

TITLE III CHILDREN'S CODE

Historical Note

Legislative History. Title III - Children's Code was first enacted by the Eastern Shoshone and Northern Arapaho Tribes in 1988. Certain amendments to the Children's Code were approved by the Eastern Shoshone Tribe in 2000. The Northern Arapaho Tribe approved most of the amendments to the Code,

pursuant to its legislative process, on July 28, 2003. The following provisions are those which have been enacted by both the Eastern Shoshone and the Northern Arapaho Tribes and fully replace the 1988 version of the Code. Effective date: September 1, 2003.

CHAPTER 1 GENERAL PROVISIONS

Section 3-1-1 Purpose and Construction

(1) The young people of the Shoshone and Arapaho Tribes are the Tribes' most important resource and their welfare is of paramount importance to the Tribes.

(2) The court shall protect the interests of the children by choosing a course of action and interpretation of this Code which least restricts each child's freedom while still consistent with the safety and interests of the Shoshone and Arapaho Tribes.

Section 3-1-2 Due Process to be Afforded

All provisions and procedures established herein shall be construed and applied so as to provide not less than the minimum requirements of due process to children subject to this code.

Section 3-1-3 Transfer from Adult Court

If, during the pendency of a criminal or quasi-criminal proceeding in the tribal court, including an arraignment, it shall be ascertained that the person charged was less than eighteen (18) years of age at the time of committing the alleged offense, that court shall transfer the case to the Children's Court, together with all related documents. The Children's Court shall then proceed as provided herein.

Section 3-1-4 Transfer to Other Courts

Exercise of jurisdiction over a child on probation, under protective supervision, or other continuing jurisdiction of the court may be transferred by the court, if the receiving court consents and in fact has proper jurisdiction over the matter.

Section 3-1-5

Continuing Jurisdiction

The jurisdiction obtained by the court of a child through adjudication pursuant to this code shall exist for the purpose of this code until he becomes eighteen (18) years of age and may be extended by order to continue until the age of twenty-one (21) years to carry out the terms and conditions of a sentence incurred while a minor, or the terms and conditions of probation or parole arising out of a sentence incurred while a minor, but only if the child leaves or is expected to leave the Wind River Reservation.

Section 3-1-6 Definitions

For the purpose of this code the words and phrases shall have the meanings respectively ascribed to them.

(1) “Abandon” - When a parent, guardian, custodian or other person responsible for the welfare of a child:

 a) Leaves the child without communication; or

 b) Fails to support the child and there is no indication of that person’s willingness to assume his parental role for a period in excess of one (1) year.

(2) “Abuse” - Inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof.

(3) “Adult” - A person eighteen (18) years of age or older.

(4) “Children’s Court” - The Shoshone and Arapaho Tribal Court when exercising jurisdiction under this code.

(5) “Children’s Court Judge” - A duly appointed judge of the Shoshone and Arapaho Tribal Court when exercising jurisdiction under this code.

(6) “Custodian” - A person, agency, organization or institution who has legal and physical custody of a minor and who is obligated to provide food, shelter and supervision to the minor.

(7) “Delinquent Act” - An act which if committed by an adult is designated as a crime under this code or if on probation, an act which violates the conditions of that probation, or an act which violates Title VII, Section 7-3, of this Law and Order Code.

(8) “Detention” - The placement of a person under eighteen (18) years of age in a physically restrictive facility pending court disposition or execution of a court order for placement or commitment.

(9) “Detention facility” - A physically restrictive facility which has been approved or licensed by the Bureau of Indian Affairs Department of Social Services, Wyoming Department of Public Assistance and Social Services, or the Shoshone and Arapaho Tribes.

(10) “Domicile” - The place where a person has his true, fixed and permanent home and to which, whenever absent, he has the intention of returning.

(11) “Extended family” - A person over the age of eighteen (18) and who is the child’s grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent.

(12) “Guardian” - A person other than the parent who is by law responsible for that child.

(13) “Guardian ad litem” - A guardian appointed by the court to represent or defend a child in any action to which he is a party.

(14) “Guardianship” - The office, duty or authority of a guardian. Also the relationship subsisting between guardian and ward.

(15) “Imminent danger” - Includes threatened harm and means a statement, overt act, condition or status which represents an immediate and substantial risk of physical, sexual or mental abuse or injury.

(16) “Indian” - A person who is:

a) An enrolled member of any Indian Tribe;

b) Eligible for enrollment in any Indian tribe and a biological child of an enrolled member of an Indian tribe; or

c) A descendant of a member of any Indian tribe who is a resident or domiciliary of the Wind River Reservation or who has significant family or cultural contacts with the Wind River Reservation.

(17) “Juvenile offender” - An Indian who commits a delinquent act prior to his eighteenth (18th) birthday.

(18) “Least restrictive environment” - The least drastic method of detention for achieving the court’s goal; the restrictions placed on the child must be reasonably related to the court’s objectives and must be the least restrictive way of achieving that objective.

(19) “Minor” - An Indian under the age of eighteen (18).

(20) “Minor-in-need-of-care” - An Indian under the age of eighteen (18) who:

- a) Has no parent, guardian, or custodian available and willing to care for him;
- b) Has suffered or is likely to suffer an injury inflicted upon him by other than accidental means which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions, or intellectual or psychological functioning;
- c) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by a parent, guardian or custodian necessary for health and well-being;
- d) Has been physically, sexually or mentally abused; or
- e) Has been committed delinquent acts or status offenses.

(21) “Neglected” - A failure or refusal, without good cause, by those responsible for a minor’s welfare to provide reasonably adequate care of a minor including adequate provision of:

- a) Food, clothing, shelter, and support of the minor;
- b) Medical and surgical care;
- c) Education including the minor’s regular and full-day attendance at school until the minor shall have reached eighteen (18) years of age;
- d) Supervision including:
 - i) not leaving a minor for an unreasonable period of time without being under the control of, or without having communication with, a responsible adult; or
 - ii) insuring the minor’s observance of the curfew or any other provisions of the Code of Tribal Offenses, Title VII, of this Law and Order Code; or
- e) Protection including:
 - i) driving a motor vehicle in which a minor is present without being under the influence of alcohol or a controlled substance; or
 - ii) driving a motor vehicle in which every minor under eighty (80) lbs. present is restrained in a device appropriate to the minor’s weight.

(22) “Probable cause” - A reasonable ground for belief in the existence of facts which would induce a reasonably intelligent person to believe that a civil cause of action exists.

(23) “Relative” - An adult person who is related in any degree to a minor by blood, marriage or adoption or as otherwise defined by law or tribal custom.

(24) “Shelter care” - A temporary home or facility which does not physically restrict the freedom of a child that provides food, clothing and shelter pending court disposition of a court order for placement.

(25) “Substantial risk” - Means a strong possibility as contrasted with a remote or insignificant possibility.

(26) “Sexual abuse” - Injury to the genital organs of a minor in attempt of carnal knowledge falling short of actual intercourse or the taking of immodest, immoral, or indecent liberties including, but not limited to, fondling a minor, either by physical touching or through clothing, masturbating with any minor, or causing or encouraging a minor to commit with him any immoral or indecent act.

(27) “Status offense” - Non-criminal behavior of a minor which violates tribal laws that apply only to minors, such as curfew, delinquency, liquor, etc.

(28) “Status offender” - A minor who commits a status offense within the jurisdiction of the Wind River Children’s Court.

CHAPTER 2 THE COURT SYSTEM

Section 3-2-1 Establishment

There is at Title I, Chapter 3, Section 1, established for the Shoshone and Arapaho Tribes of the Wind River Indian Reservation a court to be known as the Shoshone and Arapaho Children’s Court. The Shoshone and Arapaho Children’s Court shall consist of a judge as appointed by the Joint Business Council, acting pursuant to this Law and Order Code.

Section 3-2-2 Powers and Duties

No adjudication upon the status of any child in the jurisdiction of the Children’s Court shall be deemed criminal or be deemed a conviction of a crime, unless the Children’s Court refers the matter to the adult tribal court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

Section 3-2-3 Authority of Court

(1) The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this code through the supervising agency with the knowledge and approval of the Joint Business Council.

(2) The Children's Court shall utilize such social services as may be furnished by any tribal, federal, or state agency as social workers herein.

Section 3-2-4 Presenting Officer

The tribal prosecutor or assistant shall act as presenting officers.

Section 3-2-5 Guardian Ad Litem

The Children's Court, under any proceeding authorized by this code, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor where the court finds that the minor is alleged to be neglected or abused and does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship or where a conflict exists between the parent and child or children. (Form III-1)

Section 3-2-6 Care and Treatment in Shelter Care Facilities

The Children's Court Judge or Chief Judge of the tribal court shall proscribe and enforce policies and procedures governing the administration of shelter care facilities.

CHAPTER 3 JURISDICTION

Section 3-3-1 Original Jurisdiction

The Children's Court has exclusive, original jurisdiction of the following proceedings:

(1) Proceedings in which an Indian is alleged to be a minor-in-need-of-care, status or juvenile offender.

(2) Proceedings properly transferred to the Children's Court from any other judicial forum.

Section 3-3-2 Medical Examination

The Children's Court may order a medical examination for a minor who is alleged to be a minor-in-need-of-care, status or juvenile offender. (Form III-2)

CHAPTER 4 MINOR-IN-NEED-OF-CARE AND STATUS OFFENDER
PROCEDURE

Section 3-4-1 Petition

A petition may be filed by a person who has knowledge of the facts alleged. The petition shall be signed by the petitioner. (Form III-3) The petition shall contain:

- (1) A citation to the specific statutory provisions of this code which gives the Children's Court jurisdiction of the proceedings.
- (2) Name, age, and address of the minor who is the subject of the petition, if known.
- (3) A plain, concise and sworn statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

Section 3-4-2 Order of Protective Custody

The Children's Court may enter an order directing that a minor be taken into protective custody if the Children's Court finds there is probable cause to believe the minor is a minor-in-need-of-care. (Form III-4)

Section 3-4-3 Protective Custody; Grounds

A minor may be taken into protective custody by a law enforcement officer if:

- (1) The officer has reasonable grounds to believe that he is a minor-in-need-of-care as defined in this code and the minor is in immediate danger from his surroundings and that his removal is necessary.
- (2) An order pursuant to this code has been issued for the minor.

Section 3-4-4 Notice

In all proceedings, the following notice requirement shall apply:

- (1) Notice of the preliminary inquiry shall be given to the minor and his parent, guardian, or custodian and their counsel as soon as the time for inquiry has been established.
- (2) The notice shall contain:
 - a) The name of the court;
 - b) The title of the proceeding;

- c) A brief statement of the alleged circumstances upon which the minor-in-need-of-care allegation is based; and
- d) The date, time, and place of the preliminary inquiry. (Form III-5)

(3) The notice shall be delivered by a Bureau of Indian Affairs or tribal law enforcement officer, or an appointee of the Children's Court.

Section 3-4-5 Law Enforcement Officer's Duties

A law enforcement officer who takes a minor into protective custody pursuant to this code shall proceed as follows:

- (1) Release the minor to the minor's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care is necessary.
- (2) If the minor is not released, the officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them.
- (3) If the minor is not released, the minor shall be taken immediately to the appropriate state, federal or tribal agency by the officer.

Section 3-4-6 Shelter Care and Restrictions on Detention

(1) A minor alleged to be a minor-in-need-of-care or status offender may be detained pending a court hearing in places approved by the court under criteria as established from time to time by the tribes, BIA, or by the State of Wyoming, including:

- a) A foster care facility;
- b) A private family home; or
- c) A shelter care facility.

(2) A minor alleged to be a minor-in-need-of-care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of minor offenders, he must be detained in a room separate from minor offenders.

Section 3-4-7 Preliminary Inquiry

(1) If a minor is placed in shelter care, the Children's Court shall conduct a preliminary inquiry within seventy-two (72) hours for the purpose of determining:

- a) Whether probable cause exists to believe the minor is a minor-in-need-of-care or status offender; and
- b) Whether continued shelter care is necessary pending further proceedings.

(2) If a minor has been released to his parent, guardian, or custodian, the Children's Court shall conduct a preliminary inquiry within seventy-two (72) hours after receipt of the petition for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(3) If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the Children's Court shall recess for not more than twenty-four (24) hours and direct the social worker or juvenile officer to make continued efforts to obtain the presence of a parent, guardian, or custodian.

(4) The Children's Court shall hear testimony concerning:

- a) The circumstances that gave rise to the petition or the taking of the minor into custody; and
- b) The need for shelter care.

(5) If the Children's Court finds that probable cause exists to believe the minor is a minor-in-need-of-care or status offender, he shall be released to his parents and ordered to appear at the adjudicatory hearing, unless:

- a) There is a reasonable cause to believe that the minor will run away or that he will be unavailable for further proceedings;
- b) There is reasonable cause to believe that the minor is in immediate danger from his parents, guardian or custodian and that his removal from them is necessary; or
- c) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(6) The Children's Court may release a minor to any relative or other responsible Indian adult if the parent, guardian, or custodian of the minor consents to the release.

(7) Upon a finding that probable cause exists to believe that the minor is a minor-in-need-of-care or status offender and that there is a need for shelter care, the minor's shelter care shall be continued. The court shall consider the social worker or juvenile officer's recommendations.

(8) If probable cause to believe the minor is a minor-in-need-of-care or status offender and the need for continued shelter care is not found, the petition shall be dismissed and the minor shall be released.

Section 3-4-8 Informal Hearing

(1) The social worker or juvenile officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- a) The admitted facts bring the case within the jurisdiction of the Children's Court;
- b) An informal adjustment of the matter would be in the best interest of the minor and the Tribes; and
- c) The minor and a parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

(2) At the informal hearing, the social worker or juvenile officer shall:

- a) Refer the minor and the parent, guardian or custodian to a community agency for needed assistance; or
- b) Recommend that the presenting officer file a petition for a minor-in-need-of-care or status offender.

(3) The social worker or juvenile officer shall set forth in writing the conclusion reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

(4) Any informal adjustment period shall not exceed six (6) months.

(5) The social worker or juvenile officer shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, he concludes that positive results are not being achieved, he shall recommend that the presenting officer file a petition pursuant to this code.

Section 3-4-9 Deadline for Holding Adjudicatory Hearing

Upon receipt of the petition, the Children's Court shall set a date for an adjudicatory hearing within ninety (90) days of the Children's Court having received the petition. If the adjudicatory hearing is not held within ninety (90) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

(1) The hearing is continued upon motion of the minor; or

(2) The hearing is continued upon motion of the presenting officer by reason of the unavailability of counsel, material evidence, or witnesses and the Children's Court finds the presenting officer has exercised due diligence to obtain the material or that evidence will become available.

Section 3-4-10 Summons

(1) At least five (5) days prior to the adjudicatory hearing, the Children's Court may issue summons to:

a) The minor;

b) The minor's parent, guardian, or custodian;

c) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and

d) Any person the minor believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court; the title of the proceedings; and the date, time, and place of the hearing.

(3) A copy of the petition shall be attached to the summons or notice of hearing.

(4) The notice shall be delivered personally by a tribal law enforcement officer or appointee of the Children's Court. If the notice cannot be delivered personally or by registered mail, the notice may be by publication once a week for one (1) month in a newspaper of general circulation, the costs to be paid by the petitioner.

(5) If a person who has been served a summons fails to appear at the hearing, that person shall be held in contempt of court.

Section 3-4-11 Adjudicatory Hearing

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care or status offender. The hearing shall be private and closed. A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal. (Form III-6)

Section 3-4-12 Pre-Dispositional Report

(1) The social worker or juvenile officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care and assistance to the minor, calculated to resolve the problems presented in the petition.

(2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.

(3) Preferences shall be given to the dispositional alternatives which are listed in Section 3-4-14 and selection shall be made of that which is the least restrictive of the minor's freedom and is consistent with the interests of the tribes. If the report does not recommend placement of the minor with his parents, guardian or custodian, it shall contain specific reasons therefor.

(4) The social worker or juvenile officer shall present the pre-dispositional report to the Children's Court, the minor, the minor's parents, guardian, or custodian, the person selected by the minor to represent him and the presenting officer, at least three (3) days before the dispositional hearing.

Section 3-4-13 Dispositional Hearing

(1) A dispositional hearing shall take place not more than ten (10) days after the adjudicatory hearing, or may be held immediately after.

(2) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

(3) At the dispositional hearing, the Children's Court shall consider the pre-disposition report, submitted by the social worker or juvenile officer and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The Children's Court shall also consider the alternative pre-disposition report prepared by the minor and his attorney or advocate, if any.

(4) The dispositional order constitutes a final order for purposes of appeal. (Form III-8)

Section 3-4-14 Dispositional Alternatives; Review Hearing Every Six (6) Months

(1) If a minor has been adjudged minor-in-need-of-care, the Children's Court may make any of the following dispositions which are listed by priority:

a) Permit the minor to remain with his parents, guardian or custodian subject to such limitations and conditions as the court may prescribe;

- b) Place the minor with a relative within the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe;
- c) Place the minor with a relative outside the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe;
- d) Place the minor with a member of his tribe within the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe;
- e) Place the minor with a member of his tribe outside the external boundaries or the reservation subject to such limitations and conditions as the court may prescribe;
- f) Place the minor with an Indian of any other tribe within the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or
- g) Place the minor with an Indian of any other tribe outside the external boundaries of the reservation subject to such limitations and conditions as the court may prescribe.

(2) A record of each placement of an Indian child under the Children's Code shall be maintained by the court. Such record shall document the efforts made to comply with the order of preference specified in sections a) through g) above.

(3) Except as permitted in sections a) through g) above, no Indian child shall be placed with a non-Indian, except approved foster homes, shelters, group homes, schools, agencies of government, etc., for more than one (1) year.

(4) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court. (Form III-9)

(5) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the minor reaches the age of eighteen (18) years.

(6) The dispositional orders are to be reviewed at the Children's Court discretion, but at least once every six (6) months.

Section 3-4-15 Modification of Dispositional Order

(1) A dispositional order of the Children's Court may be modified upon a showing of change of circumstances.

(2) The Children's Court may modify a dispositional order at any time upon the motion of the following:

- a) The minor;
- b) The minor's parents, guardian or custodian; or
- c) The presenting officer or juvenile officer.

(3) If the modification involves a change of custody, the court will hear a review of its dispositional order.

CHAPTER 5 JUVENILE OFFENDER PROCEDURE

Section 3-5-1 Complaint

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. (Form III-10) The complaint shall contain:

- (1) A citation to the specific statutory provision of this code which gives the Children's Court jurisdiction of the proceedings.
- (2) A citation to the tribal code provision which the juvenile is alleged to have violated.
- (3) Name, age and address of the juvenile who is the subject of the complaint, if known.
- (4) A plain, concise and sworn statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

Section 3-5-2 Warrant

The Children's Court may enter an order called a warrant directing that a juvenile be taken into custody if the Children's Court finds there is probable cause to believe the juvenile committed the delinquent act alleged in the complaint. (Form III-11)

Section 3-5-3 Notice

In any proceeding in the Children's Court for juvenile offenders, the following shall apply:

(1) Notice of the proceeding shall be given to the juvenile and his parents, guardian, or custodian and their counsel as soon as the time for the proceeding has been established.

(2) The notice shall contain:

- a) The name of the court;
- b) The title of the proceedings;
- c) A brief statement of the substance of the allegations against the juvenile;
and
- d) The date, time, place and type proceeding. (Form III-12)

(3) The notice shall be delivered by a BIA Law enforcement officer, or an appointee of the Children's court.

Section 3-5-4 Rights of Parties

In any proceeding in the Children's Court for juvenile offenders, the following shall apply:

(1) The Children's Court Judge shall inform the juvenile and his parents, guardian, or custodian of their right to retain counsel by telling them, "According to the Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation which may be required."

(2) If the parties appear at the hearing without counsel, the Children's Court Judge shall continue the proceedings if they need additional time to seek counsel.

(3) If the parties are unable to pay for counsel, the Children's Court Judge shall inform them of any available services that provide representation.

(4) The juvenile need not be a witness against nor otherwise incriminate himself.

(5) The Children's Court Judge shall give the juvenile, the parents and their respective counsels or persons selected to represent them, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

Section 3-5-5 Custody

(1) A juvenile may be taken into custody by a law enforcement officer if:

- a) The officer has probable cause to believe delinquent act has been committed and that the juvenile has committed the delinquent act; or
- b) A warrant pursuant to this code has been issued for the juvenile.

(2) Whenever a juvenile or minor is taken into custody during school hours, the law enforcement officer shall inform the principal or other school authorities of his intent and request their cooperation so that the taking of custody may be accomplished privately and orderly with the minimum embarrassment to the person being taken into custody, and without unduly disturbing the school population.

Section 3-5-6 Law Enforcement Officer's Duties

A law enforcement officer who takes a juvenile into custody pursuant to this code shall proceed as follows:

(1) An arresting officer shall give the following warnings to any juvenile he takes into custody prior to any questioning:

- a) The juvenile has a right to remain silent;
- b) Anything the juvenile says can be used against the juvenile in court;
- c) The juvenile has the right to the presence of an attorney during questioning; and
- d) If he cannot afford an attorney, the court will help him obtain the services of one through available services.

(2) An arresting officer shall release the juvenile to the juvenile's parent, guardian, or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary as determined by the Children's Court Judge.

(3) If the juvenile is not released, an arresting officer shall make immediate and recurring efforts to notify the juvenile's parent, guardian, or custodian to inform them that the juvenile has been taken into custody and inform them of their right to be present with the juvenile until an investigation to determine the need for shelter care or detention is made.

Section 3-5-7 Detention and Shelter Care

(1) A juvenile alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- a) A foster care facility approved by the tribes;

- b) A detention home approved by the tribes; or
- c) In a private family home approved by the tribes, BIA Social Services, or Fremont County D-PASS.

(2) Policies and procedures shall include, but are not limited to the following:

- a) A juvenile may wear his own clothes rather than clothes supplied by the detention facility, so long as they comply with minimum standards of cleanliness;

- b) Incoming and outgoing mail may be inspected for contraband, but shall not be read;

- c) Whenever possible, the juvenile shall be allowed to attend the school in which he is enrolled. School work and educational assistance, at the juvenile's level of development, shall be provided for the juvenile in detention facilities;

- d) A juvenile shall be allowed to attend traditional religious ceremonies provided that he is accompanied by a parent, guardian or custodian, has received consent to do so by the Children's Court Judge, and returns immediately to the detention or shelter care facility;

- e) A juvenile shall be allowed to attend the funeral of extended family members whether they be natural or adopted provided that his parent, guardian or custodian request and receive permission from the Children's Court Judge, he is accompanied by a parent, guardian, or custodian, and he returns immediately to the shelter care or detention facility;

- f) A juvenile shall be given the opportunity to engage in physical exercise everyday;

- g) A juvenile shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. While the juvenile is locked alone in a room, he must be visited at least once an hour. The confinement shall not continue unnecessarily; and

- h) A juvenile shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.

(3) A juvenile who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

- a) A facility is not available or would not assure adequate supervision of the juvenile;

b) Detention in a cell separate and removed from sight and sound of adults whenever possible; and

c) Adequate supervision is provided twenty-four (24) hours a day.

Section 3-5-8 Decision to Treat Juvenile Offender as Adult

(1) If a juvenile is sixteen (16) years of age or older at the time of an alleged offense, said juvenile may be prosecuted under the Children's Code or as an adult under the general criminal laws of the Wind River Indian Reservation.

(2) The decision to prosecute a juvenile as an adult shall be made by the Children's Court Judge, who shall consider at a hearing:

a) The age and maturity of the juvenile;

b) The past criminal record of the juvenile, if any;

c) The nature, severity, and circumstances of the offense charge; and

d) The recommendations of the juvenile officer.

Section 3-5-9 Preliminary Inquiry

(1) If a juvenile is placed in detention or shelter care by the Children's Court pursuant to this code, the Children's Court shall conduct a preliminary inquiry within seventy-two (72) hours for the purpose of determining:

a) Whether probable cause exists to believe the juvenile committed the alleged delinquent act; and

b) Whether continued detention or shelter care is necessary pending further proceedings.

(2) If a juvenile has been released to his parent, guardian or custodian, the Children's Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the juvenile committed the alleged delinquent act.

(3) If the juvenile's parent, guardian, or custodian is not present at the preliminary inquiry, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the Children's Court shall recess for not more than

twenty-four (24) hours and direct the juvenile officer to make continued efforts to obtain the presence of a parent, guardian, or custodian.

(4) The Children's Court shall hear testimony concerning:

a) The circumstances that gave rise to the complaint or the taking of the juvenile into custody; and

b) The need for detention or shelter care.

(5) If the Children's Court finds that probable cause exists to believe the offense charged was committed by the accused, the juvenile shall be released to his or her parents and ordered to appear at the adjudicatory hearing, unless:

a) The act is serious enough to warrant continued detention or placement in a restrictive facility;

b) There is reasonable cause to believe that the juvenile will run away so that he will be unavailable for further proceedings; or

c) There is reasonable cause to believe that the juvenile will commit a serious act causing damage to person or property.

(6) The Children's Court may release a juvenile to a relative or other responsible Indian adult if the parent, guardian or custodian of the juvenile consents to the release.

(7) Upon a finding that probable cause exists to believe that the juvenile committed the alleged delinquent act and that there is a need for detention or shelter care, the juvenile's detention or shelter care shall be continued. The court shall consider the juvenile officer's recommendation.

(8) If probable cause to believe the juvenile committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed and the juvenile be released.

Section 3-5-10 Informal Hearing

(1) The Children's Court may hold an informal conference with the juvenile and the juvenile's parent, guardian, or custodian to discuss alternatives to the filing of a petition if:

a) The admitted facts bring the case within the jurisdiction of the Children's Court;

b) An informal adjustment of the matter would be in the best interests of the juvenile and the tribes; and

c) The juvenile and his parent, guardian, or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

(2) At the informal hearing, the Children's Court may:

a) Refer the juvenile and the parents, guardian or custodian to a community agency for needed assistance;

b) Order terms of supervision calculated to assist and benefit the juvenile which regulate the juvenile's activities and which are within the ability of the juvenile to perform;

c) Accept an offer of restitution if voluntarily made by the juvenile; or

d) Recommend that the presenting officer file a petition pursuant to this code.

(3) Any informal adjustment period shall not exceed six (6) months.

(4) The Children's Court shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

(5) The Juvenile Officer shall review the juvenile's progress every thirty (30) days. If at any time after the initial thirty (30) day period the juvenile officer concludes that positive results are not being achieved, the said officer shall recommend that the presenting officer file a petition.

Section 3-5-11 Hearing Date

(1) Upon receipt of the complaint, the Children's Court shall set a date for the hearing which shall not be more than thirty (30) days after the Children's Court receives the complaint from the presenting officer.

(2) If the adjudicatory hearing is not held within thirty (30) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

a) The hearing is continued upon motion of the juvenile; or

b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Children's Court finds the

presenting officer has exercised due diligence to obtain the material or evidence which will become available.

Section 3-5-12 Summons

(1) At least five (5) days prior to the adjudicatory hearing, the Children's Court shall issue summons to:

- a) The juvenile;
- b) The juvenile's parent, guardian, or custodian;
- c) Any person the Children's Court believes necessary for the proper adjudication of the hearing; and
- d) Any person the juvenile believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing.

(3) A copy of the complaint shall be attached to the summons.

(4) The summons shall be delivered personally by a BIA law enforcement officer or appointee of the Children's Court. If the summons cannot be delivered personally, the court may deliver the summons by registered mail, or the summons may be by publication in a newspaper of general circulation for one (1) month once a week, the costs of which are to be paid by the prosecution.

(5) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

Section 3-5-13 Adjudicatory Hearing

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the juvenile. The hearing shall be private and closed.

(1) If the juvenile admits the allegations of the petition, the Children's Court shall proceed to the dispositional stage only if the Children's Court finds:

- a) The juvenile fully understands his rights and fully understands the potential consequences of his admission;

b) The juvenile voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Children's Court action; and

c) The juvenile has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(2) The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint.

(3) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the juvenile to be a juvenile offender and proceed to the dispositional hearing.

(4) A finding that a juvenile is a juvenile offender constitutes a final order for purposes of appeal. (Form III-13)

Section 3-5-14 Pre-Dispositional Report

(1) The Juvenile Officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the juvenile calculated to resolve the problems presented in the petition. (Form III-14)

(2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the juvenile under the proposed plan.

(3) Preference shall be given to the dispositional alternatives which are listed in Section 3-5-16 and select that which is the least restrictive of the juvenile's freedom and is consistent with the interests of the tribe. If the report does not recommend placement of the juvenile with his parent, guardian, or custodian, it shall contain specific reasons therefor.

(4) The juvenile officer shall present the pre-dispositional report to the Children's Court, the person selected by the juvenile to represent him and the presenting officer at least one (1) day before the dispositional hearing.

Section 3-5-15 Dispositional Hearing

(1) A dispositional hearing shall take place not more than ten (10) days after the adjudicatory hearing.

(2) At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

(3) At the dispositional hearing, the Children's Court shall consider the pre-disposition report submitted by the juvenile officer and afford the parents an opportunity to controvert the factual contents and conclusions of the report. The Children's Court shall also consider the alternative pre-dispositional report prepared by the juvenile and his attorney or advocate, if any.

(4) The dispositional order constitutes a final order for purposes of appeal. (Form III-15)

Section 3-5-16 Dispositional Alternative; Review Hearing Every Six (6) Months

(1) If the juvenile has been adjudged a juvenile offender, the Children's Court may make the following dispositions:

a) Place the juvenile on probation subject to conditions set by the Children's Court. (Form III-16)

b) Place the juvenile in an institution or agency designated by the Children's Court for not more than one (1) year. (Form III-17)

(2) The dispositional orders are to be in effect for the time limit set by the Children's Court, but no order shall continue after the juvenile reaches the age of eighteen (18) years of age, unless extended to age twenty-one (21) pursuant to Section 3-1-5.

(3) The dispositional orders are to be reviewed at the discretion of the Children's Court, but at least every six (6) months.

Section 3-5-17 Modification of Dispositional Order

(1) A dispositional order of the Children's Court may be modified upon a showing of change of circumstances.

(2) The Children's Court may modify a dispositional order at any time upon the motion of the following:

a) The juvenile;

b) The juvenile's parent, guardian or custodian; or

c) The juvenile officer.

(3) If the modification involves a change of custody, the Children's Court shall conduct a hearing to review its dispositional order.

(4) The juvenile and the juvenile's parent, guardian, or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(5) The Children's Court shall review the performance of the juvenile, the juvenile's parents, guardian or custodian and the Juvenile officer and other persons providing assistance to the juvenile and the juvenile's family.

(6) In determining modification of disposition, the procedures prescribed in this code shall apply.

(7) If the request for review of disposition is based upon an alleged violation of a court order, the Children's Court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

Section 3-5-18 Appeal

All appeals shall be conducted in accordance with the rules and regulations of the Appellate Court.

Section 3-5-19 Contempt of Court

(1) Any willful disobedience or interference with any order of the Children's Court constitutes contempt of court.

(2) The Children's Court may punish an adult for contempt of court in accordance with the tribal law and order code.

CHAPTER 6 COURT RECORDS

Section 3-6-1 Preserved

A record of all hearings under this code shall be made and preserved.

Section 3-6-2 Confidential

All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

- (1) The juvenile, his representative or counsel;
- (2) The juvenile's parents, guardian, custodian, or his representative or counselor;
- (3) The juvenile officer; or

- (4) The presenting officer.

Section 3-6-3 Law Enforcement Records

(1) Law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults.

(2) All law enforcement records and files shall be confidential and shall not be open to inspection to any but the following:

- a) The juvenile, his representative or counsel;
- b) The juvenile's parent, guardian or his representative;
- c) The juvenile officer; or
- d) The presenting officer.

Section 3-6-4 Expungement

When a juvenile who has been the subject of any proceeding before the Children's Court attains his eighteenth (18th) birthday, the Chief Judge of the tribal court shall order the clerk of court to destroy all court records and the law enforcement records, except where jurisdiction has been extended to age twenty-one (21) years pursuant to Section 3-1-5.

CHAPTER 7 PRIVATE CUSTODY DISPUTES

Section 3-7-1 No Limit on Rights

Nothing in this code shall prevent or limit the right of private parties to petition the court for custody of any Indian child, except that no immediate or emergency transfers of custody shall be made other than pursuant to this code.

Section 3-7-2 Modification of Orders

Custody orders made pursuant to private custody petitions may be modified upon a showing of change of circumstances.

CHAPTER 8 VISITATION

Specific visitations rights with regard to an Indian child may be granted in the best interests of the child to any relative of that child at any appropriate stage in either private proceedings or proceedings pursuant to this code.

CHAPTER 9 CHILD PROTECTIVE SERVICES

Section 3-9-1 Purpose

The purpose of creating or approving a tribal child protection agency is to protect the best interest of the child, to offer protective services when necessary in order to prevent any harm to the child or any other children living in the home, to protect the child from abuse and neglect which jeopardize his health or welfare, and to stabilize the home environment and preserve family life whenever possible.

Section 3-9-2 Definitions

As used in this chapter:

(1) “A person responsible for a child’s welfare” means the child’s parent, guardian, custodian, stepparent, foster parent, or other person, institution, or agency having the physical custody or control of the child.

(2) “Physical injury” means death or any harm to a child including, but not limited to, disfigurement, impairment of any bodily organ, skin bruising, bleeding, burns, fracture of any bone, subdural hematoma, or substantial malnutrition.

(3) “Mental injury” means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in his ability to function within a normal range of performance and behavior with due regard to his culture.

(4) “Child” means any person under the age of eighteen (18) years of age.

(5) “Child protection agency” means any agency or entity approved by the Tribes to provide child protection services under this Code.

(6) “Court proceedings” means child protective proceedings which have as their purpose the protection of a child through an adjudication of whether the child is a minor-in-need-of-care as abused or neglected, and the making of an appropriate order of disposition.

(7) “Institutional child abuse or neglect” means situations of child abuse or neglect where a foster home, public or private residential home, institution, or agency is responsible for the child’s welfare.

Section 3-9-3

Duties of a Child Protection Agency

The duties of a child protection agency shall be:

- (1) To prepare a plan for child protective services and provide services under the plan to prevent further child abuse and neglect.
- (2) To receive, investigate, and coordinate investigation of all reports of known or suspected child abuse or neglect.
- (3) To initiate an investigation and verify every report of child abuse or neglect within twenty-four (24) hours after notification of a suspected case. A thorough investigation and report shall be made in a timely manner. If a child protection agency is denied reasonable access to child by a parent or other persons and the agency deems that the best interest of the child so requires, it shall seek an appropriate court order by ex-parte proceedings to see the child.
- (4) If the investigation discloses that abuse or neglect is present, to initiate services with the family of the abused or neglected child and to assist in resolving problems that led to or caused the child abuse or neglect.
- (5) To cooperate, coordinate, and assist with other child protection agencies, law enforcement, and the prosecution.
- (6) To contact the tribal prosecutor if the best interest of the child requires court action in order to initiate legal proceedings, and assist during those proceedings.

Section 3-9-4

Persons Required to Report

- (1) Any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected, or who observes any child to be subject to conditions or circumstances that would reasonably result in abuse or neglect, shall immediately report it to the local child protective or law enforcement agency or to the tribal prosecutor.
- (2) If a person reporting child abuse or neglect is a member of the staff of a medical or other public or private institution, school, agency, or department, he shall notify the person in charge as soon as possible to make a report or cause a report to be made. Nothing in this section shall relieve individuals of their obligation to report on their own behalf unless a report has already been made or will be made.

Section 3-9-5 Coroner's Investigation

Any person who knows or has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report it to the appropriate coroner. The coroner shall investigate the report and submit findings in writing to law enforcement, the prosecuting attorney, and the local protection agency.

Section 3-9-6 Temporary Protective Custody; Order; Time Limitations; Remedial Health Care

(1) When a treating physician of a child or a medical staff member of a clinic or hospital in which a child is being treated has reasonable cause to believe there exists an imminent danger to the child's life or safety unless the child is taken into protective custody and there is not time to apply for a court order, the child may be taken into temporary protective custody without a warrant or court order and without the consent of the parents, guardians, or others exercising control over the child. Any person taking a child into temporary protective custody shall, as soon as possible, notify the appropriate local child protection agency. Upon notification, the local child protection agency shall initiate an investigation and make every reasonable effort to inform both parents or other person responsible for the child's welfare that the child has been taken in temporary protective custody.

(2) Any tribal judge may issue a temporary protective order upon finding that a child's life or safety is in danger. The order may be requested by the local child protection agency, a local law enforcement officer, an administrator of a hospital or clinic in which a child reasonably believed to have been abused or neglected is being treated, or any physician who reasonably believes that a child has been abused or neglected, whether or not additional medical treatment is required, and that the child would be in imminent danger if he remains in his place of residence or under the care and custody of the person responsible for his welfare. The local child protection agency shall be notified of the order.

(3) Temporary protective custody shall not exceed seventy-two (72) hours.

(4) When necessary for the best interest or welfare of a child, the Court may order medical remedial health care notwithstanding the absence of a prior finding of child abuse or neglect.

Section 3-9-7 Immunity from Liability

Any person, official, institution, or agency participating in good faith in any act required or permitted by Sections 3-9-1 through 3-9-12 (2) is immune from any civil or criminal liability that might otherwise result by reason of the action. For the purpose of any civil or criminal proceeding, the good faith of any person, official, agency, or institution participating in any act permitted or required by Sections 3-9-1 through 3-9-12 shall be presumed.

Section 3-9-8 Privileged Communication Not Excluded; Exception

Evidence regarding a child in any judicial proceeding resulting from a report made pursuant to Sections 3-9-1 through 3-9-12 shall not be excluded on the grounds that it constitutes a privileged communication between husband and wife.

Section 3-9-9 Appointment of Counsel for Child and Other Parties

(1) The Court shall appoint counsel to represent any child in a court proceeding in which the child is alleged to be abused or neglected. Anyone representing a child under this section shall also serve as the child's guardian ad litem unless one has already been appointed. Representation shall be in the child's best interest.

(2) The Court may appoint counsel for any party when necessary in the interest of justice.

Section 3-9-10 Child Protection Teams; Creation; Composition Duties; Records Confidential

(1) The Shoshone and Arapaho Tribes encourage the creation of a multi disciplinary child protection team within the Wind River Indian Reservation.

(2) It shall be composed of members as designated by the Joint Business Council.

(3) Terms shall be as set by the Joint Business Council.

(4) The team will assist and coordinate with all child protective agencies and all other agencies and organizations dealing with children, facilitate diagnosis and prognosis, and provide an adequate treatment plan for the abused or neglected child and his family.

(5) All records and proceedings of the child protection team are subject to Sections 3-6-2 and 3-6-3 of this Code.

Section 3-9-11 Confidentiality of Records; Access; Report; Divulgence of Information; School Interviews

(1) All records concerning reports and investigations of child abuse or neglect are confidential as provided by Sections 3-6-2 and 3-6-3 of this Code.

(2) Applications for access to records concerning child abuse or neglect contained by a child protection agency or other local child protective agencies shall be made in the manner and form prescribed by that agency. Upon appropriate application, the agency shall give access to any of the following persons or agencies for purposes directly related with the administration of Sections 3-9-1 through 3-9-12:

- a) A tribal, state, or federal child protection agency;
- b) A law enforcement agency, guardian ad litem, child protection team, or the attorney or advocate representing the subject of the report;
- c) A physician or surgeon who is treating an abused or neglected child, the child's family, or a child he reasonably suspects may have been abused or neglected;
- d) A person legally authorized to place a child in protective temporary custody when information in the report or record is required to determine whether to place the child in temporary protective custody;
- e) A person responsible for the welfare of the child;
- f) A court or grand jury upon a showing that access to the records is necessary for the determination of an issue, in which case access shall be limited to in camera inspection unless the court finds public disclosure is necessary; and
- g) Court personnel who are investigating reported incidents of child abuse or neglect.

(3) A physician or person in charge of an institution, school, facility, or agency making the report shall receive, upon written application to a child protection agency, a summary of the records concerning the subject of the report.

(4) Any person, agency, or institution given access to information concerning the subject of the report shall not divulge or make public any information except as provided herein.

Section 3-9-12 Attendance by School Personnel at Interview

Nothing in Sections 3-9-1 through 3-9-12 prohibits the attendance of any one of the following in an interview conducted on school property by law enforcement or child protection agency personnel of a child suspected to be abused or neglected, provided the person is not a subject of the allegation:

- (1) The principal of the school or his designee.
- (2) A child's teacher, counselor, or a specialist employed by the school district and assigned the duties of monitoring, reviewing, or assisting in the child's welfare in cases of suspected child abuse or neglect.