guardian or legal custodian whose child has been the subject of an investigation of child maltreatment where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. A parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the Court for full access to all PASS records and information except those records and information PASS finds would be likely to endanger the life or safety of any person providing information to PASS.
- D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this Chapter or releases or makes other unlawful use of records in violation of that act is guilty of a misdemeanor or petty offense and shall be sentenced pursuant to Title 5 of Pueblo of Acoma Laws (2003), as amended.
- E. PASS shall promulgate rules for implementing disclosure of records pursuant to this section in accordance with [all applicable] laws.

4-4-31.1 Records release when a child dies

- A. After learning that a child fatality has occurred and that there is reasonable suspicion that the fatality was caused by child maltreatment, PASS shall, upon written request to the secretary of PASS, release the following information, if in PASS's possession, within five (5) business days:
1. the age and gender of the child;
 2. the date of death;
 3. whether the child was in foster care or in the home of the child's parent[(s)] or guardian at the time of death; and
 4. whether an investigation is being conducted by PASS.

- B. If an investigation is being conducted by PASS, then a request for further information beyond that listed in Subsection A of this Section shall be answered with a statement that a report is under investigation.
- C. Upon completion of a child maltreatment investigation into a child's death, if it is determined that child maltreatment caused the child's death, the following documents shall be released upon request:
 - 1. a summary of PASS's investigation;
 - 2. a law enforcement investigation report, if in PASS's possession; and
 - 3. a medical examiner's report, if in PASS's possession.
- D. Prior to releasing any document pursuant to Subsection C of this section, PASS shall consult with the Court's attorney and shall redact:
 - 1. information that would, in the opinion of the Court's attorney, jeopardize a criminal investigation or proceeding;
 - 2. identifying information related to a reporting party or any other party providing information; and
 - 3. information that is privileged, confidential or not subject to disclosure pursuant to any other Acoma, state or federal law.
- E. Once documents pursuant to this Section have been released by PASS, PASS may comment on the case within the scope of the release.
- F. Information released by PASS consistent with the requirements of this Section does not require prior notice to any other individual.
- G. Nothing in this Section shall be construed as requiring PASS to obtain documents not in the child maltreatment case file.
- H. A person disclosing child maltreatment case file information as required by this Section shall not be subject to suit in civil or criminal proceedings for complying with the requirements of this Section.

Chapter 5. DELINQUENCY

4-5-1 Purposes of [Chapter]; Interpretation

A. Purposes:

1. Consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so;
2. To provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives;
3. To strengthen families and to successfully reintegrate children into homes and the community;
4. To foster and encourage collaboration between government agencies and the community with regard to juvenile justice policies and procedures;
5. To develop juvenile justice policies and procedures that are supported by data;
6. To develop objective risk assessment instruments to be used for admission to juvenile detention centers;
7. To encourage efficient processing of cases;
8. To develop community-based alternatives to detention;
9. To improve conditions of confinement in juvenile detention centers; and
10. To achieve reductions in the number of warrants issued, the number of probation violations and the number of youth awaiting placements.

[B. Interpretation

The definitions set forth in §4-2-3, as amended, shall apply to this Chapter. Nothing in these definitions shall be used to interfere with or prohibit cultural and spiritual development of the child or family, nor shall these definitions be used to interfere with traditional child-rearing practices of a child's family or Indian tribe.]

4-5-2 Detention facilities; standards; reports; appeals: PASS in conjunction with [the Acoma detention facility] shall promulgate updated standards for detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. PASS in conjunction with [the Acoma detention facility] shall establish emergency procedures for temporary detention of children.

4-5-3 Adult jails and lockups used as temporary holding facilities; reports

- A. A child arrested and detained for an alleged delinquent act may be temporarily held in an adult jail or lockup for no longer than twenty-four (24) hours without a hearing. A child who is detained in an adult jail or lockup shall be placed in a setting that is physically segregated by sight and sound from adult offenders.
- B. An adult jail or lockup used as a temporary holding facility for alleged delinquent offenders shall file an annual report regarding its compliance with federal requirements.

4-5-4 Juvenile probation services; establishment; juvenile probation and parole officers; powers and duties

- A. Juvenile probation and parole services (JPO) are established and provided under the Court.
- B. To carry out the objectives and provisions of [this Chapter], but subject to its limitations, JPO has the power and duty to:
 - 1. receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of [this Chapter];
 - 2. make case referrals for services as appear appropriate or desirable;

3. make predisposition studies and assessments and submit reports and recommendations to the Court;
4. supervise and assist a child placed on informal probation, probation or supervised release or under supervision by Court order or by JPO;
5. give notice to any individual who has been the subject of a petition filed pursuant to the provisions of [this Chapter] of the sealing of that individual's records in accordance with [this Chapter];
6. informally dispose of up to three [(3)] misdemeanor charges brought against a child within two [(2)] years;
7. give notice to the Court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;
8. receive and act upon notices from a state that identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases;
9. work with the New Mexico Children Youth and Families Department [and similar agencies from other states and Indian tribes] to ensure proper consultation and exchange of information when a predisposition report is made, commitment or placement of a child from the Pueblo of Acoma is contemplated or has been ordered;
10. when any report is made by [a state or tribal agency] pursuant to Paragraphs (8) and/or (9) of this Subsection, JPO shall work with [PASS] and prepare a report for Tribal Administration and the Court on what action is being taken by [a state or Indian tribe] as well as provide PASS and JPO recommendations on actions that should be taken to ensure that the best interests of the child and the Pueblo of Acoma are promoted.

- C. A JPO officer does not have the powers of a [peace] officer. A JPO officer may take into physical custody and place in detention a child who is under supervision as a delinquent child or as a youthful offender when there is reasonable cause to believe that the child has violated the conditions of the child's probation or that the child may leave the jurisdiction of the Court. Taking a child into custody

under this Subsection is subject to and shall proceed in accordance with the provisions of this Chapter relating to custody and detention procedures and criteria.

4-5-5 Complaints; referral; preliminary inquiry; notice; time waiver

- A. Complaints alleging delinquency shall be referred to [JPO], which shall conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken.
- B. During the preliminary inquiry on a delinquency complaint, the matter may be referred to another appropriate agency, such as PASS and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to this Title, and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The child shall be informed of the child's right to remain silent.
- C. Prior to a preliminary inquiry being conducted with a child who is detained, the child's parent[(s)], guardian or custodian or the child's attorney shall be given reasonable notice by the [JPO] officer and an opportunity to be present at the preliminary inquiry. If a child is not detained, the preliminary inquiry shall be conducted within thirty (30) days of receipt of the referral from law enforcement. The thirty (30) -day time period may be extended upon a determination by [JPO] that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the child.
- D. When a child is in detention or custody and the prosecutor does not file a petition within the time limits authorized by this Chapter, the child shall be released immediately. If a child is not detained and a determination is made to file a petition, the petition shall be filed within sixty (60) days of completion of the preliminary inquiry, unless a motion is granted to extend the time limit for good cause shown. If a child is not in custody or detention, a petition shall not be dismissed for failure to comply with the time limit set forth in this Subsection unless there is a showing of prejudice to the child.
- E. After completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, JPO may notify the prosecutor and recommend an appropriate disposition for the case. If the child has been referred for three (3) or more prior misdemeanors within

two (2) years of the instant offense, JPO shall notify the prosecutor and recommend an appropriate disposition for the case.

- F. JPO shall notify the prosecutor of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law. JPO shall also recommend a disposition to the prosecutor.
- G. The child, through counsel, and the prosecutor may agree, without judicial approval, to a waiver of time limitations imposed after a petition is filed. A time waiver defers adjudication of the charges. The prosecutor may place restrictions on a child's behavior as a condition of a time waiver. If the child completes the agreed upon conditions and no new charges are filed against the child, the pending petition shall be dismissed. If the prosecutor files a new petition against the child, the prosecutor may proceed on both the original petition and the new charges.

4-5-6

Petition; authorization to file

- A. A petition alleging delinquency shall not be filed in delinquency proceedings unless the prosecutor, after consulting with JPO has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child. The prosecutor shall furnish legal services in connection with the authorization and preparation of the petition.
- B. A petition alleging delinquency or petition for probation revocation shall state the allegations of delinquency or violation of probation; the Title, chapter and section of the Pueblo of Acoma Laws (2003), as amended, that was violated; the statement whether the violation occurred within the exterior boundaries of the Pueblo of Acoma, except for probation violations; the respondent's name and address; the respondent's parent[(s)]' or guardian's name and address; whether the JPO has conducted a preliminary inquiry; and whether the respondent is in detention.
- C. When the prosecutor files a petition alleging delinquency or petition for probation revocation, the Court shall issue a summons ordering the respondent to appear for a first appearance set within twenty-one (21) days of issuing the summons. If the respondent is in detention, the summons shall be served upon the respondent and the first appearance shall be held at the time of the detention hearing.

4-5-7

Taking into custody: A child may be taken into custody:

- A. pursuant to a Court order issued because a parent, guardian or custodian fails when requested to bring the child before the Court after having promised to do so when the child was delivered [to them] upon release from custody;
- B. pursuant to the laws of arrest for commission of a delinquent act;
- C. by a JPO officer proceeding pursuant to the provisions of this Chapter, or
- D. pursuant to a bench warrant for failure to appear at a hearing or failure to comply with conditions of release set by the Court.

4-5-8

Release or delivery from custody

- A. A person taking a child into custody shall, with all reasonable speed:
 - 1. release the child to the child's parent[(s)], guardian or custodian or an adult authorized by the child's parent[(s)], guardian or custodian and issue verbal counsel or warning as may be appropriate;
 - 2. release the child to the child's parent[(s)], guardian or custodian or an adult authorized to sign on behalf of the child's parent[(s)], guardian or custodian upon written promise to bring the child before the Court when requested by the Court. If the parent[(s)], guardian or custodian or an adult authorized to sign on behalf of the child's parent[(s)], guardian or custodian fails, when requested, to bring the child before the Court as promised, the Court may order the child taken into custody and brought before the Court;
 - 3. deliver the child to a place of detention as provided in [this Chapter];
 - 4. deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or prompt diagnosis;
 - 5. deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to

the child's self or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis; or

6. deliver the child to a center or organization that the Court recognizes as an alternative to secure detention.
- B. When an alleged delinquent child is delivered to a place of detention or a center or organization recognized as an alternative to secure detention as provided in [this Chapter], only a JPO officer or a trained detention professional designated by the JPO may place the child in detention or with a center or organization recognized as an alternative to secure detention in accordance with the criteria for detention set forth in [this Chapter]. If the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody.
 - C. A child under the age of eleven (11) shall not be held in detention. If a child under the age of eleven (11) poses a substantial risk of harm to the child's self or others, a JPO or Acoma law enforcement officer may detain and transport that child for emergency mental health evaluation and care.
 - D. If a child is taken into custody and is not released to the child's parent[(s)], guardian or custodian or an adult authorized by the child's parent[(s)], guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four (24) hours, to the child's parent[(s)], guardian or custodian or an adult authorized by the child's parent[(s)], guardian or custodian and to the Court, together with a statement of the reason for taking the child into custody.
 - E. In all cases when a child is taken into custody, the child shall be released to the child's parent[(s)], guardian or custodian or an adult authorized by the child's parent[(s)], guardian or custodian in accordance with the conditions and time limits set forth in this [Chapter].

4-5-9

Criteria for detention of children

- A. Unless ordered by the Court pursuant to the provisions of [this Chapter], a child taken into custody for an alleged delinquent act shall not be placed in detention unless a detention risk assessment determination is made that the child:

1. poses a substantial risk of harm to himself;
2. poses a substantial risk of harm to others; or
3. has demonstrated that he/she may leave the jurisdiction of the court.

4-5-10 Placement or detention

- A. A child alleged to be a delinquent child may be placed or detained, pending a Court hearing, in any of the following places:
1. a licensed foster home or a home otherwise authorized under the law to provide foster or group care;
 2. a facility operated by PASS or a child welfare services agency [licensed by a state or Indian tribe];
 3. a shelter-care facility provided for in [Acoma law or that of an Indian tribe or state] that is in compliance with all applicable standards, conditions and regulatory requirements and that shall be considered a temporary placement subject to judicial review within thirty (30) days of placement;
 4. a detention facility certified by the Pueblo of Acoma or [a state or Indian tribe] for children alleged to be delinquent children;
 5. any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent may be [detained] and that meets the standards for detention facilities pursuant to the Pueblo of Acoma or federal law; or
 6. the child's home or place of residence, under conditions and restrictions approved by the Court.
- B. A child adjudicated as a youthful offender or serious youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a Court hearing, to any jail, tribal, federal, state or county facility. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age and shall take measures to

provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

- C. A child who has previously been incarcerated as an adult or a person eighteen (18) years of age or older shall not be detained in a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a [tribal, federal, state or] county jail. A child shall not be transferred to a [tribal, federal, state or] county jail solely on the basis of attaining the age of eighteen (18) while detained in a juvenile detention facility. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.
- D. A child alleged to be a youthful offender or serious youthful offender may be detained pending a Court hearing in any of the following places, prior to arraignment:
 - 1. a detention facility for children alleged to be delinquent children; or
 - 2. any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined.
- E. A child detained in an out-of-home placement pursuant to this section may request judicial review of the appropriateness of the placement.

4-5-11

Detention hearing required on detained children; probable cause determination; court determination; disposition

- A. When a child who has been taken into custody is not released but is detained:
 - 1. a judicial determination of probable cause shall be made by [the Court] as soon as reasonably practicable but in any case within forty-eight (48) hours (excluding weekends and holidays) [from the time the child is taken into custody]. A statement by a [peace] officer, which shall include the

charges, may be the basis of a probable cause determination. The probable cause determination shall be non-adversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the Court finds no probable cause to believe the child committed an offense, the child shall be released;

2. a petition and motion for detention shall be filed within seventy-two (72) hours (excluding weekends and holidays) from the time the child is taken into custody, and if not filed within the stated time, the child shall be released; and

3. a detention hearing shall be held within seventy-two (72) hours, excluding Saturdays, Sundays and holidays, from the time of filing the petition and motion for detention to determine whether continued detention is required. At the request of any party, the Court may permit a detention hearing to be conducted by appropriate means of electronic communication; provided that all hearings conducted by electronic means shall be recorded and preserved as part of the record, the child shall have legal representation present with the child and the Court finds:

a. that undue hardship will result from conducting the hearing with all parties, including the child, present in the courtroom; and

b. that the hardship substantially outweighs any prejudice or harm to the child that is likely to result from the hearing being conducted by electronic means.

B. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the Court to the child's parent[(s)], guardian or custodian, if they can be found, and to the child. The JPO shall be provided with reasonable oral or written notification and an opportunity to be heard.

C. At the commencement of the detention hearing, the Court shall advise the child of their basic rights provided in this Title and shall appoint counsel, guardians and custodians, if appropriate.

D. If the Court finds that the child's detention is appropriate under the criteria established by this Chapter, the Court shall order detention in an appropriate facility.

- E. If the Court finds that detention of the child is not appropriate under the criteria established under this Chapter, the Court shall order the release of the child, but, in so doing, may order one or more of the following conditions to meet the individual needs of the child:
1. place the child in the custody of a parent, guardian or custodian or under the supervision of PASS or other agency agreeing to supervise the child;
 2. place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or
 3. impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by this Title, including a condition requiring that the child return to custody as required.
- F. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.
- G. If the child is not released at the detention hearing and a parent, guardian or custodian was not notified of the hearing and did not appear or waive appearance at the detention hearing, the Court shall rehear the detention matter without unnecessary delay upon the filing of an affidavit stating the facts and a motion for rehearing.

4-5-12

Basic rights

- A. A child subject to the provisions of [this Chapter] is entitled to the same basic rights as an adult, except as otherwise provided in this [Title], including rights provided in this [Section], except as otherwise provided in this [Title].
- B. The public defender (subject to availability) shall represent the child. If there is no public defender then a[n attorney or lay advocate] appointed by the Court and licensed to practice before the Court may act on behalf of the child. The parent[(s)], guardian or custodian may also obtain a licensed attorney [or lay advocate] to represent the child.

- C. No person subject to the provisions of [this Chapter] who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's rights under Pueblo of Acoma and federal law and securing a knowing, intelligent and voluntary waiver of any applicable rights.
- D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the Pueblo shall prove by clear and convincing evidence that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's rights under Pueblo of Acoma and federal law was obtained.
- E. Unless life threatening circumstances exist; serious bodily injury is and could likely be avoided based upon a reasonable likelihood of information a juvenile possesses or the child does not want his parent[(s)] or guardian present, no child may be subject to a custodial interrogation without a parent or guardian present. If a parent or guardian is not available a guardian ad litem will be appointed by the Court. Any violation of this provision shall render any statement inadmissible in any Court proceeding to determine whether the child committed a delinquent act.
- F. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the Court shall consider the following factors:
 - 1. the age and education of the child;
 - 2. whether the child is in custody;
 - 3. the manner in which the child was advised of the child's rights;
 - 4. the length of questioning and circumstances under which the child was questioned;
 - 5. the condition of the quarters where the child was being kept at the time of being questioned;
 - 6. the time of day and the treatment of the child at the time of being questioned;
 - 7. the mental and physical condition of the child at the time of being questioned; and

8. whether the child had the counsel of an attorney, friends or relatives at the time of being questioned.
- G. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen [(13)] years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen [(13)] or fourteen [(14)] years old to a person in a position of authority are inadmissible.
- H. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed a delinquent act alleged in the petition unless it is corroborated by other evidence.
- I. The child and the parent[(s)], guardian or custodian of the child shall be advised by the Court that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition, including all post-dispositional Court proceedings. If counsel is not retained for the child or if it does not appear that counsel will be retained, counsel shall be appointed by the Court for the child.
- J. A child under the age of thirteen [(13)] alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.
- K. The Court shall appoint a guardian for a child if the Court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.
- L. A person afforded rights under [this Chapter] shall be advised of those rights at that person's first appearance before the court on a petition under [this Chapter].
- M. A serious youthful offender who is detained prior to trial in an adult facility has a right to bail unless there is a finding on the record by the Court that a no bond hold is needed to protect the child and/or public. A child held in a juvenile facility designated as a place of

detention prior to adjudication does not have a right to bail but may be released pursuant to the provisions of [this Chapter].

- N. The provisions of [this Chapter] shall not be interpreted to limit the right of a child to petition a court for a writ of habeas corpus.

4-5-13

Conduct of hearings; findings; dismissal; dispositional matters; penalty

- A. Hearings on petitions shall be conducted by the Court separate from other proceedings. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. An adjudicatory hearing before a jury is presumed to be waived unless the child files a written request with seven (7) days of the first appearance. The standards for a jury in these proceedings shall be the same as an adult case.
- B. All hearings to declare a person in contempt of court and all [other] hearings on petitions pursuant to the provisions of [this Chapter] shall be open except, upon motion of any party or the Court's motion, in the discretion of the Court, on a finding that it is appropriate to close the hearing, the hearing shall be closed. Only the parties, their counsel, witnesses and other persons approved by the Court may be present at a closed hearing. Those other persons the Court finds to have a proper interest in the case or in the work of the Court may be admitted by the Court to closed hearings on the condition that they refrain from divulging any information concerning the exceptional circumstances that resulted in the need for a closed hearing.
- C. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of Subsection B of this Section may be held in contempt.
- D. The Court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court after hearing all of the evidence bearing on the allegations of delinquency shall make and record its findings on whether the delinquent acts subscribed to the child were committed by the child. If the Court finds that the allegations of delinquency have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings.

- E. The Court shall make a finding of delinquency based on a valid, in-court admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt.
- F. If the Court finds on the basis of a valid, in-court admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt that the child is a delinquent, the Court may proceed immediately or at a postponed hearing to make disposition of the case. A disposition [hearing] must be held within thirty [(30)] days of the finding of delinquency if the child is in detention or forty-five [(45)] days if the child is not in detention.
- G. In that part of the hearings held under [this Chapter] on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the Court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.
- H. On the Court's motion or that of a party, the Court may continue the hearing on the petition for a reasonable time to receive reports and other evidence in connection with disposition. The Court may continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this Subsection, the Court shall make an appropriate order for detention or legal custody.
- I. An adjudicatory hearing on a petition alleging delinquency or a petition for probation violation must commenced:
 - 1. Within forty-five [(45)] days of the detention hearing if the child is in detention;
 - 2. Within four [(4)] months of the first appearance if the child is not in detention, or has been released from detention prior to the expiration of the time limits set forth in this [Chapter] for a child in detention; or
 - 3. If a bench warrant is issued due to failure to appear for any hearing before the Court or failure to abide by conditions of release set by the Court, the time limits are reset to begin from the next hearing that the child appears.
- J. If an adjudicatory hearing is not commenced within the time limits set out in Subsection [(1)], the child shall be released if in detention

and the time limits set out in [Subsection] I([2]) or ([3]) shall apply; or, for good cause shown, the time for commencement of an adjudicatory hearing may be extended by the Court, provided that the aggregate of all extensions granted by the Court shall not exceed thirty (30) days, except upon a showing of exceptional circumstances. An order granting an extension shall be in writing and shall state the reasons supporting the extension.

- K. If an adjudicatory hearing is not commenced within the time limits set out in Subsection I([2]) or ([3]), the petition shall be dismissed with prejudice; or, for good cause shown, and upon written motion of any party filed before the time limit expires, the time for commencement of an adjudicatory hearing may be extended by the Court, provided that the aggregate of all extensions granted by the Court shall not exceed four [(4)] months, except upon a showing of exceptional circumstances. An order granting an extension shall be in writing and shall state the reasons supporting the extension.

4-5-14

Predisposition studies; reports and examinations

- A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the Court may direct that a predisposition study and report to the Court be made in writing by an appropriate agency or JPO concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the Court five (5) days before actual disposition or sentencing:
1. the adult probation department shall prepare a predisposition report for a serious youthful offender;
 2. the JPO shall prepare a predisposition report for a serious youthful offender who is convicted of an offense other than first degree murder;
 3. the JPO shall prepare a predisposition report for a youthful offender concerning the youthful offender's amenability to treatment and if:
 - a. the Court determines that a juvenile disposition is appropriate, the JPO shall prepare a subsequent predisposition report; or

- b. the Court makes the findings necessary to impose an adult sentence pursuant to [this Chapter], the adult probation office shall prepare a subsequent predisposition report; and
- 4. the JPO shall prepare a predisposition report for a delinquent offender, upon the Court's request.
- B. Where there are indications that the child may have a mental disorder or developmental disability, the Court, on motion by the Court attorney or counsel for the child, may order the child to be examined at a suitable place by a physician or psychiatrist, a licensed psychologist, a licensed professional clinical counselor or a licensed independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the Court finds that placement in a hospital or other appropriate facility is necessary.
- C. The Court, after a hearing, may order examination by a physician or psychiatrist, a licensed psychologist or a licensed professional clinical counselor or a licensed independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the Court.
- D. The Court may order that a child adjudicated as a delinquent child be administered a pre-dispositional evaluation by a professional designated by [PASS]for purposes of diagnosis, with direction that the Court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered. The evaluation shall be completed within fifteen (15) days of the Court's order and the preference shall be for performing the evaluation in the child's community.
- E. If a child is detained for purposes of performing a pre-dispositional evaluation, it shall be completed within fifteen (15) days except upon a finding of good cause shown.

4-5-15

Judgment; noncriminal nature; non-admissibility

- A. The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under this Chapter resulting in a [delinquent offender] disposition shall not be deemed a conviction of crime nor shall it

impose any civil disabilities ordinarily resulting from conviction of a crime nor shall it operate to disqualify the child in any civil service application or appointment. The juvenile disposition of a child and any evidence given in a hearing in Court shall not be admissible as evidence against the child in any case or proceeding in any other tribunal whether before or after reaching the age of majority, except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report.

- B. If a judgment resulting from a youthful offender or serious youthful offender proceeding under this Chapter results in an adult sentence, a record of the judgment shall be admissible in any other case or proceeding in any other court involving the youthful offender or serious youthful offender.
- C. If a judgment on a proceeding under [this Chapter] results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the criminal laws of the Pueblo of Acoma.

4-5-16

Disposition of an adjudicated delinquent offender

- A. At the conclusion of the dispositional hearing, the Court may make and include in the dispositional judgment its findings on the following:
 - 1. the interaction and interrelationship of the child with the child's parent[(s)], siblings, and any other person who may significantly affect the child's best interests;
 - 2. the child's adjustment to the child's home, school and community;
 - 3. the mental and physical health of all individuals involved, including consideration of such factors as the child's brain development, maturity, trauma history and disability;
 - 4. the wishes of the child as to the child's custodian;
 - 5. the wishes of the child's parent[(s)] as to the child's custody;
 - 6. whether there exists a relative of the child or other individual who, after study by the JPO, is found to be qualified to receive and care for the child;

7. the availability of services recommended in the predisposition report; and
 8. the ability of the parent[(s)] to care for the child in the home.
- B. If a child is found to be delinquent, the Court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:
1. commit the child and transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children, the judge may include recommendations for placement of the child. The types of commitments include:
 - a. a short-term commitment of one (1) year in a facility for the care and rehabilitation of adjudicated delinquent children. No more than nine (9) months shall be served at the facility and no less than ninety (90) days shall be served on supervised release, unless:
 - i. a petition to extend the commitment has been filed prior to the commencement of supervised release;
 - ii. the commitment has been extended pursuant to [this Chapter]; or
 - iii. supervised release is revoked pursuant to [this Chapter];
 - b. a long-term commitment for no more than two [(2)] years in a facility for the care and rehabilitation of adjudicated delinquent children. No more than twenty-one [(21)] months shall be served at the facility and no less than ninety [(90)] days shall be served on supervised release, unless: 1) supervised release is revoked; or 2) the commitment is extended [pursuant to this Chapter];
 - c. if the child is a delinquent offender who committed one of the criminal offenses set forth in §4-2-3 (BY) or (CJ) [of this Title], a commitment to age twenty-one (21), unless sooner discharged; or

- d. if the child is a youthful offender, a commitment to age twenty-one (21), unless sooner discharged;
 2. place the child on probation under those conditions and limitations as the Court may prescribe;
 3. place the child in a local detention facility that has been certified in accordance with [this Chapter] for a period not to exceed fifteen (15) days unless good cause shown; or if a child is found to be delinquent solely on the basis of §4-2-3(AB), the Court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or
 4. if a child is found to be delinquent solely on the basis of §4-2-3(AB)(2),(3), and (4), the Court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child for a period not to exceed six (6) months without further order of the Court to a treatment facility; provided that this transfer shall not be made unless the Court first determines that the treatment facility is able to provide adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.
- C. A child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.
- D. A child found to be delinquent shall not be committed or transferred to a penal institution or other facility used for the execution of sentences of adults convicted of crimes.
- E. Whenever the Court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.
- F. In addition to any other disposition pursuant to Subsection B of this Section, the Court may report [child maltreatment] for investigation and proceedings as provided for in Chapter 4 of this Title . The report may be made to a PASS or Acoma [peace officers] for an

child residing within the exterior boundaries of the Pueblo of Acoma.

- G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen (15) years of age or older is adjudicated delinquent on the basis of [§ 4-2-3(AB)(1), the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety (90) days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one (1) year. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege or an ignition interlock license, and nothing in this Section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.
- H. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of §§6-6-1, 6-6-2, 6-20-18 or 6-20-21 the child shall perform the mandatory community service preferably for service the Tribal Sheriffs deem necessary. When a child fails to completely perform the mandatory community service, the parent[(s)] or legal guardian may be held accountable for the required community service and if deemed necessary by the Court, sanctioned for contempt and/or turned over to the Tribal Sheriffs [pursuant to §1-1-5 of Acoma Laws, 2003 as amended].

4-5-17

Disposition of a youthful offender and serious youthful offender

- A. The Court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender or serious youthful offender. The prosecutor shall file a notice of intent to invoke an adult sentence within twenty-five (25) working days of the filing of the petition, provided that the Court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the Court shall be held, within fourteen (14) days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.
- B. If the prosecutor has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender or serious youthful offender, the Court shall make the following findings in order to invoke an adult sentence:

1. the child is not amenable to treatment or rehabilitation as a child in available facilities; and
 2. the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.
- C. In making the findings set forth in Subsection B of this Section, the Court shall consider the following factors:
1. the seriousness of the alleged offense;
 2. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
 3. whether a firearm was used to commit the alleged offense;
 4. whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
 5. the maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history and disability;
 6. the record and previous history of the child;
 7. the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and
 8. any other relevant factor, provided that factor is stated on the record.
- D. If a child has previously been sentenced as an adult pursuant to the provisions of this Section, there shall be a rebuttable presumption that the child is not amenable to treatment or rehabilitation as a child in available facilities.
- E. If the Court invokes an adult sentence, the Court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender or serious youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for

incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the Court over the child with respect to the delinquent acts alleged in the petition.

- F. If a juvenile disposition is appropriate, the Court shall follow the provisions set forth in §4-5-16. A youthful offender or serious youthful offender may be subject to extended until the age of twenty-one (21).

4-5-18

Disposition of a child with a mental disorder or developmental disability in a delinquency proceeding

- A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child has or may have a mental disorder or developmental disability, the Court may:
1. order the child detained if appropriate under the criteria established pursuant to the provisions of [this Chapter]; and
 2. initiate proceedings for the involuntary placement of the child as a minor with a mental disorder or developmental disability pursuant to the provisions of [this Title].
- B. If the child is placed for residential treatment or habilitation, any person or agency provided in [this Title] shall retain legal custody during the period of involuntary placement or until further order of the Court.
- C. The child may remain in the residential treatment or habilitation facility pending the disposition of the delinquency petition.
- D. When a child in [PASS] custody needs involuntary placement for residential mental health or developmental disability services as a result of a mental disorder or developmental disability, [PASS] shall request the Court attorney to petition for that child's placement.
- E. A child subject to [this Chapter] who receives treatment in a residential treatment or habilitation program shall enjoy all the substantive and procedural rights set forth in the Pueblo of Acoma Laws (2003), as amended.
- F. A child's competency to stand trial or participate in his own defense may be raised by a party at any time during a proceeding. If the child has been accused of an act that would be considered a misdemeanor if the child were an adult and the child is found to be

incompetent to stand trial, the Court shall dismiss the petition. In all other cases, the Court shall stay the proceedings until the child is competent to stand trial; provided that a petition shall not be stayed for more than one [(1)] year. The Court may order treatment to enable the child to attain competency to stand trial and may amend the conditions of release pursuant to [this Chapter]. The child's competency to stand trial shall be reviewed every ninety [(90)] days for up to one [(1)] year. The Court shall dismiss the petition without prejudice if, at any time during the year, the Court finds that a child cannot be treated to competency or if, after one [(1)] year, the Court determines that a child is incompetent to stand trial or participate in his own defense. Upon dismissal, the Court may recommend that the Court attorney initiate proceedings for commitment.

4-5-19 Continuance under supervision without judgment; consent decree; disposition

- A. At any time after the filing of a delinquency petition and before the entry of a judgment, the Court may, on motion of the prosecutor or that of counsel for the child, suspend the proceedings and continue the child under supervision in the child's own home under terms and conditions negotiated with [JPO] and agreed to by all the parties affected. The Court's order continuing the child under supervision under this Section shall be known as a "consent decree". An admission of some or all of the allegations stated in the delinquency petition shall not be required for a consent decree order.
- B. If the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the prosecutor after consultation with JPO, the Court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.
- C. A consent decree shall remain in force for six [(6)] months unless the child is discharged sooner by JPO. Prior to the expiration of the six [(6)]-month period and upon the application of [JPO] or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six [(6)] months in the absence of objection to extension by the child. If the child objects to the extension, the Court shall hold a hearing and make a determination on the issue of extension.

- D. If either prior to discharge by [JPO] or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the Court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the Court may:
1. extend the period of the consent decree; or
 2. make any other disposition that would have been appropriate in the original proceeding.
- E. A child who is discharged by [JPO] or who completes a period under supervision without reinstatement of the original delinquency petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this Subsection precludes a civil suit against the child for damages arising from the child's conduct.
- F. A judge who pursuant to this Section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency if:
1. a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies the allegations; or
 2. a consent decree is granted but the delinquency petition is subsequently reinstated.

4-5-20

Probation revocation; disposition

- A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures [set out in this Chapter] regarding taking into custody and detention shall apply. The petition shall

state the terms of probation alleged to have been violated and the factual basis for these allegations.

- B. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the Court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of the child's probation, the Court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

4-5-21

Sealing of records

- A. On motion by or on behalf of a person who has been the subject of a delinquency petition (not a youthful or serious youthful offender) or on the Court's own motion, the Court shall vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, JPO, and any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the Court finds that:
1. two [(2)] years have elapsed since the final release of the person from legal custody and supervision or two [(2)] years have elapsed since the entry of any other judgment not involving legal custody or supervision;
 2. the person has not, within the two [(2)] years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding; and
 3. the person is eighteen [(18)] years of age or older or the Court finds that good cause exists to seal the records prior to the child's eighteenth [(18th)] birthday.
- B. Reasonable notice of the motion shall be given to:
1. the prosecutor;
 2. the authority granting the release;

3. the [peace] officer, department and central depository having custody of the law enforcement files and records; and
 4. JPO and any other agency having custody of records or files subject to the sealing order.
- C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The Court, [peace] officers and departments and agencies shall reply, and the person may reply, to an inquiry that no record exists with respect to the person. Copies of the sealing order shall be sent to each agency or official named in the order.
- D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the Court only:
1. upon motion by the person who is the subject of the records and only to those persons named in the motion; and
 2. in its discretion, in an individual case, to any clinic, hospital or agency that has the person under care or treatment or to other persons engaged in fact finding or research.
- E. Any finding of delinquency or need of services or conviction of a crime subsequent to the sealing order may at the Court's discretion be used by the Court as a basis to set aside the sealing order.
- F. A child who has been the subject of a petition filed pursuant to the provisions of [this Chapter] shall be notified in writing by the [JPO] when the child reaches the age of eighteen [(18)] or at the expiration of legal custody and supervision, whichever occurs later, that the [JPO] records have been sealed and that the Court, the Pueblo prosecutor, the child's attorney and the referring law enforcement agency have been notified that the child's records are subject sealing.
- G. The JPO shall seal the child's files and records when the child reaches the age of eighteen [(18)] or at the expiration of the disposition, whichever occurs later. The JPO shall notify the Pueblo prosecutor, the child's attorney and the referring law enforcement agency that the child's records are subject to sealing.
- H. A child who is determined by the Court not to be a delinquent offender shall have the child's files and records in the instant

proceeding automatically sealed by the Court upon motion by the Court attorney at the conclusion of the proceedings.

- I. After sealing, the JPO may store and use a person's records for research and reporting purposes, subject to the confidentiality provisions of [this Chapter] and other applicable federal laws.

4-5-22 Injury to person or destruction of property; liability; costs and attorney fees; restitution

- A. Any person may recover damages in a civil action in a court or tribunal of competent jurisdiction from the parent or guardian (but not foster parent) having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action.
- B. Nothing contained in this section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by the child when the child has been found to be within the provisions of [this Chapter].

4-5-23 Parental responsibility

- A. In any complaint alleging delinquency, a parent of the child alleged to be delinquent may be made a party in the petition. If a parent is made a party and if a child is adjudicated a delinquent, the Court may order the parent or parents to submit to counseling, participate in any probation or other treatment program ordered by the Court and, if the child is committed for institutionalization, participate in any institutional treatment or counseling program including attendance at the site of the institution. The Court shall order the parent to support the child committed for institutionalization by paying the reasonable costs of support, maintenance and treatment of the child that the parent is financially able to pay.
- B. If a fine or community service is imposed against a child, the parent or legal guardian of the child is not liable to pay the fine or do community service if the parent is making active efforts get the child to take care of this responsibility.
- C. The Court may enforce any of its orders issued pursuant to this Section by use of its contempt power.

Confidentiality; records

- A. All records pertaining to the child, including all related social records, behavioral health screenings, diagnostic evaluations, psychiatric reports, medical reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pretrial history, supervised release reports and supervision histories obtained by the [JPO], and [any other] department, are confidential and shall not be disclosed directly or indirectly to the public.
- B. The disclosure of all mental health and developmental disability records shall be made pursuant Court order and federal health privacy laws.
- C. The records described in Subsection A of this Section, other than mental health and developmental disability records, shall be disclosed only to any of the following, provided that the agency, person or institution receiving information shall not re-release the information without proper consent or as otherwise provided by law:
1. court personnel;
 2. the child's court appointed special advocates;
 3. the child's attorney or guardian ad litem representing the child in any matter;
 4. [JPO] personnel;
 5. corrections department personnel;
 6. [peace officers] when the request is related to the investigation of a crime;
 7. Prosecutor or Court attorney;
 8. PASS or the Acoma Behavioral Health Services;
 9. a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent, when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;

10. school personnel involved with the child if the records concern the child's educational needs, but shall only include that information necessary to provide for the child's educational planning and needs;
 11. a health care or mental health professional involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;
 12. representatives of [any] protection and advocacy system;
 13. the child's parent, guardian or legal custodian when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for the treatment or care of the child;
 14. any other person or entity, by order of the Court, having a legitimate interest in the case or the work of the Court who agrees not to otherwise release the records; and
 15. the child, if fourteen [(14)] years of age or older.
- D. If disclosure of otherwise confidential records is made to the child or any other person or entity pursuant to a valid release of information signed by the child, all victim or witness identifying information shall be redacted or otherwise deleted.
- E. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section subject to contempt sanctions.

Chapter 6. PROTECTION OF PEOPLE AT RISK

4-6-1 Procedures to Protect People at Risk

- [A. Jurisdiction. The Acoma Pueblo Tribal Court ("Court") shall have jurisdiction over all actions brought under this Chapter].
- B. When Reports Required. When the persons subject to mandatory reporting requirements as set forth in Subsection B of this [Section] know or reasonably suspect that person(s) known to them in their official or professional capacity may be at risk, they shall report the matter to Pueblo of Acoma Social Services ("PASS"). [PASS] shall

determine which agency or agencies shall be notified and shall give prompt notice to such agencies.

C. Persons Subject to Mandatory Reporting Requirements:

1. Physicians, residents, interns, or members of a hospital staff engaged in the admission, examination, care, or treatment of persons.
2. Any other health or mental health professional.
3. School teachers, other school officials, or school employees.
4. Social workers, operators, or employees of daycare or substitute care facilities.
5. Foster, residential, or institutional care providers or workers.
6. Law enforcement officers.

No person listed above may refuse to make a report on the grounds of physician/patient or similar privilege.

D. Reports Made by Other People. Any person not identified above may make a report under this [Chapter] if he or she knows or reasonably suspects that a person is at risk.

E. Costs and Fees Associated with Family Violence Offenses. An alleged victim of family violence [as defined in §4-2-3(AP)] shall not be required to bear the cost of:

1. Filing a petition against an alleged abusing family member;
2. The issuance or service of a warrant;
3. The issuance or service of a witness subpoena; [or]
4. The issuance or service of a protection order.

F. Reports to Be Made in Writing. Reports made under this Section shall be in writing and contain:

1. The name(s) and address(es) of the person(s) at risk, his or her family, and, to the extent known, other Caretakers or Guardians.

2. To the extent known, the age of the person(s) at risk, the nature and extent of the injury or incident which led the person making the report to reasonably suspect that a person(s) is at risk, including any knowledge of a previous injury or incident.
 3. Any information the person making the report believes might be helpful in establishing the cause and nature of the risk and the identity of the person(s) responsible.
 4. Any other facts which led the person making the report to believe that a person(s) is at risk.
- G. [Liability] for Failure to Report. Any person or institution subject to the mandatory reporting requirements, who fails to report person(s) who may be at risk, or who prevents another person from reasonably doing so, may be civilly liable for the injuries proximately caused by such failure or prevention.
- H. Law Enforcement. PASS shall notify the Acoma Police Department within twenty-four (24) hours of receiving a report or immediately if there is a need for emergency procedures for people at risk. The [peace officer] will investigate as deemed necessary after consultation with PASS and provide a copy of all reports to PASS.

4-6-2

Emergency Procedures

- A. Emergency Protective Care:
1. Any employee of [PASS], [peace] officer, or other Pueblo official who has a reasonable belief that a person may be at risk and is in immediate or apparent danger of harm may immediately remove the person at risk and place the person at risk in a protective facility or with a family member or other responsible adult who is able to provide shelter for the person at risk.
 2. Notwithstanding any other provision of Acoma Laws (2003), as amended, where a person places his or her person or any other person in danger of substantial harm, a [peace] officer may place the person in protective custody for a period of time not to exceed forty-eight (48) hours. The Court, after a hearing where the person is present, may extend the period of protective custody to a maximum of ninety-six (96) hours

upon finding that the person continues to pose a risk of substantial harm to himself or herself or others, if released.

B. Notification of Emergency Removal

1. The person removing a person at risk shall immediately notify [PASS] and other family members, caretakers, or guardians of the emergency removal and placement unless the person removing the person at risk has reason to believe that notifying a particular person could increase the danger of harm to the person at risk. The least restrictive alternative for placement which will provide protection to the person at risk shall be used.
2. [PASS], with [the] assistance [of] Acoma [peace officers] and Pueblo officials, shall respond to emergency reports of persons at risk twenty-four (24) hours a day, seven (7) days a week.
3. Within twenty-four (24) hours of any emergency removal and placement, a written report as described in this Chapter shall be given to [PASS].
4. [PASS] shall be responsible for making necessary arrangements for the well-being of the person at risk prior to the Court hearing on the petition and, where deemed necessary for the safety of the person at risk, [PASS] shall have the authority to take temporary custody of a person at risk until the Court orders otherwise. [PASS] also has the authority to enlist the efforts of [peace officers, the Acoma Police Department and other departments as is necessary to protect the person at risk.

C. Time Limits on Emergency Placement of a Child.

1. Filing a Petition. No child shall be held in a protective care facility or other emergency placement for more than ninety-six (96) hours unless a petition for such placement has been filed with the Court.
2. Temporary Order. In no event shall a Child be held in a protective care facility or other emergency placement for longer than one hundred twenty (120) hours without a valid temporary protection order issued by the Court, which clearly states the reason for such placement.

- D. Time Limits of Emergency Placement of an Adult.
 - 1. Adult Suffering from Incapacity. Where there is reason to believe that an adult at risk is a danger to himself or herself or suffers from an incapacity, the time limits set out in this [Chapter] shall apply.
 - 2. Other Adults and Elders. Where the person(s) at risk is an adult and the emergency caretaker consents to continue providing protective shelter to the person(s) thought to be at risk, the time limits set out in this [Chapter] shall not apply.
- E. Necessary Court Hearing. Within seventy-two (72) hours of an emergency removal, [PASS] or [the] Acoma Police Department shall present a petition for a temporary protection order to the Court pursuant to this Chapter and the Court shall make a decision to grant or deny the request for a temporary protection order prior to any time limits set out in this Chapter.

4-6-3

Procedures in the Absence of an Emergency

- A. Initial Investigation.
 - 1. Upon receiving a report that a person may be at risk, [PASS], with the assistance of the Acoma Police Department, if appropriate, and other tribal services providers, as [PASS] deems appropriate, shall promptly conduct a thorough investigation into the home of the person at risk or any other place where the person may be at risk and into all other matters which the investigators, in good faith, believe are relevant to the investigation.
 - 2. No investigation may inquire into the financial state of the family, caretaker, or guardian of a person at risk without the consent of the individual from whom information is sought or by a Court order.
 - 3. Where the financial ability of an individual family member, caretaker, or guardian to provide for a person is relevant and material to determining if the person is at risk, the Court can order an individual to make financial information available to [PASS].

4. If the person at risk has been or is being treated at a medical facility, the investigator shall, consistent with reasonable medical practice, have:
 - a. The right to access the person at risk for interviews, photographs, and securing physical evidence; and
 - b. The right to access relevant hospital and medical records pertaining to the person at risk [except as prohibited by federal law].
5. If at any time during the investigation it appears that a person who may be at risk is in imminent danger of harm, emergency procedures shall be used pursuant to this Chapter.
6. [PASS] within thirty (30) days of commencing an investigation, shall prepare a written report.
7. Based upon the written report, [PASS] shall determine whether there is probable cause to believe that a person is at risk. After consultation with the Tribal [Sheriffs], [PASS] shall determine whether a formal petition to declare a person at risk should be filed in the Court. Where a decision is made that informal procedures may be the least restrictive alternative to effectively remove the risk, [PASS] shall initiate informal procedures.

B. Informal Procedures.

1. Informal procedures shall be used wherever all members of the family, guardian(s) and/or caretaker(s) of a person at risk voluntarily seek assistance from [PASS] or seek to obtain traditional advice from the Tribal Sheriffs. If a petition is filed with the Court by someone other than [PASS], upon finding that informal procedures may be in the best interests of the person allegedly at risk, the Court can stay the proceeding and direct [PASS] to initiate informal procedures.
2. Based upon the written report of the investigation required in this Chapter or a voluntary request for assistance, [PASS], in consultation as [PASS] deems necessary with other appropriate tribal agencies and officials, shall develop an action plan consisting of recommendations of those tribal services necessary to assist the family and other

caretaker(s) or Guardian(s) in providing for and protecting the person at risk and the goals to be met through use of the services.

3. The family and other caretakers or guardians shall be presented with the action plan at a meeting arranged by [PASS].
4. If the family, other caretaker(s) or guardian(s) of the person at risk and the person at risk, if not [an] incapacitated adult, voluntarily agree to comply with the requirements of the action plan, [PASS] shall monitor compliance with the action plan.
5. [PASS] shall be responsible for assisting the family and other caretaker(s) or guardian(s) of a person at risk in complying with the action plan. [PASS] may enlist the efforts of other departments and agencies as PASS deems necessary.
6. If the family, other caretaker(s) or Guardian(s) of the person at risk and the person at risk, if not [an] incapacitated adult, do not agree to comply with the requirements of the action plan or, after agreeing to comply, fail to [comply], [PASS] can begin formal procedures in the Court to have a person declared at risk and obtain a protection order.

C. Formal Procedures.

1. Petition for Protection Order. Formal procedures begin with the filing of a petition in Court seeking to have a person declared to be “at risk” and a protection order issued. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out the facts why the person is thought to be at risk.
2. Emergency Proceedings. When there is a reasonable belief that a person who may be at risk is in imminent danger of harm, the petition can also request the Court to issue a temporary protection order without first declaring the victim to be a person at risk.
3. Who Can File a Petition. Petitions may be filed by the following persons when there is reason to believe that a person is at risk:

- a. a victim of abuse or neglect;
 - b. the caretaker or guardian of a person who may be at risk; or
 - c. [PASS, a] [peace] officer, Domestic Violence Advocate, or [Pueblo official].
4. Temporary Protection Order. Upon receipt of a petition requesting a temporary protection order, the Court shall:
- a. Immediately grant a temporary protection order, if there is probable cause from the specific facts shown by the affidavit or the petition for the Court to reasonably believe that a person is in imminent danger of harm.
 - b. Cause the temporary protection order together with notice of hearing to be served immediately on the alleged abuser or negligent person(s), all adult family members of the person alleged to be at risk, and [PASS]. [PASS] shall be responsible for notifying any other tribal agencies that [PASS] deems necessary.
 - c. Within fifteen (15) days after granting an ex-parte temporary protection order, hold a hearing on the question of continuing the order.
 - d. If a temporary protection order is not granted, the court clerk shall immediately serve notice to appear before the Court upon the interested persons including, but not limited to, the alleged abuser or negligent person(s), the person alleged to be at risk, all adult family members, and [PASS]. [PASS] shall be responsible for notifying any other tribal agencies [that PASS] deems necessary. A preliminary hearing on a petition for protection order shall be held within fifteen (15) days after the filing of the petition.
 - e. A temporary protection order issued **prior to** a hearing shall be effective until a hearing is held, unless otherwise ordered by the Court.

- f. A protection order issued at or after a hearing for which all interested persons had prior notice shall have effect for no more than twelve (12) months unless there is good cause that the protection order is needed for a longer time period but in no case can a protection order stay in effect for more than two (2) years without the Court conducting a hearing to determine if the circumstances still require the protection order. If the protection order involves domestic violence or is otherwise subject to the federal Violence Against Women Act, 42 U.S. C., Subchapter III, the Court shall issue the Project Passport Cover Sheet to accompany the protection order to better ensure that the order is enforceable in all other [Tribal lands], U.S. states and territories.

4-6-4

Protection Orders or Temporary Restraining Orders

- A. Protection Order. Upon finding that a person is at risk in a hearing where all other interested persons are present or had prior notice, the Court shall enter a protection order ordering the abuser or negligent person to refrain from abusing or neglecting the person or person found to be at risk, and designate other family members, [PASS], or community member as caretaker or guardian. Where the Court designates a caretaker, treatment, or other services in an action initiated by [PASS], or otherwise at the request of [PASS], the order must permit [PASS] to select a comparable alternative for the placement, treatment, or other services ordered by the Court. The Court shall state in writing in specific language the behavior that [an] abuser or negligent person is to do or refrain from doing. The Court may also order the following conditions be imposed:
 1. In the case of abuse or neglect of a spouse:
 - a. Grant sole possession of the residence or household to the person at risk during the period of the order or to order the person causing the person to be at risk to provide temporary suitable alternative housing for the person at risk and others to whom there is owed a legal obligation of support;
 - b. Award temporary custody of any children to the person at risk, other family members, caretaker(s), or guardian(s). Safety of the person at risk and the

children shall be the primary consideration in granting temporary custody;

- c. Order that the person causing the risk not to have any or limited contact with the person at risk;
 - d. Restrain all interested persons from interfering with, transferring, concealing, encumbering, or otherwise disposing of the property of the person at risk or joint property of the spouses; or
 - e. Order any other relief as the Court deems necessary for the protection of the Person at risk including orders to law enforcement agencies and other tribal agencies to provide services to the Person at risk and his or her Family, Caretakers, and/or Guardians.
 - f. If the protection order involves domestic violence or is otherwise subject to the federal Violence Against Women Act, 42 U.S.C. Subchapter III, the Court shall issue the Project Passport Cover Sheet to accompany the protection order to better ensure that the order is enforceable in all other [Indian Tribal lands], U.S. states and territories.
2. In the case of abuse or neglect of an elder or a determination that an elder is incapacitated:
- a. Remove the elder from the place where the abuse or neglect has taken or is taking place;
 - b. Remove the person who has abused or neglected an elder from the elder's home;
 - c. Restrain the person who has abused or neglected an elder from continuing such acts;
 - d. Require an elder's family, caretaker(s), or guardian or any person with a fiduciary duty to the elder to account for the elder's funds and property;
 - e. Require any person who has abused or neglected an elder to pay restitution to the elder for damages resulting from the person's wrongdoing;

- f. Appoint a guardian or caretaker for the elder;
 - g. Recommend that a guardian be named as a representative payee;
 - h. Order [PASS] to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs; and
 - i. Order any interested person to comply with a plan approved by the Court to deliver services to an elder.
3. In other cases of Abuse, Neglect, or where a person is in need of supervision, the Court shall have the following powers in addition to those set out above:
- a. The Court shall have authority, whenever it appears necessary or convenient, to appoint a Caretaker or Guardian for a person at risk who is an elder or [adult] incapacitated by reason of physical or mental sickness or deficiency, or chronic use of drugs or alcohol.
 - b. Order that the person causing the risk not to have any or limited contact with the person at risk.
 - c. Order the Person at risk to cease any conduct that the Court finds to be causing or contributing to the risk of harm to the person.
 - d. Order [PASS] to prepare a plan for and deliver services to the person at risk.
 - e. Order any interested person to comply with a plan approved by the Court for delivery of services.
 - f. Order any other relief the Court deems necessary for the protection of the person at risk, including, but not limited to, orders to [the Acoma Police Department] and other tribal agencies [to] provide services to the Person at risk and his or her family, caretaker(s), and/or guardian(s).

- B. Violation of Court orders: contempt of Court. Any refusal to obey a Court order is contempt of Court and may result in civil penalties. Any penalty shall be assessed after notice, an opportunity to be heard, and determination by the Court that a person is in contempt of court.
- C. Service of Orders. Any protection order granted by the Court shall be filed with the clerk of the Court and a copy shall be sent to [PASS] and the [Acoma Police Department]. The order shall be personally served upon the parties by [the] Acoma Police Department unless the Court provides for an alternative means of service. A protective order granted by the Court shall be effective for up to twelve [(12)] months unless there is good cause for issuing an order for up to two [(2)] years. The order may be extended for good cause upon motion of the petitioner for additional two [(2)] - year periods of time. Any interested person can request the Court to revise a protective order after the order has been in place, based upon a change in circumstances.
- D. Guardians and caretakers. Except as otherwise specifically ordered or limited by the Court:
 - 1. Rights and responsibilities of guardians and caretakers
 - a. A guardian or caretaker of a person at risk shall have the right to take or provide for the custody of the person and shall be required to care for the health, safety, and welfare of such person and provide for their education as needed or appropriate.
 - b. A guardian or caretaker may, in writing, ask the Court for authority to do any act when uncertain of his or her authority and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct, if doing so appears to be consistent with the best interest of the person at risk.
 - 2. Rights and responsibilities of guardians only. In addition to the rights and responsibilities set out in paragraph 1 [of this Subsection], guardians:
 - a. Shall have the authority to invest, manage, and dispose of the property of the person at risk in a prudent and reasonable manner and expense portions of the estate or income, as he or she shall

reasonably deem necessary for the support, care, including medical care, and education of the Person at risk, given the amount and value of property and the needs of the person.

- b. A guardian has a fiduciary relationship with the person; A guardian shall exercise a high degree of care in managing the property of the person at risk; shall derive no personal benefit of any kind from his or her management of the property of the person at risk; and shall be liable to such person for any losses to the property caused by a breach of these duties. Actions to enforce such liability must be brought by the person at risk or any tribal agency within twelve (12) months of the discovery of breach of duties by the guardian.
3. Requirements for appointing a guardian or caretaker. At a hearing conducted to appoint a guardian or caretaker, the Court shall:
 - a. Determine the need to have a guardian appointed.
 - b. If the person is an Adult who is not incapacitated, take into consideration who the person would prefer to have as his or her guardian.
 - c. Determine which person is most suitable to act as guardian based upon the best interests of the person at risk.
 - d. Examine that person's willingness to act as such.
4. Appointment of a Guardian or Caretaker. If the Court finds that the person seeking appointment is qualified to serve as guardian or caretaker, the Court shall make the appointment in a written order which sets out the scope of the guardian's or caretaker's authority and the duration of that appointment. If the Court finds that a proposed guardian or caretaker is not qualified, the Court may dismiss the proceedings or dispose of the matter in a way that serves the best interests of the person at risk. The Court may appoint a temporary guardian or caretaker but the authority of a temporary Guardian shall not last longer than twelve (12) months. After

twelve (12) months, if a guardian or caretaker is still required, the Court shall either:

- a. reappoint the temporary guardian or caretaker for an additional twelve (12) months; or
 - b. appoint a permanent guardian or caretaker.
5. Termination of guardianship or caretakership. The authority and responsibility of a guardian or caretaker terminates upon any of the following:
- a. A finding by the Court that a person is no longer at risk;
 - b. The death of a guardian, a caretaker, the elder or other person at risk;
 - c. Upon removal [of a guardian or caretaker] by the Court's order; or
 - e. Voluntary resignation only if such resignation is accepted by the Court.
6. Who May Serve as guardian or caretaker. Any adult person twenty-one (21) years of age or older and subject to the jurisdiction of the Court may serve as guardian or caretaker. Preference will be given to the family and extended family of the person at risk, taking into consideration the closeness of the relationship. Some preference shall also be given to a person with whom the person at risk is living at the time of the hearing. Preference may also be given to the person preferred by a person at risk, but in all cases, the Court shall determine the best interests of the person at risk.
7. Oath, Letters of Guardianship. A guardian appointed by the Court shall be required to take an oath before the Court to faithfully perform the duties of a guardian. Upon taking the oath, a guardian shall be issued letters of guardianship by the court clerk under seal of the Court, as evidence of the appointment. Any limits on the authority of the guardian shall be set forth in the letters of guardianship.
8. Reports by the guardian. A guardian shall file a report with the Court and [PASS] every six [(6)] months or as otherwise

ordered by the Court. The report shall include information concerning the [expenditure of funds of the person at risk,] progress and condition of the person at risk including, but not limited to, his or her health, medical and dental care, residence, education, employment, and habitation and social activities. A report on the actions of the guardian in fulfilling his or her duties shall also be included and the guardian's opinion on whether the need for guardianship is still necessary.

9. Guardian compensation. No guardian shall be compensated for being a guardian without prior approval of the Court. The right to receive compensation by a guardian shall be deemed waived for any year in which it is not requested and received within sixty (60) days after December 31.
10. Guardianship records. [PASS] and the court clerk shall keep separate, permanent files for each guardianship proceeding and shall keep in the file all papers relevant thereto, including petitions, notices of hearing, etc.

E. Confidentiality of records and court proceedings

1. [PASS] shall maintain a record system containing the following:
 - a. All written reports that person(s) may be at risk.
 - b. All written investigation reports.
 - c. All reports of guardians or caretakers.
 - d. The results of any formal or informal procedures, including copies of all written orders of the Court.
2. All records of [PASS] and all court records required to be maintained under this [Chapter] are subject to the following rule to protect the confidentiality of the Acoma Community: These records shall be open only to the person at risk, the person's family, caretaker or guardian (unless an individual family member, caretaker, or guardian is suspected of being the cause of the risk); employees of [PASS], the Child and Elder Protection Team, law enforcement officers, Court [employees], or a medical examiner or coroner who has

reason to believe that a person died as the result of abuse or neglect.

3. All Court hearings required under this Chapter shall be closed and confidential. Persons who may attend are: The person at risk, the family, any caretaker or guardian of the person at risk, [PASS] and other tribal agency representatives necessary to the administration of justice, and necessary court [employees]. Other persons may appear only to testify. No one attending or testifying at a hearing required under this [Chapter] shall reveal information about the proceeding unless ordered to do so by the Court in a written order.
4. Any person who violates the confidentiality of these records and hearings shall be subject to civil penalties in an amount left to the discretion of the Court and, if a tribal employee, to appropriate disciplinary action up to a recommendation to terminate employment. The penalty shall be assessed by the Court after notice, an opportunity to be heard, and a determination by the Court that a violation occurred.

Chapter 7. DOMESTIC RELATIONS AND PROBATE

4-7-1 Jurisdiction. [Except where specifically states otherwise,] the Acoma Pueblo Tribal Court (Court) shall have such jurisdiction over domestic relations and probate cases covered by this [Chapter] as shall come before the Acoma Courts, provided that the Court shall have no jurisdiction to grant a divorce or an annulment, and further provided that the Court shall have jurisdiction to determine paternity, support, and custody of minor [children] and division of property.

4-7-2 Marriages

- A. All marriages [of] a Pueblo of Acoma member shall be recognized if performed according to the laws of the state of their residence or according to tribal custom.
- B. Recognition of a marriage by the Pueblo of Acoma will be shown on a certificate of marriage. A certificate by a [Tribal Sheriff], that the marriage occurred, satisfies this requirement. The marriage registry shall be maintained by the Court.

- C. The Chief Judge of the Court or a pro tem or associate Judge of the Court, if so authorized by the Chief Judge, may perform a wedding ceremony when requested by the couple that is getting married.

4-7-3

Legal Separation Procedures

- A. Before any Pueblo of Acoma member or resident of the Acoma Community can petition the Court for a legal separation, Acoma cultural practices must be followed. These practices require counseling by family elders, followed if necessary by meeting with [Tribal Sheriffs]. The Court has no jurisdiction to act on a petition for legal separation without clear [and convincing] evidence that these elements of Acoma Pueblo cultural practice have been followed. Only then may the Court consider whether to grant a legal separation.
- B. Jurisdiction of proceedings under this Chapter will be determined as set forth in Title 1, regarding civil jurisdiction over persons.
 - 1. The Court has exclusive continuing jurisdiction over any child custody proceeding for which it has issued a judgment, except that a party to an action under this Chapter can motion to have the matter transferred to the traditional process.
 - 2. The Tribal Court may, if there is good cause and the transfer does not prejudice a party, notify the 2nd Lieutenant Governor or Tribal Sheriffs requesting a transfer of the matter to the traditional process. If the 2nd Lieutenant Governor and/or Tribal Sheriffs agree, the matter may be transferred to the traditional process. If the traditional process includes a hearing and decision by Tribal Council, then Tribal Council's decision shall be final. If a decision is made instead by Tribal Sheriffs, clan or family elders, that decision may be appealed to Court. The party challenging the decision has the burden of proving by clear and convincing evidence that the decision by Tribal Sheriffs, clan or family elders should be overturned.
- C. Scope of legal separation. In a decree of legal separation, the Court may address the following issues, including, but not limited to: custody of children, maintenance, child support, disposition of real and personal property and debts, and expenses of suit as may be equitable under the circumstances.

- D. Legal separation procedure.
1. Proceedings for legal separation shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided.
 2. If either party in a proceeding for legal separation is a member of the military or an appointed official, the Court may conduct the proceeding in such a way as to be consistent with the Servicemembers Civil Relief Act, 50 U.S.C. §§3901, et seq., or provide such due process as to ensure that the appointed official's rights are not compromised because of his service.
- E. Restraint. The Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the proceedings for legal separation. In addition, contempt [or exclusion] proceedings may be brought against any party violating a valid court order obtained pursuant to this Section.
- F. Maintenance and suit money. During the pendency of the action for legal separation, the Court may order [a] spouse to pay temporary maintenance and [support] money.
- G. Criteria for maintenance. In a proceeding for legal separation, the Court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the Court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:
1. The financial resources of the party seeking maintenance, including separate or [jointly owned] property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
 2. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
 3. The standard of living established during the marriage;

4. The duration of the marriage;
5. The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and
6. The ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse seeking maintenance.

H. Modification of decree of legal separation

1. The provisions of any decree of legal separation respecting maintenance or support may be modified only upon a showing of substantial change of circumstances. The Court may only modify [payment obligations] occurring after the date of the petition for modification.
2. The provisions of any decree of legal separation respecting property disposition may not be revoked or modified, unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Tribe.
3. The provisions of any decree of legal separation respecting child custody may be modified according to this [Title].
4. The provisions of any decree of legal separation respecting child support may be modified according to [this Title]

I. Termination of maintenance obligation. Unless otherwise agreed in writing or expressly provided in the decree of legal separation or other Court order, the obligation to pay future maintenance is terminated upon the death of either party.

J. Rights and liabilities of legally separated persons. Once legally separated:

1. Either spouse can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.
2. Either spouse can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.
3. Neither spouse, nor the property of either in which the other spouse has no Interest, is liable for any new debts or

obligations acquired by the other spouse after the date of the decree of legal separation.

4. Neither spouse, nor the property of either in which the other spouse has no interest, is liable for torts committed by the other spouse.
 5. A conveyance, transfer, or lien executed by either spouse in favor of the other shall be valid to the extent such an action is equitable under an interpersonal trust relationship.
- K. Family expenses. The expenses of the family and the education of the children are chargeable upon the property of both spouses or either of them, and they may be enforced jointly or separately.
- L. Conclusiveness of decree of legal separation. A decree of legal separation is final when entered, subject to the right of appeal

4-7-4

Determination of Heirs

- A. Inheritance within Acoma Community requires that family elders meet to settle the estate and to transfer property following a death. If the family does not agree, then the family involves the Tribal Sheriffs. If agreement still cannot be reached, the Tribal Court ("Court") is the final resort to determine heirs and disposition of property. The Court must consider decisions of the elders and Tribal Sheriffs seriously in its process. Any person who challenges a decision of the elders or Tribal Sheriffs has the burden of proving by clear and convincing evidence that the decision was wrong.
- B. Subject to the provisions of Subsection A of this Section, when any Pueblo of Acoma member dies leaving property, any person claiming to be an heir of the decedent may bring [an action] to have the Court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all known probable heirs of the decedent known to the Court, [the U.S. Bureau of Indian Affairs'] Southern Pueblos Agency, and to the claimant have been notified of the [action] and given full opportunity to come before the Court and defend their interest. Probable heirs who are not residents of Acoma Pueblo must be notified by certified mail and a copy of the notice must be preserved in the record of each case. This Section does not apply to trust property subject to the probate jurisdiction of the Department of the Interior.

4-7-5

Approval of Wills

- A. When any Pueblo of Acoma member dies leaving a will disposing of any property, the Court shall, at the request of any Pueblo of Acoma member named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in Court to all persons who might be heirs of the decedent, such notice to be given as provided in Title 3 of Pueblo of Acoma Laws 2003, as amended. This section does not apply to trust property subject to the probate jurisdiction of the Department of the Interior.
- B. A will may be in writing or recorded on audio cassette or video tape. Audio or video recordings for this purpose must include identification of the people in the meeting in their own voice(s), including their relation or office.
- C. A will shall be deemed to be valid if the decedent was of a sound mind and understood the nature and extent of his or her property and understood he or she was making a will at the time he or she signed the will, or prepared the recording on audio cassette or video tape, and further that at such time was not subject to duress, coercion, or undue influence of any kind from another person. A written will must be signed by the decedent in the presence of two witnesses who are not heirs or beneficiaries under the will. An audio cassette or video tape will must be made in the presence of two witnesses who must identify themselves as witnesses on the audio cassette or video tape.
- D. If the Court determines that the will was validly executed, it shall order the property described in the will to be given to the persons described in the will or to their heirs.
- E. If any will, having been declared valid by the Court, be contested by any of the heirs of the decedent, an appeal may be taken as provided for in the laws of the Pueblo.
- F. If the will is declared invalid, the case will be handled by the Court as a determination of heirship under §4-7-4.

4-7-6

Paternity

- A. Determination of Paternity. An action brought under this Section may be joined with an action for separation of marriage, maintenance, or support. The Children's Court ("the Court") has

jurisdiction to determine the paternity and support of a child residing within Acoma Pueblo.

B. **Presumption of Paternity.** A man is presumed to be the natural father of a child, if:

1. He and the child's natural mother are or have been married to each other and the child is born during the marriage;
2. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in compliance with tribal or state law, although the attempted marriage is or could be declared invalid;
3. He acknowledges his paternity of the child in writing filed with [an] appropriate state agency or with a census or enrollment office of an Indian tribe;
4. After the child's birth, he, with his consent, is named as the child's father on the child's birth certificate;
5. After the child's birth, he is obligated to support the child under a written voluntary promise or by [any] court order; or
6. While the child is under the age of majority, he openly holds out the child as his natural child and has established a personal, financial, or custodial relationship with the child.

C. **Medical/Scientific Evidence to Establish Paternity**

1. A man is presumed to be the natural father of a child if, pursuant to a blood or genetic test properly performed by a qualified individual and evaluated by an expert, including deoxyribonucleic acid (DNA) probe technique test, the probability of his being the father is ninety-nine percent (99%) or higher.
2. The Court may, in its discretion or upon request of a party, require the child, the mother, or the alleged father to submit to a blood or genetic test to determine paternity. The Court shall order the test be performed by experts qualified as examiners of blood types or as qualified experts in administration of genetic tests, including DNA probe technique tests. The costs of tests shall be divided among the parties.

- D. Other Evidence Related to Paternity: The Court may consider the following evidence relating to paternity:
1. An expert's opinion concerning the probability of the alleged father's paternity based upon [the] duration of the mother's pregnancy.
 2. Blood test or genetic test results, including DNA probe technique test results, if available, of the statistical probability of the alleged father's paternity based on a test performed by a qualified individual and evaluated by an expert.
 3. All other evidence the Court deems relevant to the issue of paternity of the child.
- E. Civil Action. An action under this Section is a civil action governed by the rules of the Court. Any interested party may bring an action for the purpose of determining the existence or nonexistence of the parent and child relationship by filing a petition with the Court.
- F. Judgment and Order
1. The judgment or order of the Court determining the existence or nonexistence of the parent and child relationship is determined for all purposes. If paternity is established, it shall be conclusive as to all subsequent determinations of inheritance and conclusive as to enrollment criteria or requirements of Acoma Pueblo.
 2. If the paternity of a child is not established, in the absence of evidence that the child more likely than not possesses a different degree of Indian blood, the Child shall be presumed to have the **same degree** of Indian blood of the mother for the purposes of meeting the criteria for enrollment with the Acoma Pueblo.
- G. Support Orders
1. A judgment or an order determining paternity may contain any provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, or any other matter within the jurisdiction of the Court.

2. Support judgments or orders shall include provisions for periodic lump sum payments for support of the child. In determining the amount to be paid by a parent for support of the child or children, the Court shall make such determination in accordance with Child Support Guidelines [in §4-9-16(F).]

H. Enforcement of Judgment or Order

1. If the existence of the father and child relationship is declared or paternity or duty of support has been acknowledged or adjudicated in any court with jurisdiction over the father, the obligation of the father may be enforced in the same or other proceedings by any interested party.
2. The Court may order support payments to be made to the mother, the clerk of the Court, or the person or agency designated to collect or administer such funds for the benefit of the Child.
3. Willful failure to obey the judgment or order of the Court is civil contempt of the Court. All remedies for the enforcement of judgments apply.

I. Modification of Judgment or Order. The Court has continuing jurisdiction to modify or revoke a judgment or order for the future support of a child.

J. Statute of Limitations. An action to determine a parent and child relationship under this [Chapter] shall be brought no later than one (1) year after the child has reached the age of eighteen (18) years if the action to establish a parental relationship deals with inheritance rights or issues. There is no statute of limitations to determine a parent and child relationship for purposes of establishing Tribal enrollment, membership or other good cause where there is no objection. If there is an objection, the Court will, after a hearing with all interested parties present (or provided notice and an opportunity to be heard) decide if the objection is well founded. The person seeking to establish the parent [and] child relationship has the burden proving that relationship by a preponderance of the evidence.

Chapter 8. CUSTOMARY ADOPTION INCLUDING SUSPENSION OF PARENTAL RIGHTS

4-8-1 Purpose and Interpretation

- A. It is the fundamental belief of the Pueblo that its children are the sacred responsibility of the Pueblo.
- B. The principles that shall guide decisions pursuant to this [Chapter] are: acting in the child's best interests which requires promoting a sense of permanency and belonging throughout a child's life, protection of the child's safety, well-being and welfare; preservation of the child's identity as a tribal member, member of an extended family and clan; providing the child with knowledge of and experience with our culture, religion, language, values, history, clan system, tribal government, and importantly our way of life.
- C. To embody and promote the basic traditional values of the Pueblo regarding the protection and care of the Pueblo's children, the Pueblo believes that it is the responsibility of the Pueblo, the Acoma community and extended families to protect, care for, and nurture our children.
- D. One of the Pueblo's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children.
- E. The Pueblo delegates the authority to its Children's Court ("Court") to adjudicate its customary practices regarding child rearing and child custody. This Chapter shall be liberally interpreted.
- F. To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children.
- G. It is the intent of this Chapter that suspension of parental rights and customary adoptions are clearly preferred as being consistent with the Chapter's purposes as set forth above. Suspension of parental rights and customary adoptions better preserve the connection between the child and his/her family, clan, the Pueblo, customs and traditions while providing the sense of permanency that children need and deserve. It is only in extremely rare and unusual circumstances that termination of parental rights prior to adoption

may be permissible. [Termination of parental right prior to adoption requires that] a showing beyond a reasonable doubt that it is the only option that is in the best interests of the child and the Pueblo.

4-8-2 Definitions: The definitions set out in §4-2-3 apply to this Chapter except that as used in this Chapter:

- A. “Adoptee” is defined as the individual, child or adult who is adopted or is to be adopted.
- B. “Adoptive Parent” is defined as the person establishing or seeking to establish a permanent parent and child relationship with a child who is not their biological child.
- C. “Best Interests of the [Pueblo]” is defined as a variety of factors including but not limited to the ability of the Pueblo and its members to provide for the child; the ability of the Pueblo and its members to provide for the continuation of the Pueblo’s culture, language, history, religion, traditions and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Pueblo to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Pueblo as crucial to the future of the Pueblo as a whole.
- D. “Birth Parent” is defined as the biological parent.
- E. “Family member” is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, significant others, and any other persons who might be considered a family member or a relative under tribal law or custom.
- F. “Enrolled Member” is defined as any individual who is recognized as enrolled by the Pueblo Enrollment Office.
- G. “Final decree of customary adoption” is defined as the final Court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent(s).
- H. “Final order suspending parental rights” means a final [Court] order which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order

may establish the parameters of contact between [a] birth parent and the child if said contact is in the child's best interests. The order shall indicate what relationship, such as visitation, the child maintains with his/her biological parent(s), extended family, clan and [the Pueblo].

- I. "Member" (or "Pueblo of Acoma member") is defined as any individual who is descended from a biological parent who is an Acoma Pueblo member or enrolled member or otherwise recognized by the Pueblo as a member. In the case of a child, it is a child whose biological parent or parents are Pueblo members, including those enrolled in Acoma Pueblo.
- J. "Pueblo" means the Pueblo of Acoma, unless the context of its use suggests one or more of the 19 Indian Pueblos that are federally recognized Indian tribes.
- K. "State court" means a court of a state, having civil jurisdiction over the child or children who are the subject of a suspension of parental rights petition or customary adoption petition.
- L. "Suspension of parental rights" is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child.
- M. "Termination of parental rights" is defined as the permanent ending or termination of any rights of a biological parent with respect to a child.

4-8-3

Civil Jurisdiction

- A. Jurisdiction of proceedings under this Chapter will be determined as set forth in **Title 1**, regarding civil jurisdiction over persons.
- B. The Court shall have continuing civil jurisdiction to hear and adjudicate petitions seeking termination or suspension of parental rights orders, adoption, or customary adoption for a child or; to issue temporary and permanent orders for protection of a child, including ex parte orders if an emergency exists; and to issue such other orders as may be just and reasonable and designed to carry out the intent and purposes of this [Chapter], including use of the civil contempt powers of the Court as set forth in the Pueblo of Acoma Laws 2003, as amended. A party to an action under this Chapter can motion to have the matter transferred to the traditional process.

- C. The Court may, if there is good cause and the transfer does not prejudice a party, notify the 2nd Lieutenant Governor or Tribal Sheriffs and request a transfer of the matter to the traditional process. If the 2nd Lieutenant Governor and/or Tribal Sheriffs agree, the matter may be transferred to the traditional process. If the traditional process includes a hearing and decision by Tribal Council, then Tribal Council's decision shall be final. If a decision is made instead by Tribal Sheriffs, clan or family elders that decision may be appealed to [the] Court. The party challenging the decision has the burden of proving by clear and convincing evidence that the decision by Tribal Sheriffs, clan or family elders should be overturned.

4-8-4 Rights of Parties in Suspension or Termination of Parental Rights Proceedings

- A. In addition to any other rights afforded under the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03 (1968), as amended, petitioners, and other parties have the following rights:
1. A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact on their ability to have contact with their child;
 2. The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition for suspension of parental rights pursuant to this [Chapter];
 3. The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;
 4. The biological parents and the petitioner have the right to summon and cross-examine witnesses; and
 5. The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

Petition to Suspend or Terminate Parental Rights

- A. Filing a petition starts an action: An action to suspend or terminate a parent and child relationship is started by filing a petition in the Court. A petition may be filed by:
1. One or both parents who voluntarily request that the parent and child relationship be suspended or terminated, unless it is determined that such a request is made to avoid support obligations;
 2. One parent requesting that the parent and child relationship between the child and the other parent be suspended or terminated;
 3. PASS; or
 4. A Guardian, Caretaker, or any other person having legitimate interest in the child.
- B. The petition shall include:
1. The name, address (physical and mailing), and telephone number of the petitioner and the petitioner's relationship, if any, to the child;
 2. A statement detailing the specific reasons why an order for the suspension of parental rights of the parent(s) is in the best interests of the child and the [Pueblo, or where the Pueblo is not the child's Indian tribe, the] child's Indian tribe and how it meets the criteria set forth in this Chapter;
 3. It should be recalled that suspension of parental rights is preferred under this [Chapter] as being generally consistent with Acoma traditions, but if termination of parental rights is sought, a detailed statement as to why it is in the best interests of the child and the [Pueblo, or where the Pueblo is not the child's Indian tribe, the] child's Indian tribe that the biological rights of the parent(s) be terminated as opposed to suspended and why [termination] of parental rights is a better option for child and the [Pueblo, or where the Pueblo is not the child's Indian tribe, the] child's Indian tribe;
 4. A statement detailing how the suspension or termination will lead to a permanent relationship for the child in customary

adoption or permanent guardianship that is accordance with Pueblo preferences, and how connections will be maintained and enhanced with extended family, and if the parents are not [members], with the Pueblo;

5. A statement as to basis for the request for the suspension of parental rights supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
 6. The name, address (physical and mailing), telephone number the name, address and telephone number of the child's Indian tribe;
 7. The name, address (physical and mailing), telephone number and age and birth dates (if known) of the child's parent(s) whose parental rights are to be suspended or terminated;
 8. In cases of [a] minor parent, the names and addresses (physical and mailing) of [a] minor parent's parent(s) or guardians;
 9. The names and addresses (physical and mailing) of the person(s) or entity having legal custody or guardianship of the child or acting in the place of the parent.
 10. The name(s), address(es), and telephone number(s) of any other relatives who may have an interest in the care, custody and control of the child; and
 11. A statement that no similar action is pending in a state or other court of an Indian tribe having jurisdiction over the child.
- C. Criteria for Suspension & Termination: The Court may not find suspension of parental rights appropriate unless the petitioner demonstrates by clear and convincing evidence that the criteria set forth in this section are met. The Court may not terminate parental rights unless: a) there is proof beyond a reasonable doubt that the criteria set forth below in this section are met, and b) that suspension of parental rights cannot be accomplished and termination is the only option.

1. Where a petition is filed by a biological parent, suspension or termination is appropriate where the Court finds:
 - a. The biological parent has been informed of the consequences of a suspension or termination of parental rights;
 - b. The desire of the biological parent to terminate his or her parental rights is not coerced, the result of undue influence, or an involuntary act in light of all the circumstances; and
 - c. That the suspension or termination is in the best interests of the child. Petitions filed by a biological parent to evade child support obligations are *prima facie* not in the child's best interests.

2. Where a petition to suspend or terminate parental rights is filed by anyone other than the biological parent whose rights are sought to be suspended or terminated, suspension or termination is appropriate where the Court finds in accordance with the proper burden of proof and applicable standard:
 - a. That the child was abandoned by his or her parent or has been determined to be a victim of child maltreatment by a court of competent jurisdiction;
 - b. That all services available from the Pueblo have been made available to the parent, and the parent's behavior is not conducive to treatment or rehabilitation; and
 - c. That the conduct or condition of the parent, which makes the parent unfit, is unlikely to change in a reasonable time.

3. In deciding whether the conduct or condition of a parent is unlikely to change within a reasonable time, the Court must find that continuation of the parent and child relationship will, more likely than not, result in continued child maltreatment or that [the] conduct or condition of a parent renders the parent unfit, unable or unwilling to give the child adequate parental care. The Court shall consider, but is not limited to, the following;

- a. Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;
- b. A history of violent behavior by the parent;
- c. An incident of life threatening or gravely disabling injury to or disfigurement of the child caused by the parent;
- d. Excessive use of intoxicating liquor or of a narcotic or dangerous substance that affects the parent's ability to care and provide for the child;
- e. Present judicially-ordered long-term confinement of the parent and a determination that no other option is in the best interests of the child than the suspension of parental rights; or
- f. The serious physical, mental, emotional or psychological [in]jury to, or the death of, a sibling due to proven parental maltreatment [of a child].
- g. Reasonable efforts by protective service agencies have been unable to rehabilitate the parent.

4-8-6

Notice of Hearing on Petition to Suspend or Terminate Parental Rights

- A. Upon the filing of a petition seeking an order for the suspension (or termination) of parental rights, a hearing shall be set within [thirty] (30) to [sixty] (60) days of the petition's filing and the Court shall provide written notice of such hearing to be served upon the petitioner; the child's tribe; the child's biological parent(s); resource or foster parents, guardian(s), extended family members; caretaker, if any; and appropriate agencies which may either have an interest in the proceedings or be of assistance to the court in adjudicating the matter.
- B. The Court shall make inquiry on the record to ensure that the biological parent(s) received notice if he/she or they are not in attendance or have not provided a written statement under oath (or otherwise validly established as authentic) to the Court

acknowledging that they are aware of the hearing and its purpose. Sworn testimony by the [PASS], Petitioner or other interested party that actual notice of hearing was provided to the biological parent(s) is prima facie evidence that notice was provided.

- C. If the whereabouts of the biological parent(s) are unknown and the biological parent(s) is/are not in attendance at the hearing, the Court shall make inquiry on the record as to what efforts were made to discover the location of the biological parent(s) and notify them of the hearing.
 - 1. Publication for [three] (3) weeks in any paper that circulates in the county or city where [a] biological parent was last known to reside regarding notice of the hearing shall be prima facie evidence that notice was provided if a copy [or proof]of publication is provided to the Court.
 - 2. If the Court determines that insufficient efforts were made to notify [a] biological parent, the Court will elicit suggestions for attempting notification from the parties and then will inform the petitioner and PASS as to what is necessary to ensure that notification requirements have been met.

4-8-7

Hearing

- A. Attendance at hearing.
 - 1. The biological parent(s), petitioner, respondent, family members, PASS, resource/foster parents, guardians or other individuals the Court deems necessary may be present at the hearing.
 - 2. The petitioner's failure to appear may be grounds for dismissal of the petition.
 - 3. [The failure of one or both of] the biological parent(s) to appear shall not prevent the issuance of an order for suspension (or termination) of parental rights.
- B. Conduct of the hearing.
 - 1. The Court shall inform the biological parent(s) of their rights under this [Chapter], as well as the nature and consequences of the proceedings. These rights shall include rights under the Indian Civil Rights Act, 25 U.S.C., §§ 1301-

03 (1968), as amended, as well as the right to summon and cross-examine witnesses.

2. Except where it conflicts with the Pueblo's traditional law [and rules of evidence], the federal rules of evidence shall apply to these proceedings. Where differences in evidentiary rules exist between the state of New Mexico and the federal rules of evidence the parties may argue for application of New Mexico evidentiary rules.
3. The burden of proving the allegations of the petition shall be upon the petitioner. If petitioner seeks suspension of parental rights the standard of proof shall be clear and convincing evidence. If petitioner seeks termination of parental rights the standard of proof shall be beyond a reasonable doubt to demonstrate that the criteria for termination set forth above is met and that there is no other option that is in the child's and the [Pueblo's, or where the Pueblo is not the child's Indian tribe, the best interests of the child's Indian] tribe's best interest. There shall be a legal presumption of a parent's ability to parent until proven otherwise.

C. Record of proceedings. All hearings are on the record and properly recorded.

D. Findings.

1. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and include both in the written order as well as enter an appropriate judgment or order.
2. The Court may make findings that it is in the child's best interests that a final order suspending (or terminating) the parental rights be entered and the Court shall specify the basis of those findings.
3. Using the appropriate standard of proof the Court will make necessary findings for suspension or termination of parental rights that include, but are not limited to, how the Court ordered action:

- a. recognizes the best interests of the child and the Pueblo [and where the Pueblo is not the child's Indian tribe, the best interests of the child's Indian];
- b. recognizes the best relationship possible between the child, biological parent(s), any extended family, other individuals determined from evidence entered in Court to be important to the child such as resource parents, guardians. If continued contact with the biological parent(s) continues the Court must base that on a finding that the contact/visitation will benefit the child and the biological parents and extended family must agree to abide by any reasonable restrictions and conditions that the adoptive parent(s) may place upon them;
- c. modifies the legal relationship with the biological parent(s) and/or custodian as well as include any visitation or contact the biological parent(s) and/or custodian will have with the child and the conditions that must be met for this contact to occur;
- d. protects the rights of inheritance of the child from the families of the biological parents, including inheritance which may be controlled by federal law pursuant to the American Indian Probate Reform Act of 2004, as amended, or by Acoma probate laws;
- e. states that the biological parent(s) have no ongoing legal obligations to and are not responsible for the child's care, custody or welfare. However, the biological parent(s) may contribute to the child's welfare through appropriate gifts, school supplies and by providing culturally appropriate items to assist with the child's cultural development;
- f. supports and protects the legal relationship between the child and the Pueblo, the child's current or future membership or enrollment with the Pueblo, especially if the child is being placed with non-tribal and/ or adoptive parents who are not members of an Indian tribe and how the child's Pueblo and federal rights and privileges are protected as a member of the Pueblo;

- g. recognizes and explains that any rights, contact or privileges not identified in these findings are waived by the biological parent(s), custodian or extended family and shall vest with the adoptive parents.

4-8-8

Final Order for Suspension of Parental Rights

- A. Order: If the Court determines that, based upon the findings [and conclusions of law], it is in the best interests of the child and the Pueblo, [and where the Pueblo is not the child's Indian tribe, the best interests of the child's Indian] tribe, it shall issue a final order for a suspension (or termination where appropriate) of parental rights. Such an order for the suspension of parental rights may also include, but is not limited, to the following:
 1. The necessary findings as set forth in §4-8-7;
 2. Permanent suspension of the parental rights of a parent including the suspension of the right to the care, custody and control of the child and allowing the child to be adopted;
 3. Permanent suspension of the right of [a] parent to have contact with the child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement of the parties to be ordered by the Court;
 4. Restraining a parent from contacting the child, the child's foster parent(s), the child's adoptive parent(s) and/or PASS or [other] agencies possessing information regarding the child;
 5. Ordering that [a] the biological parent(s)' obligation to pay child support, except for arrearages, is hereby terminated;
 6. Ordering that any prior Court order for custody, visitation or contact with the child is hereby terminated;
 7. Ordering that the biological parent(s) shall have no standing to appear at any future legal proceedings involving the child, however the;
 8. Ordering that the suspension of parental rights does not sever or affect in any way the child's relationship to [the Pueblo, or where the Pueblo is not the child's Indian tribe,

the child's relationship to the]child's Indian tribe or any rights of inheritance from the biological parent(s);

9. Stating that any rights, contact or privileges not identified in these findings are waived by the biological parent(s), custodian or extended family and shall vest with the adoptive parents.
- B. Copies of any order for suspension of parental rights shall be served upon the biological parent(s) and PASS or other agencies having legal custody of the child and any other parties as directed by the Court.
- C. Court review of final orders for the suspension of parental rights.
1. The Court may review a final order suspending parental rights, at the request of the biological parent(s), [PASS] (on behalf of its self or at the request of other agencies) only if one of the following occurs:
 - a. if there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights;
 - b. the adoption of the child fails; or
 - c. the adoptive parent is deceased.
 2. The Court retains jurisdiction to review and thereafter modify the final order for good cause shown based upon clear and convincing evidence for the modification. This includes clear and convincing evidence of lack of compliance [with] the suspension order offered by the biological parents.
 3. The Court may only review a termination of parental rights where there is proof beyond a reasonable doubt that the order is based upon evidence that is subsequently proved fraudulent.

4-8-9

Customary Adoption

- A. Intent: All adoptions at the Pueblo will be customary adoptions that are intended to be in the best interests of the child, recognizing that best interests includes a sense of permanency with the adoptive parents as well as maintaining the child's connection with the

Pueblo, its culture and traditions. Where feasible and in the child's best interests, this also includes maintaining a connection as defined by Court order with biological parent(s), and extended family.

- B. Exclusive Jurisdiction: The Court shall have exclusive jurisdiction in any action for customary adoption for:
 - 1. a member or enrolled member of the Pueblo;
 - 2. a child eligible for membership or enrollment with the Pueblo;
 - 3. a child who has a biological parent who is eligible for membership or enrollment in the Pueblo.

4-8-10 Adoption Preferences

- A. Where there is a conflict in placement preference, priority is given to the preference that is in the best interests of the child and Pueblo and will promote the child's wellbeing and his/her continued connection to the Pueblo, its customs and traditions.
- B. Absent good cause to the contrary, a preference shall be given to a placement with, in descending order:
 - 1. Members of the child's family.
 - 2. Members of the child's extended family residing within the exterior boundaries of the Pueblo or within the exterior boundaries of other Keresan Pueblos.
 - 3. Members of the child's extended family residing within the exterior boundaries of other Pueblos.
 - 4. Foster care providers who reside within the exterior boundaries of the Acoma Pueblo or other Keresan Pueblos.
 - 5. Members of the child's extended family residing on non-Pueblo lands.
 - 6. Foster care providers who reside within the exterior boundaries of other Pueblos.

7. Indian foster homes licensed by the state of New Mexico or another Indian tribe, with preference in favor of the foster home closest to the Pueblo.
8. Other foster homes licensed by the state of New Mexico or another Indian tribe, with preference in favor of the foster home closest to the Pueblo.
9. Institutions for children approved of by [PASS] and the state of New Mexico [or another Indian tribe] which have a program suitable to meet the child's needs.

4-8-11

Petition for Customary Adoption

- A. Customary Adoption proceedings begin by the filing of a petition with the Court. Any adult or [PASS] on behalf of an adult, may [file a petition], but generally the adoptive parent(s) will file a petition with the Court seeking an order for the customary adoption of a child. The petition shall contain the following information:
 1. The name, address and telephone number of the child's [Indian] tribe;
 2. The name, address, telephone number, and documentary proof of the birth date and age, of the child to be adopted;
 3. The name, address, and telephone number of the petitioner/adoptive parent(s), the petitioner's/adoptive parent(s)' relationship, if any, to the child; the names, ages of other children and adults in the adoptive parent(s) residence;
 4. The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the child. [PASS] as well as the Pueblo Enrollment Office shall assist in the identification of potentially interested relatives if needed;
 5. An order by a court suspending or terminating the biological parents' parental rights to the child, or properly evidenced consent of the biological parents and, if applicable the child's legal guardian, to the customary adoption, or proof of death of the biological parents;

6. The proposed name of the adoptee after the entry of the final order of customary adoption;
7. A statement or a copy of the final order suspending the parental rights of the biological parent(s);
8. A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the Pueblo;
9. A statement as to basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
10. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

4-8-12

Investigative Report: Unless otherwise indicated by written order of the Court, a report will be provided by [PASS]. In making this report, [PASS] will work as needed with Court personnel, such as probation and the court administrator and any other relevant Pueblo, tribal, state or federal agencies. The report will include but not limited to:

- A. the qualifications of the adoptive parent(s), including any criminal record and background. Note that serious criminal offenses or substantiated acts committed by the petitioner (or others that the child will be exposed to because of the adoption under conditions that may endanger him/her) that are deemed detrimental to children, especially those involving serious crimes against children may at the discretion of the Court, disqualify a petitioner from adopting the child;
- B. the nature and condition [of the] proposed residence where the adoptee will reside, including how the child will be included with other potential siblings and other individuals in the residence;
- C. a statement of assurances that the adoptive parent(s) will abide by and incorporate into the adoption any contact or visitation specified in the suspension order by the biological parents, extended family, clan and/or tribe;
- D. a statement of assurance that the adoptive parent(s) will maintain Pueblo culture and traditions with the child including the attendance

if applicable, at religious events, feast days and other traditional obligations;

- E. if applicable, where the child will attend school;
- F. any other information deemed necessary by the Court or provided by PASS and/or the petitioner.

4-8-13 Notice of Hearing on Petition for Customary Adoption

- A. A hearing will be set within [thirty] (30) days, upon the filing of a customary adoption petition and completion of the investigative report [required by §4-8-12].
- B. Notice shall be sent to:
 - 1. the child's Indian tribe;
 - 2. the petitioner/adoptive parent(s);
 - 3. PASS; and
 - 4. other appropriate extended family members, any appropriate individual or agency with a relevant interest in the proceedings or that may be of assistance to the Court in adjudicating this matter.
- C. Notice may be personally served, sent by certified mail or regular mail (and is presumed received if the mail is not returned). Notice shall also comply with any other method and in accordance with any other procedure authorized by the rules of the Court.
- D. Actual notice such as verbally informing a party is acceptable if the party or individual who provided the notice provides sworn testimony or a sworn written statement of such notice.

4-8-14 Hearing on Petition for Customary Adoption

- A. Attendance at hearing.
 - 1. Unless there is written excusal by the Court, the child who is the subject of a petition for customary adoption, [PASS], other relevant agencies, the petitioner and any appropriate family members including siblings may be present at the hearing.

2. The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

B. Conduct of the hearing.

1. The Court shall inform the parties of their rights under [this Title] and of the nature and consequences of the proceedings. This shall include the rights to summon and cross-examine witnesses, the parties' rights under the Pueblo of Acoma Laws 2003, and the Indian Civil Rights Act, 25 U.S.C. §§ 1301-03 (1968), as amended;
2. Except where it conflicts with tradition, the federal rules of evidence shall apply to these proceedings. Where differences exist between [the state of] New Mexico rules of evidence and the federal rules of evidence the parties may argue for application of [the state of] New Mexico rules of evidence.
3. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.

C. Record of proceedings. All hearings are on the record and properly recorded.

D. Findings.

1. In all cases, the Court shall make specific findings of fact, state separately its conclusions of law, and include both in the judgment or order.
2. The Court may make findings that it is in the child's best interests that a final order of customary [adoption] be entered and the Court shall specify the bases of those findings.
3. Based upon the evidence at hearings, the petition, documents filed and the investigative report, the Court will make necessary findings for determining whether the customary petition will be granted or denied and under what conditions. The necessary findings include, but are not limited to, how the customary adoption:

- a. is in the best interests of the child and the Pueblo;
- b. maintains the visitation/contact set forth in the order of suspension of parental rights between the child, biological parent(s), any extended family, clan, other individuals determined from evidence entered in Court, to be important to the child such as resource parents, guardians, and the reasonable conditions that must be met for this contact to occur under the adoptive parent(s)' supervision and control;
- c. protects the rights of inheritance of the child from the families of the biological parents, including inheritance which may be controlled by federal law pursuant to the American Indian Probate Reform Act of 2004, as amended, or by Acoma probate laws;
- e. states that the biological parent(s) have no ongoing legal obligations to and are not responsible for the child's care, custody or welfare. However, the biological parent(s) may contribute to the child's welfare through appropriate gifts, school supplies and by providing culturally appropriate items to assist with the child's cultural development;
- f. supports and protects the legal relationship between the child and the Pueblo, the child's current or future membership or enrollment with the Pueblo, especially if the child is being placed with adoptive parents who are not members of the Pueblo, or other Indian tribe and how the child's Pueblo and federal rights and privileges are protected as a member of Acoma;
- g. assures that the adoptive parent(s) will maintain Acoma culture and traditions with the child including the attendance if applicable, at religious events, feast days and other traditional obligations;
- h. promotes Acoma tradition and culture through assistance from extended family, and/or Acoma members with the development of regalia, language, or culture and tradition;

- i. recognizes and explains that any rights, contact or privileges not identified in these findings are waived and shall vest with the customary adoptive parents.

4-8-15 Final Order for Customary Adoption

- A. If the Court determines that it is in the best interests of the child and the Pueblo, it shall issue a final order for a customary adoption. Such an order may include, but is not limited, to the following:
 - 1. All necessary findings as set forth above and any conclusions of law;
 - 2. A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order;
 - 3. A notice regarding the new name of the child, if any. Unless otherwise specified it is presumed that the child will take on the last name of the adoptive parent(s) and will so specify in the order;
 - 4. A statement that the legal relationship between Acoma and the child for membership and/or enrollment is protected even if the child is adopted by a person who is not a member of Acoma.
 - 5. A statement that recognizes and explains that any rights, contact or privileges not identified in these findings are waived and shall vest with the customary adoptive parents.

4-8-16 Certification of a Customary Adoption

- A. A customary adoption, conducted in a manner that is a long-established, continued, reasonable process and considered by the people of the Pueblo to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Court as having the same effect as an adoption order issued by any other court so long as it is in the best interests of the child and Pueblo.
- B. A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this Court.

4-8-17 Enforcement: Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt powers of the Court as set forth in the Pueblo of Acoma Laws 2003, as amended.

4-8-18 Appeals

A. Who Can Appeal. any party to an action to suspend the parental rights of a parent pursuant to this [Chapter] or any party to a customary adoption may appeal a final Court order.

B. Appeals Procedure. All appeals from proceedings under this [Chapter] shall be heard pursuant to Title 1, Chapter 5 of Pueblo of AcomaLaws 2003, as amended.

4-7-19 Right of Access to Records: Any party deemed appropriate by the Court and the child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the Court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under federal or Pueblo law.

Chapter 9. CHILD SUPPORT

4-9-1 Purpose – Child support: The purpose of this Chapter is to [set out] guidelines and procedures for the enforcement of child support. The establishment of these guidelines and procedures is in the best interests of Acoma families, and especially our children, who have a right and need to receive support from their parents.

4-9-2 Jurisdiction: The Tribal Court shall have exclusive continuing jurisdiction over any action to establish or enforce child support.

4-9-3 Definitions – Child support

A. “Alleged father” means any man who might be the biological father of a child.

B. “Basic visitation” means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five (35) percent of the time. Such arrangements can exist where the parties share responsibilities pursuant to [a joint custody order based on the best interest of the child and a court order mandating child support issued by a court of competent jurisdiction].

- C. “Child” means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- D. “Children of the parties or parents” means the natural or adopted child or children of the parties to the action before the court but shall not include the natural or adopted child or children of only one of the parties;
- E. “Child support” means the financial obligation that [a] noncustodial parent owes toward his or her children, whether such obligation is established through a judicial or administrative process or by stipulation of the noncustodial parent. The financial obligation of a noncustodial parent shall be met through the payment of monies and/or through the provision of other services or resources, as ordered by a court or as agreed by the parties.
- F. “Child Support Guidelines and/or schedule” means the guidelines schedules in force in the state of New Mexico, as amended.
- G. “Court” means the Acoma Tribal Court.
- H. “Custodial parent” means the person who holds custody of the child or children, legal and/or physical, pursuant to a Court order, or on the basis of an agreement between the parents or by the absence of one parent, if there is no court order. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.
- I. “Employer” means all persons or entities who agree to compensate another for services performed.
- J. “Noncustodial parent” means a parent of a child, whether or not conceived during the course of marriage, who does not hold legal custody of the child pursuant to a Court order, or who does not exercise physical custody of the child on the basis of agreement between the parents or by the absence of one parent.
- K. “Obligor” means the person with an obligation to pay child support.
- L. “Obligee” means the person or agency with the right to receive child support.

- M. “Parenthood” means the position, function, and standing of a parent.
- [N. “Pueblo” means the Pueblo of Acoma.]
- O. “Shared responsibility” means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children of the parties spend at least thirty-five (35) percent of the year in each home and the parents significantly share the duties, responsibilities and expenses of parenting pursuant to [a joint custody order based on the best interests of the child and a child support order entered by a court of competent jurisdiction.
- P. “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Pueblo, another tribe or a state.

4-9-4 Statute of Limitations: The statute of limitations for the enforcement of child support is tolled from the child’s birth until the child reaches the age of eighteen (18) or nineteen (19) if still enrolled in high school or studying for his/her [General Education Diploma] (“GED”). Under extraordinary circumstances, and [at] the discretion of the Court, a child support obligation may continue for an adult child until the age of twenty-six (26) for educational or medical expenses. Factors to be considered include income of the parents, aptitude and ability of the adult child and parental expectations.

4-9-5 Procedure for child support proceedings: Any child support action under this article is a civil action governed by Civil Rules of the Court, unless otherwise provided.

4-9-6 Confidentiality

- A. Generally. The Court may order that the address and other location information regarding a party or child shall not be released if the Court finds that release of such information is reasonably likely to result in physical or emotional harm to the child or to the party. In such instance, the information shall not be available for public view and the Court may designate those persons who are allowed access.
- B. Hearings. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this

[Chapter]. Acoma Child Support Program staff may be present at child support hearings.

- C. Financial Records. The Court shall provide for the confidentiality of financial records filed by the parties, so that they are secure from view by the general public but may be reviewed by the parties to the case and the Acoma Child Support Program, solely for the purpose of establishing, modifying, enforcing, or distributing child support.

4-9-7

Petition for child support

- A. Who May File. Any parent, guardian, child (18 years or older), or agency authorized to enforce the child support laws of the Pueblo may file a petition for establishment of child support under this article. The child support petition may be filed as a separate proceeding, or in connection with a petition for Separation, Paternity; or Child custody.
- B. Contents of Petition. A petition for establishment of child support shall contain:
 - 1. The name, address, tribal affiliation, date and place of birth, and Social Security number of the petitioner, the responding party, and the child for whom support is requested;
 - 2. The child support obligation requested or agreed upon;
 - 3. The proposed provision of health insurance for the child;
 - 4. Any proposed work-related day care or extraordinary medical or educational expenses;
 - 5. The date proposed for the child support obligation to begin;
 - 6. The proposed frequency of payment;
 - 7. A statement whether child support payments should be made by wage withholding or by direct deposit to the Acoma Child Support Program;
 - 8. A proposed parenting plan, if any, or if custody is shared, the percentage of a year that each parent has physical custody of the child, this includes where child support is being defined under basic visitation or shared responsibility as

defined in this [Chapter] and/or under [a joint custody order based on the best interests of the child and a child support order entered by a court of competent jurisdiction];

9. A statement that the petitioner swears that he or she believes that the male party is the father of the child, or a statement that the parties agree that the male party is the father of the child;
 10. A statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency:
 - a. Child custody proceeding;
 - b. Child support proceeding;
 - c. Paternity establishment or disestablishment proceeding;
 - d. Proceeding requesting a domestic violence protective order or no-contact order; or
 - e. Proceeding requesting a restraining order involving the child or a party.
 11. A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or Indian tribe providing assistance;
 12. Any financial information required (note the Court may require certain financial information);
 13. Authorization for the release of all financial records to the Court; and
 14. A statement regarding which parent should be allowed to claim the child as a dependent for income tax purposes.
- C. Service and Summons. The petitioner shall serve a copy of the petition and summons upon the parent against whom child support is to be established. The summons shall inform the respondent that they must meet the requirements of this [Chapter]. These requirements include:

1. That an answer must be filed with the Court and served on the petitioner within twenty-one (21) days of the date of service of the petition;
2. That if the respondent fails to enter a defense to the petition challenging the authority of the Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence (however, if the respondent is pro se the Court shall not issue a default judgment for failure to respond until after the first hearing at which a respondent receives sufficient notice and either appears and responds in a hearing or fails to appear);
3. That an order of child support may obligate the respondent to pay child support until the age of majority under the statute of limitations;
4. That if the [respondent] fails to pay child support under an order, the Court may authorize community service, fines, incarceration or other sanctions and/or suspension or denial of [respondent's] licenses for failure to pay child support;
5. That respondent's employer or others based on evidence of the parent's income may be subpoenaed to provide the Court with records of his or her income;
6. That if there is no reliable evidence of the respondent's income, income will be imputed according to the Child Support Guidelines and Schedule;
7. That if [respondent's] income is reduced as a matter of choice and not for reasonable cause, the Court will attribute income up to the respondent's earning capacity; and
8. That respondent may enter into an Agreed Child Support Order as allowed in §4-9-10.

4-9-8 Notice to State of New Mexico Human Services Department: Upon request by the state of New Mexico Human Services Department ("Department"), and pursuant to any Memorandum of Understanding between the [Pueblo of Acoma] and Department, the Court can provide the Department with a copy of the petition, response, financial information and all other documents filed in a child support case and [if requested, the

Court] shall provide the Department with notice of all hearings in a child support case.

4-9-9 Setting the Initial Child Support Hearing. When the Court receives a petition for child support, it shall set a hearing date which shall not be more than [forty-five] (45) calendar days after the petition was received, unless continued for good cause.

4-9-10 Agreed Child Support Order

- A. Generally. In lieu of a contested hearing under this [Chapter], the parties may enter into an agreement as to the level of child support obligation in accordance with this chapter, [provided that any] deviation from the Child Support Guidelines and Schedule must be supported by good cause.
- B. Form. The signed agreement shall be submitted to the Court for approval and entry of the order. The agreed order shall have the same force as any other order issued by the Court.
- C. Court Review. The Court shall hold a hearing to review the agreed order and ensure that the parties understand the terms of the proposed order. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

4-9-11 Child support hearing. The Court shall review the contents of the petition and hear any additional evidence in order to establish the child support obligation by applying the Child Support Guidelines and Schedule to the circumstances of the parties. The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence.

4-9-12 Child support order

- A. Generally. Unless otherwise specified by Court order, payments under a child support order shall be directly made to the party to whom the payments are owed. The parties shall maintain records of payment amounts, when made/sent, when received and where payment sent. The Court may, however, order payments to be made elsewhere if there is a showing that it is in the best interests of the child.
- B. Content. A child support order shall include:

1. The child support obligation of one or both parties, including:
 - a. The amount of cash to be paid to the other party;
 - b. The amount of the cash payment which is allocated to work-related day care or health insurance, if any;
 - c. The amount of noncash services or resources to be provided to the other party, if any; and
 - d. The amount to be paid to third parties for day care, health insurance, or extraordinary expenses, if any;
2. The date the child support obligation begins;
3. The frequency of child support payments;
4. The duration and amount of any pre-filing child support obligation;
5. A statement that each party shall notify the Court of any change of employer or change of address within [ten] (10) days of the change;
6. A statement that the order is final for purposes of appeal.

4-9-13

Default child support order

- A. When the respondent fails to appear or otherwise defend, the Court may enter a default child support order. The Court may enter a default child support order based upon the evidence contained in the child support petition and upon finding the following:
 1. The respondent was given proper service of the petition and summons and proper notice of the hearing; and
 2. The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.
- B. The default order may be suspended or vacated upon a showing of good cause, such as disestablishment of paternity.

4-9-14

Modification of child support orders. When there has been a substantial change in the income of the paying party or other factors that determined

the original support obligation, a party may request, by motion, modification of a child support order [issued by the Court].

- A. Motion for Modification. A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested. The moving party shall serve the other parties who would be affected by the modification request with the motion and Notice of Hearing. The Court shall set a hearing no sooner than [fourteen] (14) days after service of the motion.
- B. Modification Hearing. The moving party has the burden to prove by a preponderance of evidence, the grounds for modification of the order. Grounds for modification of a child support order include:
 - 1. A substantial increase or decrease in the gross income that was the basis of the current support order;
 - 2. A change in custody of a child;
 - 3. A change in the Child Support Guidelines and Schedule; or
 - 4. Other substantial change in circumstance[s] that justifies a modification.
- C. Financial Information. Both parties shall file updated financial information as required by the Court, except that:
 - 1. In agreed modification orders, no financial information need be filed with the Court; and
 - 2. A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Court.

4-9-15

Enforcement of child support orders

- A. Motion to Enforce Child Support Order. An obligee may file a motion for the Court to enforce payment of a child support order. The petitioner must serve the obligor with a copy of the motion and notice of the hearing. The Court shall set a hearing no sooner than [fourteen] (14) days after the respondent receives notice of the enforcement action.

B. Enforcement Hearing. If the moving party establishes by a preponderance of the evidence that the child support obligation is at least [thirty] (30) days overdue in an amount equal to one [(1)] month's child support obligation or that the party has a history of noncompliance, the Court may find an obligor in contempt and order any one or several of the remedies available at law, including, but not limited to:

1. Wage withholding;
2. Attachment of assets;
3. Garnishment;
4. Assignment of per capita [distributions];
5. Suspension of licenses;
6. Verification of income;
7. [Submission to the Court of] proof of reasonable efforts to secure employment;
8. Community Service;
9. Fines; and,
10. Incarceration.

The Court may order further hearings to monitor compliance with all child support orders.

4-9-16

Calculation of Child Support Guidelines and Schedule

A. In any action to establish or modify child support, the Child Support Guidelines and Schedule set out in §4-9-3(F) shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. Every decree or judgment of child support that deviates from the guideline amount shall contain a statement of the reasons for the deviation.

B. For purposes of the guidelines specified in this Section:

1. "income" means actual gross income of a parent if employed to full capacity or potential income if unemployed or

underemployed. Income need not be imputed to the primary custodial parent actively caring for a child of the parties who is under the age of six (6) or disabled. If income is imputed, a reasonable child care expense may be imputed. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses, notwithstanding the community nature of both incomes after remarriage; and

2. “gross income” includes income from any source and includes, but is not limited to, income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received, provided:
 - a. “gross income” shall not include benefits received from means-tested public assistance programs or child support received by a parent for the support of other children;
 - b. for income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, “gross income” means gross receipts minus ordinary and necessary expenses required to produce such income, but ordinary and necessary expenses do not include expenses determined by the Court to be inappropriate for purposes of calculating child support;
 - c. “gross income” shall not include the amount of alimony payments actually paid in compliance with a court order;
 - d. “gross income” shall not include the amount of child support actually paid by a parent in compliance with a court order for the support of prior children; and
 - e. “gross income” shall not include a reasonable amount for a parent’s obligation to support prior children who are in that parent’s custody. A duty to support

subsequent children is not ordinarily a basis for reducing support owed to children of the parties but may be a defense to a child support increase for the children of the parties.

- C. The basic child support obligation shall be calculated based upon the combined income of both parents and shall be paid by them proportionately, consistent with the calculations adopted by the State of New Mexico for application of its Child Support Guidelines and Schedule
- D. Physical custody adjustments shall be made as follows:
 - 1. for basic visitation situations, the basic child support obligation shall be calculated using the basic child support schedule as adopted by the State of New Mexico for application of its Child Support Guidelines and Schedule, The Court may provide for a partial abatement of child support for visitations of one [(1)] month or longer; and
 - 2. for shared responsibility arrangements, the basic child support obligation shall be calculated , consistent with the calculations adopted by the State of New Mexico for application of its Child Support Guidelines and Schedule.
- E. In shared responsibility situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-(24) hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five (365).
- F. The cost of providing medical and dental insurance for the children of the parties and the net reasonable child-care costs incurred on behalf of these children due to employment or job search of either parent shall be paid by each parent in proportion to that parent's income, in addition to the basic obligation.
- G. The child support obligation may also include the payment of the following expenses not covered by the basic child support obligation:
 - 1. any extraordinary medical, dental and counseling expenses incurred on behalf of the children of the parties. Such extraordinary expenses are uninsured expenses in excess of one hundred dollars (\$100) per child per year;

2. any extraordinary educational expenses for children of the parties; and
- 3 transportation and communication expenses necessary for long distance visitation or time sharing.

H. Whenever application of the child support guidelines set forth in this section requires a person to pay to another person more than forty percent (40%) of the paying person's gross income for a single child support obligation for current support, there shall be a presumption of a substantial hardship, justifying a deviation from the guidelines.

4-9-17 Sovereign Immunity and Pre-eminence of [Acoma Law]: Nothing in this [Chapter] shall be construed as a waiver of sovereign immunity of the Pueblo of Acoma. Further, where New Mexico law is referred to it shall not in any way supersede Acoma custom or traditions, nor shall New Mexico law supersede any other law of the Pueblo of Acoma.

Chapter 10. CHILD CUSTODY.

4-10-1 Jurisdiction

- A. Jurisdiction of proceedings under this Chapter will be [in the Acoma Tribal Court ("Court") and] determined as set forth in Title 1, regarding civil jurisdiction over persons.
- B. The Court has exclusive continuing jurisdiction over any child custody proceeding for which it has issued a judgment, except that a party to an action under this Chapter can motion to have the matter transferred to the traditional process.
- C. The Court may, if there is good cause and the transfer does not prejudice a party, notify the 2nd Lieutenant Governor or Tribal Sheriffs and request a transfer of the matter to the traditional process. If the 2nd Lieutenant Governor and/or Tribal Sheriffs agree, the matter may be transferred to the traditional process. If the traditional process includes a hearing and decision by Tribal Council, then Tribal Council's decision shall be final. If a decision is made instead by Tribal Sheriffs, clan or family elders that decision may be appealed to Tribal Court. The party challenging the decision has the burden of proving by clear and convincing evidence that the decision by Tribal Sheriffs, clan or family elders should be overturned.

4-10-2

Commencement of a child custody proceeding – Notice – Intervention

- A. A child custody proceeding is commenced in the Court:
 - 1. By a parent by filing a petition:
 - a. for legal separation, child support;
 - b. seeking custody of a child; or
 - 2. By a person other than a parent, by filing a petition seeking custody of the child, but only if the child is not in the physical custody of one of [the child's] parents or if the petitioner alleges that neither parent is a suitable custodian. Custody under Subsection where filing is done by a person other than a parent, will be governed by Chapter 10 of this Title.
- B. The petitioning party shall cause the petition and summons to be served on the child's parent(s), guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.
- C. All parties to an action filed shall provide good contact information including mailing and physical address, telephone (including all cell telephone) numbers, and email addresses. If there is any change to this information the party is under an obligation to notify (except to the extent that a protective or restraining order applies) all other parties and the Court. The Court may hold [in contempt] any party who fails to timely provide contact information or provide notice of any change of contact information.

4-10-3

Child custody procedure

- A. Proceedings in child custody shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided.
- B. If either party in a proceeding for child custody is a member of the military, the Court may conduct the proceeding in such a way as to be consistent with the federal Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901, et seq.
- C. Upon proof of service, the court clerk shall set a hearing date.

- D. The parties should attempt to agree on a parenting plan to be filed with the Court and if child support is requested or required, the parties should submit financial information to each other and the Court.

4-10-4 Relevant factors in awarding custody: The primary factor guiding the Court's decision in awarding custody shall be the best interests of the child. The Court shall also consider all relevant factors including:

- A. The wishes of the child's parent(s) as to visitation privileges;
- B. The wishes of the child as to his or her custodian and as to visitation privileges;
- C. The interaction and interrelationship of the child with the child's parent(s), siblings, and any other person who may significantly affect the child's best interests, including, but not limited to, the child's extended family;
- D. The child's adjustment to the child's home, school, and community;
- E. Availability of extended family to assist in the care and custody;
- F. The mental and physical health of all persons involved;
- G. Affiliation of the parties and the child with Indian tribes;
- H. The extent of the participation of the parties in cultural activities [of Indian tribes].

4-10-5 Duties of custodian: Except as otherwise agreed upon by the parties in writing at the time of the custody decree, or as ordered by the Court, the custodian may determine the child's upbringing, including the child's education, health care, and religious training, unless the Court finds, upon motion by the noncustodial parent and after a hearing, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered. The Court may order joint legal and/or physical custody. If joint legal custody is ordered both parents shall determine the child's upbringing, including the child's education, health care, and religious training, even though physical custody resides with just one of the parents. Joint custody is presumed unless it is not in the child's best interests.

4-10-6 Temporary custody order

- A. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by good cause. The Court may award temporary custody prior to a hearing if good cause or emergency exists, however, the other party must be given an opportunity to present their case at a hearing set with fourteen (14) days of the Court's ex-parte order.
- B. A temporary custody order may also be obtained through a protective order pursuant to the Pueblo of Acoma Laws 2003, as amended.

4-10-7 Requirements for temporary custody order. A party seeking a temporary custody order shall submit a motion, a statement made under penalty of perjury setting forth facts supporting the requested order, and a proposed temporary parenting plan, and shall give notice to other parties to the proceedings. The Court shall set a date for a hearing on an order to show cause why the requested order should not be granted.

4-10-8 Parenting plan proceedings

- A. The Court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.
- B. If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Court may make an appropriate order sealing the record.
- C. The Court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation privileges. The Court may permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be made part of the record in the case. The Court shall have the discretion to seal the record of the interview with the child.
- D. The Court may seek the advice of professional personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Court. The advice

given shall be in writing and shall be made available by the Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Court.

- E. Either party may petition the Court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the Court deems necessary to determine the best interests of the child.

4-10-9 Default on petition for parenting plan: If a party does not respond to a petition for a parenting plan after notice and an opportunity to be heard at a Court hearing has been given, the Court may find that party in default and the petition may be granted.

4-10-10 Modification of parenting plan or custody decree

- A. Except as otherwise provided in this [Chapter], the Court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the Court at the time of the prior decree or plan, that a change has occurred in the circumstances of the child or the child's custodian and that the modification is necessary to serve the best interests of the child. The effect of a parent's military duties or a parent's traditional obligations as a member of an Indian tribe potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan. In applying these standards, the Court shall retain the residential schedule established by the decree or parenting plan unless:
 - 1. The custodian agrees to the modification;
 - 2. The child has been integrated into the family of the petitioner with the consent of the custodian in substantial deviation from the parenting plan;
 - 3. The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
 - 4. The Court has found the nonmoving parent in contempt of court at least twice within three (3) years because the parent

failed to comply with the residential time provisions in the court-ordered parenting plan.

- B. Upon a motion for minor modification, the Court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in Subsection (A) of this Section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:
1. Does not exceed [twenty-four] (24) full days in a calendar year;
 2. Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or
 3. Does not result in a schedule that exceeds [ninety] (90) overnights per year in total, if the Court finds that, at the time the petition for modification is filed, the parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the Court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in Subsection (B)(1) of this Section. However, any motion under this Subsection is subject to the factors established in Subsection (A) of this Section if the party bringing the petition has previously been granted a modification under this same subsection within [twenty-four] (24) months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.
 4. The Court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this Section may be made without consideration of the factors set forth in Subsection (A) of this Section.

- C. If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one (1) year or longer, the Court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child. For the purposes of determining whether the parent has failed to exercise residential time for one (1) year or longer, the Court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties or traditional obligations as a member of an Indian tribe potentially impacting parenting functions.
- D. A parent with whom the child does not reside a majority of the time who is required by a court order to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under this Section unless that parent has fully complied with such requirements.
- E. Upon the filing of a petition for modification, a hearing shall be held to determine if the facts alleged meet the legal standard as set forth in this Section.
- F. If the Court finds that a motion to modify a prior custody decree or parenting plan has been brought in bad faith, the Court shall assess the attorney's fees and court costs of the custodian against the petitioner.
- G. Restrictions in temporary or permanent parenting plans.
 - (1) The Court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if the parent or a person residing with the parent has engaged in any of the following conduct:
 - (a) Willful abandonment by the parent that continues for an extended period of time or substantial refusal to perform parenting functions;
 - (b) Physical, sexual, or a pattern of emotional abuse of a child; or
 - (c) A history of acts of domestic violence or an assault, sexual assault, mental or psychological abuse or physical harm which causes grievous bodily harm or the great fear of such harm.

- (2) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to subsection (1) of this section may not seek expansion of residential time unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.
- (3) If a parent abandons the family, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of eight (8) unless a court of competent jurisdiction shall otherwise direct. Abandonment shall be defined as voluntary absence of a parent from the home in which the children reside for a period of six (6) months without intent to return.

4-10-11 Relocation

- A. When entering or modifying a court order, the Court has the authority to allow or not allow a person to relocate the child.
- B. If the person with whom the child resides a majority of the time plans to relocate, that person shall give notice to every person entitled to court-ordered time with the child. If information is protected under a court order, it may be withheld from the notice. A relocating person may ask the Court to waive any notice requirements that may put the health and safety of a person or a child at risk. Failure to give the required notice may be grounds for sanctions, including contempt.
- C. A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice. The objection must be served on all persons entitled to time with the child. The relocating person shall not move the child during the time for objection unless:
 1. the delayed notice provisions apply; or
 2. a court order allows the move.
- D. The notice of an intended relocation of the child must be given by personal service or any form of mail requiring a return receipt and:

1. No less than [sixty] (60) days before the date of the intended relocation of the child; or
2. No more than five (5) days after the date that the person knows the information required to be furnished under Subsection (F) of this Section, if the person did not know and could not reasonably have known the information in sufficient time to provide the [sixty] (60) days' notice, and it is not reasonable to delay the relocation.

E. The notice of intended relocation of the child must include:

1. An address at which service of process may be accomplished during the period for objection;
2. A brief statement of the specific reasons for the intended relocation of the child; and
3. A notice to the non-relocating person that an objection may be filed. The notice shall contain the following statement: The relocation of the child will be permitted and the proposed revised residential schedule may be confirmed unless, within [thirty] (30) days, you file a petition and motion with the Court to block the relocation or object to the proposed revised residential schedule and serve the petition and motion on the person proposing relocation and all other persons entitled by Court order to residential time or visitation with the children.

F. The following information shall also be included in every notice of intended relocation of the child, if available:

1. The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;
2. The new mailing address, if different from the intended new residence address;
3. The new home telephone number;
4. The name and address of the child's new school and day care facility, if applicable;
5. The date of the intended relocation of the child; and

6. A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.

A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

- G. When the intended relocation of the child is within the school district in which the child currently resides the majority of the time, the person intending to relocate the child, in lieu of notice prescribed in Subsections (D) and (E) of this Section, may provide actual notice by any reasonable means to every other person entitled to residential time or visitation with the child under a court order. A person who is entitled to residential time or visitation with the child under a court order may not object to the intended relocation of the child within the school district in which the child currently resides the majority of the time, but he or she retains the right to move for modification.
- H. The Court may grant a temporary order restraining relocation of the child, or ordering return of the child if the child's relocation has occurred, if the Court finds:
 1. The required notice of an intended relocation of the child was not provided in a timely manner and the non-relocating party was substantially prejudiced;
 2. The relocation of the child has occurred without agreement of the parties, court order, or the notice required by this section; or
 3. After examining evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the Court will not approve the intended relocation of the child, or no circumstances exist sufficient to warrant a relocation of the child prior to a final determination at trial.
- I. The Court may grant a temporary order authorizing the intended relocation of the child pending final hearing if the Court finds:

1. The required notice of an intended relocation of the child was provided in a timely manner or that the circumstances otherwise warrant issuance of a temporary order in the absence of compliance with the notice requirements and issues an order for a revised schedule for residential time with the child; and
 2. After examining the evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the Court will approve the intended relocation of the child.
- J. Except for good cause shown, if a person entitled to object to the relocation of the child does not file an objection with the Court within [thirty] (30) days after receipt of the relocation notice, then the relocation of the child may be permitted. A non-objecting person may be entitled to the residential time or visitation with the child specified in the proposed residential schedule included with the relocation notice. Any person entitled to residential time or visitation with a child under a court order retains his or her right to move for modification pursuant to this Chapter.
- K. In determining whether to permit or restrain the relocation of the child, the Court shall make its decision in accordance with the best interests of the child. The Court shall consider all relevant factors including, but not limited to:
1. The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
 2. Prior agreements of the parties;
 3. Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
 4. Whether either parent or a person entitled to residential time with the child is subject to restrictions under this Chapter;

5. The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
 6. The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
 7. The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
 8. The continued cultural relationship between the child and the [child's Indian] tribe;
 9. The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
 10. The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also; and
 11. The financial impact and logistics of the relocation or its prevention.
- L. In determining whether to permit or restrain the relocation of the child, the Court may not admit evidence on the issue of whether the person seeking to relocate the child will forgo his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The Court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the Court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the Court has denied relocation of the child and the person is relocating without the child.
- M. A court may not restrict the right of a parent to relocate the child when the sole objection to the relocation is from a third party, unless that third party is entitled to residential time or visitation under a court order.

- N. The Court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

4-10-12 Military service or traditional obligations [of a member of an Indian Tribe]

- A. If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military or is appointed to Tribal office that involves moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:
1. Any temporary custody order for the child during the parent's absence shall end no later than [ten] (10) days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the Court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten (10) days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and
 2. The temporary appointment, duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member or who is appointed to Tribal office.
- B. If a parent receives military temporary duty, deployment, activation, or mobilization orders or is [responsible for traditional obligations of a member of an Indian Tribe] that involve moving a substantial distance away from the the parent's residence or otherwise have a material effect on the parent's ability to exercise residential time or visitation rights, at the request of the parent, the Court may delegate the parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent,

or another person other than a parent, with a close and substantial relationship to the child for the duration of the parent's absence, if delegating residential time or visitation rights is in the child's best interest. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the Court for good cause shown. Such a court-ordered temporary delegation of a parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

4-10-13 Third party visitation rights

- A. Any relative or person with a significant connection to the child may petition the Court for visitation rights at any time including, but not limited to, custody proceedings.
- B. Any relative or person with a significant connection to the child who is not granted custody of the child may be granted reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health. The Court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.
- C. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the Court shall not restrict a parent's or grandparent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

4-10-14 Child support: Child support shall be governed by Chapter 9 of [this Title].

4-10-15 Court-appointed attorney or GAL to represent interests of child

- A. The Court may appoint an attorney or guardian ad litem (GAL) to represent the interests of a child with respect to the child's custody, support, and visitation.
- B. The Court shall enter an order for costs, fees, and disbursements in favor of the child's attorney or GAL. The order shall be made against either or both parents, except that, if both parents are indigent, the costs, fees, and disbursements may be borne by Acoma, provided sufficient funds are available.

4-10-16 Payment of costs and attorney's fees: The Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this [Chapter] and for reasonable counsel or attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

4-10-17 Uniform Child-Custody Jurisdiction and Enforcement: Before the Court, the New Mexico Uniform Child-Custody Jurisdiction and Enforcement Act, shall be persuasive authority and provide a *prima facie* case for authority over a legal matter. Where the New Mexico Uniform Child-Custody Jurisdiction and Enforcement Act conflicts with Pueblo of Acoma Laws, 2003, as amended, including the traditional law of the Pueblo as referenced in §1-1-5 of the Pueblo of Acoma Laws, 2003, as amended, Acoma laws shall apply.

Chapter 11. EXTENDED FAMILY GUARDIANSHIP

4-11-1 Policy; purpose

- A. It is the policy of the Pueblo that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance and supervision to a child, it is the policy of the Pueblo that, whenever possible, a child should be raised by family members or kinship caregivers.
- B. This [Chapter] is intended to address those cases where a parent has left a child or children in the care of another for ninety (90) consecutive days or where the parent is not likely to return for the foreseeable future and that arrangement leaves the child or children without appropriate care, guidance or supervision.
- C. The purposes of this Chapter are to:
 - 1. establish procedures to effect a legal relationship between a child and a kinship caregiver when the child is not residing with either parent; and
 - 2. provide a child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child's parents are not willing or able to do so.

4-11-2

Jurisdiction

- A. Jurisdiction of proceedings under this Chapter will be determined as set forth in Title 1, regarding civil jurisdiction over persons.
- B. The Tribal Court (“Court”) has exclusive continuing jurisdiction over any child custody proceeding for which it has issued a judgment, except that a party to an action under this Chapter can motion to have the matter transferred to the traditional process.
- C. The Court may, if there is good cause and the transfer does not prejudice a party, notify the 2nd Lieutenant Governor or Tribal Sheriffs requesting a transfer of the matter to the traditional process. If the 2nd Lieutenant Governor and/or Tribal Sheriffs agree, the matter may be transferred to the traditional process. If the traditional process includes a hearing and decision by Tribal Council, then Tribal Council’s decision shall be final. If a decision is made instead by Tribal Sheriffs, clan or family elders that decision may be appealed to Tribal Court. The party challenging the decision has the burden of proving by clear and convincing evidence that the decision by Tribal Sheriffs, clan or family elders should be overturned.

4-11-3

Definitions: As used in this Chapter:

- A. “Caregiver” means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;
- B. “Child” means an individual who is a minor;
- C. “Extended Family” or “kinship” or means the relationship that exists between a child and a relative of the child, a godparent, a member of the child’s Indian tribe or clan or an adult with whom the child has a significant bond;
- D. “Parent” means a biological or adoptive parent of a child whose parental rights have not been terminated; and
- E. “Relative” means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix “grand” or “great”, or the spouse or former spouse of the persons specified.

Petition; who may file; contents

- A. A petition seeking the appointment of a guardian, either temporary or permanent, pursuant to this [Chapter] may be filed only by:
1. a relative, an extended family or kinship caregiver;
 2. PASS on behalf of someone else who is authorized to file under this [Chapter];
 3. a caregiver, who has reached the age of twenty-one (21), with whom no kinship with the child exists, who has been nominated to be guardian of the child by PASS or the child if the child has reached the age of fourteen (14); or
 4. a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:
 - (a) the purpose and effect of the guardianship;
 - (b) that the parent has the right to be served with the petition and notices of hearings in the action; and
 - (c) that the parent may appear in court to contest the guardianship.
- B. A petition seeking the appointment of a guardian shall be verified by the petitioner and allege the following with respect to the child:
1. facts that support the grounds for temporary or permanent guardianship;
 2. the date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge;
 3. the legal residence of the child and the place where the child resides, if different from the legal residence;
 4. the name and address of the petitioner;
 5. the kinship, if any, between the petitioner and the child;

6. the names and addresses of the parents of the child;
7. the names and addresses of persons having legal custody of the child;
8. the existence of any matters pending involving the custody of the child;
9. a statement that the petitioner agrees to accept the duties and responsibilities of guardianship, including but not limited to making decisions that are in the child's best interests on such matters as the child's finances, physical care, mental and psychological wellbeing, medical care and education;
10. the petition for guardianship must identify if it is limited as to certain responsibilities and/or duties with respect to the child, but if it is limited the petition must state what is the plan for ensuring that these responsibilities and duties are being carried out in the child's best interests;
11. the existence of any matters pending involving PASS and, if so, a statement that [PASS] consents to the relief requested in the petition;
12. whether the child is subject to provisions of the federal Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901–1963) and, if so the tribal affiliation(s) of the child's parents; and
13. other facts in support of the guardianship sought.

4-11-5 Service of petition; notice; parties

- A. The Court shall set a date for hearing on the petition, which date shall be no less than thirty (30) and no more than ninety (90) days from the date of filing the petition.
- B. The petition and a notice of the hearing shall be served upon:
 1. [PASS] if there is any pending matter relating to the child with [PASS];
 2. the child if the child has reached the age of fourteen (14);
 3. the parents of the child;

4. a person having custody of the child or visitation rights pursuant to a court order; and
 5. if the child is an Indian child as defined in the federal Indian Child Welfare Act of 1978, [25 U.S.C. §§ 1901–1963]), the appropriate Indian tribe and any “Indian custodian”, together with a notice of pendency of the guardianship proceedings, pursuant to the provisions of the federal Indian Child Welfare Act of 1978, [25 U.S.C. §§ 1901–1963)].
- C. Service of process required by Subsection A of this Section shall be made in accordance with the requirements for giving notice of a hearing pursuant the rules of the Court.
- D. The persons required to be served pursuant to Subsection B of this section have a right to file a response as parties to this action. Other persons may intervene pursuant to the rules of the Court.

4-11-6

Temporary guardianship pending hearing

- A. After the filing of the petition, upon motion of the petitioner or a person required to be served pursuant to §4-11-5(B) or upon [the Court’s] own motion, the Court may appoint a temporary guardian. The Court must conduct a review hearing for temporary guardianship at least every one hundred eighty [(180)] days or until the case is decided on the merits, whichever occurs first.
- B. A motion for temporary guardianship shall be heard within twenty (20) days of the date the motion is filed. The motion and notice of hearing shall be served on all persons required to be served pursuant to §4-11-5(B).
- C. An order for temporary guardianship may be entered *ex parte* upon good cause shown. If the order is entered *ex parte*, a copy of the order shall be served on the persons required to be served pursuant to §4-11-5(B). If a person files an objection to the order, the Court immediately shall schedule a hearing to be held within ten [(10)] days of the date the objection is filed. Notice of the hearing shall be given to the petitioner and all persons required to be served pursuant to §4-11-5(B).

4-11-7

Permanent guardianship of a child

- A. In proceedings for permanent guardianship, the Court shall give primary consideration to the physical, mental and emotional welfare and needs of the child. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than those rights and responsibilities of the natural or adoptive parent, if any, set forth in the decree of permanent guardianship.
- B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that PASS grants consent to the guardianship if the child is in the legal custody of PASS. An agency or institution may not be a permanent guardian. The Court shall appoint a person nominated by the child, if the [child] is fourteen (14) years of age or older, unless the Court finds the appointment contrary to the best interests of the child.
- C. The Court may establish a permanent guardianship between a child and the guardian when the proposed guardianship is in the best interests of the child and when:
 - 1. the child has been adjudicated as a [victim of child maltreatment pursuant to Chapter 4 of this Title];
 - 2. PASS has made active efforts to reunite the parent and child and further efforts by PASS would be unproductive;
 - 3. reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child; and
 - 4. the likelihood of the child being adopted is remote or it is established that termination of parental rights is not in the child's best interest.

4-11-8

Hearing; elements of proof; burden of proof; judgment; child support

- A. Upon hearing, if the Court finds that a qualified person seeks appointment, the required notices have been given, the requirements of Subsection B of this Section have been proved and the best interests of the [child] will be served by the requested appointment, it shall make the appointment. In other cases, the Court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the [child].

- B. A guardian may be appointed pursuant to [this Chapter] only if:
1. a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;
 2. a parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or
 3. the child has resided with the petitioner without the parent for a period of ninety [(90)] days or more immediately preceding the date the petition [was] filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and
 4. no guardian of the child is currently appointed pursuant to other [provisions of this Title].
- C. The burden of proof shall be by clear and convincing evidence.
- D. As part of a judgment entered pursuant to [this Chapter], the Court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. The Court may use the child support guidelines set forth in Chapter 9 of this Title to calculate a reasonable payment.
- E. The Court may order visitation between a parent and child to maintain or rebuild a parent-child relationship if the visitation is in the best interests of the child.
- F. The Court shall retain jurisdiction to enforce its judgment of permanent guardianship.
- G. The Court may revoke the order granting guardianship when a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship.
- H. A judgment of the Court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

- I. Upon a finding that grounds exist for a permanent guardianship, the Court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.
- J. Any party may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances, including:
 - 1. the child's parent is able and willing to properly care for the child; or
 - 2. the child's guardian is unable to properly care for the child.

4-11-9 Guardian ad litem; appointment

- A. In a proceeding to appoint a guardian pursuant to [this Chapter], the Court may appoint a guardian ad litem for the child upon the motion of a party or solely in the Court's discretion. The Court shall appoint a guardian ad litem if a parent of the child is participating in the proceeding and objects to the appointment requested.
- B. In a proceeding in which a parent of the child has petitioned for the revocation of a guardianship established pursuant to [this Chapter] and the guardian objects to the revocation, the Court shall appoint a guardian ad litem.
- C. The Court may order all or some of the parties to a proceeding to pay a reasonable fee of a guardian ad litem. If all of the parties are indigent, the court may award a reasonable fee to the guardian ad litem to be paid out of funds of the Court.

4-11-10 Guardian ad litem; powers and duties: A guardian ad litem appointed by the court in a proceeding pursuant to [this Chapter] shall:

- A. in connection with a petition for guardianship, make a diligent investigation of the circumstances surrounding the petition, including visiting the child in the home, interviewing the person proposed as guardian and interviewing the parents of the child if available;

- B. in connection with a petition or motion for revocation of a guardianship, recommend an appropriate transition plan in the event the guardianship is revoked; and
- C. at a hearing held in connection with proceedings described in Subsection A or B of this Section, report to the Court concerning the best interests of the child and the child's position on the requested relief.

4-11-11 Revocation of guardianship

- A. Any person, including a child who has reached his fourteenth [(14th)] birthday, may move for revocation of a guardianship created pursuant to [this Chapter]. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A transition plan shall take into consideration the child's age, development and any bond with the guardian.
- B. If the Court finds that a preponderance of the evidence proves a change in circumstances and the revocation is in the best interests of the child, it shall grant the motion and:
 - 1. adopt a transition plan proposed by a party or the guardian ad litem;
 - 2. propose and adopt its own transition plan; or
 - 3. order the parties to develop a transition plan by consensus if they will agree to do so.

4-11-12 Rights and duties of guardian

- A. A guardian appointed for a child pursuant to [this Chapter] has the legal rights and duties of a parent except the right to consent to adoption of the child and except for parental rights and duties that the Court orders retained by a parent.
- B. Unless otherwise ordered by the Court, a guardian appointed pursuant to [this Chapter] has authority to make all decisions regarding visitation between a parent and the child.
- C. A certified copy of the Court order appointing a guardian pursuant to [this Chapter] shall be satisfactory proof of the authority of the guardian, and letters of guardianship need not be issued.

4-11-13 Continuing jurisdiction of the court. The Court appointing a guardian pursuant to this [Chapter] retains continuing jurisdiction of the matter.

4-11-14 Caregiver's affidavit

- A. A caregiver who executes a caregiver's affidavit substantially in the form contained in Subsection J of this Section by completing Items one (1) through [four] (4) of the form and who subscribes and swears to it before a notary public, is authorized to:
1. enroll the named child in early intervention services, child development programs, Headstart, preschool or a kindergarten through grade twelve (12) school;
 2. consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and
 3. be the authorized contact person for school-related purposes.
- B. A caregiver who is a [member of the extended family] of the child, who executes a caregiver's affidavit substantially in the form set forth in Subsection J of this Section by completing Items one (1) through [seven] (7) and who subscribes and swears to the affidavit before a notary public, has the same authority to authorize medical care, dental care and mental health care for the child as a guardian appointed pursuant to [this Chapter].
- C. A caregiver's affidavit executed pursuant to this Section is not valid for more than one [(1)] year after the date of its execution.
- D. The decision of a caregiver to consent to or refuse medical, dental or mental health care pursuant to a caregiver's affidavit is superseded by a contravening decision of a parent or other person having legal custody of the child if the contravening decision does not jeopardize the life, health or safety of the child.
- E. No person who acts in good faith reliance on a caregiver's affidavit to provide medical, dental or mental health care to a child without actual knowledge of facts contrary to those stated in the affidavit shall be subject to criminal culpability, civil liability or professional disciplinary action if the affidavit complies with the requirements of this Section. The foregoing exclusions apply even though a parent

having parental rights or person having legal custody of the child has contrary wishes as long as the provider of the care has no actual knowledge of the contrary wishes.

- F. A person who relies upon a caregiver's affidavit is under no duty to make further inquiry or investigation.
- G. If a child stops living with the caregiver, the caregiver shall give notice of that fact to a school, early intervention services provider, child development program provider, headstart provider, preschool or kindergarten through grade twelve [(12)] school, medical or dental health care provider, mental health care provider, health insurer or other person who has been given a copy of the caregiver's affidavit.
- H. A caregiver's affidavit is invalid unless it contains the warning statement set out in the form contained in Subsection J of this Section in not less than ten-point boldface type, or a reasonable equivalent thereof, enclosed in a box with three-point rule lines.
- I. As used in this Section, "school-related medical care" means medical care that is required by the governmental authority as a condition for school enrollment.
- J. The caregiver's authorization affidavit shall be in substantially the following form:

Caregiver's Affidavit

Use of this affidavit is authorized by Title 4, Chapter 11 of the Pueblo of Acoma Laws 2003, as amended.

Instructions:

A. Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize the caregiver to:

- (1) enroll a [child] in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve [(12)] school ("school");
- (2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and
- (3) be the authorized contact person for school-related purposes.

B. Completion of Items 5-7 is additionally required to authorize any other medical care.

C. Print clearly.

The [child] named below lives in my home and I am [eighteen] (18) years of age or older.

1. Name of [child]: _____.
2. [Child's] birth date: _____.
3. My name ([caretaker]): _____.
4. My home address: _____.
5. Check one or both (for example, if one parent was advised and the other cannot be located):

I have advised the parent(s) or other person(s) having legal custody of the [child] of my intent to authorize medical care, and have received no objection.

I am unable to contact the parent(s) or other person(s) having legal custody of the [child] at this time, to notify them of my intended authorization.

6. My birth date: _____.
7. My NM driver's license or other identification card number: _____.

WARNING: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the laws of the Pueblo of Acoma that the foregoing is true and correct.

Signed: _____

The foregoing affidavit was subscribed, sworn to and acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires:

Notary Public

Notices:

1. This declaration does not affect the rights of the [child]'s parents or legal guardian regarding the care, custody and control of the [child] and does not mean that the caregiver has legal custody of the [child].
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one (1) year after the date on which it is executed.

Additional Information:

1. If the [child] stops living with you, you are required to notify any school, early intervention services provider, child development program provider, Headstart provider, preschool or kindergarten through grade twelve [(12)] school, medical or dental health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.
2. If you do not have the information requested in Item 7, provide another form of identification such as your social security number or Medicaid number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

- 1.No person who acts in good faith reliance upon a caregiver's affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes.

Chapter 12. PROCEDURES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT

4-12-1 Purpose and Policy

- A. The Pueblo of Acoma ("Pueblo") sets out the procedures to be followed to exercise the Pueblo's rights and responsibilities under the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901, *et seq.* It is the intent of the Pueblo that use of these procedures will protect the best interests of the Pueblo's children and families.
- B. [For purposes of this Chapter any child is a child of the Pueblo who is a member as defined in §4-2-3 and/or §4-8-2(1) of this Title.]
- C. Where children of the Pueblo are involved in custody proceedings outside the exterior boundaries of the Pueblo, it is the intent of the Pueblo that any decision concerning whether the Pueblo shall petition another jurisdiction to transfer the matter to the Pueblo shall be made only after an investigation by [PASS] and consultation with the Governor.
- D. Policy. [It is the policy of the Pueblo that the Pueblo will always invoke its right to intervene in any court matter where the child is a child of the Pueblo as defined in §4-2-3 and §4-8-2(1) of this Title. Further, the Governor will seek to transfer the case or administrative matter the Pueblo Tribal Court.]

4-12-2

Authorized Representative of the Pueblo. The Indian Child Welfare Act provides for notification of the Pueblo in certain instances and allows for the Pueblo to initiate proceedings or make other court appearances.

- A. Notification. The Governor of the Pueblo and the Director of [PASS] shall be [the] authorized representatives of the Pueblo for receiving notification of referrals to the Pueblo pursuant to state and federal laws concerning Indian children.
- B. Filing Court Petitions. The Governor of the Pueblo shall be the authorized representative of the Pueblo for the purpose of filing any petition with any court for either
 - (1) the transfer of jurisdiction to the Pueblo; or
 - (2) intervening in any proceeding in the courts of another jurisdiction for any purposes pursuant to state and federal laws concerning Indian children.
- C. Presenting Testimony. In all other instances, the Director of [PASS] may appear in any court to present testimony or, upon delegation of the Governor's authority as to a specific proceeding, to appear on behalf of the Pueblo in an ongoing proceeding.

4-12-3

Receipt of Referrals

- A. Referrals to the Pueblo must be sent by registered mail as provided for in the federal Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901, *et seq.* to both the Governor and the Director of [PASS].
- B. Upon receipt of a referral, the Director of [PASS] shall prepare a preliminary written report to the Governor containing the following information:
 - 1. The source of the referral;
 - 2. The names and addresses of the child, the child's parents, other family members, and, if applicable, the child's caretaker or guardian;
 - 3. The date of the referral; and
 - 4. The date that any scheduled hearing or other proceedings in the court making the referral to the Pueblo.

- C. Upon receipt of the written report on the referral, the Governor may, in his discretion:
1. Request the referring court to give the Pueblo a twenty (20) day extension so that [the Pueblo may continue to investigate or consider the case.] The Governor will seek to transfer the case to the Court as well as take any other action [deemed necessary].
 2. Determine, based upon the preliminary report, that it is not in the best interests of the Child or its Family for the Pueblo to take any action.
- D. Investigating the Referral.
1. In any case where the Governor makes a determination pursuant to **Subsection C (2)**, no further action shall be taken by the Pueblo.
 2. In all other cases, the Governor shall immediately notify the Director of the [PASS] that an extension has been requested and request [PASS] to conduct an investigation of the referral and prepare a written report within ten (10) days.
 3. The written report of the investigation shall contain the following information:
 - a. The child's membership status with the Pueblo or eligibility of membership.
 - b. Any relevant social, medical, legal, or other information on the child and the child's family. The Director may request the referring court to provide copies of all reports and other documents it has concerning the child and the case before it.
 - c. A recommendation whether the Pueblo should transfer the case to its Court, intervene in ongoing proceedings in the referring court, or take no action at all, based upon what would be in the best interests of the child and the child's family.
- E. Final Determination as to Action to Be Taken on Referral. Upon receipt of the written report of the Director of the Social Services Department, the Governor shall determine what action, if any, is to

be taken by the Pueblo. The decision of the Governor is final and not subject to appeal.

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