

## **TITLE X - CHILDREN'S CODE**

### **ARTICLE 1 - GENERAL PROVISIONS**

- Sec. 10-1-1 Title
- Sec. 10-1-2 Purposes
- Sec. 10-1-3 Definitions
- Sec. 10-1-4 Establishment of Children's Court
- Sec. 10-1-5 Jurisdiction; Contempt
- Sec. 10-1-6 Transfers from Other Courts
- Sec. 10-1-7 General Procedures; Timely Issuance of Orders; Computation of Time
- Sec. 10-1-8 Preference of Placement under the Children's Code
- Sec. 10-1-9 Conduct of Hearings
- Sec. 10-1-10 Emergency Hearings
- Sec. 10-1-11 Contents of a Petition filed Pursuant to the Children's Code
- Sec. 10-1-12 Informal Resolution
- Sec. 10-1-13 Child Support
- Sec. 10-1-14 Powers and Duties of the Department
- Sec. 10-1-15 State Services
- Sec. 10-1-16 Confidentiality of Records Regarding Children
- Sec. 10-1-17 Appeals

### **ARTICLE 2 - CHILD ABUSE AND NEGLECT**

- Sec. 10-2-1 Duty to Report; Criminal Penalty; Civil Penalty
- Sec. 10-2-2 Investigation
- Sec. 10-2-3 Protective Custody; Place of Protective Custody; Notice and Time Limits
- Sec. 10-2-4 Initiation of Abuse and Neglect Proceedings
- Sec. 10-2-5 Emergency Custody Order
- Sec. 10-2-6 Custody Hearing
- Sec. 10-2-7 Adjudicatory Hearing on Petition: Abuse and Neglect Proceedings
- Sec. 10-2-8 Pre-disposition Report
- Sec. 10-2-9 Proposed Case Plan
- Sec. 10-2-10 Disposition Hearing: Abuse and Neglect Proceedings
- Sec. 10-2-11 Limitations on Disposition Orders
- Sec. 10-2-12 Disposition Review Hearings
- Sec. 10-2-13 Pre-Permanency Planning
- Sec. 10-2-14 Permanency Hearing
- Sec. 10-2-15 Permanency Review Hearings
- Sec. 10-2-16 Permanent Guardianship
- Sec. 10-2-17 Permanent Guardianship Procedures

### **ARTICLE 3 - KINSHIP GUARDIANSHIP**

- Sec. 10-3-1 Kinship Guardianship
- Sec. 10-3-2 Kinship Guardianship Procedures

#### **ARTICLE 4 - TERMINATION OF PARENTAL RIGHTS**

- Sec. 10-4-1 Grounds for Termination of Parental Rights
- Sec. 10-4-2 Procedures to Terminate Parental Rights

#### **ARTICLE 5 - ADOPTION**

- Sec. 10-5-1 Petition for Adoption
- Sec. 10-5-2 Pre-Adoption Investigation
- Sec. 10-5-3 Disposition Hearing: Petition for Adoption
- Sec. 10-5-4 Consent to Adoption
- Sec. 10-5-5 Adoption Decree
- Sec. 10-5-6 Rights under Adoption Decree

#### **ARTICLE 6 - JUVENILE OFFENDERS**

- Sec. 10-6-1 Taking a Child into Custody for a Juvenile Offense
- Sec. 10-6-2 Provision of Rights
- Sec. 10-6-3 Place of Detention
- Sec. 10-6-4 Detention Hearing
- Sec. 10-6-5 Initiation of Juvenile Proceedings
- Sec. 10-6-6 Transfer to Contemporary Court
- Sec. 10-6-7 Adjudicatory Hearing: Juvenile Proceedings
- Sec. 10-6-8 Disposition Hearing: Juvenile Proceedings
- Sec. 10-6-9 Disposition Orders: Juvenile Proceedings
- Sec. 10-6-10 Effect of Proceedings under this Article
- Sec. 10-6-11 Expungement

## **TITLE X - CHILDREN'S CODE**

### **ARTICLE 1 - GENERAL PROVISIONS**

#### **Sec. 10-1-1 Title**

This Title shall be known as the Santa Ana Pueblo Children's Code.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### **Sec. 10-1-2 Purposes**

The purposes of this Title are to provide means to protect children from abuse and neglect; to provide services to children and families that are in need; to establish standards and procedures for kinship guardianship, termination of parental rights, and adoption; and to establish appropriate judicial procedures and consequences for juvenile offenders. This Title shall be liberally interpreted in order to achieve its purposes.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### **Sec. 10-1-3 Definitions**

As used in this Title, the following terms shall have the following meanings:

A. "Abandoned" means a parent, guardian, or custodian has failed to ensure reasonable support for and regular contact with a child for an unreasonable period without justifiable cause.

B. "Abused or neglected child" means a child:

1. who has suffered or is at risk of suffering serious emotional or physical harm due to the action or inaction of the child's parent, guardian, or custodian;

2. who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, or custodian;

3. whose parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child in a situation that endangers the child's life or health;

4. whose parent, guardian, or custodian has tortured, cruelly confined, or cruelly punished the child;

5. who has been abandoned by the child's parent, guardian, or custodian;

6. who is without parental care and control or whose subsistence, education, medical care, or other care or control necessary for the child's well-being is seriously inadequate 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;

7. whose parent, guardian, or custodian failed to take reasonable steps to protect the child from physical or sexual abuse when the child's parent, guardian, or custodian knew or should have known of the abuse;

8. whose sole parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or mental disorder or incapacity; and/or

9. who is subject to compulsory school attendance and is habitually absent from school without good reason.

Nothing herein shall be construed to imply that a child who is being treated solely by spiritual or traditional means is for that reason alone an abused or neglected child.

C. "Adjudicatory hearing" means a proceeding to determine whether a child is an abused or neglected child or has committed a juvenile offense.

D. "Adult" means a person eighteen (18) years of age or older.

E. "Child" means a person under eighteen (18) years of age who is: (1) an enrolled member of the Pueblo, eligible for enrollment with the Pueblo, or a child of an enrolled member of the Pueblo, wherever the child resides or is domiciled; (2) an Indian who resides or is domiciled within the jurisdiction of the Pueblo; or (3) otherwise subject to the jurisdiction of the Pueblo.

F. "Children's Court" means a division of the Contemporary Court established by this Code with jurisdiction over all proceedings in which a child is alleged to be an abused or neglected child or a juvenile offender.

G. "Custodian" means an adult with whom the child lives who is not a parent or guardian.

H. "Code" means this Santa Ana Pueblo Children's Code.

I. "Department" means the Santa Ana Pueblo Social Services Department.

J. "Disposition hearing" means a proceeding to determine how to resolve a case after it has been determined that a child is an abused or neglected child or has committed a juvenile offense.

K. "Foster care home" means a home licensed and certified by the Department or the State of New Mexico to provide care for children who are in the custody of the Department, the State of New Mexico, or another jurisdiction.

L. "Guardian" means a person appointed by a court of competent jurisdiction or by a power of attorney signed by a parent to care for a child.

M. “Juvenile offender” means a child who, before his or her eighteenth (18th) birthday, commits a juvenile offense.

N. “Juvenile offense” means (1) an act committed by a child that would be designated a criminal offense under Pueblo law if the act had been committed by an adult; (2) the purchase, attempt to purchase, receipt, or possession of any alcoholic beverage by a child; (3) the escape by a child who has been adjudicated a juvenile offender from the custody of a law enforcement officer or from any placement made by the Department or the Children’s Court; or (4) the violation by a child of an order of protection.

O. “Kinship caregiver” means an adult who is not a parent of the child but who is a relative of the child who provides the child with the care, maintenance, and supervision that a parent would provide to a child and is the person with whom the child resides.

P. “Law enforcement officer” means a peace officer employed by Santa Ana Pueblo Tribal Police Department or commissioned to enforce Santa Ana Pueblo law.

Q. “Legal custody” means a legal status created by order of the Children’s Court or other court of competent jurisdiction, or by operation of statute that vests in a person one or more of the following rights: 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; and the right to consent to major medical, psychiatric, psychological, and surgical treatment.

R. “Parent” means a biological or adoptive parent but does not include a person whose parental rights have been legally terminated or relinquished.

S. “Protective custody” means temporary physical custody of a child without a court order, in accordance with Sec. 10-2-3 (Protective Custody), and the provisions of this Code.

T. “Protective services” means services furnished by the Department or under arrangement through the Department to a child, and, as appropriate, the child’s family members, parents, guardians, or custodians with the consent of the parents, guardians, or custodians, or pursuant to court order. Protective services may include social, psychiatric, health, and other services to detect, correct, or eliminate abuse and neglect.

U. “Protective services worker” means a person who has been selected and trained pursuant to the requirements established by the Department to provide protective supervision and other services and who assists in carrying out the provisions of this Title.

V. “Protective supervision” means supervision by the Department ordered by the Children’s Court, whereby the Department has the authority to visit a 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.

W. “Tribal Police” means the Santa Ana Pueblo Tribal Police Department.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-4 Establishment of Children's Court

There is established in the Contemporary Court a division to be known as the Children's Court. Unless a judge has been specifically appointed as a Children's Court judge and is acting in that capacity and is available, any formally appointed Contemporary Court judge may perform the duties of a Children's Court judge on a full-time, part-time, or as-needed basis.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-5 Jurisdiction; Contempt

A. The Children's Court shall have jurisdiction over all proceedings in which a child is alleged to be an abused or neglected child, is alleged to be a juvenile offender, or is subject to adoption or kinship guardianship, provided that the Traditional Court shall have exclusive jurisdiction over traditional adoptions.

B. The Children's Court has the power and authority to issue orders to show cause to compel parties to appear at trial or comply with court orders. The Children's Court, at its discretion, may issue fines or bench warrants if an individual is found to be in contempt of court.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-6 Transfers from Other Courts

The Children's Court may accept or decline, in its discretion, requests from the Contemporary Court, other tribal courts, or from state courts to transfer to the Children's Court a case involving an abused or neglected child, or an alleged juvenile offender, provided that the Children's Court shall accept a transfer from the Contemporary Court of a case where a child has been charged criminally in the Contemporary Court, provided that where Sec. 10-6-6 (B) (Transfer to Contemporary Court) may apply, the Children's Court shall hold a hearing no later than the following business day after the case was transferred from the Contemporary Court to the Children's Court to determine whether the case should remain in the Children's Court or should be transferred back to Contemporary Court.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-7 General Procedures; Timely Issuance of Orders; Computation of Time

A. Except as otherwise provided in this Code, hearings under this Title shall be conducted in accordance with the Rules of Procedure for the Contemporary Court. All motions, pleadings, and petitions filed with the Children's Court pursuant to this Code shall be served on all parties.

B. All orders shall be timely issued. When the Children's Court is required by this Code to issue an order after a hearing, the court shall issue the order no later than ten (10) days after the hearing.

C. When computing a time period specified in either the Children's Code or an order of the Children's Court:

1. exclude the day of the event that triggers the time period, and
2. include the last day of the time period, but, if the last day of the time period is a Saturday, Sunday, or day that the court is closed, then the period continues to run until the next day that is not a Saturday, Sunday, or day that the court is closed.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-8 Preference of Placement under the Children's Code

A. When a child is removed from the custody of his or her parent, guardian, or custodian under this Title, preference shall be given to the following placements, listed in order of priority, in the absence of good cause to the contrary:

1. a member of the child's extended family who is willing to guarantee that the child will not be returned to the child's parent, guardian, or custodian without the prior approval of the Department or the Children's Court;
2. a Pueblo member and resident who is willing to guarantee that the child will not be returned to the child's parent, guardian, or custodian without the prior approval of the Department or the Children's Court;
3. a foster care home licensed by the Pueblo and located within the territorial jurisdiction of the Pueblo; or
4. a foster care home licensed by the state or another tribe that is located outside the territorial jurisdiction of the Pueblo.

B. Placement of a child outside the external boundaries of the Pueblo does not divest the Children's Court of jurisdiction over the child.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-9 Conduct of Hearings

Hearings under this Title shall be conducted as follows:

A. Hearings shall be conducted without a jury. Hearings may be continued or recessed from time to time and, in the interim, the Children's Court may take such action and issue such orders as it deems in the best interests of the child, in accordance with the provisions of this Code. The court shall exclude the general public from these hearings and shall admit only those

persons who, in the discretion of the court, have a direct interest in the case or in the work of the court.

B. The petitioner or movant shall have the burden of proof.

C. Each child, parent, guardian, or custodian who is a party to an action brought under this Title has the right to be represented by an attorney or advocate, at his or her own expense.

D. The Children's Court may appoint a guardian-ad-litem to protect the interests of the child when it appears at any stage of the proceeding that such action is necessary, and the court believes that such an appointment is desirable.

E. Except in juvenile offender proceedings, the Children's Court may waive the presence of the child in court at any stage of the proceedings when it is in the best interest of the child to do so. In a juvenile offender proceeding, after the child is adjudicated as having committed the juvenile offense(s) that is (are) the subject of that proceeding, the court may excuse the presence of the child from the hearing when it is in the best interest of the child to do so. In any proceeding, the court may temporarily excuse the presence of the parent, guardian, or custodian of the child when it is in the best interests of the child to do so. The lay counsel, professional attorney, or guardian ad litem of an excused party, if any, has the right to continue to participate in any proceedings during the absence of the child, parent, guardian, or custodian.

F. The child and his or her parent, guardian, or custodian are entitled to be heard, to present evidence material to the case, and to confront and cross-examine witnesses, and shall not be deprived of the privilege against self-incrimination.

G. The Children's Court shall provide to all parties to a proceeding reasonable notice of the time and location of any hearing in the proceeding.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-10 Emergency Hearings

A. For good cause shown, or upon the Children's Court's own motion, the Children's Court may hold one or more emergency hearings.

B. Notice of an emergency hearing shall be given to counsel and unrepresented parties by the most expeditious means available, including telephone, email, or similar means.

C. By prior arrangement with the Children's Court, a party may attend an emergency hearing telephonically or by electronic means.

D. The timing of an emergency hearing shall be at the discretion of the Children's Court.

E. At the conclusion of an emergency hearing, the Children's Court shall issue appropriate orders, in writing.



Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-1-11 Contents of a Petition filed Pursuant to the Children's Code

A. A petition filed pursuant to the Children's Code shall state:

1. the name and address of the petitioner;
2. the child's name, date of birth, and residence;
3. the name or names of the respondent or respondents;
4. the name and residence of the child's parent, guardian, or custodian;
5. the facts necessary to invoke the jurisdiction of the Children's Court;
6. the relief sought;
7. the facts supporting the relief sought; and
8. whether the child has been taken into custody, and if so, who has custody of

the child.

B. If any matter required to be set forth in a petition is not known, the petitioner shall state that such matter is unknown.

C. The statements in a petition may be made upon information and belief.

D. The petition shall be verified, signed, and filed with the court clerk, who shall place on the petition the date of filing and assign a docket number to the matter.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-1-12 Informal Resolution

A. At any time after the initiation of a proceeding under this Title and before the entry of judgment, the parties may reach an informal resolution of the allegations in the petition.

B. Before any informal resolution, the Children's Court may suspend court proceedings and shall inform the respondent(s) of the rights afforded under Sec. 10-1-9 (Conduct of Hearings) if the matter were to proceed to a formal hearing.

C. An admission of some or all of the allegations in the petition shall not be required for an informal resolution.

D. Statements made by the child and the child's parent, guardian, or custodian at a proceeding conducted pursuant to this Section shall not be subsequently used against the person who made the statement in determining the truth of the allegations in the petition.

E. If the matter is informally resolved, the proposed informal resolution shall be presented to the Children's Court and the Court shall issue a written order that sets forth the terms of the informal resolution, as appropriate. The Children's Court may suspend proceedings and require continued supervision of the child and/or the child's parent, guardian, or custodian for up to twelve (12) months, or until the child and/or the child's parent, guardian, or custodian is released from supervision, whichever occurs first.

F. If the respondent fails to abide by or fulfil the terms of the informal resolution or if a new petition under this Title is filed before the respondent is released from supervision under an informal resolution, the Children's Court may extend the period of the informal resolution, or revoke the informal resolution and make any other disposition that would have been appropriate in the original proceeding.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-13 Child Support

If, under any provision of this Code, a child is placed with a person other than his or her parent, and the Children's Court determines that the child's parent(s) is(are) financially able to pay child support, the court shall order the parent to pay the reasonable costs of support and maintenance of the child.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-14 Powers and Duties of the Department

A. Subject to funding availability, the Department shall employ protective service workers to carry out its duties under this Title.

B. The Department shall:

1. develop, maintain, and update as needed a process to receive a report that a child is believed to be an abused or neglected child;
2. assess such child and the child's situation to determine what immediate protective services, protective custody, or protective supervision may be required;
3. conduct a prompt and thorough investigation to determine if a report that a child is an abused or neglected child is substantiated;
4. document evidence, observations, and other information obtained in the course of an investigation;

5. file a petition to adjudicate a child as an abused or neglected child when it determines that the filing of the petition is in the best interest of the child;

6. establish an evaluation or assessment process to conduct a pre-disposition evaluation of a child for whom a petition has been filed and conduct such evaluations;

7. take a child into protective custody when warranted in accordance with the provisions of this Article;

8. develop a plan to provide the child and his or her family with, or referral to, protective services or other intervention service;

9. ensure that the protective services or protective custody provided by or through the Department is the least restrictive setting, provided that the safety and well-being of the child is the paramount concern; and

10. when requested by the Children's Court, supervise a child who has been adjudicated to be a juvenile offender, provide protective supervision, prepare home studies and other reports, and provide assistance to behavioral health, welfare, and other social service agencies that have primary responsibility over a matter pending before the Children's Court.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-15 State Services

In any proceeding under this Code, the Children's Court and the Department may access services for any child that are available to other children in the State of New Mexico. The Children's Court shall retain jurisdiction over any child receiving such services.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-16 Confidentiality of Records Regarding Children

A. The Department's records regarding any activities it undertakes pursuant to this Title, and any services or referrals provided, are confidential and may be viewed only by authorized representatives of the Department, law enforcement personnel, a prosecutor appointed to handle any case on behalf of the Pueblo under this Title, and the parties to a case pending before the Children's Court and their attorneys.

B. The Children's Court's records of proceedings under this Title shall be kept as follows:

1. The Children's Court shall keep a record of the proceedings. The Children's Court records shall include the petition, summons, notice, findings, orders, decrees, judgments and motions, and such other documents as the Children's Court Judge deems necessary and proper. The records shall be open at all reasonable times to inspection and copying by any child to whom the records relate; his or her parent, guardian, or custodian and their attorneys; authorized representatives of the Department; law enforcement personnel; a prosecutor appointed

to handle any case on behalf of the Pueblo under this Title; and, with the permission of the Children's Court, such other persons whom the court determines have valid reasons to see the records.

2. Except as provided in subsection B(1) of this Section or as to information required to be included in the Pueblo's sex offender registry, or as required by applicable law, none of the records of the Children's Court shall be open to public inspection or their contents disclosed.

C. Tribal Police records pertaining to alleged or adjudicated juvenile offenders shall not be open to the public or disclosed to the public, except for information required to be included in the Pueblo's sex offender registry, or by order of the Children's Court. The police shall not photograph or fingerprint for identification purposes any alleged or adjudicated juvenile offenders without the consent of the Children's Court. The foregoing prohibition does not prevent police from photographing a child in connection with an investigation under this Title.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-1-17 Appeals

A. Any party may appeal from a final order of the Children's Court in the manner provided for under Pueblo law.

B. The appeal shall be heard by the appellate court upon the record of the Children's Court.

C. Files and records that are required to be kept confidential by this Code shall be kept confidential in the same manner by the appellate court.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

### **ARTICLE 2 - CHILD ABUSE AND NEGLECT**

#### Sec. 10-2-1 Duty to Report; Immunity; Criminal Penalty; Civil Penalty

A. Any person who has reasonable cause to believe that a child is an abused or neglected child as defined in this Title shall immediately report that information to the Department or the Tribal Police. Such reports may be made anonymously. The Tribal Police shall immediately forward any report it receives to the Department for investigation.

B. The report may be made orally or in writing, and shall include:

1. the name, and address or location of the child believed to be an abused or neglected child, and the name, address or location, and phone number(s) of the child's parent, guardian, or custodian;

2. the nature and extent of the child's injuries or health deficiencies, if any; and

3. other information that might be helpful in establishing the cause of the abuse or neglect and the identity of the person responsible for the abuse or neglect.

C. Any person who makes a report pursuant to this Section, testifies in any judicial proceeding arising from that report, or provides information or documents in the course of the Department's investigation of a report, shall be immune from civil or criminal liability on account of that report, testimony, or participation in an investigation, unless the information or documentation provided is false, and the person acted in bad faith or with a malicious purpose.

D. Any person subject to the jurisdiction of the Santa Ana Pueblo Tribal Court who knowingly fails to make a report required by this Section, or who obstructs or impedes any investigation of a report made pursuant to this Section, or who provides false information, documentation, or testimony in bad faith or with a malicious purpose may be subject to a civil fine of no more than five thousand dollars (\$5,000.00).

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-2 Investigation

A. After receiving a report that a child is an abused or neglected child, the Department shall conduct a safety check on the child, and any other child under the same care who may be an abused or neglected child or in danger of becoming an abused or neglected child, to determine whether there are reasonable grounds to believe that the child is an abused or neglected child and whether there is an immediate threat to the child's safety. If there are such grounds, the Department shall take the child into protective custody pursuant to Sec. 10-2-3 (Protective Custody).

B. If the report indicates that the child may be in immediate danger, then the Department must conduct the safety check within twenty-four (24) hours after receiving the report. Otherwise, the Department shall conduct the safety check as soon as possible, but no later than seventy-two (72) hours after receiving the report.

C. Investigations may include interviews of the child and the child's family and any other person having personal knowledge of the relevant circumstances. Prior to interviewing a child, the Department shall notify the child's parent, guardian, or custodian, unless the Department reasonably determines that notification would adversely affect the child's safety or compromise the investigation.

D. The Department shall complete the investigation promptly, but no later than five (5) days after the date the report was received.

E. Upon completion of the investigation, the Department shall file a petition in accordance with Sec. 10-2-4 (Initiation of Abuse and Neglect Proceedings) if the evidence indicates that the child is an abused or neglected child. The Department shall close the case file if the evidence does not indicate that the child is an abused or neglected child.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-3 Protective Custody; Place of Protective Custody; Notice and Time Limits

A. A child may be taken into protective custody by a law enforcement officer or protective services worker when there exist reasonable grounds to believe that the child is an abused or neglected child and that there is an immediate threat to the child's health or safety that can only be remedied by removal.

1. A runaway child is presumed to be an abused or neglected child unless a law enforcement officer has filed a petition in conformity with Sec. 10-6-5 (Initiation of Juvenile Proceedings), alleging that the child has committed a juvenile offense.

2. If a law enforcement officer takes a child believed to be an abused or neglected child into protective custody, he or she shall immediately deliver the child to the Department, unless the child is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, in which case the officer shall deliver the child to a medical facility and notify the Department that the child has been placed in the Department's protective custody.

3. If a protective services worker takes a child believed to be an abused or neglected child into protective custody, he or she shall immediately notify the Tribal Police of the facts supporting the decision to take the child into protective custody.

B. In accordance with the preferences set forth in Sec. 10-1-8 (Preference of Placement), a child taken into protective custody shall be placed in the least restrictive setting within reasonable proximity to the child's home. A child taken into protective custody shall not be placed 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 juvenile offenders.

C. When a child is taken into protective custody, the Department shall:

1. immediately notify the child's parent, guardian, or custodian that the child has been taken into protective custody and disclose the child's location, unless there are reasonable grounds to believe that the disclosure of the location could jeopardize the child's safety; and

2. with reasonable speed, release the child to the child's parent, guardian, or custodian and issue counsel or a warning, as may be appropriate.

D. If a child taken into protective custody is not released to the child's parent, guardian, or custodian within twenty-four (24) hours after being taken into protective custody, the Department shall, within such period, give written notice to the child's parent, guardian, or custodian of the reasons for taking the child into protective custody.

E. A child taken into protective custody shall be released to the child's parent, guardian, or custodian within seventy-two (72) hours, unless:

1. a petition has been filed in accordance with this Code; and

2. the Children's Court has issued a written order awarding legal custody of the child to a person other than the child's parent, guardian, or custodian.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-4 Initiation of Abuse and Neglect Proceedings

Proceedings under this Article 2 (Child Abuse and Neglect) shall be initiated by the filing by the Department of a petition in conformity with Sec. 10-1-11 (Contents of a Petition).

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-5 Emergency Custody Order

A. At the time a petition is filed alleging that a child is an abused or neglected child, or any time thereafter, the Children's Court may issue an emergency custody order upon a sworn, written statement of facts showing probable cause exists to believe that the child is an abused or neglected child and that there is an immediate threat to the child's health or safety that can only be remedied by the issuance of an emergency custody order.

B. Emergency custody orders issued pursuant to this Section shall be valid for no longer than fifteen (15) days, provided that for good cause or upon agreement of the parties such orders can be extended one (1) time for up to fifteen (15) days.

C. The Children's Court shall hold a custody hearing pursuant to Sec. 10-2-6 (Custody Hearing), before the emergency custody order expires.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-6 Custody Hearing

A. Within fifteen (15) days after either: (1) the Department has filed a petition alleging that a child is an abused or neglected child and has asked for custody of the child, or (2) a child alleged to be an abused or neglected child has been taken into custody pursuant to an emergency order, whichever occurs later, the Children's Court shall hold a custody hearing to determine if the child should be placed according to the preferences in Sec. 10-1-8 (Preference of Placement), or remain in the Department's custody.

B. Upon the written motion of the parent, guardian, or custodian of a child who is in the Department's protective custody, the hearing may be held sooner.

C. At the custody hearing, the Children's Court shall release the child to his or her parent, guardian, or custodian unless probable cause exists to believe that:

1. the child is suffering from an illness or injury, and the parent, guardian, or custodian is not providing adequate care for the child;

2. the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary for the child's health or safety;
3. the child will be subject to injury by others if not placed in the legal custody of the Department;
4. the child has been abandoned; or
5. the parent, guardian, or custodian is not able or willing to provide adequate supervision and care for the child.

D. If the Children's Court determines that probable cause exists pursuant to subsection C of this Section, then the Children's Court:

1. may
  - a. return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services, or
  - b. award legal custody of the child to the Pueblo, acting through the Department, provided that the Department shall place the child in accordance with the preferences set forth at Sec. 10-1-8 (Preference of Placement); and
2. shall order the Department to make reasonable efforts to preserve and reunify the family, provided that the Department's paramount concern shall be the safety and well-being of the child.

E. If the Children's Court determines that probable cause does not exist pursuant to subsection C of this Section, then the Children's Court shall return the child to, or permit the child to remain with, his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child pending the resolution of the petition.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

**Sec. 10-2-7 Adjudicatory Hearing on Petition: Abuse and Neglect Proceedings**

A. The Children's Court shall hold an adjudicatory hearing on a petition within thirty (30) days after it was filed, provided that the court may extend the time period once by thirty (30) days for good cause.

B. If at the conclusion of the presentation of evidence, the Children's Court does not find by clear and convincing evidence that the child is an abused or neglected child, then the court shall dismiss the petition with prejudice, provided, however, that if the court determines by a preponderance of the evidence that further investigation is warranted, the court may continue the adjudicatory hearing once by thirty (30) days to allow for such investigation.



C. If the Children's Court finds by clear and convincing evidence that a child is an abused or neglected child, the court shall either immediately proceed to a disposition of the case in accordance with Sec. 10-2-10 (Disposition Hearing: Abuse and Neglect Proceedings) or schedule a disposition hearing for a later date.

D. If the Children's Court opts to schedule a disposition hearing rather than proceed immediately to a disposition of the case, it shall:

1. require the Department to file a pre-disposition report and proposed case plan at least five (5) days prior to the disposition hearing;

2. either

(i) return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services, or

(ii) award legal custody of the child to the Department; and

3. order the Department to make reasonable efforts to preserve and reunify the family, provided that the Department's paramount concern shall be the safety and well-being of the child.

E. An order finding that a child is an abused or neglected child is a final order for purposes of appeal.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-8 Pre-disposition Report

The Department shall prepare a pre-disposition report required pursuant to Section 10-2-8 (D)(1) and file it with the Children's Court and send the report to the child's parent, guardian, or custodian at least five (5) days prior to the disposition hearing or disposition review hearing. A pre-disposition report shall:

A. Describe all efforts to provide remedial services designed to prevent the breakup of the family;

B. Include statements regarding:

1. the Department's specific reason(s) for intervention;

2. the interaction of the child with his or her parents, guardians, or custodians, siblings, and other family members;

3. the child's adjustment and attachment to his or her home, school, community, and the Pueblo;

4. the wishes of the child as to his or her disposition or a statement that the child is unable to articulate his or her wishes;

5. the wishes of the child's parents, guardians, or custodians as to the child's disposition;

6. a description of the home where the child is currently placed, a description of the home where the child will be placed, if different, and the appropriateness of the placement;

7. whether there is a member of the child's extended family or other person who may be qualified to receive and care for the child; and

8. the mental and physical health of the child and the respondent;

C. For pre-disposition reports prepared for disposition review hearings, each report shall also contain statements regarding:

1. the Department's reasonable efforts to implement the case plan approved by the Children's Court;

2. respondent's progress toward eliminating the cause or causes of the child being adjudicated an abused or neglected child; and

3. respondent's efforts toward maintaining contact with the child and whether those efforts were diligent and made in good faith.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-9 Proposed Case Plan

The Department shall prepare a proposed case plan and shall file it with the Children's Court at least five (5) days before the disposition hearing or disposition review hearing. The proposed case plan shall:

A. identify steps to ensure that the child's physical, medical, psychological, and educational needs are met;

B. identify steps needed to facilitate permanent placement of the child in the parent's, guardian's, or custodian's home; and

C. designate a party responsible for each of the steps identified and a time frame for completing the steps.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-10 Disposition Hearing: Abuse and Neglect Proceedings

A. If not held in conjunction with the adjudicatory hearing at which the child was found to be an abused or neglected child, the Children's Court shall hold a disposition hearing within thirty (30) days after the adjudicatory hearing. At the conclusion of the initial disposition hearing and any disposition review hearing, the Children's Court shall prepare a written disposition order that contains findings regarding the applicable matters set forth in Sec. 10-2-8 (Pre-disposition Report) and Sec. 10-2-9 (Proposed Case Plan), and the provisions required by this Section.

B. If the court adjudicated the child as an abused or neglected child, the Children's Court shall make any of the following dispositions to protect the child:

1. return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services; or

2. transfer legal custody of the child to the Pueblo, acting through the Department, and place the child in accordance with the preferences set forth in Sec. 10-1-8 (Preference of Placement), subject to those conditions and limitations that the Children's Court prescribes, including protective supervision and/or protective services.

C. The disposition order shall also:

1. order the Department to implement and the respondent to cooperate with a case plan approved by the court;

2. order the Department to provide reasonable efforts to provide remedial services designed to prevent the breakup of the family; and

3. in the event that the child is placed with a person other than the child's parent, guardian, or custodian, provide the child's parent, guardian, or custodian with reasonable rights of visitation with the child, unless the court determines that visitation would not be in the best interest of the child.

D. A disposition order is a final order for purposes of appeal.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-2-11 Limitations on Disposition Orders

A. A disposition order vesting legal custody of a child in the Pueblo, acting through the Department, shall remain in effect for two (2) years from the date it is entered, unless sooner terminated by order of the Children's Court.

B. A disposition order vesting legal custody of a child in the child's parent, guardian, or custodian shall remain in effect for an indeterminate period from the date it is entered until

terminated by order of the Children's Court or until the child is emancipated or reaches the age of eighteen (18) years.

C. At any time prior to its expiration, a disposition order may be modified, revoked, or extended on motion by any party, provided that a disposition order vesting legal custody of a child in a person other than the child's parent, guardian, or custodian may be extended only upon a showing that the extension is necessary to protect the child and then only for one (1) additional year.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-12 Disposition Review Hearings

A. The Children's Court shall hold a disposition review hearing within six (6) months after the disposition hearing, and thereafter, shall hold a disposition review hearing every six (6) months until the child is permanently placed.

B. At the conclusion of the disposition review hearing, the Children's Court shall prepare a written disposition order that contains findings regarding the matters set forth at Sec. 10-2-10 (A) (Disposition Hearing: Abuse and Neglect Proceedings), and the provisions required by this Section.

C. If the Children's Court finds that the conditions that led to the child being adjudicated an abused or neglected child have been corrected and it is safe for the child to return to or remain in the home, the court shall dismiss the action and return the child to or allow the child to remain with the parent, guardian, or custodian without protective supervision.

D. If the Children's Court finds that the conditions that led to the child being adjudicated an abused or neglected child have not been corrected, the court shall issue a disposition order in accordance with Sec. 10-2-10 (Disposition Hearing: Abuse and Neglect Proceedings) and Sec. 10-2-11 (Limitations on Disposition Orders).

E. The Children's Court shall make supplemental orders as necessary to ensure the child's safety and the parties' compliance with the case plan approved by the court.

F. If during a disposition review hearing the Children's Court determines that the Department, the respondent, or both have failed to implement or comply with any material provision of the approved case plan, the court may order:

1. the appropriate party or parties to show cause why they should not be held in contempt;
2. the Department to file a motion to terminate the parent's, guardian's, or custodian's rights regarding the child;
3. the child to be returned to his or her parent, guardian, or custodian; and/or

4. the case to be dismissed.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-13 Pre-Permanency Planning

A. At least ten (10) days prior the initial permanency hearing, the Department shall meet with the child's parent, guardian, or custodian to attempt to develop a proposed permanency plan that serves the best interest of the child.

B. The Department shall file a notice with the Children's Court that the pre-permanency meeting occurred and whether an agreement was reached. If the parties reached an agreement, the Department shall attach a copy of the proposed permanency plan to the notice.

C. A proposed permanency plan shall describe or identify, as appropriate, the following:

1. the Department's reasonable efforts to provide remedial services to prevent the breakup of the family;

2. the location and type of environment where the child is placed and the location and type of environment where the parties propose to place the child;

3. the propriety of the intended placement and of the services to be provided to meet the needs of the child and the child's family members, parents, guardians, or custodians, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child, or if the services are available, why such services are not appropriate;

4. the date by which it is likely that the child will be returned home or otherwise permanently placed;

5. the steps needed to ensure that the child's physical, cultural, medical, psychological, and educational needs will be met after permanent placement, including identification of the party responsible for each step identified and a time frame for completing each step; and

6. an alternative permanency plan that could be implemented in the event that the primary permanency plan cannot be realized.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-2-14 Permanency Hearing

A. A permanency hearing shall be held within twelve (12) months after the petition was filed. For good cause, the Children's Court may extend the time for the commencement of a permanency hearing up to two times, for no more than three (3) months at a time. The permanency hearing may be held in conjunction with a disposition review hearing.

B. There shall be a rebuttable presumption that a child's best interest will be served by remaining with or returning to the child's parent, guardian, or custodian, which presumption may be overcome by a preponderance of evidence that a child's best interest will not be served by remaining with or returning to the child's parent, guardian, or custodian.

C. At the conclusion of the permanency hearing, the Children's Court shall issue a written permanency plan in accordance with this Section.

D. The court's permanency plan shall include the following findings:

1. whether the Department has made reasonable efforts to provide remedial services to prevent the breakup of the family;

2. the location and type of environment where the child is placed and the location and type of environment where the parties propose to place the child; and

3. the propriety of the intended placement and of the services to be provided to meet the needs of the child and the family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child, or if the services are available, why such services are not appropriate.

E. In addition to the findings in subsection D, the court's permanency plan shall:

1. make any one of the following dispositions: reunification, adoption (after parental rights are terminated), permanent guardianship, or long-term foster care;

2. identify a date by which it is likely that the child will be returned home or otherwise permanently placed;

3. order steps to be taken to ensure the child's physical, cultural, medical, psychological, and educational needs will be met after permanent placement, including identification of the party responsible for each step identified and a time frame for completing each step; and

4. set a permanency review hearing.

F. The Children's Court may also identify in the permanency plan an alternative permanency plan that could be implemented in the event the primary permanency plan cannot be realized.

G. A permanency plan is a final order for purposes of appeal.

## Sec. 10-2-15 Permanency Review Hearings

A. The Children's Court shall hold one or more permanency review hearings to monitor the implementation of the court-approved permanency plan.

B. The timing of permanency review hearings shall be at the discretion of the Children's Court and may be held in conjunction with disposition review hearings.

C. At the conclusion of every permanency review hearing, the Children's Court shall issue appropriate orders, including, but not limited to:

1. returning the child to or permitting the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services;

2. changing the permanency plan from reunification to provide for adoption of the child, emancipation of the child, permanent guardianship for the child, or long-term foster care for the child;

3. dismissing the case upon a finding that the permanency plan has been fulfilled; and/or

4. setting another permanency hearing.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

## Sec. 10-2-16 Permanent Guardianship

A. The Children's Court may establish a permanent guardianship between a child and a guardian when the prospective guardianship is in the child's best interest and when:

1. the child has been adjudicated as an abused or neglected child;

2. the Department has made reasonable efforts to reunify the family and further efforts by the Department would be unproductive;

3. reunification is not in the child's best interest because the parent, guardian, or custodian 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.

B. 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 set forth in the decree of permanent guardianship, if any.

**Sec. 10-2-17 Permanent Guardianship Procedures**

A. A motion for permanent guardianship may be filed by any party to an abuse or neglect proceeding and shall include:

1. the information required by Sec. 10-1-11 (Contents of a Petition);
2. the name and address of the prospective guardian;
3. a statement that the prospective guardian agrees to accept the duties and responsibilities of guardianship; and
4. the relationship of the child to the prospective guardian.

B. The Children's Court shall hold a hearing and provide notice of the hearing in conformity with Sec. 10-1-9 (Conduct of Hearings), and upon conclusion of the hearing shall enter a written order on the motion.

C. The grounds for a permanent guardianship shall be proved by clear and convincing evidence.

D. An order of the Children's Court granting permanent guardianship divests the child's parents of legal custody of the child but is not a termination of parental rights.

E. An order of permanent guardianship is a final order for purposes of appeal, shall remain in effect until the child reaches the age of eighteen (18) years, unless earlier modified or revoked, and may include provisions for visitation with the parents, siblings, or other relatives of the child and any other provisions necessary to provide for the child's safety and well-being.

F. The Children's Court may modify or revoke the order of permanent guardianship upon motion of any party where a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interest to modify or revoke the order.

**ARTICLE 3 - KINSHIP GUARDIANSHIP**

**Sec. 10-3-1 Kinship Guardianship**

A. It is the policy of the Pueblo that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance, and supervision to a child, it is the policy of the Pueblo, whenever possible, that a child should be raised by a kinship caregiver or by a caregiver designated by the child's parents.

B. A kinship guardianship creates a legal relationship between a child and a caregiver when the child is not residing with either parent and provides the child with a stable and consistent relationship with a caregiver that will enable the child to develop physically, mentally,



and emotionally to the maximum extent possible when the child's parents are not willing or able to do so.

C. A guardian appointed under a kinship guardianship has the legal rights and duties of a parent, except the right to consent to adoption of the child and any parental rights and duties that the court orders to be retained by a parent.

D. Children's Court may establish a kinship guardianship when the kinship guardianship is in the child's best interest and when:

1. the parents' consent;
2. all parental rights have been terminated or suspended by prior orders of the court; or
3. the child has resided with the petitioner without the parent for a period of at least ninety (90) days immediately prior to the date the petition was filed, and a parent having legal custody of the child is unwilling or unable to provide adequate care, maintenance, and supervision for the child, or there are extraordinary circumstances that justify the appointment of a guardian.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-3-2 Kinship Guardianship Procedures

A. The following parties may petition the court for a kinship guardianship:

1. a kinship caregiver as defined in Sec. 10-1-3 (Definitions); or
2. a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands:
  - a. the purpose and effect of the guardianship;
  - b. that the parent has the right to be served with the petition and notices of hearings in the action; and
  - c. that the parent may appear in court to contest the guardianship.

B. A petition for kinship guardianship shall include:

1. the information required by Sec. 10-1-11 (Contents of a Petition);
2. a statement that the petitioner agrees to accept the duties and responsibilities of guardianship;
3. the relationship of the child to the petitioner;

- child;
4. the names and addresses of parents and of persons having legal custody of
  5. the reason for the kinship guardianship;
  6. the requested duration of the kinship guardianship; and
  7. the existence of any matters pending pursuant to the provisions of Article 2 of this Code (Child Abuse and Neglect), and, if so, a statement whether the Department consents to the relief requested in the petition.

C. The petition shall be served on all parties; the child's parent, guardian, or custodian; any person having custody of the child or visitation rights pursuant to a court order; and if there are any pending matters relating to the child pursuant to Article 2 (Child Abuse and Neglect), the Department.

D. The Children's Court shall hold a hearing and provide notice of the hearing in conformity with Sec. 10-1-9 (Conduct of Hearings), and upon conclusion of the hearing shall enter a written order on the petition.

E. The grounds for a kinship guardianship shall be proved by clear and convincing evidence.

F. An order of the Children's Court granting kinship guardianship divests the child's parents of legal custody of the child but is not a termination of parental rights.

G. An order of kinship guardianship is a final order for purposes of appeal and shall remain in effect until the child reaches the age of eighteen (18) years, and may include provisions for visitation with the parents, siblings, or other relatives of the child and any other provisions necessary to provide for the child's safety and well-being.

H. The Children's Court may modify or revoke the order of kinship guardianship upon motion of any party where a change of circumstances has been proven by a preponderance of the evidence and it is in the child's best interest to modify or revoke the order.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

## **ARTICLE 4 - TERMINATION OF PARENTAL RIGHTS**

### **Sec. 10-4-1 Grounds for Termination of Parental Rights**

The Children's Court may, upon petition, terminate all parental rights in the following cases:

A. With the written consent of parents who for good cause desire to terminate their parental rights (e.g., in order to facilitate an adoption); or

B. If the court finds by clear and convincing evidence that one or more of the following conditions exist:

1. that the parents have abandoned the child permanently; or
2. that the child has been adjudicated an abused or neglected child, and the court finds that the conditions and causes of the neglect or abuse are unlikely to change in the foreseeable future despite the reasonable efforts by the Department to prevent the breakup of the family.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-4-2 Procedures to Terminate Parental Rights

Parental rights may be terminated as follows:

A. A proceeding to terminate parental rights may be initiated at any time during an abuse or neglect proceeding, or in connection with or prior to an adoption proceeding, by the filing of a petition or motion in accordance with Sec. 10-1-11 (Contents of a Petition). A petition filed during an abuse or neglect proceeding may be brought by any party to the proceeding. A petition or motion filed in connection with or prior to an adoption proceeding may only be brought by the Department or any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem or attorney in another action, a foster parent, or a relative of the child. The petition or motion shall be served on all parties, including the Department if applicable, the child's parent, guardian, or custodian, and on any person having custody of the child or visitation rights pursuant to a court order.

B. The termination of parental rights shall be made only after a hearing before the Children's Court conducted in accordance with Sec. 10-1-9 (Conduct of Hearings).

C. At least ten (10) days before the hearing, the Children's Court shall have a copy of the petition and a notice of the time, place, and purpose of the hearing served on the parties, by personal service and certified mail, return receipt requested. A parent, or a guardian-ad-litem appointed by the Children's Court for an incompetent parent, who consents to the termination of parental rights may waive in writing the notice required by this paragraph.

D. No parental rights of an incompetent parent may be terminated on consent of the parent unless the guardian ad litem appointed for the incompetent parent joins, in writing, in the written consent of the parent for termination of his or her parental rights.

E. That a parent is younger than eighteen (18) years of age shall not by itself be a bar to the right of consent nor shall it invalidate such consent.

F. If, after a hearing at which the parents may be represented by lay counsel or a professional attorney, the Children's Court does not terminate parental rights, but determines that the child is an abused or neglected child, the Children's Court may adjudicate the child to be an

abused or neglected child, and may enter a disposition order in accordance with the provisions of this Code.

G. If, after a hearing at which the parents may be represented by lay counsel or a professional attorney, the Children's Court terminates the parental rights of both parents, the parental rights of the mother if the child's mother is unwed and the paternity of the child has not been acknowledged or established, or the parental rights of the only living parent, the Children's Court shall proceed to adoption or guardianship proceedings.

H. A termination of parental rights shall not extinguish any status, rights, or privileges to the child's Indian ancestry, heritage, or tribal membership.

I. An order terminating parental rights is a final order for purposes of appeal.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

## **ARTICLE 5 - ADOPTION**

### **Sec. 10-5-1 Petition for Adoption**

A. A petition for adoption shall be filed in accordance with Sec. 10-1-11 (Contents of Petition).

B. A petition for adoption may be filed by any adult. A married couple may jointly petition for adoption, but a married petitioner may not adopt a child without the approval of the petitioner's spouse, unless the couple is legally separated or for other reasonable circumstances as determined by the Children's Court.

C. In addition to the requirements set forth in Sec. 10-1-11 (Contents of Petition), the petition shall set forth:

1. place and duration of residence of the petitioner, and, if married, the date and place of marriage or an indication that the petitioner and his or her spouse were married by tribal custom;
2. the child's place of birth, the current residence of the child, and the date, if applicable, when the petitioner acquired custody of the child and how petitioner acquired custody;
3. the place of birth of the child;
4. the adoptive name of the child if a change of name is desired;
5. a statement indicating that it is the desire of the petitioner to adopt the child;
6. any facts forming the basis for the adoption;

7. information on whether consent that has been given to the adoption, any reason why consent need not be given, including, if applicable, a death certificate from the biological parent(s);

8. the existence of any matters pending pursuant to the provisions of Article 2 of this Code (Child Abuse and Neglect), and, if so, a statement whether the Department consents to the relief requested in the petition;

9. the existence of any court orders, including placement orders, that are known to the petitioner and that regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits; and

10. full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.

D. A petition for adoption must be served on the child's parents, guardian(s) or custodian(s), any person having custody of the child or visitation rights pursuant to a court order, and, if there are any pending matters relating to the child pursuant to Article 2 (Child Abuse and Neglect), on the Department.

E. Any written consent required by this section may be attached to the petition or may be filed with the court separately.

F. The petitioner may withdraw his or her petition at any time prior to entry of the adoption decree.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-5-2 Pre-Adoption Investigation

A. Upon the filing of a petition under this Section, the Children's Court shall order the Department to conduct a pre-adoption investigation into the fitness of the petitioner to adopt the child.

B. The investigation shall consider all relevant and material facts dealing with the fitness of petitioner to adopt the child and shall include at a minimum the following factors:

1. the child's and the petitioner's connections with the Pueblo;
2. the mental and physical conditions of the child and the petitioner;
3. the petitioner's financial situation;
4. if the petitioner is a non-member of the Pueblo, the reasons the non-member should be considered suitable to adopt the child, and whether a member is suitable to adopt the child;

5. all other factors that impact the fitness of the petitioner and all members of the petitioner's household;

6. if and when the child's biological parents' rights were terminated or relinquished;

7. the child's ancestry;

8. whether the adoption between the child and the petitioner and his or her family is a suitable match; and

9. If the child is fourteen (14) years of age or older the wishes of the child.

C. The investigator shall conclude his or her report within ninety (90) days after the filing of the petition. The report shall include a definite recommendation for or against the placement of the child with the petitioner and the reasons for that recommendation.

D. Prior to the final adoption decree, the Children's Court may require additional investigation if it finds that the welfare of the child would be served thereby.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-5-3 Disposition Hearing: Petition for Adoption

The hearing on the petition shall not be held until after the investigation required under Sec. 10.40 (Pre-Adoption Investigation), is completed, except that said time period may be waived upon the showing of good cause. Upon submission of the investigative report, the Court shall set and conduct a hearing in accordance with Sec. 10-1-9 (Conduct of Hearings). The petitioner shall be provided the opportunity to respond to the determinations in the investigative report.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-5-4 Consent to Adoption

A. No adoption shall be granted unless consent to the adoption has been obtained and filed with the Children's Court from the following parties as applicable:

1. the adoptee's parents,

2. the adoptee's proposed adoptive parent(s);

3. the Pueblo, acting through the Department, or any other person or entity that has legal custody of a child pursuant to an order from a court of competent jurisdiction and who is given authority by that court to consent to the child's adoption.

B. An incompetent parent cannot consent to an adoption unless the guardian ad litem appointed for the incompetent parent joins, in writing, in the written consent of the parent to the adoption.

C. Consent shall not be required from a biological father of an adoptee conceived as the result of rape or incest, or from any person who failed to respond when given notice of the petition pursuant to Sec. 10-5-1 (D) (Petition for Adoption).

D. The Children's Court may grant the adoption without the consent of the Department if, after a hearing, the court determines that there is sufficient evidence to conclude that it is in the best interest of the child to do so. In such a case, the Children's Court shall make written findings of facts upon which its order is founded.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

### Sec. 10-5-5 Adoption Decree

A. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

1. the court has jurisdiction to enter a decree of adoption affecting the adoptee;
2. the adoptee has been placed with the petitioner for a period of ninety (90) days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty (180) days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;
3. all necessary consents, relinquishments, terminations or waivers have been obtained;
4. a pre-adoption investigation has been completed and the recommendation in the report is for placement of the child with the prospective adoptive parent(s), unless, in the case of a negative recommendation, the court finds sufficient evidence presented to conclude the placement is in the best interests of the child;
5. all requirements of this Code have been met, including that service of the petition for adoption has been made as to all persons entitled to notice pursuant to provisions of Sec. 10-5-1 (Petition for Adoption); and
6. the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption.

B. Adoption preferences shall be made in accordance with Sec. 10-1-8 (Preference of Placement).

C. The adoption decree shall be in writing and shall recite the findings upon which the determination is based, including findings pertaining to the court's jurisdiction.

D. An adoption decree shall be effective and binding on all persons from date of entry and shall be considered a final order for purposes of appeal.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-5-6 Rights under Adoption Decree

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

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

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

D. Notwithstanding anything in this section to the contrary, the adoption decree shall not extinguish any status, rights, or privileges to the child's Indian ancestry, heritage, or tribal membership.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

**ARTICLE 6 - JUVENILE OFFENDERS**

Sec. 10-6-1 Taking a Child into Custody for a Juvenile Offense

A. A law enforcement officer may take a child into custody for a juvenile offense without a warrant or court order when:

1. the child commits a juvenile offense in the presence of the officer;
2. the officer has reasonable suspicion to believe that a juvenile offense has been committed by the child; or
3. the Children's Court has issued an appropriate custody order or warrant.

B. The taking of a child into custody under the provisions of this Section shall not be considered an arrest.

C. A law enforcement officer taking a child into custody shall notify the child's parent, guardian, or custodian as soon as possible. This requires all reasonable efforts, including



telephone and personal contacts at the home, place of employment, or other locations the person to be notified is known to frequent, and if the child's parent, guardian, or custodian cannot be notified, all reasonable efforts shall be made to notify an adult member of the child's extended family.

D. After taking a child into custody for a juvenile offense and unless otherwise directed by an appropriate custody order or warrant, a law enforcement officer shall:

1. release the child to the custody of his or her parent, guardian, or custodian unless the immediate welfare of the child or the protection of the community requires that the child be detained; or

2. if the immediate welfare of the child or the protection of the community requires the detention of the child, notify the Children's Court and the child's parent, guardian, or custodian of the place of detention as soon as possible, and:

a. deliver the child to a place of detention as provided in Sec. 10-6-3 (Place of Detention); or

b. deliver the child to a medical facility if the child is believed to need prompt medical treatment or is under the influence of alcohol or other substances.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-2 Provision of Rights

At the time that a law enforcement officer takes a child into custody as an alleged juvenile offender, the officer shall inform the child that:

A. the child has the right to remain silent;

B. anything the child says can be used against the child in court;

C. the child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and

D. the child has the right to an advocate or attorney at his or her own expense.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-3 Place of Detention

A. A child may be detained in one of the following places:

1. A licensed foster care home approved by the Children's Court; or

2. A juvenile residential care facility or a juvenile detention facility designated by the Children's Court as suitable for the care of the child, provided that any such facility must

provide coverage twenty-four (24) hours a day, seven days a week, and must separate detained children by gender; or

3. A suitable placement identified in Sec. 10-1-8 (Preference of Placement), in accordance with the preferences set forth therein.

B. Children shall not be detained in a detention facility which houses adults.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-4 Detention Hearing

A. Within twenty-four (24) hours after a child has been taken into custody pursuant to this Article 6 and detained, the Children's Court shall hold a detention hearing to determine whether the child should be released or detained pending the adjudicatory hearing.

B. The Children's Court shall inform the child of the accusations against him or her.

C. The child may present evidence of personal recognizance or of the ability of his or her parent, guardian, or custodian to provide adequate supervision.

D. The Children's Court shall release the child to the child's parent, guardian, or custodian unless:

1. The act is serious enough to warrant continued detention;

2. There is probable cause to believe the child has committed the act alleged;

and

3. Either:

a. there is reasonable cause to believe that the child will run away so that he or she will be unavailable for further proceedings; or

b. there is reasonable cause to believe that the child will commit a serious act causing damage to persons or property.

In making the foregoing determination, the court may consider the child's record or juvenile offense history and other relevant information.

E. The Children's Court may require a bail or bond to be posted.

F. No child may be held longer than forty-eight (48) hours unless a petition has been filed.

G. The Children's Court shall issue a written order stating the reasons for the continued detention or release of the child. If the Children's Court's determination is to continue the child's detention, the order shall include the physical location and length of time of detention. If the Children's Court's determination is to release the child, the order shall state the conditions for

release, if any, including, as applicable, the identity of the person to whom the child is released, where the child will stay pending the proceedings, curfew, compliance with Pueblo laws, and other conditions necessary to insure the child's safety and appearance before the Children's Court.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-5 Initiation of Juvenile Proceedings

Proceedings under this Article 6 (Juvenile Offenders) shall be initiated by the filing of a petition by a law enforcement officer in conformity with Sec. 10-1-11 (Contents of a Petition).

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-6 Transfer to Contemporary Court

A. The Children's Court shall transfer to the Contemporary Court any case involving a person alleged to have committed a juvenile offense who was actually eighteen (18) years of age or older at the time of the offense. Cases transferred to Contemporary Court shall proceed pursuant to the rules and procedures governing Contemporary Court.

B. The Children's Court may transfer to the Contemporary Court any case involving a child sixteen (16) years of age or older who is alleged to have committed a serious or violent juvenile offense when, after a hearing conducted in accordance with Sec. 10-1-9 (Conduct of Hearings) held after the detention hearing but before the adjudicatory hearing, and the Children's Court finds by clear and convincing evidence that:

1. there are no reasonable prospects for rehabilitating the child through the resources available to the Children's Court; and
2. the offense(s) allegedly committed by the child evidence a pattern of conduct that constitutes a substantial danger to the public.

C. For the purposes of this section, a violent juvenile offense is an offense in which someone has been injured and requires medical attention. A serious juvenile offense is an offense that would be a felony if it were charged under federal law or the laws of the State of New Mexico.

D. An order transferring a case to Contemporary Court must be in writing and contain specific findings with regard to the factors set forth in subsection B of this Section.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-6-7 Adjudicatory Hearing: Juvenile Proceedings

A. The Children's Court shall hold an adjudicatory hearing on a petition to determine whether a child has committed a juvenile offense. The hearing shall be conducted in accordance with Sec. 10-1-9 (Conduct of Hearings).

B. If the child is in custody, the hearing shall be held within ten (10) days after the petition was filed; if the child is not in custody, the adjudicatory hearing shall be held within thirty (30) days after the petition was filed.

C. For good cause, the Children's Court may extend the time for the commencement of an adjudicatory hearing one time, by up to five (5) days when the child is in custody, and by up to fifteen (15) days when the child is not in custody.

D. Before accepting an admission by the child to the allegations of the delinquency petition, the Children's Court shall ask the child, in language the child will easily understand, whether:

1. the child understands his or her rights under Sec. 10-6-2 (Provision of Rights), of this Title;
2. the child's admission is voluntary; and
3. the child understands the nature of the proceedings, including the purpose of the adjudication hearing and the consequences of an admission.

E. The Children's Court shall not accept an admission until it determines, based on the child's answers to the foregoing and other relevant circumstances that:

1. the child fully understand each of the items set forth in subsection D;
2. the child voluntarily, intelligently, and knowingly admits all facts sufficient to support a finding that the child committed a delinquent act and that there is independent, admissible evidence corroborating such admission;
3. the child has not set forth facts, that if found to be true, would be a defense to the allegations in the petition; and
4. that there are no other compelling factual or legal bases for declining to accept the admission.

F. If at the conclusion of the presentation of evidence, the Children's Court does not find by beyond a reasonable doubt that the child has committed a juvenile offense, then the court shall dismiss the petition with prejudice. If the Children's Court determines beyond a reasonable doubt that an offense has been committed, but that the child was actually eighteen (18) years of age or older at the time of the offense, the Children's Court shall transfer the case to the Contemporary Court.

G. If the Children's Court finds on the basis of a valid admission of the allegations in the petition or on the basis of proof beyond a reasonable doubt that a child has committed a juvenile offense, the court shall either proceed immediately to a disposition of the case or schedule a disposition hearing in accordance with Sec. 10-6-8 (Disposition Hearing: Juvenile Proceedings).

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

Sec. 10-6-8 Disposition Hearing: Juvenile Proceedings

A. If not held in conjunction with the adjudicatory hearing at which the child was found to be a juvenile offender, the Children's Court shall hold a disposition hearing within thirty (30) days after the adjudicatory hearing.

B. For good cause, the Children's Court may extend the time for the commencement of a disposition hearing one time, by up to five (5) days when the child is in custody, and by up to fifteen (15) days when the child is not in custody.

C. If the Children's Court opts to schedule a disposition hearing rather than proceed immediately to a disposition of the case, it may order:

1. A pre-disposition study and report concerning the child;
2. A medical assessment of the child;
3. An evaluation of the child by a qualified psychiatrist, psychologist, or other licensed medical professional; and/or
4. An examination and/or evaluation of the parents, guardians, or custodians of a child by a physician, psychiatrist, or psychologist.

D. Any such study, examination, or evaluation shall be conducted on an outpatient basis unless the Children's Court determines that placement in a hospital or other appropriate facility is necessary, in which case the Children's Court may order the transfer of a child adjudicated as a juvenile offender to a hospital or other appropriate facility for a period of not more than thirty (30) days for such study, examination, or evaluation, and may continue the disposition hearing for a period not to exceed sixty (60) days.

E. If the Children's Court adjudicates the child as a juvenile offender, it shall make one or more of the following dispositions that it determines are in the best interest of the child:

1. Permit the child to remain with his or her parent, guardian, or custodian, subject to such conditions and limitations as the court may prescribe;
2. Place the child in the legal custody of a relative, other suitable person, or the Pueblo acting through the Department, subject to such conditions and limitations as the court may prescribe;

3. Place the child in foster care home;
4. Place the child in a juvenile residential care facility or a juvenile detention facility that meets the requirements of Sec. 10-6-3 (Place of Detention);
5. Order the child, parent, guardian, and/or custodian to pay restitution for actual damages suffered due to the juvenile offense;
6. Impose a fine not to exceed the fine that could be imposed if the child were an adult;
7. Order the child to perform community service;
8. Prohibit the child from operating a motor vehicle within the external boundaries of the Pueblo;
9. Order the child to attend a course designed to improve driving skills;
10. Place the child under the supervision of the Department or other suitable person;
11. Order the Department to provide protection supervision to the child and/or protective services to the child and his or her parent, guardian, or custodian; and/or
12. If the child is in need of special treatment and care for his or her physical or mental health, refer the child for such treatment.

F. The child's parent, guardian, or custodian and any person or entity that has legal custody of a child shall report to the Children's Court, as the court may direct.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

**Sec. 10-6-9 Disposition Orders: Juvenile Proceedings**

- A. At the conclusion of the initial disposition hearing and any disposition review hearing, the Children's Court shall prepare a written disposition order containing its factual findings and one or more dispositions.
- B. All juvenile disposition orders shall be for an indeterminate period unless otherwise specified by the Children's Court.
- C. A juvenile disposition order is a final order for purposes of appeal.
- D. The Children's Court shall review juvenile disposition orders at least once every six (6) months.

E. The Children's Court may, after a hearing and upon good cause, modify, revoke, or extend a juvenile disposition order at any time upon the motion of the child, the child's parents, guardian, or custodian, or other interested party.

F. All review hearings and hearings to modify, revoke, or extend a juvenile disposition order shall be conducted in accordance with Sec. 10-1-9 (Conduct of Hearings).

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-10 Effect of Proceedings under this Article

A. An adjudication that a child is a juvenile offender shall not be deemed a conviction of a crime, nor shall it impose any civil disabilities ordinarily resulting from the conviction of a crime.

B. Neither the disposition of the child nor any evidence given by the child before the Children's Court shall be admissible as evidence against the child in any case or proceeding in any other court, including the Contemporary Court.

C. Nothing in this Section shall be construed to relate to subsequent proceedings in the Children's Court, or to preclude the Children's Court from disclosing information to qualified persons if the court considers such disclosures to be in the best interest of the child.

D. The protections of this Section do not apply to matters transferred to the Contemporary Court pursuant to Sec. 10-6-6 (Transfer to Contemporary Court), or to information required to be included in the Pueblo's sex offender registry.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.

#### Sec. 10-6-11 Expungement

The Children's Court may expunge the adjudication of a juvenile offender at any time that it deems advisable except for adjudications pursuant to which a juvenile offender must register as a sex offender.

Enacted by Resolution No. 2016-R-65, adopted November 15, 2016.