PUEBLO OF ACOMA LAWS 2003 (08-2026 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 August 28, 2026.

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These laws may be cited by Title, Chapter, Section and Year as “Section or __-__-__ Pueblo of Acoma Laws 2003 (08-2026 Replacement)”

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TITLE 4
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Title 4
CHILDREN AND FAMILY LAW CODE

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.

On November 7, 2025, Tribal Council Resolution No. 2025-033 to amend the definitions of “Acoma Community”, “Member”, and “Enrolled Member” in Title 4.

On August 28, 2026 Tribal Council Resolution 2026-022 adopted on amended and restated Title 4, Children and Family Law.

Annotations: The TC Resolution 2026-022 amended and restated Title 4. The amended and restated Title 4 includes:

- A complete restructuring, reorganization and renaming of all chapters related to the Pueblo’s involvement with children and family welfare matters into Parts I-IV/Chapters 1-11, including the consolidation and streamlining of related court and pre-court procedures, definitions, and policies.
- Significant changes to pre-court Emergency Protective Custody and child placement procedures, pre-court voluntary services procedures for families that PASS engage with, and court hearing procedures and timelines.
- Definitions and clarifying procedures for determining when adults are “incapacitated,” and how the Pueblo and family members handle Incapacitated Adults’ care and welfare;
- New definitions and clarification of certain “plans” for families or children voluntarily seeking PASS services, or in relation to placement, etc.;
- Changes to ensure Title 4 is consistent and compliant with the Pueblo’s Joint Powers Agreement with the New Mexico Children, Families and Youth Department;
- Changes to domestic relations and probate provisions, further described as a separate annotation in Part IX;
- A restructuring of all criminal law provisions through their removal in Title 4 and more appropriate placement in an amended and restated Title 6 (Criminal Laws); and
- A removal of the Juvenile Delinquency chapter and adoption of a new Title 4A specifically for Juvenile Delinquency.

PART I - GENERAL PROVISIONS – CHILDREN AND FAMILIES

Chapter 1 – PURPOSES AND CONSTRUCTION

4-1-1 Purpose and Interpretation of Title

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

B. Purposes: The Pueblo of Acoma recognizes that the future of our people rests on our children and protecting and promoting the families that raise them. It hereby enacts this Part to establish policies and procedures to protect the interests of its children, families, the Pueblo, its customs and traditions, laws and culture.

C. The purposes and policies of this Title are to:

1. Prevent the unwarranted breakup of Pueblo of Acoma families, maintain the connection of children to their families and Pueblo, promote the safety, well-being and stability of the Pueblo;

2. 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;

3. Provide child welfare services to children and families that, in accordance with the customs, traditions, laws and cultural values of the Pueblo of Acoma, make active efforts to prevent removal of Pueblo of Acoma children from their parent(s), extended family or Indian custodian and to make active efforts to reunify the family if removal occurs.

4. Preserve and strengthen our children'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 aware of the social impact of their actions;

5. 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 bests interests of the child and their families;

6. 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;

7. Act in the best interests of children and families and create safety, well-being, stability and permanency for children and families experiencing violence and/or maltreatment through prevention, diversion and/or Court intervention, and to provide services for a family in need of services;

8. In considering tribal customary adoption, to ensure the following principles are considered: 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;

9. Recognize 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, ideally as legal guardians or adoptive parents;

10. Establish 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.*;

11. Set out guidelines and procedures in relation to child support, child custody, probate and domestic relations matters; and to

12. Protect the Pueblo's inherent sovereign right to make decisions regarding the best interests of its children and families including who should provide for the care, custody and control of its children.

4-1-2 Definitions

These definitions shall be used in this Title. 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 (90) ninety days 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 requires 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 non-members and enrolled members.

F. “active efforts” means affirmative, active, thorough, and timely efforts required to prevent the breakup of an Indian family or reunify the family.

G. “adoptee” is defined as the individual, child or adult who is adopted or is to be adopted.

H. “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.

I. “adult” means a person who is at least eighteen (18) years of age.

J. “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 a 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.

K. “alleged father” means any man who might be the biological father of a child.

L. “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 .

M. “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. The best interests of the child (Indian child) 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.

N. "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.

O. "birth parent" is defined as the biological parent.

P. "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.

Q. "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.

R. "case management" means the activity of a PASS 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.

S. "case plan" means a written plan with time-limited goals which is developed and signed by a client and a PASS worker.

T. "child" means a person who is less than eighteen (18) years old.

U. "child maltreatment" means abuse, neglect, or abandonment of a child as defined in this Section.

V. "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.

W. "Child Support Guidelines and/or schedule" means the guidelines schedules in force in the state of New Mexico, as amended.

X. “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.

Y. “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.

Z. “Court” means the Pueblo of Acoma Court, unless otherwise specified.

AA. “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.

AB. “custodian” means an adult with whom the child lives who is not a parent or guardian of the child or it may be one who exercises physical control, care or custody of a child, including an employee of a residential facility.

AC. “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.

AD. “customary adoption” means a permanent custody alternative in accordance with Indian, in most cases, Pueblo of Acoma, 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.

AE. “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.

AF. “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.

AG. “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.

AH. “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.

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. “Enrolled Member” is defined as any individual who is recognized as enrolled by the Pueblo of Acoma Tribal Enrollment Department and certified as enrolled by the Pueblo of Acoma Tribal Enrollment Department.

AK. “essential needs” means shelter, food, clothing, and utilities.

AL. “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.

AM. “extended family” means any person related by blood or marriage to the child having significant contacts or bond 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.

AN. "family in need of court-ordered services" means the child, Incapacitated Adult and/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.

AO. “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.

AP. “family-centered meeting” means a meeting convened and facilitated by PASS to gather family members and others with close ties to the person to discuss care, safety, or placement needs and to make a plan of support.

AQ. “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.

AR. “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.

AS. “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).

AT. “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 .

AU. “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.

AV. “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.

AW. “great bodily 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.

AX. “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 Incapacitated Adult by a parental power of attorney as permitted by Pueblo of Acoma law or laws of jurisdictions outside the Pueblo Acoma.

AY. “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.

AZ. “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.

BA. "Incapacitated Adult" is an adult who has been adjudicated by a court, governmental agency or Family-Centered meeting as incapacitated or is an adult who is unable to sufficiently understand, make, and communicate responsible decisions about himself or herself as a result of diagnosed mental illness, mental deficiency, physical illness, or disability or chronic use of drugs, and/or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

BB. “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.

BC. “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.

BD. “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.

BE. “Judge” when used without further qualification, means the judge of the Court.

BF. “Kinship” 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;

BG. “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.

BH. “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 Title, as amended.

BI. “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.

BJ. “maintenance” means a court-ordered allowance that one spouse pays to the other spouse for support and maintenance while they are separated, involved in a matrimonial lawsuit, or after they are divorced.

BK. “member” (or “Pueblo of Acoma member”) means any individual who is recognized as enrolled by the Pueblo of Acoma Tribal Enrollment Department through its most current policies, or who is eligible for enrollment and is the biological child of an enrolled member.

BL. “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.

BM. “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.

BN. "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 Title 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 Title; and further provided that no child shall be denied the protection afforded to all children under this Title;

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.

BO. “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.

BP. “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 Plans developed with PASS 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.

BQ. “Obligor” means the person with an obligation to pay child support.

BR. “Obligee” means the person or agency with the right to receive child support.

BS. “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 been terminated pursuant to order of the Court.

BT. “parenthood” means the position, function, and standing of a parent.

BU. “PASS” means Pueblo of Acoma Social Services.

BV. “PASS worker” means a PASS employee who works on child welfare cases, reports to the Court and other performs the duties under this Title.

BW. “person” means an individual or any other form of entity recognized by law.

BX. “placement” means a suitable accommodations based on case management, Plan(s) and permanency goals after removal.

BY. “Plan” or “Plan(s)” means, as applicable to the context, any one or more of the following. When a provision of this Title refers to a specific plan by name, the definition of that specific plan controls:

1. “Assistance Service Plan” means a plan to provide to support to families requesting basic needs.

2. “Case Plan” means a written plan with time-limited goals which is developed and signed by a client and a PASS worker.

3. “Co-Advocacy” plan means a plan for PASS and an agency, including but not limited to a Pueblo of Acoma, state or federal agency, to support a client.

4. “Comprehensive Parent Visitation Plan” means a comprehensive plan to present to the Court regarding parent/child visitation.

5. “Permanency Plan” means a determination by the Court that the child’s interest will be served best by:

    a. reunification;

b. 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;

c. placement with a person who will be the child's permanent guardian pursuant to a legal guardianship;

d. placement in the legal custody of PASS with the child placed in the home of a fit and willing relative; or

e. placement in the legal custody of PASS under a planned permanent living arrangement.

6. "Safety Plan" a temporary, voluntary agreement between a child, and a child's parents or guardians and PASS to address immediate safety concerns and prevent a child's removal from the home. It is developed by identifying serious harm threats, outlining specific parent actions to mitigate these risks (like getting counseling or arranging supervision), detailing support services, establishing monitoring procedures, and setting timeframes for compliance and plan termination. PASS helps to develop a Safety Plan with participation from the child and the child's parent(s)/guardian(s). A third-party safety monitor must be identified.

7. "Transition Plan for Aging Out" means an individualized written plan for a child as they transition into adulthood. It is 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.

8. "Transition Plan for Change in Placement" means an individualized written plan for a child for child transitioning from one placement to another. It should include the responsibilities of the parent/guardian for the care and safety of the child.

BZ. "pre-adoptive parent" means a person with whom a child has been placed for adoption or customary adoption.

CA. "protective custody" means the act of Pueblo of Acoma Social Services or law enforcement to take physical custody of, care for and provide shelter for (in a facility or designated family home), a natural person when government authorities believe that confinement is necessary to protect the person from an immediate threat to their safety or well-being.

CB. “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.

CC. “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.

CD. “residence” means the place where the child is presently living (place of residence can differ from place of domicile).

CE. “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.

CF. “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.

CG. “safety assessment” means a determination by PASS as whether the child or family is safe.

CH. “Safety Plan” a temporary, voluntary agreement between a child, and a child’s parents or guardians and PASS to address immediate safety concerns and prevent a child's removal from the home. It is developed by identifying serious harm threats, outlining specific parent actions to mitigate these risks (like getting counseling or arranging supervision), detailing support services, establishing monitoring procedures, and setting timeframes for compliance and plan termination. PASS helps to develop a Safety Plan with participation from the child and the child’s parent(s)/guardian(s). A third-party safety monitor must be identified.

CI. “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.

CJ. “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.

CK. “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.

CL. “suspension of parental rights” means the temporary or indefinite severance of the legal relationship between parent and child.

CM. “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Pueblo, another tribe or a state.

CN. “termination of parental rights” is defined as the permanent ending or termination of any rights of a biological parent with respect to a child.

CO. “Transition Plan for Aging Out" means an individualized written plan for a child as they transition into adulthood. It is 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.

CP. “Transition Plan for Change in Placement” means an individualized written plan for a child for child transitioning from one placement to another. It should include the responsibilities of the parent/guardian for the care and safety of the child.

CQ. “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.

CR. “tribunal” means any judicial forum other than the Court.

CS. “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.

CT. “voluntary placement” means a temporary placement of a child away from the home of the child’s parents, guardian or custodian in the home of another family or person, subject to conditions described in this Title. The decision is made voluntarily by the child’s parent, guardian or custodian with participation by PASS.

Chapter 2 – JURISDICTION, STRUCTURE, AND PROCEDURE OF THE CHILDREN AND FAMILY COURT

4-2-1 Establishment and Jurisdiction of the Children and Family 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 and Family Court. The primary function of the Children and Family 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 Title.

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 the child, 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

4. Children by the consent of the parties with custody of such children.

5. Child custody proceedings, including those 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 Laws 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 interests of the child(ren)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. Jurisdiction over Incapacitated Adults:

    a. The Court shall have civil jurisdiction over proceedings concerning Incapacitated who reside within the Pueblo or are Pueblo members, including petitions for guardianship, protective orders, and emergency custody.

    b. When the Court in a criminal proceeding determines that a defendant is incompetent or otherwise incapacitated, the Court may transfer the matter to the Children and Family Court for proceedings

under this Title to ensure appropriate protection, care, or guardianship for the individual.

12. Jurisdiction in-–Child Custody Proceedings; Suspension or Termination of Parent Rights; Customary Adoption:

    a. The Court shall have continuing civil jurisdiction to hear and adjudicate petitions and enforce judgements related to child custody proceedings, guardianship, 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 Title, including use of the civil contempt powers of the Court as set forth in the Pueblo of Acoma Laws 2003, as amended.

    b. The Court shall have exclusive jurisdiction in any action for customary adoption, child custody or guardianship for which it has issued a judgment or if a party is:

        i. a member or enrolled member of the Pueblo;

        ii. a child eligible for membership or enrollment with the Pueblo;

        iii. a child who has a biological parent who is eligible for membership or enrollment in the Pueblo.

13. The Court shall have exclusive continuing jurisdiction over any action to establish or enforce child support.

14. The Court shall have jurisdiction over domestic relations and probate cases.

15. The Court shall have jurisdiction to determine paternity, support, and custody of minor children and division of property.

16. 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.

17. Traditional Process. 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, pursuant to a motion by either party or *sua sponte*. 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.

4-2-2 PASS Petitions; Who May Sign; Form & Content

A. A petition initiating proceedings pursuant to the provisions of this Chapter shall be signed by the PASS attorney or a PASS 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 or Adult ", and shall set forth with specificity:

1. the facts necessary to invoke the jurisdiction of the Court;

2. if violation of a 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 or adult;

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 state 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 state of New Mexico or, if there be none, any known adult relative;

5. whether the child or adult is in custody or detention pursuant and, if so, the place of custody or detention and the time the child or adult 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; and

7. Sworn affidavits setting out relevant facts alleged in any petition shall accompany petitions to the extent possible.

8. Family in Need of Services (FINS) Petitions for Child or Incapacitated Adult maltreatment, protective custody, etc. are found in §§4-11-1 et. seq.

9. Petitions for Judicial Determination of Incapacity Petition and Adult Guardianship are found in §4-9-4.

9. Petitions for Child Guardianship are found in §§4-12-1 et. seq.

11. Petitions for Suspension of Parental Rights are found in §4-13-3

12. Petitions for Tribal Customary Adoption are found in §4-14-3.

13. Petitions for Child Custody are found in §§4-16-1 et. seq.

14. Petitions for Child Support are found in §§4-17-5 et. seq.

15. Petitions for Divorce are found in §4-18-2.

4-2-3 Service/Summons

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 or adult 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 or adult 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 or Incapacitated Adult party to an action pursuant to §§4-11-1 et seq., service shall be on the child's guardian ad litem, guardian, 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.

4-2-4 Evidence

A. Rules of Evidence. Except where it conflicts with tradition, the federal rules of evidence shall apply. 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.

B. 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.

C. Rules of evidence do not apply to the issuance of an *ex-parte* custody order.

D. Rules of evidence shall not apply to protective custody hearings.

E. Rules of evidence shall not apply to hearings held pursuant to hearings to review dispositional judgements.

F. 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 permanency plan. All testimony shall be subject to cross-examination.

G. Admissibility of report in evidence; immunity of reporting person; investigation of report; child interviews

1. In any proceeding alleging child maltreatment resulting from a report required by this Title, 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.

2. Anyone reporting an instance of alleged child maltreatment or participating in a judicial proceeding brought as a result of a report required in this Title 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.

3. A public official, any school personnel or other person who has the duty to report child maltreatment pursuant to this Title, 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 Title.

4. 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.

4-2-5 Protective Orders

A. A protective order under this Title 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 Title 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.

4-2-6 Contempt Power

A. At any stage of a proceeding under this Title , 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.

4-2-7 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.

4-2-8 Confidentiality and Access of Records

A. All records or information concerning a family in need of court-ordered services or child maltreatment proceeding, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a statement of child or Incapacitated Adult 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 or child maltreatment 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, resource, or adoptive parent, if the records are those of a child currently placed with that foster, resource, adoptive parent or of a child being considered for placement with that foster, resource, adoptive 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. 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. 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.

E. PASS shall have policies for implementing disclosure of records pursuant to this Section and in compliance with applicable Acoma , state and federal law and the Court Rules.

4-2-9 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.

4-2-10 Appeals

All appeals from proceedings under this Title , except as indicated herein, shall be heard pursuant to Title 1, Chapter 5 of Pueblo of Acoma Laws 2003, as amended.

CHAPTER 3 – DUE PROCESS RIGHTS OF CHILDREN AND CHILD PLACEMENT REQUIREMENTS

4-3-1 Due Process 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 this Title .

B. In proceedings on a petition alleging a family in need of court-ordered services, custody or child maltreatment the Court may appoint counsel, a guardian ad-litem 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, custody or child maltreatment the Court may appoint a guardian ad litem for a child under the age of fourteen (14) and the Court may 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 may continue as the child's attorney; provided that the Court may 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. Any guardian ad litem, lay advocate or attorney who is appointed shall be knowledgeable about the child's cultural background. A party to the proceeding or an employee, officer or representative of a party shall not be appointed as guardian ad litem. The Court shall assure that the child's guardian ad litem, lay advocate or attorney zealously represents the best interests of the child.

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.

4-3-2 Placement of Child When in PASS Custody

A. General Provisions

1. PASS shall make active efforts to provide services to prevent removal of an Indian child(ren) 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 and placement outside the child's home.

2. PASS shall follow all internal policies and procedures regarding removal and placement.

B. Emergency Placement Procedure

1. In the event of an emergency removal or hold of an Indian child from the home of their parent, guardian or custodian for 72 hours or less, PASS shall place a child in the most immediate available adult home, in accordance with placement preferences pursuant to Section 3 of this Chapter (§4-3-3).

2. PASS shall request a valid criminal history record and warrant check of each adult residing in the home where a child will be placed while in PASS custody.

3. In an emergency, PASS may place the child in the home of an available person (in accordance with 4-3-3 placement preferences) while the criminal history record check is being conducted. The child may be removed from the home of placement if any adult resident fails to provide fingerprints or written permission to perform a federal criminal history record check when requested to do so (within 48 hours), or as soon as PASS learns that a resident in the home of placement has a criminal background that deems that would threaten the child's safety.

C. Non-Emergency Procedure

Absent an emergency, children in PASS custody must be placed with a Pueblo of Acoma or New Mexico licensed foster care/resource family and home.

4-3-3 Child Placement Preferences

A. Unless a child 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. A child may be placed in the least restrictive, culturally-appropriate setting that most closely approximates the child's family of origin, with consideration for the child's needs. 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. In any resource/foster family care, or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, in descending order to:

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.

B. Cultural Compact. Unless the child is placed with a member of the child's family or extended family residing within the exterior boundaries of the Pueblo, a cultural compact shall be developed to ensure that the child's cultural and family ties are protected and fostered.

C. Change in placement

1. Whenever a child's placement must change, while the child is in PASS custody, 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.

2. 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.

3. When a child's placement is changed without prior notice as provided for in 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.

4. 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.

4-3-4 Placement of a Child with a Development Disability or Mental Disorder; Involuntary Placement Proceedings

A. If during any stage of a proceeding under this §§4-1-1 et. seq. 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 to show why there is good cause to deviate from the placement preferences in §4-3-3.

C. The court may order a 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 mental health or developmental disability services, when the child is subject to §4-3-4, may be heard by the Court as a part of the family in need of Court-ordered services proceedings under §4-11-1 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. An order issued by the Court for involuntary placement to deviate from §4-3-3 shall be based on the following:

    1. evidence from a qualified health care provider or medical person's of:

        a. the child symptoms or behavior;

        b. why involuntary placement, residential mental health or developmental disability services 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;

    4. When a child is subject to §4-3-4 and is receiving residential mental health or developmental disability services any documentation shall be filed with the Court as part of the family in need of court-ordered services proceeding under §4-11-1 et. seq.

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

CHAPTER 4 – ROLES AND RESPONSIBILITIES OF PUEBLO AGENCIES & EMPLOYEE DUTIES

4-4-1 Roles and Responsibilities

A. 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").

B. 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.

C. 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.

D. Authorized PASS Programs

1. 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, 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.

2. 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.

E. Duty to report child or Incapacitated Adult maltreatment

Every and any person who knows or has a reasonable suspicion of maltreatment or abuse shall report the matter immediately to:

1. PASS; or

2. tribal law enforcement; or

3. mandated reporters with duties to report abuse under Acoma, state or federal law.

PART II - EMERGENCY PROTECTIVE CUSTODY WITHOUT COURT ORDER

CHAPTER 5 – PROTECTIVE CUSTODY OF CHILDREN AND INCAPACITATED ADULTS

4-5-1 Procedures for Taking Emergency Protective Custody of Children and Incapacitated Adults

A. A law enforcement officer or PASS may take a child or Incapacitated Adult, into protective custody when there is evidence and reasonable grounds to believe the child or Incapacitated Adult:

1. has run away from their parent(s) (in the case of a child), guardian or custodian;

2. is 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; or

3. is without parental, guardian, or custodian supervision due to the parents (in the case of children), guardians or custodians being incapacitated due to an illness or injury and are unable to care for the child or Incapacitated Adult due to an emergency;

4. has been injured as a result of child or Incapacitated Adult maltreatment and the child or Incapacitated Adult may be at risk of further injury if they are returned to the parent(s)(in the case of a child), guardian, custodian, or caretaker, according to reasonable beliefs of medical personnel. The medical personnel shall hold the child or Incapacitated Adult until a law enforcement officer is available to take custody of the child or Incapacitated Adult; or

5. is a victim of child or Incapacitated Adult maltreatment.

6. A PASS or a law enforcement officer has evidence and reasonable grounds to believe that child or Incapacitated Adult maltreatment has occurred and that there is an immediate threat to the child or Incapacitated Adult's safety if:

   a. the child or Incapacitated Adult's parent(s), guardian, caretaker or custodian has attempted, conspired to cause, allowed or caused great bodily harm to the child or Incapacitated Adult or great bodily harm or death to the child's sibling;

   b. the child or Incapacitated Adult's parent(s), guardian, caretaker or custodian has attempted, conspired to cause, allowed or caused great bodily harm or death to another parent (in the case of a child), guardian or custodian of the child or Incapacitated Adult;

   c. the child or Incapacitated Adult has been abandoned;

   d. the child or Incapacitated Adult 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 or Incapacitated Adult is in imminent risk of abuse or neglect.

B. When a child is taken into protective custody, PASS is not compelled to place the child in an out-of-home placement and may release the child to the parent(s)(in the case of a child), 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.

4-5-2 Protective Custody; Restrictions; Time Limitations

A. A law enforcement officer or PASS worker who takes a person into protective custody pursuant to §4A-1-1 et seq. shall immediately:

1. inform the person of the reasons for the protective custody;

2. notify the person's parents, guardian or custodian (if applicable) of the protective custody and the reasons therefore. In the event that notification attempts, are unsuccessful, then best efforts shall immediately be made to notify the person's nearest family members; and

3. place the child with PASS (if PASS has not already taken custody).

B. When PASS is contacted by a law enforcement officer who has taken a child or Incapacitated Adult into protective custody, PASS shall:

1. return the person to their parent (in the case of a child), guardian or custodian if the person's safety is assured;

2. if the person's safety cannot be assured, PASS shall accept custody of the person, and in the case of a child, conduct an investigation upon reasonable belief or evidence that the child or Incapacitated Adult is an alleged victim of maltreatment and is in danger of further substantial harm, pursuant to §4-10-1 et seq and place the person in an appropriate home or facility in accordance with §4-3-2 et seq; or

3. deliver the person to a medical facility if the person 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 the person to a medical facility, the officer shall immediately notify PASS that the person has been placed in PASS's legal custody.

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 or Incapacitated Adult is transported in a law enforcement vehicle:

1. the officer shall make reasonable efforts to ensure the safety and comfort of the child or Incapacitated Adult within the law enforcement vehicle, and

2. the child or Incapacitated Adult shall not be placed in any vehicle that contains another person placed under arrest.

E. A person taken into protective custody shall not be held involuntarily for more than three (3) days, unless a petition to extend the custody is filed pursuant to §4-11-1 et seq.

F. When a petition is filed or any time thereafter, the Court may issue an *ex-parte* custody order, or in circumstances where the person is in immediate danger of abuse, or poses an immediate safety risk to themselves or others, an order based upon a sworn written statement of facts by a case worker or law enforcement officer, showing that probable cause exists to believe that protective custody of the person 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 person and deliver the person to a place designated by the Court.

4-5-3 Notification to Family; Release from Protective Custody

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

B. When PASS releases a child or Incapacitated Adult placed in protective custody to the family, PASS shall refer the family for voluntary family services unless the parents (in the case of a child) or guardians are incapacitated due to illness or injury.

C. When PASS releases a child or Incapacitated Adult from protective custody and the parent (in the case of a child), guardian or custodian refuses to allow the child or Incapacitated Adult to return home, PASS shall file a Family in Need of Services petition pursuant to §4-11-1 et seq 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.

E. 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 FINS petition pursuant to §4-11-1 et seq. or a protective custody placement has been ordered by the Court.

F. Active efforts shall be made to prevent or eliminate the need for removing the child or Incapacitated Adult from the person's home, with the paramount concern being the child's or Incapacitated Adult's health and safety. In all cases when a child or Incapacitated Adult is taken into custody, the child or Incapacitated Adult shall be released to the parent(s)(in the case of a child), guardian or custodian, unless PASS files a petition pursuant to §4-11-1 et seq., within forty-eight (48) hours from the date that the child or Incapacitated Adult was taken into custody.

G. PASS may release the person at any time within the forty-eight (48) hours period after the person was taken into custody if it is determined by PASS that release is appropriate or if release has been ordered by the Court.

CHAPTER 6 – DETENTION AND TRANSPORT FOR INVOLUNTARY EMERGENCY MENTAL HEALTH EVALUATION, DETENTION, AND TREATMENT OF PERSONS

ORIGIN: This 08-2026 Title 4 Restatement adds this chapter and all of its provisions as new content.

4-6-1 Procedures for Taking Emergency Protective Custody of Persons for Involuntary Emergency Mental Health Evaluation, Detention, and Treatment

A. A law enforcement officer may detain and transport a person subject for emergency mental health evaluation and care in the absence of a court order if:

1. the subject is otherwise subject to lawful arrest;

2. the officer has reasonable grounds to believe the subject has suicidal ideations or just attempted suicide;

3. the officer, based upon the officer's own observation and investigation, has reasonable grounds to believe that the person, as a result of a mental disorder, presents a likelihood of serious harm to oneself or to others and that immediate detention is necessary to prevent such harm; or

4. a physician, a psychologist, or a qualified licensed mental health professional has certified that the subject, as a result of a mental disorder, presents a likelihood of serious harm to oneself or to others and that immediate detention is necessary to prevent such harm. Such certification

shall constitute authority to transport the person to an evaluation facility, including a facility outside of the jurisdiction of the Pueblo of Acoma.

B. A court order is not required under this section. However, if an application is made to the Acoma Tribal Court, including by the subject's legal guardian, informal caretaker, or other household member, the Court may issue an order, including an *ex parte* order, that:

1. an Acoma Police Department officer, EMS Services, or PASS shall transport the subject to an appropriate evaluation facility, even if such evaluation facility is outside of the jurisdiction of the Pueblo of Acoma;

2. an Acoma Police Department officer shall transport the subject for a temporary hold at a detention facility for no more than five (5) days, in the instance of an adult, pursuant to subsection D of this chapter, if no mental health evaluation facilities are presently available; or

3. the subject should not be detained or transported to an evaluation facility.

C. In the event a proceeding is initiated under subsections (A)-(B) of this chapter, the Acoma Tribal Court may order, in its discretion, any of the additional relief:

1. removal of firearms in the subject's possession and/or from the subject's household by the Acoma Police Department for a period of seven days,

2. treatment by a healthcare provider without the subject's consent, including through medication administration and/or through sedation for a period of up to 72 hours;
3. a temporary restraining order protecting other individuals from the subject if the subject poses a danger to those individuals; or

4. any other emergency relief deemed necessary and appropriate by the Court in accordance with Pueblo of Acoma Law.

D. If either the Acoma Behavioral Health Services Department or the Acoma Tribal Court reasonably determines that no evaluation or in-patient treatment facility is immediately available to the subject, the subject may be transported to a detention facility for a temporary hold. Detention facilities shall be used as temporary shelter for such persons only in cases of extreme emergency for protective custody, and no person taken into custody shall remain in a detention facility longer than necessary, but in no instance longer than five (5) days.

E. In the event a person needs to be held for more than five (5) days when detention is used, the Acoma Tribal Prosecutor shall file a petition for an involuntary commitment which the Court can grant for an additional ten (10)

days.

F. If the use of a detention facility is necessary, the proposed subject:

1. shall not be held in a cell with prisoners.

2. shall be monitored by staff of the Acoma Department of behavioral health as often as they feel necessary.

3. shall not be identified on records used to record custody of prisoners.

4. shall be provided adequate protection from possible suicide attempts; and

5. shall be treated with the respect and dignity due every person who is neither accused nor convicted of a crime.

4-6-2 Limitation

Nothing in this section authorizes the involuntary detention of a competent adult except as provided in this Section 4-6-1 (Emergency Mental Health Evaluation and Care)

PART III – EARLY INTERVENTION AND FAMILY SERVICES

CHAPTER 7 – CHILD AND FAMILY SERVICES, INTAKE, AND VOLUNTARY SUPPORT

4-7-1 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.

4-7-2 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.

4-7-3 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 interests of the child and family, and that the parent maintains continuous contact with the family and child.

4-7-4 Voluntary Placement of Child Outside Home; PASS Recommendation

A. The purpose of a Voluntary Placement Agreement is to provide an opportunity to strengthen and assist families and remediate risks that may lead to a removal or filing of a petition. A Voluntary Placement Agreement may be used in situations in which it is in the best interest of the child to live in an out of home placement, or for instances where a parent has substance use and/or domestic violence is occurring in the home and the parent requires additional support and time to remediate the possible safety concerns of having the child in the home. This Agreement furthers the Pueblo's intent to only file petitions when absolutely necessary to protect the child(ren), and to provide the parents' every opportunity to remediate risks before removal.

B. If after a family calls PASS for voluntary services, or after an investigation, PASS determines the family is in need of services or in danger of abuse and neglect, prior to filing a petition, PASS may enter into a voluntary placement agreement with the child's parent, guardian or custodian.

C. The request for voluntary placement shall be initiated in writing by the child's parent or guardian, or PASS and if good cause is shown, PASS may accept temporary custody or placement and care responsibility. Placement and care responsibility means that PASS is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows PASS to make placement decisions about the child pursuant to §4-3-2 et seq.

D. If the child is not Pueblo of Acoma eligible member, PASS shall notify the Indian child's tribe by certified mail, with return receipt requested, of the pending voluntary placement agreement and of the Indian child's tribe's right to intervene.

E. In lieu of PASS gaining custody of a child through a Voluntary Placement Agreement, PASS may recommend a Safety Plan, among other Plans, to voluntarily and temporarily place the child with a custodian, of the parent or guardian's choice, preferably a member of the family, upon the consent of that temporary custodian. A Safety Plan shall last for no more than 21 days. After 21 days, PASS shall recommend a Voluntary Placement Agreement, if necessary.

4-7-5 PASS Explanation Upon Voluntary Placement

A. Prior to accepting custody of any child for voluntary placement and entering into a Voluntary Placement Agreement, 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.

B. PASS shall ensure that the voluntary placement agreement is executed in writing. PASS shall certify in a separate signed document that:

1. The terms and consequences of the consent to Voluntary Placement were fully explained in detail;
2. There is no pending child abuse or neglect investigation involving the child;

3. The child's parent or guardian is voluntarily entering into the voluntary placement without any threat of removal of the child by PASS; and

4. If not represented, the child's parent or guardian is proceeding without an attorney and has the right to consult with an attorney of the child's parent's or guardian's own choosing.

C. If PASS accepts custody of a child and enters into a Voluntary Placement Agreement, PASS shall place the child in accordance with the requirements and preferences outlined in §4-3-2 et seq.

D. The Voluntary Placement Agreement shall recommend a time period for the voluntary change in custody and placement that is in the best interests of the child, and outline regular check-in times, to evaluate the status of any Plan with the family.

E. During voluntary placement, PASS shall make active efforts to provide tailored case planning to alleviate the causes and conditions leading to the voluntary placement agreement.

4-7-6 Voluntary Placement; Rights of Parent

Any parent, guardian or custodian whose child has been voluntarily placed with another custodian or PASS for out of home 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.

4-7-7 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.

4-7-8 Voluntary Placement; Time Limitation

A. No child shall remain in voluntary placement, with another custodian or PASS, including informal voluntary placement, for longer than six (6) months without an application by the parent or guardian to demonstrate good cause to renew the Voluntary Placement Agreement for an additional six (6) months or fewer. PASS shall notify the parent or guardian four (4) weeks prior to the date the parent or guardian is required to apply for a renewal of the Voluntary Placement Agreement, the requirement to re-apply (for continued voluntary placement), and any requirements for a Family-Centered meeting to re-evaluate the plan.

B. A Voluntary Placement Agreement shall not remain in place for more than one (1) year total over the course of two (2) years.

C. Voluntarily placement pursuant to the allowable time periods described in these sections shall not per se be considered abandonment or neglect by a parent, guardian or custodian.

D. At least 60 days prior to full one (1) year mark for voluntarily placement, PASS shall notify the child's parent or guardian and the temporary custodian,

if not PASS, of the need to discuss the future of the child's custody and placement. If the parent or guardian does not attend the meeting or notifies PASS that they do not wish to regain custody of the child at the end of one (1) year, PASS shall recommend:

1. That the child's custodian, caretaker or another individual with close ties to the child, file for Guardianship pursuant to §4-12-1 et seq., or Tribal Customary Adoption pursuant §4-14-1; or

2. If no person demonstrates an interest in Guardianship or Tribal Customary Adoption during the requisite time period, PASS shall file a Family in Need of Services Petition for court ordered family services and custody, pursuant to §4-11-1 et. seq.

4-7-9 Duty to File a Petition

PASS shall immediately file a petition alleging that the child needs court-ordered family services (§4-11-1 et. seq.) 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.

C. A hearing will be conducted within ten (10) days of PASS filing the petition for court-ordered family services and custody pursuant to §4-11-1 et. seq. unless the child's parent or guardian exercises their right to request an informal resolution of the proceeding prior to the hearing. 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 interests of the child.

Chapter 8 - VOLUNTARY ADULT PROTECTIVE SERVICES

Origin: This 08-2026 Title 4 Restatement adds this chapter and all of its provisions as new content.

4-8-1 Purpose and Scope

A. The purpose of this Chapter is to provide a voluntary, culturally appropriate process for the Pueblo of Acoma to assist adults, who may be in need of support, while respecting the individual's right to self-determination and liberty.

B. These provisions apply to voluntary requests for services for adults who may be unable to meet basic needs or who are at risk of abuse, neglect, or exploitation.

C. Nothing in this Part authorizes the involuntary detention or placement of an adult without the adult's consent, except as provided under §4-6-1 (Emergency Mental Health Evaluation and Care) or upon a finding of incapacity by the Court or court of competent jurisdiction.

4-8-2 Requests and Referrals for Services

A. Any adult, or any person acting in good faith on behalf of a adult, may request assistance from the Pueblo of Acoma Social Services Program (PASS).

B. Any person who believes that an adult is in need of support, assistance, or protective services may make a referral to PASS.

B. PASS shall assess each request or referral and, subject to available resources, offer voluntary services, supports, or referrals to other programs.

D. An adult may withdraw or decline services at any time. Refusal of voluntary services shall not, by itself, be considered neglect or abuse.

4-8-3 Family-Centered Meetings and Traditional Support

A. PASS may convene or assist in convening a Family-Centered Meeting when appropriate to identify supports, caregivers, or other culturally appropriate responses to the needs of the adult.

B. A Family-Centered Meeting may recommend a plan, support arrangement, or guardianship petition, or other appropriate relief. Such recommendations

are voluntary and shall not be binding unless approved by the Court or accepted in writing by the adult.

C. The Court may consider the results of a Family-Centered Meeting as evidence when determining incapacity, guardianship, or the need for protective intervention.

4-8-4 PASS Authority and Coordination

A. PASS may provide case management, referrals, and coordination of services for health care, housing, food, transportation, and other needs identified in consultation with the adult.

B. PASS may refer matters to law enforcement or the Acoma Behavioral Health Department if evidence of abuse, neglect, exploitation, or a mental-health emergency arises.

C. PASS shall maintain policies and procedures consistent with this Title establishing intake, assessment, and service timelines for adult cases.

4-8-5 Confidentiality and Consent

A. Information obtained by PASS in the course of providing services to an adult shall be confidential and may be shared only with the adult's consent or as required by law or court order.

B. PASS shall explain the purpose of services, the adult's rights, and available alternatives before initiating any assistance or referrals.

4-8-6 Relationship to Other Provisions

A. If an adult receiving voluntary services becomes subject to an emergency mental-health crisis, law enforcement or PASS may act under Section 4-5-3 (Emergency Mental Health Evaluation and Care).

B. If the Court finds that an adult is incapacitated and unable to manage their affairs, proceedings for guardianship or protective custody shall be conducted under the applicable sections of this Title.

C. Nothing in this Chapter limits the Pueblo's authority to protect the welfare of its members consistent with Acoma law, custom, and the inherent sovereignty of the Pueblo.

CHAPTER 9 – DETERMINATIONS OF INCAPACITY OF AN ADULT

Origin: This 08-2026 Title 4 Restatement adds this chapter and all of its provisions as new content.

4-9-1 Purpose and Interpretation

A. This Chapter establishes the procedures for determining when an adult lacks the capacity to understand, make, or communicate responsible decisions concerning their personal care, health, finances, or safety.
B. All determinations under this Chapter shall be guided by the principle of using the least restrictive alternative that protects the adult while preserving dignity and autonomy in accordance with Acoma cultural values.
C. A finding of incapacity may not be made unless supported by clear and convincing evidence that the adult, even with appropriate supports, is unable to make responsible decisions in specific areas.
D. Incapacity may be temporary or fluctuating. All orders under this Chapter must be tailored accordingly.

4-9-2 Mandatory Reporting and Initial Response

A. Mandatory reporting requirements under this Title 4 apply to suspected adult incapacity. Any mandatory reporter reasonably suspects an adult lacks decision-making capacity and is at risk of harm shall report concerns to PASS.
B. PASS shall respond pursuant to Chapter 6, including assessment of immediate danger, coordination with law enforcement when necessary, and consideration of whether emergency protective procedures are required.
C. PASS shall initiate an investigation consistent with Chapter 6 and this Chapter.

4-9-3 Voluntary Support Available to Adults with Capacity

A. An adult who retains decision-making capacity may voluntarily enter into:
    1. A Power of Attorney for financial or personal matters.
    2. A Medical or Health Care Power of Attorney.
    3. A supported decision-making agreement with one or more trusted persons.

4. A representative payee arrangement for benefits.
5. A voluntary limited guardianship or conservatorship, subject to Court approval.
6. Any written agreement designating a family member or extended family to assist with daily activities or decisions.

B. Execution of a voluntary document is evidence, but not conclusive proof, that the adult possesses capacity to understand the nature and consequences of the arrangement.

C. A voluntary POA or supported decision-making agreement may be revoked by the adult at any time, unless the Court determines the adult lacks the capacity to knowingly revoke it.

D. These voluntary tools must be considered and exhausted before the Court may impose guardianship or conservatorship.

4-9-4 Who May File a Petition for Determination of Incapacity

A. A petition for judicial determination of incapacity may be filed by:

1. A spouse, partner, parent, guardian, or adult child.
2. An adult extended family member.
3. PASS.
4. A caretaker with sustained responsibility.
5. Any other person, but only after the Court reviews the petition and finds good cause to allow filing.

B. The adult may not petition for a finding of their own incapacity. However, the adult may petition for voluntary limited guardianship, conservatorship, or approval of voluntary supports, if the Court determines the adult has capacity to understand the request.

C. Before accepting a petition the Court shall find that:

1. The petition appears to be filed in good faith.
2. The petition is not for control, coercion, retaliation, or financial advantage.

3. The petition includes specific, credible facts indicating potential functional incapacity.

4-9-5 Required Contents of a Petition

A petition must include:

A. Specific, recent, observable facts indicating the adult may lack capacity in identified functional areas.

B. A description of the adult's strengths, abilities, and areas where the adult remains capable, if any.

C. A description of voluntary supports attempted, including Powers of Attorney, supported decision-making agreements, representative payeeship, or any informal action plans, including plans developed through the Family-Centered Meeting.

D. Identification of family members, extended family relatives, or caretakers relevant to the adult's situation.

E. Any supporting assessments, including at least one independent medical diagnosis from a healthcare professional, medical records, statements, or documentation reasonably available.

F. Whether emergency relief is requested and the sworn facts supporting the request.

G. A sworn statement affirming the petition is filed in good faith.

4-9-6 Notice and Rights of the Adult

A. Notice of the petition and hearing must be served on:

1. The adult, unless the court finds good cause to proceed on an emergency basis without prior notice, in which case the Court shall issue written findings explaining the need for *ex parte* action.

2. Immediate and extended family identified by the petitioner.

3. PASS, unless the Court finds good cause to delay or withhold notice because PASS involvement is not necessary under the circumstances.

a. Good cause may include voluntary petitions where the adult is not at risk, where appropriate family or extended family supports are in place, or where PASS involvement would not serve the purposes of this Chapter. In emergency or risk-related circumstances, notice to PASS shall be mandatory.

4. Any known guardian or caretaker.

5. Any other designated party of interest.

B. The Notice of the petition and hearing shall inform the parties of:

1. The nature of the proceeding.

2. The adult's right to counsel or a lay advocate.

3. The adult's right to request an independent evaluation.

4. The adult's right to be present unless medically unable.

C. Service shall follow Section 4-2-3 of this Title.

D. The Court may limit notice to certain persons, including certain family relatives, upon finding that notice would cause harm or is not in the adult's best interest

4-9-7 PASS Investigation and Written Report

A. PASS shall conduct an investigation under this Section only when PASS has been served with notice pursuant to Section 4-9-6 and the Court has not found good cause to withhold PASS involvement. If PASS is not served based on a good-cause finding, the requirements of this Section do not apply.

B. When PASS is served, PASS shall review whether voluntary supports exist that may resolve the concerns, including any Power of Attorney, supported decision-making agreement, representative payee arrangement, or any informal family supports or action plans.

C. When PASS is served, PASS shall conduct an investigation consistent with Chapter 6 and 10, which may include:

1. Interviews with the adult, family members, extended family members, and caretakers.

2. Home visits or environmental assessments.

3. Review of medical, behavioral, or safety information or records when reasonably available.

4. Evaluation of less restrictive alternatives already attempted.

D. PASS may convene a Family-Centered Meeting in accordance with 4-9-8.

E. When PASS is served, PASS shall prepare a written report within thirty (30) days summarizing findings, safety concerns, existing supports, recommendations, and a determination if the adult is at risk of harm.

F. The PASS report, when required, shall be filed at least five (5) days before the hearing.

4-9-8 Family-Centered Meeting and Supported Decision-Making

A. Unless the adult objects or the Court finds a Family-Centered meeting may result in harm, PASS may convene a family-centered meeting which may include interested parties invited by PASS.

B. A family-Centered Meeting may:

1. Develop or refine a supported decision-making agreement.

2. Create or revise an Plan appropriate for the care and support of the Adult and consistent with Acoma cultural practices.

3. Identify family or community-based supports that may meet the adult's needs.

4. Recommend limited guardianship if voluntary supports are insufficient.

C. PASS shall summarize Family-Centered Meeting recommendations in writing.

4-9-9 Right to Representation and Independent Assessment

A. In all Court proceedings, the adult has the right to counsel or a lay advocate. The Court may appoint representation if needed to ensure fairness.

B. The adult has the right to an independent assessment by a qualified medical or behavioral health evaluator. If unable to pay, the Court may authorize payment.

C. Representatives must respect Acoma cultural norms and extended family structures.

4-9-10 Evidentiary Standard and Types of Evidence

A. Incapacity must be proven by clear and convincing evidence.

B. Evidence may include:

1. Evidence of functional impairment or inability to understand or communicate decisions.

2. Evidence of temporary or reversible conditions.

3. Testimony from family, extended family, caretakers, medical experts, or other persons with relevant information.

4. PASS written report and assessments.

5. Evidence of supported decision-making effectiveness or ineffectiveness.

6. Evidence of exploitation or vulnerability linked to impaired judgment.

7. Information derived from any emergency procedures as ordered by the Court under Chapter 6.

C. Evidence of poverty, eccentricity, or lifestyle preferences shall not be grounds for incapacity.

4-9-11 Hearing Procedures

A. Hearings are closed unless the adult requests otherwise.

B. The adult shall be present unless medically unable to attend or unless the Court is proceeding on an emergency *ex-parte* basis pursuant to a finding of good cause.

C. When the hearing is *ex-parte* due to good cause, the Court shall provide the adult with notice and an opportunity to be heard as soon as reasonably possible, and a full hearing shall be scheduled at the earliest practicable time.

D. The adult may call witnesses, cross-examine others, and submit evidence.

E. PASS shall attend and answer questions regarding its investigation and report only when PASS has been served under Section 4-9-6 and required to investigate under Section 4-9-7. PASS is not required to appear when the Court has found good cause to withhold PASS involvement.

F. If the Court determines that additional information is necessary to decide the issue of capacity, the Court may, in its discretion, request or order testimony from appropriate evaluators, which may include medical professionals, behavioral health providers, PASS personnel, or culturally knowledgeable persons such as traditional practitioners or Acoma community members. The Court shall consider the least burdensome and appropriate form of evaluation.

G. The Court may modify the adult's participation if necessary to protect the adult's well-being.

4-9-12 Required Judicial Findings

A written order must address:

A. Whether there exists an impairment qualifying the adult as an Incapacitated Adult.

B. The adult's functional abilities.

C. Whether voluntary supports, including POAs or supported decision-making agreements, are sufficient.

D. Whether Chapter 6 informal family or community supports and assistance are adequate.

E. Whether less restrictive alternatives have been exhausted.

F. The specific areas in which the adult lacks capacity.

G. Whether guardianship or conservatorship is necessary and is the least restrictive alternative.

H. The adult's expressed preferences, if any.

4-9-13 Disposition and Least Restrictive Alternatives

A. Before imposing guardianship and/or conservatorship, the Court must find that the adult's needs cannot be met through:

1. Supported decision-making.

2. Powers of Attorney.

3. Representative payee arrangements.

4. Informal family, extended-family, or community plans or supports.

B. If intervention is necessary, the Court shall consider whether to order guardianship and/or conservatorship.

C. Guardianship or conservatorship may be granted only if no lesser measures can adequately protect the adult.

D. The Court shall specify rights retained by the adult, if any, and ensure the adult is placed in the least restrictive environment.

E. Priority in appointment shall be given to family or extended family consistent with Acoma tradition.

4-9-14 Guardian and Conservator Qualifications and Duties

A. A guardian or conservator must:

1. Be at least twenty-one (21) years old.

2. Be suitable, willing, and free from conflicts of interest.

3. Have no disqualifying criminal history.

4. Understand Acoma cultural norms and family structures.

B. Conservators must demonstrate financial competence and may be required to post a bond.

C. Guardians and conservators owe fiduciary duties of loyalty, honesty, and care. A guardian may not engage in self-dealing, conflicts of interest, or use the adult's assets for personal gain.

D. A guardian or conservator shall file a report at least every six (6) months unless ordered otherwise by the Court.

4-9-15 Duration, Review, and Modification

A. No disposition order may exceed three (3) years without review.

B. The Court shall hold review hearings annually.

C. Any party may request modification or termination of the order based on changed circumstances.

D. The Court may reduce or end the guardianship and/or conservatorship whenever voluntary supports or improvements restore the adult's decision-making ability.

4-9-16 Restoration of Capacity

A. The adult may petition for restoration at any time.

B. The Court shall hold a hearing within thirty (30) days.

C. Restoration shall be granted unless clear and convincing evidence shows the adult continues to lack capacity.

D. Upon restoration, all rights are restored, and the adult may create, amend, or revoke Powers of Attorney or supported decision-making agreements.

E. The Court may restore specific rights prior to full restoration, as appropriate.

4-9-17 Emergency Procedures and Relationship to Chapter 6

A. Emergency protective actions are governed by Chapter 6. The Court may proceed on an *ex-parte* basis in an incapacity proceeding only upon written findings of good cause, which may include:

1. Immediate risk of serious physical harm;
2. The adult is medically incapacitated and unable to consent to necessary services or decisions;
3. No person holding a valid Power of Attorney under New Mexico law or other voluntary authority is available to act;
4. Delay in issuing a temporary order would result in irreparable harm.

B. Any emergency order under this Chapter shall be narrowly tailored to address only the emergency conditions necessitating immediate action and shall not substitute for a full incapacity determination.

C. An emergency order issued under this Chapter shall expire within fourteen (14) days unless extended after a hearing at which the adult has notice and an opportunity to be heard.

4-9-18 Confidentiality

A. Records in incapacity proceedings are confidential consistent with Chapter 6.

B. Information disclosed in Family-Centered Meetings or assessments may be sealed upon request.

C. Unauthorized disclosure may result in civil penalties and disciplinary action.

PART IV – FAMILY PROTECTION AND COURT-INVOLVED INTERVENTION

CHAPTER 10 - INVESTIGATION AND REPORTING OF CHILD AND INCAPACITATED ADULT MALTREATMENT

4-10-1 Duty to investigate maltreatment of Children and Incapacitated Adults

A. PASS and law enforcement shall share information and cross report regarding any report of child or Incapacitated Adult maltreatment. PASS and law enforcement shall immediately transmit the facts of any such report and

the name, address and phone number or email of the reporter by telephone or email and shall transmit the same information with all due immediate speed, not to exceed twenty-four (24) hours.

B. PASS has the authority to screen and investigate reports of child and Incapacitated Adult maltreatment. A written PASS intake report shall contain the person's name, if a child, the child's parent(s) ', or if the person has a guardian, the guardians' name(s), the date and time the report was taken, the person's age, the person's primary language, the contact information of the alleged victim, the type of alleged maltreatment, the nature and extent of the person's injuries, including any specific allegation, the location where the alleged maltreatment occurred, any evidence or reports of previous injuries, all children and/or adults residing in the person'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.

C. PASS has the discretion to assess safety in each individual case and shall assign priority to intake reports of child or Incapacitated Adult maltreatment in accordance with its Policies and Procedures.

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 ensures a child's or Incapacitated Adult'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 or Incapacitated Adult 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 or Incapacitated Adult's safety and well-being. The child or Incapacitated Adult 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 or Incapacitated

Adult does not reside within the exterior boundaries of Acoma lands; or information was reported maliciously.

D. The investigation of reports of child or Incapacitated Adult maltreatment shall ensure that immediate steps are taken to protect the health, safety and well-being of the alleged victim of maltreatment, as well as that of any other child or Incapacitated Adult under the same care who may be in danger of child or Incapacitated Adult 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.

E. 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.

F. A law enforcement agency or PASS shall have access to any of the records pertaining to a child or Incapacitated Adult maltreatment case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in this Chapter .

4-10-2 Complaints; Referral; Preliminary Inquiry

A. PASS shall investigate any reports of child or Incapacitated Adult maltreatment, whatever the source of the referral, to determine the best interests of the child and family, or Incapacitated Adult 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 or Incapacitated Adult maltreatment report, PASS shall either recommend or refuse to recommend the filing of a FINS 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 or Incapacitated Adult is taken into protective custody pursuant to §4-5-1 et. seq., PASS shall file a petition within 3 business days. If a petition is not filed in a timely manner, the person shall be released to the parent(s) (in the case of a child), guardian or custodian.

CHAPTER 11 - PETITIONS, SUMMONS, AND PRE-HEARING PROCESS FOR FAMILY IN NEED OF SERVICES (FINS)

4-11-1 Procedures for Family in Need of Services (FINS) Petitions

A. A petition regarding an alleged family in need of court-ordered services and/or temporary protective custody 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 or Incapacitated Adult, and family. All Court proceedings initiated by a petition under shall be prepared and filed by PASS. The petition shall contain the following information:

1. The name and birth date of the child or Incapacitated Adult;

2. The name of the mother, parents or custodian of the child; or the guardian or caretaker of the Incapacitated Adult;

3. The name of the child's Indian tribe if the child is an Indian child;

4. The basis of the Court's jurisdiction;

5. An allegation that the child, Incapacitated Adult or family is in need of Court-ordered services, and a plain statement of facts supporting the allegation;

6. Any facts relevant to the present physical or legal custody of the child or Incapacitated Adult;

7. 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;

8. Whether temporary custody of the child or Incapacitated Adult is requested by PASS; and

9. A statement of any other relief requested by PASS.

B. A petition alleging child or Incapacitated Adult 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 or Incapacitated Adult. 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.

4-11-2 Hearings

A. Generally - conduct of hearings; findings; dismissal; dispositional matters; time limitations; intervention.

1. All hearings shall be recorded by stenographic notes, or by electronic, mechanical or other appropriate means.

2. All hearings regarding a family in need of court-ordered services, child or adult maltreatment, protective custody or related matters shall be closed to the general public, except the parties, the parties' counsel, family members, spiritual & community leaders and advisors, witnesses and other persons.

3. A child or Incapacitated Adult may be excluded from a hearing only if the Court makes a finding that there is a compelling reason to exclude the child or Incapacitated Adult and states the factual basis for the finding.

4. Only the parties, the parties' counsel, family members, and other persons approved by the Court to intervene, pursuant to a finding of good cause, 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.

5. 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.

B. Hearings on Family in Need of Services Petitions, Protective Order and Related Petitions

1. When PASS petitions the Court for family in need of court-ordered services, protective custody of a child or Incapacitated Adult, a finding of child or Incapacitated Adult maltreatment or related matters, a hearing

shall be held within ten (10) business days from the date the petition is filed to determine if the child or Incapacitated Adult should remain with the parent(s)(in the case of a child), guardian, caretaker, or family or be placed in the custody of PASS pending adjudication, and to make preliminary findings regarding child maltreatment. 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.

2. The parent, guardian or custodian of the child or Incapacitated Adult, 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 or Incapacitated Adult. 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.

   a. At a hearing regarding a Family in Need of Services petition, the Court shall determine if the allegations of 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, shall make and record its findings.

   b. 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.

   c. When the Family in Need of Services/custody hearing is conducted, the Court shall release the child or Incapacitated Adult to his parent(s)(in the case of a child), guardian or custodian unless probable cause exists to believe that:

      i. the child or Incapacitated Adult is suffering from an illness or injury, and the parent(s), guardian or custodian is not providing adequate care for the child or Incapacitated Adult;

      ii. the child or Incapacitated Adult is in immediate danger from the child's or Incapacitated Adult’s surroundings, and removal from those surroundings is necessary for the child's or Incapacitated Adult’s safety, welfare or well-being;

iii. the child or Incapacitated Adult's will be subject to child or Incapacitated Adult maltreatment by others if not placed in the custody of PASS;

iv. a parent, guardian or custodian of the child or Incapacitated Adult, nor any other person, is unable or unwilling to accept custody or unwilling to provide adequate supervision and care for the child of the child or Incapacitated Adult, including a refusal to provide essential needs, or non-emergency and non-routine medical or personal care.

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

a. 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.

b. 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.

c. If a child or Incapacitated Adult is a member of another Indian tribe, the Indian tribe in which the child or Incapacitated Adult is a member may intervene unless the court finds such intervention is not in the best interests of the child or Incapacitated Adult.

d. 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.

4. At the conclusion of the hearing, if the Court determines that protective custody, court ordered services and a preliminary finding of child or Incapacitated Adult maltreatment pending adjudication is appropriate, or if the court determines that probable cause exists pursuant to Subsection of this Section, the Court may:

a. Return the child or Incapacitated Adult to the child's parent, guardian or custodian, subject to conditions that will reasonably assure the safety and well-being of the child or Incapacitated Adult, including protective supervision by PASS; or

b. Order custody of the child or Incapacitated Adult to PASS.

c. In the case of children, the order, including any subsequent orders pertaining to the child's removal from the home, shall contain a written determination that:

i. "it is contrary to welfare of the children to remain in the home" where removal occurred and for which custody was lost , accompanied by specific written findings as to why the removal and order for the child to be in the Pueblo's custody is necessary; and

ii. "active and reasonable efforts to prevent removal of the children " has been made, accompanied by specific written findings as to what efforts have been made to prevent the removal of the children from the home; AND/OR

iii. any other language or determinations necessary for Title IV-E assistance payments to be made, pursuant to any current or future Joint Powers Agreements between the Pueblo and New Mexico Child, Youth and Family Services Department.

5. At the conclusion of the hearing, if the court determines that probable cause does not exist, the Court shall:

a. retain jurisdiction and, unless the Court permits otherwise, order that the respondent and child remain in the jurisdiction of the Court pending the adjudication;

b. return legal custody of the child or Incapacitated Adult to the child's parent(s), guardian or custodian with conditions to provide for the safety and well-being of the child or Incapacitated Adult, including protective supervision by PASS; and

c. order that the child's or Incapacitated Adult's parent(s), guardian or custodian allow the child necessary contact with the child's or Incapacitated Adult's guardian ad litem or attorney.

d. As needed, make findings regarding child or Incapacitated Adult maltreatment.

e. Order the parent, custodian or guardian, and child to engage PASS for family services.

6. In addition to any disposition made by the Court, the Court may order the child or Incapacitated Adult, and their 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 or Incapacitated Adult maltreatment, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the best interests of the child or Incapacitated Adult, 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.

7. For children and or Incapacitated Adult, active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's or Incapacitated Adult's health and safety.

8. 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. Adjudicatory Hearings

1. An Adjudicatory Hearing for an alleged family in need of court-ordered services, child or Incapacitated Adult maltreatment or protective custody shall be commenced within sixty (60) days after the date of service of the petition on the respondent.

2. 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.

3. 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 Plan that serves the best interests of the child or Incapacitated Adult.

D. Dispositional Hearings; Predisposition studies, reports and examinations

1. The Court may hold the Dispositional Hearing in conjunction with, or separate from, the Adjudicatory Hearing at its discretion.

2. 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.

3. Prior to holding a dispositional hearing, the Court may direct that a predisposition report be submitted in writing to the Court by PASS. The predisposition report shall include PASS' active efforts to achieve the Permanency Plan. The predisposition report shall contain the following information:

   a. a statement of the parent(s)'s, guardian(s)'s, or custodian(s)'s ability to care for the child or Incapacitated Adult in the parent(s)'s, guardian(s)'s, or custodian(s)'s home without causing harm to the child or Incapacitated Adult;

   b. a statement of how a Permanency Plan or case plan is designed to achieve placement of the child or Incapacitated Adult in the least restrictive setting available, consistent with the best interests and special needs of the child or Incapacitated Adult, including a statement of the likely harm the child or Incapacitated Adult may suffer as a result of being removed from the parent(s)'s, guardian(s)'s, or custodian(s)'s home, including for children, any emotional harm that may result due to separation from the child's parent(s), and a statement of how the 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 best interests of the child or Incapacitated Adult;

   c. the wishes of the child as to the child's custodian if the child is over twelve (12) years of age;

   d. whether the child or Incapacitated Adult has a family or extended family member who, subsequent to a report by PASS, is determined to be qualified to care for the child or Incapacitated Adult;

   e. a description of services offered to the child or Incapacitated Adult, the child's or Incapacitated Adult's family and the child's resource or foster family and a summary of active efforts made to prevent removal of the child or Incapacitated Adult from the child's or Incapacitated Adult's family, guardian, or caretaker; or active efforts made to reunite the child with the child's or Incapacitated Adult's family, guardian, or caretaker;

   f. a description of the home or facility in which the child or Incapacitated Adult is placed and the appropriateness of the child's or Incapacitated Adult's placement;

   g. the results of any diagnostic examination or evaluation ordered at the FINS Petition hearing in §4-11-2 et. seq.;

h. a statement of the child's or Incapacitated Adult's medical and educational background;

i. in the case of a child, whether the placement preferences of the Pueblo were followed and whether the child's Plan provides for maintaining the child's cultural ties;

j. A Plan that sets forth steps to ensure that the child's or Incapacitated Adult's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child or Incapacitated Adult's and the child's or Incapacitated Adult's parent(s), guardian(s), or custodian(s) to facilitate placement of the child (in the case of a child, permanent placement) or Incapacitated Adult's in the parent(s)'s), guardian(s), or custodian(s) home or appropriate facility;

k. 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

l. in the case of a child, a 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 Plan that specifically sets forth the child's educational and post-secondary school goals; and

m. in the case of a child, 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 best interests of the child.

4. A copy of the predisposition report shall be provided by PASS to counsel for all parties five (5) days before the Dispositional Hearing.

5. If the child or Incapacitated Adult is an adjudicated abused or neglected child or Incapacitated Adult, any temporary custody orders shall remain in effect until the Court has received and considered the pre-dispositional report at the dispositional hearing.

E. Disposition of adjudicated victim of child or Incapacitated Adult maltreatment

1. At the conclusion of the Dispositional Hearing, the Court shall make and include in the dispositional judgment its findings on the following:

   a. the interaction and interrelationship of the child or Incapacitated Adult with the person's parent(s), siblings, guardian(s), custodian(s) and any other person who may significantly affect the best interests of the child or Incapacitated Adult;

   b. the child's or Incapacitated Adult's adjustment to their home, school and community as applicable;

   c. the mental and physical health of all individuals involved;

   d. in the case of a child, the wishes of the child as to the child's placement;

   e. the wishes of the child's or Incapacitated Adult's parent(s), guardian(s) or custodian(s) as to the child's or Incapacitated Adult's custody;

   f. whether there exists a relative of the child or Incapacitated Adult, or other individual who, after report by PASS, is found to be qualified to receive and care for the child or Incapacitated Adult;

   g. the availability of services recommended in the Plan prepared as a part of the predisposition report in accordance with the provisions of §4-11-2(D).

   h. the ability of the parent(s), guardian(s), or custodian(s) to care for the child or Incapacitated Adult in the home, or appropriate facility, so that no harm will result to the child or Incapacitated Adult;

   i. whether active efforts were used by PASS to prevent removal of the child or Incapacitated Adult from the home or facility prior to placement in resource family or treatment foster care family and whether active efforts were used to reunify the child with the natural parent or in the case of an Incapacitated Adult their guardian(s), custodian(s), or family;

   j. in the case of children, 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

k. in the case of children, whether placement preferences have been followed and whether the Indian child's 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.

2. If a child or Incapacitated Adult 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 or Incapacitated Adult:

a. permit the child or Incapacitated Adult to remain with the child's or Incapacitated Adult's parent(s), guardian or custodian, subject to those conditions and limitations the court may prescribe;

b. place the child or Incapacitated Adult under protective supervision of PASS; or

c. in the case of a child, transfer legal custody of the child to any of the following:

i. the noncustodial parent, if it is found to be in the best interests of the child;

ii. an agency responsible for the care of neglected or abused children; or

iii. 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.

d. in the case of an Incapacitated Adult, the Court may enter its judgment making any of the following dispositions to protect the welfare and safety of the adult:

i. Appoint a guardian or conservator of the person and/or estate of the Incapacitated Adult in accordance with this Title;

C. Order that the Incapacitated Adult be placed in a safe and suitable living arrangement, including with family members or in a residential care facility, provided that such placement is the least restrictive alternative and in the best interests of the adult;

D. Direct PASS to provide or coordinate ongoing protective services, case management, or support consistent with the adult's abilities and consent;

iv. Order any person, agency, or caregiver to take necessary action to prevent further abuse, neglect, or exploitation of the adult, or to implement a safety plan approved by the Court;

v. Issue any restraining order or protective order necessary to prevent contact or harm to the adult; or

vi. Make any other disposition consistent with the welfare of the adult and the laws and customs of the Pueblo of Acoma.

3. If a child or Incapacitated Adult is found to be abandoned , neglected or abused, in its dispositional judgment the Court shall also order PASS to implement, and the child's or Incapacitated Adult's parent(s) , guardian or custodian to cooperate, with any Plan approved by the Court. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's or Incapacitated Adult's health and safety. 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 or Incapacitated Adult to aggravated circumstances.

4. Any parent, guardian or custodian of a child or Incapacitated Adult who is placed in the legal custody of PASS or other person shall have reasonable rights of visitation with the child or Incapacitated Adult as determined by the Court, unless the Court finds that the best interests of the child or Incapacitated Adult preclude any visitation.

5. The Court may order reasonable visitation between a child or Incapacitated Adult placed in the custody of PASS and the child's siblings, family, or any other person who may significantly affect the best interests of the child or Incapacitated Adult, if the Court finds the visitation to be in the best interests of the child or Incapacitated Adult.

6. In the case of a child, 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.

7. 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 report and any other information it has pertinent to the care and treatment of the child or Incapacitated Adult.

8. Prior to a child or Incapacitated Adult being placed in the custody or protective supervision of PASS, including prior to any order of guardianship or conservatorship of an Incapacitated Adult, 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.

9. When a child or Incapacitated Adult is placed in the custody of PASS, including upon order of guardianship of an Incapacitated Adult, PASS shall investigate whether the child or Incapacitated Adult 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 or Incapacitated Adult's behalf if ordered guardianship.

10. When parents have met all requirements of a Permanency Plan, if any, then a Permanency Hearing shall be held pursuant to §4-11-2(H).

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

1. A judgment vesting legal custody of a child or Incapacitated Adult, including order of guardianship or conservatorship of an Incapacitated Adult in the Pueblo/PASS shall remain in force for an indeterminate period not exceeding two (2) years for FINS cases from the date entered.

2. A judgment vesting legal custody of a child or Incapacitated Adult in the child's or Incapacitated Adult'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, in the case of a child, until the child reaches the age of majority

3. 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 or Incapacitated Adult by and through the child's or Incapacitated Adult's guardian ad litem, attorney, or lay advocate.

4. Prior to the expiration of a judgment transferring legal custody, including order of guardianship or conservatorship of an Incapacitated Adult, to

the Pueblo/PASS, the Court may extend the judgment for additional periods if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

5. 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.

G. Periodic review of dispositional judgments

1. Judicial Review hearings of dispositional judgements in relation to FINS and/or custody determinations shall be held within ninety 90 days of the dispositional judgement. At the judicial review hearings, the parties shall demonstrate to the Court active efforts made to implement the Plan approved by the Court in its dispositional order. The Court shall determine the extent to which the Plan has been implemented, review compliance with previous orders and make supplemental orders as necessary to ensure compliance with the Plan and the safety of the child.

2. Based on its findings at a judicial review hearing, the Court shall order one of the following dispositions:

   a. Dismiss the action and, in the case of a child, 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, or in the case of an Incapacitated Adult, terminate protective supervision or guardianship if the Court finds that the conditions or impairments that led to the finding of incapacity, abuse, or neglect have been corrected or no longer exist;

   b. Permit the child or Incapacitated Adult to remain with the child's or Incapacitated Adult's parent(s) , guardian or custodian subject to those conditions and limitations the Court may prescribe, including protective supervision of the child or Incapacitated Adult by PASS;

   c. In the case of a child, return the child to the child's parent(s) and place the child under the protective supervision of PASS;

   d. In the case of a child, transfer or continue legal custody of the child to:

      i. a noncustodial parent, if that is found to be in the best interests of the child;

ii. 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

iii. PASS, subject to the provisions of Paragraph 5 of this Subsection;

e. In the case of an Incapacitated Adult, transfer or continue guardianship or conservatorship of the Incapacitated Adult to:

i. A guardian or conservator of the Incapacitated Adult and/in accordance with this Title, if that is found to be in the best interests of the Incapacitated Adult;

ii. Modify or limit the powers of the guardian, conservator, or custodian to ensure the Incapacitated Adult's rights and preferences are protected and that the arrangement remains the least restrictive alternative;

iii. Order additional services or case planning by PASS, family, or caregivers to improve the Incapacitated Adult's welfare or access to medical support;

f. Continue the child or Incapacitated Adult's in the legal custody, or order of guardianship or conservatorship of an Incapacitated Adult, of PASS with or without any required parental, or prior guardian/conservator, involvement in a Plan. Active efforts shall be made to preserve and reunify the family, with the paramount concern being the child's or Incapacitated Adult'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:

i. the efforts would be futile; or

ii. the parent(s) , guardian or custodian has subjected the child or Incapacitated Adult to aggravated circumstances;

3. Make additional orders regarding the Plan or placement of the child or Incapacitated Adult to protect the best interests of the child or Incapacitated Adult if the Court determines PASS has failed in implementing any material provision of the Plan or abused its discretion in the placement or proposed placement of the child or Incapacitated Adult; or

4. If during a review hearing the Court finds that the child's or Incapacitated Adult's parent(s) , guardian or custodian has not complied with the Court-ordered Plan, the Court may order:

    a. The child's or Incapacitated Adult'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 or guardianship rights.

H. Child Permanency Hearings; Permanency Review Hearings

1. A permanency hearing shall be commenced within six (6) months of the initial judicial review of the child's dispositional order or within twelve (12) months of a child or youth entering resource family or foster care, whichever occurs first. Permanency review hearings shall be held every twelve (12) months thereafter, for as long as the child remains in the Pueblo's custody. A judicial determination must be made that "active and reasonable efforts have been made to finalize the Permanency Plan" at the first permanency hearing and each permanency hearing thereafter, as long as the children remains in the Pueblo's custody, or pursuant to any requirements of any current or future Joint Powers Agreements between the Pueblo and New Mexico Children, Youth and Families Services Department.

2. 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:

    a. reunification;

    b. 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;

    c. placement with a person who will be the child's permanent guardian;

    d. placement in the legal custody of PASS with the child placed in the home of a fit and willing relative; or

    e. 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.

3. 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.

4. 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.

5. 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:

    a. Change the plan to one of the alternative plans provided in this Section;

    b. Dismiss the case and return custody of the child to the child's parent(s) , guardian or custodian; or

    c. 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 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 best interests of the child 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.

6. 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 Court-appointed Special Advocate (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.

I. Transition services

1. 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 for Aging Out. PASS shall assist the child in identifying and planning to meet the child's needs after the child's eighteenth (18^{th}) birthday, including housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.

2. PASS shall present the child's proposed Transition Plan for Aging Out to the Court at the first hearing scheduled after the child's seventeenth (17^{th}) birthday.

3. The Court shall order a transition plan for the child. The Transition Plan for Aging Out approved by the Court shall be reviewed at every subsequent review and permanency hearing.

J. Discharge hearing

1. At the last review or permanency hearing held prior to the child's eighteenth (18^{th}) birthday, the Court shall review the Transition Plan for Aging Out and shall determine whether PASS has made active efforts to implement the requirements of this Section.

2. The Court shall determine:

a. 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;

b. 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;

c. whether assistance in obtaining Medicaid has been provided to the child, unless the child is ineligible for Medicaid; and

d. whether referral for a guardianship or limited guardianship if the child is incapacitated has been made.

3. If the Court finds that PASS has not made active efforts to meet all the requirements 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.

K. Parental responsibility

1. 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 to calculate a reasonable payment.

2. The Court may enforce any of its orders issued pursuant to this section by use of its contempt power.

4-11-3 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.

C. PASS refuses to litigate the motion for the suspension or termination of parental rights, guardianship or fails to act in a timely manner pursuant to §4-12-1, et. seq. or §4-13-1 et. seq. respectively.

PART V – CHILD GUARDIANSHIP

CHAPTER 12 - CHILD GUARDIANSHIP

4-12-1 Purposes

A. The purposes of this Chapter are to:

1. Establish procedures to effect a legal relationship between a child and a kinship caregiver, or caregiver with a close relationship to the child, where the child is not residing with either parent for more than ninety (90) consecutive days or either parent is unlikely to return for the foreseeable future and that arrangement leaves the child without appropriate care, guidance or supervision; and

2. Provide a child with a stable and consistent relationship with a kinship caregiver whenever possible, or alternatively, a caregiver with a close relationship to the child, 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.

3. Procedures to establish guardianships for Incapacitated Adults are only found in §4-9-1 et. seq.

4-12-2 Petition; Who May File; Contents

A. A petition seeking the appointment of a guardian for a child, 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.

C. 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 or 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;

a. the names and addresses of the parents of the child;

b. the names and addresses of persons having legal custody of the child;

c. the existence of any matters pending involving the custody of the child;

6. 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;

7. 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;

8. the existence of any matters pending involving PASS and, if so, a statement that PASS consents to the relief requested in the petition;

9. 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

10. other facts in support of the guardianship sought.

4-12-3 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 ;

a. the child if the child has reached the age of fourteen (14);

b. the parents of the child;

c. a person having custody of the child or visitation rights pursuant to a court order; and

C. 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) .

D. 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.

E. 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.

4-12-4 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 §4-12-3(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 §4-12-3(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 §4-12-3(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 §4-12-3(B).

4-12-5 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 sixteen (16) 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.

4-12-6 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.

K. The Court, in its discretion, may order annual review hearings for permanent guardianship. Review hearings shall not be ordered more frequently than once per year, unless good cause is shown.

4-12-7 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.

4-12-8 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 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.

4-12-9 Revocation of Guardianship

A. Any person, including a child who has reached his sixteenth (16^{th}) birthday, may move for revocation of a guardianship created pursuant to this Chapter . The person requesting revocation shall attach to the motion a Plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A 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 Plan proposed by a party or the guardian ad litem;

2. propose and adopt its own Plan; or

3. order the parties to develop a Plan by consensus if they will agree to do so.

4-12-10 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, including *but not limited to* medical and mental health care, and education related decisions, 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. Letters of guardianship may be issued by the Court.

4-12-11 Continuing Jurisdiction of the Court

The Court appointing a guardian pursuant to this Chapter retains continuing jurisdiction of the matter.

4-12-12 Caregiver's Affidavit

A. Purpose: The purpose of this Section is to authorize a limited and temporary delegation of certain caregiving powers to a person with whom a child resides, without transferring legal custody or affecting parental rights. A caregiver's affidavit executed pursuant to this Section permits the caregiver to enroll the child in educational and early intervention programs, consent to routine medical, dental, and mental health care, and act as the child's authorized school contact, subject to the continuing rights of a parent or other person having legal custody of the child, who may revoke a caregiver's affidavit at any time.

B. 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, prescriptions, immunizations, sports physical examinations, dental care, vision, mental health care; and

3. be the authorized contact person for school-related purposes.

C. 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 .

D. A caregiver's affidavit executed pursuant to this Section is not valid for more than one (1) year after the date of its execution.

E. 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.

F. 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.

G. A person who relies upon a caregiver's affidavit is under no duty to make further inquiry or investigation.

H. 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.

I. 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.

J. 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.

K. 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 12 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.

PART VI –SUSPENSION OF PARENTAL RIGHTS AND CUSTOMARY ADOPTION

Chapter 13 - SUSPENSION OF PARENTAL RIGHTS

4-13-1 Policy

Suspension of parental rights and customary adoptions 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.

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.

4-13-2 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 pursuant to the Court's rules of procedure; 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.

4-13-3 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 in 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. Standard for Suspension: 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 subsection are met.

D. Standard for Termination: 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; and criteria set forth in this subsection (E) are met.

E. Criteria:

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.

4-13-4 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.

4-13-5 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. The burden of proving the allegations of the petition shall be upon the petitioner. 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.

4-13-6 Final Order for Suspension or Termination 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 of parental rights. Such an order for the suspension or termination of parental rights may also include, but is not limited, to the following:

1. The necessary findings as set forth in §4-13-5(D);

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. Prohibiting 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 or termination of parental rights shall be served upon the biological parent(s) or other agencies, including PASS, 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 itself 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.

D. 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.

CHAPTER 14 - CUSTOMARY ADOPTION

4-14-1 Customary Adoption

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.

4-14-2 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.

4-14-3 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, and why returning the child to the home where removal occurred would be contrary to the welfare of the child;

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, if PASS petitions for adoption or once had custody of the child; and

10. A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

4-14-4 Investigative Report

If PASS once had custody of the child, or if PASS is the petitioner for tribal customary adoption, PASS shall provide the Court with an investigative report, to be attached to the petition for adoption unless otherwise indicated by written order of the Court. 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.

4-14-5 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 §4-14-4 .

B. Notice shall be sent to:

1. the child's Indian tribe;

2. the petitioner/adoptive parent(s);

3. PASS, if it ever had custody of the child; 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 a 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.

4-14-6 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 ith Acoma 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.

C. Burden and Criteria. 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.

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

E. 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.

4-14-7 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.

6. Any statements that may be required for the adoptive family/child to receive Title IV-E assistance pursuant to any current or future Joint Powers Agreements between the Pueblo and NM CYFD.

4-14-8 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.

PART VII – PROCEDURES FOR IMPLEMENTING INDIAN CHILD WELFARE ACT (ICWA)

Chapter 15 - PROCEDURES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT

4-15-1 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 §4-1-2 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 or a person he authorizes and designates to act on his behalf ("Designee").

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 §4-1-2 of this Title. Further, the Governor will seek to transfer the case or administrative matter the Pueblo Tribal Court.

4-15-2 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 or his Designee 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 or his Designee 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.

4-15-3 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 and any named Designee 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 or his Designee 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 or his Designee 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 or his Designee makes a determination pursuant to Subsection C (2), no further action shall be taken by the Pueblo.

2. In all other cases, the Governor or his Designee 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 or his Designee shall determine what action, if any, is to be taken by the Pueblo. The decision of the Governor or his Designee is final and not subject to appeal.

PART VIII – CHILD CUSTODY AND SUPPORT

Chapter 16 - CHILD CUSTODY

4-16-1 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 divorce, 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.

4-16-2 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.

4-16-3 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 .

4-16-4 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.

4-16-5 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.

4-16-6 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.

4-16-7 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.

4-16-8 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.

4-16-9 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.

4-16-10 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

4-16-11 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

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.

4-16-12 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.

4-16-13 Child Support. Child support shall be governed by Chapter 17 of this Title .

4-16-14 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.

4-16-15 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.

4-16-16 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 17 - CHILD SUPPORT

4-17-1 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.

4-17-2 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.

4-17-3 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.

4-17-4 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.

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.

4-17-5 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 as to whether child support payments should be made by wage withholding or by direct deposit;

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 §4-17-8.

4-17-6 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.

4-17-7 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.

4-17-8 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.

4-17-9 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.

4-17-10 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.

4-17-11 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.

4-17-12 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 circumstances 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.

4-17-13 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.

4-17-14 Calculation of Child Support Guidelines and Schedule

A. In any action to establish or modify child support, the Child Support Guidelines and Schedule 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. The court may not deviate from a child support order or modification imputing, at least, minimum wage employment by a parent without clear and convincing evidence.

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.

4-17-15 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.

PART IX – DOMESTIC RELATIONS AND PROBATE

Chapter 18 - DOMESTIC RELATIONS

Annotation: This 08-2026 Restatement clarifies the elements of a traditional Acoma marriage so that the Acoma Court can issue marriage certificates for traditional marriages. The term "divorce" replaces "legal separation" (from marriage). The divorce provision also creates an exemption for victims of domestic violence (and related abuses) from participating in the traditional process with a family meeting, including their spouse and elders, now required for legal separation. Other minor changes were made but are not described here.

4-18-1 Marriages

A. All marriages of a Pueblo of Acoma member shall be recognized if performed according to the Pueblo of Acoma laws, laws of the state of their

residence or according to tribal custom. All marriages recognized previous to this replacement are valid and recognized under this Code.

B. Traditionally married parties may request a certificate, and the court may issue a certificate for a marriage according to tribal custom upon demonstration of a Pueblo ceremony and if the marriage was witnessed (solemnization) in accordance with Acoma law, custom and tradition. The marriage registry shall be maintained by the Court.

C. The Chief Judge of the Court, or an associate 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.

4-18-2 Divorce Procedures

A. Before any Pueblo of Acoma member or resident of the Acoma Community can petition the Court for a divorce, Acoma cultural practices must be followed. These practices require a traditional family meeting regarding separation, followed if necessary, by meeting with Tribal Sheriffs . The Court has no jurisdiction to act on a petition for divorce 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 divorce.

B. The Court has the discretion to act on a petition for divorce without evidence that the cultural practices outlined in Subsection A of this provision have been followed if a petitioning party can show by probable cause that they are protected party pursuant to a protection order, or a victim of sexual assault, domestic violence, stalking or duress.

C. Scope of divorce. In a decree of divorce, the Court may address the following issues, in accordance with Acoma traditions and custom when necessary, 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. Divorce procedure.

1. Proceedings for divorce shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided.

3. If either party in a proceeding for divorce 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 divorce. 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 divorce, the Court may order a spouse to pay temporary maintenance and support money.

G. Criteria for maintenance. In a proceeding for divorce, 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 divorce

1. The provisions of any decree of divorce 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 divorce 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 divorce respecting child custody may be modified according to this Title .

4. The provisions of any decree of divorce 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 divorce or other Court order, the obligation to pay future maintenance is terminated upon the death of either party.

J. Rights and liabilities of divorced persons. Once divorced:

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 divorce.

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 divorce. A decree of divorce is final when entered, subject to the right of appeal in accordance with Section 1-5-5 of the Pueblo of Acoma Laws 2003 as amended.

4-18-3 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 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 attributed to the moving party contesting paternity unless the parties agree to divide the costs.

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 §4-17-4.

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 19 – Probate

Annotation: This 08-2026 Restatement restructures probate provisions into procedures “with a will” and “without a will”. Both sections now include provisions for the Court to issue formal documents (i.e. Letters Testamentary) necessary for estate settlement.

4-19-1 Probate with a Will

A. Approval of Wills

1. 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.

2. A will may be in writing or recorded on audio or video. 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.

3. 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 or video , 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 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.

4. 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.

5. 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.

6. If the will is declared invalid, the case will be handled by the Court as a determination of heirship under §4-19-2.

B. Letters Testamentary.

If requested by a party, the Court shall formally recognize the personal representative of a deceased person's estate who is an executor of the estate as named in a valid will, or another person authorized to act on behalf of a deceased person's estate, pursuant to the deceased person's will and/or tribal law and custom based on the decision of the elders and Tribal Sheriffs, or the Court, as a final resort. The court shall require that personal representative to accept the duties of that office. Upon such acceptance, the court shall issue Letters Testamentary to the personal representative to act on behalf of the deceased person's estate. The Letters Testamentary shall contain the following information and language:

"Notice is now given that (name of person authorized to act on behalf of deceased person's estate) has been appointed to serve as the personal

representative of the estate of _____, and has qualified as the personal representative of the estate of the decedent by filing with the court a statement of acceptance of the duties of that office. The personal representative has all of the powers and authorities provided by law."

4-19-2 Probate Without a Will

A. Inheritance within Acoma Community, requires that family elders meet to settle the estate and to transfer property following a death, especially when the deceased person did not have a will. 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 and probate 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.

C. If requested by an interested party, pursuant to A and B of this Section, the Court shall appoint a personal representative of a deceased person's estate to be the person authorized to act on behalf of a deceased person's estate, pursuant to tribal law and custom based on the decision pursuant to Subsection A of this Section. The court shall require that personal representative to accept the duties of that office. Upon such acceptance, the court shall issue Letters of Administration to the personal representative to act on behalf of the deceased person's estate. The Letters of Administration shall contain the following information and language:

"Notice is now given that _____ (name of personal representative) has been appointed to serve as the personal representative of the estate of _____, and has qualified as the personal representative of the estate of the decedent by filing with the court a

statement of acceptance of the duties of that office. The personal representative has all of the powers and authorities provided by law."