

# Choctaw Nation Juvenile Code

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**Chapter 1. General Provisions**

**Section 2-1-101. Short title**

- A. Article 2 of this title of the Choctaw Nation Statutes shall be known and may be cited as the “Choctaw Nation Juvenile Code”
- B. All statutes hereinafter enacted and codified in Article 2 of this title of the Choctaw Nation Statutes shall be considered and deemed part of the Choctaw Nation Juvenile Code.
- C. Chapter captions are part of the Choctaw Nation Juvenile Code, but shall not be deemed to govern, limit or in any manner affect the scope, meaning or intent of the provisions of any article or part of this Code.
- D. The tribal prosecutor shall prepare and prosecute any case or proceeding within the purview of the Choctaw Nation Juvenile Code.

### **Section 2-1-102. Legislative intent—Construction of chapter—Purpose**

A. It is the intent of the Choctaw Nation Tribal Council that Article 2 of this title shall be liberally construed, to the end that its purpose may be carried out.

B. The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency. This purpose should be pursued through means that are fair and just, that:

1. Recognize the unique characteristics and needs of juveniles;
2. Give juveniles access to opportunities for personal and social growth;
3. Maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior;
4. Provide a system for the rehabilitation and reintegration of juvenile delinquents into society;
5. Preserve and strengthen family ties whenever possible, including improvement of home environment;
6. Remove a juvenile from the custody of parents if the welfare and safety of the juvenile or the protection of the public would otherwise be endangered;
7. Secure for any juvenile removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile in becoming a responsible and productive member of society; and
8. Provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

### **Section 2-1-103. Definitions**

When used in the Choctaw Nation Juvenile Code, unless the context otherwise requires:

1. “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Chapter 2 of the Choctaw Nation Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;
2. “Alternatives to secure detention” means those services and facilities which are adopted by the Choctaw Nation Tribal Council as recommended by the Choctaw Nation Department of Children and Family Services and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. “Behavioral health” means mental health, substance abuse or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment;
4. “Behavioral health facility” means a mental health or substance abuse facility as provided for by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
5. “Chief” means the Chief of the Choctaw Nation of Oklahoma;
6. “Child” or “juvenile” means any person under eighteen (18) years of age, over whom the Choctaw Nation has jurisdiction including, but not limited to:
  - a. Enrolled members of the Choctaw Nation of Oklahoma who are under the age of eighteen (18) years of age;
  - b. Persons under the age of eighteen (18) years of age who are eligible for enrollment in the Choctaw Nation of Oklahoma;
  - c. Indians, who are under the age of eighteen (18) years of age and who are residing within the territorial jurisdiction of the Choctaw Nation of Oklahoma;
  - d. Persons under eighteen (18) years of age, who are the children of enrolled members of the tribe or other Indians, including adoptive children, who reside outside the territorial jurisdiction of the Choctaw Nation of Oklahoma;
  - e. Persons under eighteen (18) years of age, who are residing outside the territorial jurisdiction of the Choctaw Nation of Oklahoma, for whatever reason, in the home of an enrolled member of the Choctaw Nation of Oklahoma or another Indian as long as the parent, legal custodian, or legal guardian has consented to the jurisdiction of the Choctaw Nation of Oklahoma. Such consent, once given, may be revoked only with the permission of the courts of the Choctaw Nation of Oklahoma;
7. “Child or juvenile in need of mental health and substance abuse treatment” means a juvenile in need of mental health and substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;
8. “Child or juvenile in need of supervision” means a juvenile who:
  - a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian;
  - b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return;
  - c. is willfully and voluntarily absent from school; or

d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

9. “Community-based” means a facility, program or service located near the home or family of the juvenile, and programs of community prevention, diversion, supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, prevention and diversion programs, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

10. “Community intervention center” means a facility which serves as a short-term reception facility to receive and hold juveniles for an alleged violation of a tribal law, as provided for in subsection D of Section 2-7-305 of this title;

11. “Council” means the Choctaw Nation Tribal Council;

12. “Core community-based” means the following community-based facilities, programs or services provided through contract with the Choctaw Nation Department of Children and Family Services as provided in Section 2-7-306 of this title:

a. screening, evaluation and assessment which includes a face-to-face screening and evaluation to establish problem identification and to determine the risk level of a child or adolescent and may result in clinical diagnosis or diagnostic impression;

b. treatment planning which includes preparation of an individualized treatment plan which is usually done as part of the screening, evaluation and assessment;

c. treatment plan reviewing which includes a comprehensive review and evaluation of the effectiveness of the treatment plan;

d. individual counseling which includes face-to-face, one-on-one interaction between a counselor and a juvenile to promote emotional or psychological change to alleviate the issues, problems, and difficulties that led to a referral, including ongoing assessment of the status and response of the juvenile to treatment as well as psycho-educational intervention;

e. group counseling which includes a method of treating a group of individuals using the interaction between a counselor and two or more juveniles and/or parents or guardians to promote positive emotional or behavioral change, not including social skills development or daily living skills;

f. family counseling which includes a face-to-face interaction between a counselor and the family of the juvenile to facilitate emotional, psychological or behavior changes and promote successful communication and understanding;

g. crisis intervention counseling which includes unanticipated, unscheduled face-to-face emergency intervention provided by a licensed level or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community;

h. crisis intervention telephone support which includes supportive telephone assistance provided by a licensed level provider or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community;

i. case management which includes planned linkage, advocacy and referral assistance provided in partnership with a client to support that client in self-sufficiency and community tenure;

j. case management and home-based services which includes that part of case management services dedicated to travel for the purpose of linkage, advocacy and referral assistance and travel to provide counseling and support services to families of children as needed to support specific youth and families in self-sufficiency and community tenure;

k. individual rehabilitative treatment which includes face-to-face service provided one-on-one by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices;

l. group rehabilitative treatment which includes face-to-face group services provided by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices;

m. community-based prevention services which include services delivered in an individual or group setting by a qualified provider designed to meet the services needs of a child or youth and family of the child or youth who has been referred because of identified problems in the family or community. The group prevention planned activities must be focused on reducing the risk that individuals will experience behavioral, substance abuse or delinquency-related problems. Appropriate curriculum-based group activities include, but are not limited to, First Offender groups, prevention and relationship enhancement groups, anger management groups, life skills groups, substance abuse education groups, smoking cessation groups, STD/HIV groups and parenting groups;

n. individual paraprofessional services which include services delineated in the treatment plan of the juvenile which are necessary for full integration of the juvenile into the home and community, but do not require a professional level of education and experience. Activities

include assisting families with Medicaid applications, assisting with school and General Educational Development (GED) enrollment, assisting youth with independent living arrangements, providing assistance with educational problems and deficiencies, acting as a role model for youth while engaging them in community activities, assisting youth in seeking and obtaining employment, providing transportation for required appointments and activities, participating in recreational activities and accessing other required community support services necessary for full community integration and successful treatment;

o. tutoring which includes a tutor and student working together as a learning team to bring about overall academic success, improved self-esteem and increased independence as a learner for the student;

p. community relations which include public or community relations activities directed toward the community or public at large or any segment of the public to encourage understanding, accessibility and use of community-based facilities, programs or services;

q. emergency shelter beds and shelter host homes which include emergency shelter care for juveniles referred to the program needing shelter care;

r. transitional living programs which include a structured program to help older homeless youth achieve self-sufficiency and avoid long-term dependence on social services;

s. community-at-risk services (C.A.R.S.) which include a program provided to juveniles in custody or under the supervision of the Choctaw Nation Department of Children and Family Services to prevent out-of-home placement and to reintegrate juveniles returning from placements. The program shall include, but not be limited to, treatment plan development, counseling, diagnostic and evaluation services, mentoring, tutoring, and supervision of youth in independent living;

t. first offender programs which include alternative diversion programs, as defined by Section 2-2-404 of this title; and;

u. other community-based facilities, programs or services designated by the Council as core community based facilities, programs or services;

13. "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

14. "Delinquent child or juvenile" means a juvenile who:

a. has violated any federal or tribal law, other than those laws specially reserved for federal jurisdiction, except a traffic statute or has violated any lawful order of the court made pursuant to the provisions of the Choctaw Nation Juvenile Code; or

b. has habitually violated traffic laws;

15. “Department” means the Choctaw Nation Department of Children and Family Services;

16. “Dispositional hearing” means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

17. “Executive Director” means the Executive Director of the Choctaw Nation Department of Children and Family Services;

18. “Facility” means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles. A facility shall not mean or include a correctional facility;

19. “Graduated sanctions” means a calibrated system of sanctions designed to ensure that juvenile offenders face uniform, immediate, and consistent consequences that correspond to the seriousness of each offender’s current offense, prior delinquent history, and compliance with prior interventions;

20. “Group home” means a residential facility with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents. A group home shall not be considered a correctional facility;

21. “Independent living program” means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar service;

22. “Indian” means any member of a federally recognized Indian tribe, band, or community, or Alaskan Natives, or a person considered by the community to be Indian;

23. “Institution” means a residential facility offering care and treatment for more than twenty residents. An institution shall not mean or include a correctional facility. Said institution may:

a. have a program which includes community participation and community-based services; or

b. be a secure facility with a program exclusively designed for a particular category of resident;

24. “Juvenile detention facility” means a secure facility which meets the standards as determined by the Choctaw Nation Department of Children and Family Services and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. A juvenile detention facility shall not be considered a correctional facility;

25. “Person responsible for a juvenile’s health or welfare” includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile’s parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility;

26. “Preliminary inquiry” or “intake” means a mandatory, pre-adjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Choctaw Nation Juvenile Code, whether non-adjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

27. “Probation” means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a facility directly or by contract under prescribed conditions and under supervision by the Choctaw Nation Department of Children and Family Services, subject to return to the court for violation of any of the conditions prescribed;

28. “Rehabilitative facility” means a facility maintained or contracted by the Choctaw Nation exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

29. “Responsible adult” means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in the absence of another person who is eighteen (18) years of age or older;

30. “Secure detention” means the temporary care of juveniles who require secure custody in physically restricting facilities:

a. while under the continuing jurisdiction of the court pending court disposition; or

b. pending placement by the Choctaw Nation Department of Children and Family Services after adjudication;

31. “Training school” or “secure facility” means a facility, maintained or contracted by the Choctaw Nation of Oklahoma exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which relies on locked rooms and buildings, and fences for physical restraint in order to control behavior of its residents. A training school or secure facility shall not be considered a correctional facility;

32. “Transitional living program” means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and

employment training, and other appropriate independent living skills training as a part of the transitional living program; and

33. “Youth Services Agency” means a nonprofit corporation with a local board of directors, officers and staff that has been designated by the Choctaw Nation Department of Children and Family Services as a Youth Services Agency, that is peer reviewed annually, and that provides community-based facilities, programs or services to juveniles and their families in the youth services service area in which it is located.

## **Chapter 2. Custody and Court Proceedings**

### **Section 2-2-101. Taking of child into custody—Detention—Medical treatment—Behavioral health treatment—Hearing on order for medical treatment**

A. A child may be taken into custody prior to the filing of a petition alleging that the child is delinquent or in need of supervision:

1. By a peace officer, without a court order for any criminal offense for which the officer is authorized to arrest an adult without a warrant, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child for a substantial length of time or without intent to return, or if the surroundings of the child are such as to endanger the welfare of the child;

2. By an employee of the district court without a court order, if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child for a substantial length of time or without intent to return, or if the surroundings of the child are such as to endanger the welfare of the child;

3. Pursuant to an order of the district court issued on the application of the tribal prosecutor. The application presented by the tribal prosecutor shall be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the court;

4. By order of the district court pursuant to subsection E of this section when the child is in need of medical or behavioral health treatment or other action in order to protect the health or welfare of the child and the parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action; and

5. Pursuant to an emergency ex parte or a final protective order of the district court issued at the request of a parent or legal guardian pursuant to the Protection from Domestic Abuse Act. Any child referred to in this subsection shall not be considered to be in the custody of the Choctaw Nation Children and Family Services.

B. 1. Whenever a child is taken into custody as a delinquent child or a child in need of supervision pursuant to subsection A of this section, the child shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the parent of the child, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to the court at the time fixed if a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed.

2. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment. In addition, if a parent, legal guardian, legal custodian, attorney or other responsible adult is notified that the child has been taken into custody, it shall be a misdemeanor for such person to refuse to assume custody of the child within a timely manner.

3. If detained, the child shall be taken immediately before a judge of the district court, or to the place of detention or shelter designated by the court. If a judge of the district court is not available, the person having the child in custody shall immediately report the detention of the child to a judge of the Court of Appeals of the Choctaw Nation of Oklahoma, who shall have the authority to act in the place of a judge of the district court under this code, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a secure juvenile detention center, beyond the second judicial day unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child.

4. The child shall be present at the detention hearing, whether in-person, via telephone, or the image of the child may be broadcast to the judge by closed-circuit television or any other electronic means that provides for a two-way communication between the child and the judge.

5. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court, or be detained pursuant to Chapter 3 of the Choctaw Nation Juvenile Code in such place as shall be designated by the court, subject to further order.

C. When any child is taken into custody pursuant to this title and it reasonably appears to the

peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve the health of the child, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of the parent of the child, legal guardian, legal custodian, or other person having custody and control of the child who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent of the child, legal guardian, legal custodian, or other person legally competent to authorize said medical treatment. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

D. A child who has been taken into custody as otherwise provided by this Code who appears to be a minor in need of treatment, as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, may be admitted to a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such behavioral health expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such behavioral health evaluation or treatment shall have any liability, civil or criminal, for giving such authorization.

E. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the health or welfare of the child and the parent, legal guardian, legal custodian, or other responsible adult having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the health or welfare of the child, the court may issue an emergency ex parte order upon application of the tribal prosecutor. The application for an ex parte order may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the health or welfare of the child. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, legal guardian, legal custodian, or other responsible adult having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of

whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this subsection, whenever a child is in need of medical treatment to protect the health or welfare of the child, or whenever any other action is necessary to protect the health or welfare of the child, and the parent of the child, legal guardian, legal custodian, or other person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the tribal prosecutor, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, legal guardian, legal custodian, or other person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, legal guardian, legal custodian, or other person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

b. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

### **Section 2-2-102. Personal jurisdiction**

A. 1. Upon the filing of a petition alleging the child to be in need of supervision, or upon the assumption of custody pursuant to Section 2-2-101 of this title, the district court shall have jurisdiction over a child who is an Indian, as defined by treaty or federal law, where a child:

A. resides,

B. is found, or

C. is alleged to be or is found to be in need of supervision.

2. The court shall have jurisdiction of the parent, legal custodian, legal guardian, stepparent of the child, or any adult person living in the home of the child regardless of where the parent, legal custodian, legal guardian, stepparent, or adult person living in the home of the child is found.

3. When jurisdiction has been obtained over a child who is or is alleged to be in need of supervision, such may be retained until the child becomes eighteen (18) years of age.

B. 1. Upon the filing of a petition alleging the child to be delinquent or upon the assumption of custody pursuant to Section 2-2-101 of this title, the district court shall have jurisdiction of the child and of the parent, legal custodian, legal guardian, stepparent of the child or any adult person living in the home of the child regardless of where the parent, legal custodian, legal

guardian, stepparent, or adult person living in the home of the child is found.

2. When jurisdiction has been obtained over a child who is or is alleged to be a delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion, motion by the tribal prosecutor or motion by the Choctaw Nation Department of Children and Family Services, as provided in Section 2-7-504 of this title.

3. The juvenile proceeding may be filed before the child becomes eighteen (18) years of age; within one (1) year after the date of the eighteenth birthday of the child if the underlying act would constitute a felony if committed by an adult; or within six (6) months after the date of the eighteenth birthday if the underlying act would constitute a misdemeanor if committed by an adult.

C. Any adjudication and disposition made by the court in which said petition is filed shall control over prior orders in regard to the child.

D. Except as otherwise provided in the Choctaw Nation Juvenile Code, a child who is charged with having violated any tribal statute shall not be tried in a criminal action other than in a juvenile proceeding.

E. If, during the pendency of a criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the district court. The district court shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release the child to the custody of a suitable person to be brought before the juvenile division.

### **Section 2-2-103. Reserved**

### **Section 2-2-104. Preliminary inquiry—Petition**

A. A preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Choctaw Nation Juvenile Code require that further court action be taken. If it is determined by the preliminary inquiry that no further action be taken and if agreed to by the tribal prosecutor, the intake worker may make such informal adjustment without a petition.

B. Informal adjustment may be provided to the child by the intake worker only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where consent is obtained from the tribal prosecutor, the parent of the child, legal guardian, legal custodian, or legal counsel, if any, and the child. The informal adjustment is an agreement whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child.

The informal adjustment shall be completed within a period of time not to exceed six (6) months and shall:

1. Be voluntarily entered into by all parties;
2. be revocable by the child at any time by a written revocation;
3. be revocable by the intake worker in the event there is reasonable cause to believe the child has failed to carry out the terms of the informal adjustment or has committed a subsequent offense;
4. Not be used as evidence against the child at any adjudication hearing;
5. Be executed in writing and expressed in language understandable to the persons involved; and
6. Become part of the juvenile record of the child.

C. The informal adjustment agreement under this section may include, among other suitable methods, programs and procedures, the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion of the intake officer would be beneficial to the child and family of the child;
2. Require the child to undergo a behavioral health evaluation and, if warranted, undergo appropriate care or treatment;
3. Restitution providing for monetary payment by the parents or child to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the intake officer shall consult with the victim concerning the amount of damages; or
4. Informal adjustment projects, programs and services may be provided through public or private agencies. If the intake worker has reasonable cause to believe that the child has failed to carry out the terms of the adjustment agreement or has committed a subsequent offense, in lieu of revoking the agreement, the intake worker may modify the terms of the agreement and extend the period of the agreement for an additional six (6) months from the date on which the modification was made with the consent of the child or counsel of the child, if any.

D. If an informal adjustment is agreed to pursuant to subsection B of this section, the informal adjustment agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The child shall remit the fee directly to the agency responsible for the monitoring and supervision of the child. If the supervising agency is the Choctaw Nation Department of Children and Family Services or one of the agencies contracted by the Choctaw Nation provides the monitoring and supervision of the juvenile, the

fee shall be paid directly to the Choctaw Nation Department of Children and Family Services and shall be used to defray the costs for the operation of the department.

#### **Section 2-2-104.1 - Diversion Services - Purpose - Procedures - Notice**

A. Diversion services shall be offered to children who are at risk of being the subject of a child-in-need-of-supervision petition. Diversion services shall be designed to provide an immediate response to families in crisis and to divert children from court proceedings. Diversion services may be provided by outside agencies as designated by the district court, Choctaw Nation Department of Children and Family Services, court employees, or a combination thereof.

B. Diversion services shall clearly document diligent attempts to provide appropriate services to the child and the family of the child unless it is determined that there is no substantial likelihood that the child and family of the child will benefit from further diversion attempts.

C. Where the primary issue is truancy, steps taken by the school to improve the attendance or conduct of the child in school shall be reviewed and attempts to engage the school in further diversion attempts shall be made if it appears that such attempts will be beneficial to the child.

D. Efforts to prevent the filing of the petition may extend until it is determined that there is no substantial likelihood that the child and family of the child will benefit from further attempts. Efforts at diversion may continue after the filing of the petition where it is determined that the child and family of the child will benefit therefrom.

E. A child-in-need-of-supervision petition shall not be filed during the period that the designated agency, the Choctaw Nation Department of Children and Family Services, or court employee is providing the diversion services. A finding that the case has been successfully diverted shall constitute presumptive evidence that the underlying allegations have been successfully resolved.

F. The designated agency, the Choctaw Nation Department of Children and Family Services, or court employee shall promptly give written notice to the child and family of the child whenever attempts to prevent the filing of the petition have terminated and shall indicate in the notice whether the efforts were successful or whether a child-in-need-of-supervision petition should be filed with the court. A petition may or may not be filed where diversion services have been terminated because the parent or other person legally responsible for the child failed to consent to the diversion plan or failed to actively participate in the services provided.

#### **Section 2-2-105. Order removing child from home prohibited absent certain determinations**

No order of the court providing for the initial or continued removal of a child alleged or adjudicated delinquent or in need of supervision from the child's home shall be entered unless

the court finds that the continuation of the child in the home of the child is contrary to the welfare of the child. The order shall include either:

1. A determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from the home or, as appropriate, reasonable efforts have been made to provide for the return of the child to the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of the child from the home is reasonable upon consideration of the family circumstances, the safety of the child and the protection of the public; or

3. A determination that reasonable efforts to prevent the removal of the child from the home or to reunify the child and family are not required because:

A. a court of competent jurisdiction has determined that the parent has subjected the child to one of the following aggravated circumstances: abandonment, torture, chronic abuse, sexual abuse or chronic, life threatening neglect of the child,

B. a court of competent jurisdiction has determined that the parent has been convicted of one of the following:

(1) Murder of another child of the parent,

(2) Voluntary manslaughter of another child of the parent,

(3) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(4) A felony assault that results in serious bodily injury to the child or another child of the parent, or

(5) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

### **Section 2-2-106. Petition—Subsequent pleadings—Amended petitions**

A. If a child has been taken into custody pursuant to the provisions of the Choctaw Nation Juvenile Code before a petition has been filed, a petition shall be filed and summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to the parent of the child, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Choctaw Nation Juvenile Code.

B. No pleading subsequent to the petition is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing.

C. A petition may be amended by order of the court at any time before an order of adjudication

has been made, provided that the court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the court shall not amend the adjudicatory category prayed for in the petition.

D. A petition in a juvenile proceeding may be filed by the tribal prosecutor to determine if further action is necessary. The proceeding shall be entitled “In the matter of \_\_\_\_\_, an alleged (delinquent) or (a child alleged to be in need of supervision)”. The petition shall be verified and may be upon information and belief. It shall set forth:

1. with particularity facts which bring the child within the purview of the Choctaw Nation Juvenile Code;
2. The name, age and residence of the child;
3. The names and residences of the parents of the child;
4. The name and residence of the legal guardian of the child, if applicable;
5. The name and residence of the person or persons having custody or control of the child;
6. The name and residence of the nearest known relative, if no parent or guardian can be found;
7. The relief requested; and
8. The specific law under which the child is charged and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child.

E. A copy of the petition shall be attached to and served with the summons.

#### **Section 2-2-107. Summons—Warrant—Service**

A. After a petition shall have been filed, unless the parties provided for in this section shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase “as described more fully in the attached petition” and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years, a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy

of the summons shall be served on the parent or guardian, or both. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate. Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has not entered an appearance, the court shall immediately order the issuance of a summons which shall be served on said person.

D. Service of summons shall be made as provided for service in civil actions.

1. The court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian of the child.

2. If the parent of the child is not served within the Choctaw Nation of Oklahoma, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.

E. If after a petition has been filed, it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the judge may immediately issue a detention order or warrant authorizing the taking of said child into emergency custody. Any such child shall not be considered to be in the custody of the Choctaw Nation Department of Children and Family Services.

F. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed; in a child in need of supervision proceeding, whenever a warrant for detention of a child shall issue, it shall state the reason for detention. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

G. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian or against the child.

**Section 2-2-108. Examination by health care professionals—Investigation of child’s home and custodian’s earning capacity**

A. After a petition under the provisions of this article has been filed, the court may order the child to be examined and evaluated for medical issues, including behavioral health diagnoses, by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child.

B. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the court may, after due notice, enter an order therefor, and the expense thereof, when approved by the court, shall be a charge upon the Choctaw Nation of Oklahoma, but the court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

**Section 2-2-301. Conduct of interrogations—Appointment of counsel—Guardians ad litem**

A. No information gained by a custodial interrogation of a child under sixteen (16) years of age nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the Choctaw Nation Department of Children and Family Services is done in the presence of the parent, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child. No such custodial interrogation shall commence until the child and the parent, guardian, attorney, adult relative, adult caretaker, or legal custodian of the child have been fully advised of the constitutional and legal rights of the child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, “custodial interrogation” means questioning of a child under sixteen (16) years of age while the child is in law enforcement custody or while that child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the Choctaw Nation Department of Children and Family Services. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term “custodial interrogation” shall not be deemed to mean questioning of a child by a school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the Choctaw Nation Department of Children and Family Services. Any information gained from noncustodial questioning of a child by a school administrator or teacher concerning a wrongful act committed on school property shall be admissible into evidence against the child.

B. A custodial interrogation of a child over sixteen (16) years of age shall conform with all the requirements for the interrogation of an adult.

C. If the child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of Section 2-2-104 of this title, the court shall appoint an attorney, who shall not be a tribal prosecutor, for the child regardless of any attempted waiver by the parent or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent.

D. Whenever a petition is filed alleging that a child is a delinquent child or a child in need of supervision, the court may appoint a guardian ad litem for the child at any time subsequent to the filing of the petition and shall appoint a guardian ad litem upon the request of the child or the attorney of the child. The guardian ad litem shall not be a tribal prosecutor, an employee of the office of the tribal prosecutor, an employee of the court, an employee of the Choctaw Nation Department of Children and Family Services, or an employee of any public agency having duties or responsibilities towards the child.

E. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or Section 1-2-101 of the Choctaw Nation Children's Code.

#### **Section 2-2-401. Trial by court**

In adjudicatory hearings to determine if a child is delinquent or in need of supervision, any person entitled to service of summons or the tribe shall have the right to demand a trial by the court without a jury.

#### **Section 2-2-402. Conduct of adjudicative hearings**

A. All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time.

1. Except as provided by paragraph 2 of this subsection, the hearings shall be private unless specifically ordered by the judge to be conducted in public, and all persons having a direct interest in the case as provided in this paragraph shall be admitted. Any victim, relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness of a delinquent act shall be considered to have a direct interest in the case and shall be notified of all court hearings involving that particular delinquent act by the tribal prosecutor or his/her office and shall be admitted to the proceedings. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by law.

2. Hearings related to the second or subsequent delinquency adjudication of a child shall be public proceedings. The adjudications relied upon to determine whether a hearing is a public proceeding pursuant to this paragraph shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order specific testimony or evidence to be heard in private; provided, the court shall not exclude any relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness from the hearing during testimony of the victim. For the purposes of this paragraph, “good cause” shall mean a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing.

B. The child may remain silent as a matter of right in delinquency hearings and in need of supervision hearings, and before the child testifies, the child shall be so advised by the court.

C. A decision determining a child to come within the purview of the Choctaw Nation Juvenile Code shall be based on sworn testimony and the child shall have the opportunity for cross-examination unless the facts are stipulated. In proceedings pursuant to the Choctaw Nation Juvenile Code, the court may allow mileage as in civil actions to witnesses and reimbursement for expert witnesses but such shall not be tendered in advance of the hearing. If a child is alleged to be delinquent and the facts are stipulated, the judge shall ascertain from the child if the child agrees with the stipulation and if the child understands the consequences of stipulating the facts.

D. If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, the court shall sustain the petition, and shall make an order of adjudication setting forth whether the child is delinquent or in need of supervision and shall adjudge the child as a ward of the court.

E. If the court finds that the allegations of the petition are not supported by the evidence, the court shall order the petition dismissed and shall order the child discharged from any detention or restriction previously ordered. The parents, legal guardian or other legal custodian of the child shall also be discharged from any restriction or other previous temporary order.

**Section 2-2-403. Child is charged with an offense which would be a felony if committed by an adult—Trial as adult—Certification Order—Bail**

A. Except as otherwise provided by law, if a child is charged with a delinquent act as a result of an offense which would be a felony if committed by an adult, the court on its own motion or at the request of the tribal prosecutor shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine if the child should be held accountable for acts of the child as if the child

were an adult if the child should be found to have committed the alleged act or omission.

Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given to transferring the accused person to the adult criminal justice system for offenses against persons and, if personal injury resulted, the degree of personal injury;
3. The sophistication and maturity of the juvenile and capability of the juvenile of distinguishing right from wrong as determined by consideration of a psychological evaluation of the juvenile, home, environmental situation, emotional attitude and pattern of living;
4. The record and previous history of the accused person, including previous contacts with community agencies, law enforcement agencies, schools, juvenile or criminal courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;
5. The prospects for adequate protection of the public;
6. The likelihood of reasonable rehabilitation of the juvenile if the juvenile is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
7. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After the investigation and hearing, the court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify, based on clear and convincing evidence, that the child shall be held accountable for acts of the child as if the child were an adult and shall be held for proper criminal proceedings for the specific offense charged, by any other division of the court which would have trial jurisdiction of the offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of the certification, unless stayed pending appeal, the court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

B. Prior to the entry of any order of certification, any child in custody shall have the same right

to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, the child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of certification, the child becomes eighteen (18) years of age, the child may be detained in a jail or released on bail. If a child is certified to stand trial as an adult, the court shall make every effort to avoid duplication of the adult preliminary hearing and the prosecutorial hearing in the juvenile certification process. The parties may jointly stipulate to the court that the record for the prosecutorial merit hearing in the juvenile proceeding be used for all or part of the preliminary hearing.

C. Any child who has been certified to stand trial as an adult pursuant to any order entered by any competent court of the Choctaw Nation of Oklahoma or any other federally recognized Indian tribe or any state of the United States shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court in any further proceedings.

D. An order either certifying a person as a child or an adult pursuant to subsection A of this section or denying such certification shall be a final order, appealable when entered and shall not be modified.

#### **Section 2-2-404. Deferral of delinquency proceedings**

A. The court may defer delinquency adjudication proceedings or proceedings to determine if a child is in need of supervision for one hundred eighty (180) days if the child:

1. Is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a misdemeanor or a felony;
2. Enters into a stipulation that the allegations are true or that sufficient evidence exists to meet the burden of proof required for the court to sustain the allegations of the petition; and
3. Has not been previously adjudicated a delinquent.

If the child is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a felony, the deferral shall be upon agreement of the tribal prosecutor.

B. During such period of deferral, the court may require the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which would be beneficial

to the child and the family of the child;

2. Require the child to undergo a behavioral health evaluation and, if warranted by the mental condition of the child, undergo appropriate care or treatment;

3. Restitution providing for monetary payment by the parents or child, or both, to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged;

4. An alternative diversion program; or

5. Any other programs and services that may be provided through public or private agencies and as approved by the court.

C. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the requirements of the court have been successfully completed.

D. As used in this section, “alternative diversion program” means a program for juveniles who have been identified by law enforcement personnel, the tribal prosecutor, or the court as having committed acts which are not serious enough to warrant adjudication through the juvenile court process, but which do indicate a need for intervention to prevent further development toward juvenile delinquency.

### **Section 2-2-501. Dispositional hearings**

A. After making an order of adjudication, the court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the child and the public, including but not limited to oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

B. Before making an order of disposition, the court shall advise the tribal prosecutor, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and the conclusion of reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. An order of disposition shall include a specific finding and order of the court relative to the liability and accountability of the parents for the care and maintenance of the child as authorized by Section 2-2-703 of this title, unless custody is placed with the parent or parents of the child.

C. On its own motion or that of the tribal prosecutor, or of the parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for

detention of the child, or release of the child from detention subject to supervision by the court, during the period of the continuance.

D. In scheduling investigations and hearings, the court shall give priority to proceedings in which a child is in detention, or has otherwise been removed from his home, before an order of disposition has been made.

### **Section 2-2-502. Individual treatment and service plans**

A. An individual treatment and service plan shall be prepared by the Department and filed with the court within the thirty (30) days after any child has been adjudicated to be delinquent or in need of supervision. Said plan shall be filed by the person, department or agency responsible for the supervision of the case or by the legal custodian if the child has been removed from the custody of its lawful parent or parents. The treatment and service plan shall be based on a comprehensive assessment and evaluation of the child and family and include but not be limited to:

1. A history of the child and family, including identification of the problems leading to the adjudication;
2. Identification of the specific services available to the child to remediate or alleviate the conditions that led to the adjudication, including but not limited to educational, vocational-educational, medical, drug or alcohol abuse treatment or counseling or other treatment services;
3. Identification of the services to be provided to the parent, legal guardian, legal custodian, stepparent, other adult person living in the home or other family members, to remediate or alleviate the conditions that led to the adjudication, including services needed to assist the family to provide proper care and supervision of the child;
4. Performance criteria that will measure the progress of the child and family toward completion of the treatment and service plan;
5. A projected date for the completion of the treatment and service plan; and
6. The name and business address of the attorney representing the child, if any.

B. The individual treatment and service plan shall be amended as necessary and appropriate to reflect the disposition of the court. The amended plan shall be filed with the court within thirty (30) days of the order of disposition removing the child from the home and shall state:

1. The reasons for such placement and a statement as to the unavailability or inappropriateness of local placement, or other good cause, for any placement more than fifty (50) miles from the home of the child;

2. The services to be provided to the child while in such placement and the projected date of discharge;
3. The services necessary to assist the child to reintegrate with the family of the child or other community-based placement; and
4. If the child is age sixteen (16) or older, the services necessary to make the transition from community placement to independent living.

C. Whenever a child who is subject to the provisions of this section is committed for inpatient mental health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, the individual treatment and service plan shall be amended as necessary and appropriate, including but not limited to identification of the treatment and services to be provided to the child and his family upon discharge of the child from inpatient mental health or substance abuse treatment.

### **Section 2-2-503. Disposition orders—Revocation, modification and redispotion**

A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation with or without supervision in the home of the child, or in the custody of a suitable person, upon such conditions as the court shall determine. If the child is placed on probation, the court may impose a probation fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. The fee shall be paid to the Department.

2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from continuing to be delinquent or in need of supervision.

- a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be in need of supervision due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the school, the Department, another agency or division of the Choctaw Nation of Oklahoma, or any individual or entity as may be appropriate. Prior to final disposition, the court shall require that it be shown by the school that a child found to be truant has been evaluated for learning disabilities, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the

child may require special education services in accordance with the Individuals with Disabilities Education Act (IDEA). The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and the ability of such person to exercise parental control over the behavior of the juvenile.

c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition to independent living.

3. The court may commit the child to the custody of any public or private institution or agency, including any institution established and operated by the Choctaw Nation of Oklahoma, authorized to care for children or to place them in family homes. In committing a child to a public or private institution or agency, the court shall select one that is supervised and/or licensed by a state department or agency that supervises and/or licenses private institutions and agencies. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require.

4. The court may order the child to receive counseling or other community-based services as necessary.

5. The court may commit the child to the custody of the Choctaw Nation Department of Children and Family Services. Any order adjudicating the child to be delinquent and committing the child to the Department shall be for an indeterminate period of time.

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Department or other person or agency receiving custody of the child.

7. With respect to a child adjudicated a delinquent child, the court may:

a. for acts involving criminally injurious conduct as defined in Section 142.3 of the Choctaw Nation Criminal Code, order the child to pay a victim compensation assessment in an amount not to exceed that amount specified in Section 142.18 of the Choctaw Nation Criminal Code. The

court shall forward a copy of the adjudication order to the Choctaw Nation Crime Victims Compensation Board for purposes of Section 142.11 of the Choctaw Nation Criminal Code. Except as otherwise provided by law, such adjudication order shall be kept confidential by the Board,

b. order the child to engage in a term of community service without compensation. The tribe or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph,

c. order the child, the parent or parents of the child, legal guardian of the child, or both the child and the parent or parents of the child or legal guardian at the time of the delinquent act of the child to make full or partial restitution to the victim of the offense which resulted in property damage or personal injury.

(1) The court shall notify the victim of the dispositional hearing. The court may consider a verified statement from the victim concerning damages for injury or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering. If contested, a restitution hearing to determine the liability of the child, the parent or parents of the child, or legal guardian shall be held not later than thirty (30) days after the disposition hearing and may be extended by the court for good cause. The parent or parents of the child or legal guardian may be represented by an attorney in the matter of the order for remittance of the restitution by the parent or parents of the child or legal guardian. The burden of proving that the amount indicated on the verified statement is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(2) Restitution may consist of monetary reimbursement for the damage or injury in the form of a lump sum or installment payments after the consideration of the court of the nature of the offense, the age, physical and mental condition of the child, the earning capacity of the child, the parent or parents of the child, or legal guardian, or the ability to pay, as the case may be. The payments shall be made to such official designated by the court for distribution to the victim. The court may also consider any other hardship on the child, the parent or parents of the child, or legal guardian and, if consistent with the welfare of the child, require community service in lieu of restitution or require both community service and full or partial restitution for the acts of delinquency by the child.

(3) A child who is required to pay restitution and who is not in willful default of the payment of restitution may at any time request the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the child, the parent or parents of the child, or legal guardian, the court may modify the method of payment.

(4) If the restitution is not being paid as ordered, the official designated by the court to collect and disburse the restitution ordered shall file a written report of the violation with the court. The

report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the official. A copy of the report shall be provided to all parties and the court shall promptly take any action necessary to compel compliance.

(5) Upon the juvenile attaining eighteen (18) years of age, the court shall determine whether the restitution order has been satisfied. If the restitution order has not been satisfied, the court shall enter a judgment of restitution in favor of each person entitled to restitution for the unpaid balance of any restitution ordered pursuant to this subparagraph. The clerk of the court shall send a copy of the judgment of restitution to each person who is entitled to restitution. The judgment shall be a lien against all property of the individual or individuals ordered to pay restitution and may be enforced by the victim or any other person or entity named in the judgment to receive restitution in the same manner as enforcing monetary judgments. The restitution judgment does not expire until paid in full and is deemed to be a criminal penalty for the purposes of a federal bankruptcy involving the child,

d. order the child to pay the fine which would have been imposed had such child been convicted of such crime as an adult. Any such fine collected pursuant to this paragraph shall be deposited in a special Work Restitution Fund to be established by the court to allow children otherwise unable to pay restitution to work in community service projects in the private or public sector to earn money to compensate their victims,

e. sanction detention in the residence of the child or facility designated by the Choctaw Nation Department of Children and Family Services for such purpose for up to five (5) days, order weekend detention in a place other than a juvenile detention facility or shelter, tracking, or house arrest with electronic monitoring,

f. impose sanctions for the violation of pre-adjudicatory or post-adjudicatory violations of probation.

8. The court may order the child to participate in the Juvenile Drug Court Program, if available.

9. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

10. In any dispositional order removing a child from the home of the child, the court shall, in addition to the findings required by subsection A of Section 2-2-105 of this title, make a determination that, in accordance with the best interests of the child and the protection of the public, reasonable efforts have been made to provide for the return of the child to the home of the child, or that efforts to reunite the family are not required as provided in subsection A of Section 2-2-105 of this title, and reasonable efforts are being made to finalize an alternate permanent placement for the child.

B. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school

may disclose educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA).

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication the Choctaw Nation Department of Children and Family Services shall notify the superintendent of the school in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

D. No child who has been adjudicated in need of supervision may be placed in a secure facility.

E. Employees of the Department may arrest without a warrant a probationer, parolee or any person who is a temporary or permanent ward of the court, or may deputize any other officer or person with power of arrest by giving such officer or person a written statement setting forth that a probationer, parolee or ward of the court has in the judgment of the director or assistants violated the conditions of probation. The court may revoke or modify a disposition order and may order re-disposition. The child whose disposition is being considered for revocation or modification at said hearing shall have the right to be represented by counsel, to present evidence on behalf of the child and to be confronted by witnesses against the child. Any revocation, modification or re-disposition of the court in whole or in part shall be subject to review on appeal, as in other appeals of criminal cases. Bail may be allowed pending appeal.

F. Any arrest or detention under the Choctaw Nation Juvenile Code or any adjudication in a juvenile proceeding shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.

#### **Section 2-2-504. Periodic review of disposition orders**

A. 1. Every disposition order regarding a child adjudicated to be delinquent or in need of supervision shall be reviewed by the court at least once every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of the parent or parents are terminated pursuant to the Choctaw Nation Children's Code.

2. A dispositional order removing a child from the custody of the parent or parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is returned to the custody of the parents of the child. No later than twelve (12) months after placing a child in out-of-home care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a permanency hearing to determine whether or not reasonable efforts have been made to finalize one of the following permanent placement plans:

- a. the child should be returned to the parent or parents of the child or other family member,
- b. the child should be continued in out-of-home care for a specified period,
- c. the rights of the parent or parents of the child should be terminated and the child placed for adoption or legal guardianship pursuant to the Choctaw Nation Children's Code, or
- d. the child, because of exceptional circumstances, should remain in out-of-home care on a long-term basis as a permanent plan or with a goal of independent living.

3. The provisions of this section also shall apply to a child who has been removed from the home of the lawful parent or parents of the child after the child has been returned to that home until such time as the court orders the case closed.

4. If authorized by the court, review hearings held pursuant to this section may be conducted via teleconference communication; provided, the attorney representing the child shall be present at the hearing. For purposes of this paragraph, "teleconference communication" means participation by the child and facility staff in the hearing by interactive telecommunication among the necessary participants, the court and the child. The permanency hearing provided for in this section shall not be conducted via teleconference communication.

B. 1. The agency having supervision of the case or, if the child has been removed from the custody of its parents, the legal custodian of such child shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

2. The report shall include, but not be limited to, a summary of the physical, mental, and emotional condition of the child, the conditions existing in the home or institution where the child has been placed, and the adjustment of the child thereto, a report on the progress of the child in school and, if the child has been placed outside the home of the child, the visitation exercised by the parents of such child or other persons authorized by the court, and services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other community placement to independent living.

3. If the Choctaw Nation Department of Children and Family Services is the legal custodian of the child, the report also shall include any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated. The report shall specifically recommend, giving reasons therefor, whether or not the parental rights of the parent or parents of the child should be terminated and the child placed for adoption, whether or not the child should remain in the home or if placed outside the home of the lawful parent or parents of the child, whether or not the child should remain outside the home or be returned to the home from which the child was removed.

C. At each such review hearing, the court shall specifically inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional

services be provided if necessary to protect the child from further physical, mental, or emotional harm or to correct the conditions that led to the adjudication. In any review order, the court shall further make a determination:

1. As to whether reasonable efforts have been made to provide for the return of the child to the home of the child. If reasonable efforts have failed or are not feasible, the court shall make a finding that the efforts to reunite the family have failed, or are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child; and

2. Where appropriate, when the child is age sixteen (16) or older, that services are being provided that will assist the child in making the transition from out-of-home care to independent living.

D. The attorney representing a child whose case is being reviewed may submit a report to the court for presentation at the review hearing to assist the court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

E. The Choctaw Nation Department of Children and Family Services shall notify the court having jurisdiction and the tribal prosecutor whenever the placement of a child in the custody of the Department is changed and shall inform said court and tribal prosecutor regarding the location of the child unless placement modification results from an emergency situation, in which case the notification required by this subsection shall be within one (1) business day after the change of placement. As used in this subsection, "emergency situation" means a placement change requested by a person having actual custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or a placement for emergency medical treatment.

F. The Choctaw Nation Department of Children and Family Services shall provide the foster parent of a child and any pre-adoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in six-month review hearings and twelve-month permanency hearings held with respect to the child during the time the child is in foster care of such foster parent, pre-adoptive parent or relative caregiver. Notice of hearings and an opportunity to be heard does not include the right to standing as a party to the case.

### **Section 2-2-505. Authority to Establish Juvenile Drug Court**

A. The district court is hereby authorized to establish a juvenile drug court for the purpose of treating adjudicated juveniles who have a substance abuse disorder. The Department shall assist in the establishment of juvenile drug courts.

B. At the disposition hearing to set disposition of a case, the court may determine whether there are any statutory preclusions, other prohibitions, or program limitations that exist and are

applicable to considering the juvenile for participation in the drug court program.

C. A juvenile drug court investigation shall be ordered by the court, upon the motion of the tribal prosecutor, the juvenile, or the judge, once the requirements of subsection B of this section are met. The court shall set a date for a hearing to determine final eligibility for admittance into the program.

D. Upon denial for consideration in the juvenile drug court program at the initial hearing, the case shall proceed as authorized by the Juvenile Code.

### **Section 2-2-506. Juvenile Drug Court Investigations-Eligibility for Juvenile Drug Court Program**

A. When directed by the court, the treatment staff for the juvenile drug court program shall make an investigation of the juvenile under consideration to determine whether the juvenile is a person who:

1. Would benefit from the juvenile drug court program; and
2. Committed a delinquent act wherein the underlying act or cause of the underlying act involved alcohol or substance abuse.

B. 1. The juvenile drug court investigation shall be conducted through a standardized screening test, personal interview, and home study. A more comprehensive assessment may take place at the time the juvenile enters the treatment portion of the program and may take place at any time after placement in the juvenile drug court program.

2. The investigation shall determine the original treatment plan which the juvenile will be required to follow if admitted to the program. Any subsequent assessments or evaluations by the treatment provider, if the juvenile is admitted to the program, may be used to determine modifications needed to the original treatment plan.

3. The investigation shall include, but not be limited to, the following information:

- a. the age and physical condition of the juvenile,
- b. employment,
- c. educational background and literacy level,
- d. community and family relations,
- e. prior and current drug and alcohol use,
- f. behavioral health and medical treatment history,

- g. demonstrable motivation of the juvenile and family of the juvenile,
  - h. the willingness of the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, to actively support the participation of the juvenile in the program, and
  - i. other mitigating or aggravating factors.
4. A written treatment plan, which is subject to modification at any time during the program, shall include, but is not limited to:
- a. describing the strong linkage between participating agencies,
  - b. access by all participating parties of a case to information on the progress of the juvenile,
  - c. vigilant supervision and monitoring procedures,
  - d. random substance abuse testing,
  - e. provisions for noncompliance, modification of the treatment plan and revocation proceedings,
  - f. availability of residential treatment facilities and outpatient services,
  - g. reparation to the victim, community and the Choctaw Nation, and
  - h. methods for measuring application of disciplinary sanctions, including provisions for:
    - (1) increased supervision,
    - (2) urinalysis testing,
    - (3) Intensive treatment,
    - (4) short-term confinement not to exceed five (5) days,
    - (5) reinstating the juvenile into the program after a disciplinary action for a violation of the treatment plan, and
    - (6) revocation from the program.
- C. 1. When a juvenile is determined to be appropriate for admittance to the program, regardless of whether the juvenile is in the custody of the Department, the treatment staff shall make a recommendation for the treatment program or programs that are available in the jurisdiction and which would benefit the juvenile and accept the juvenile.
2. Prior to the next scheduled hearing, the investigation findings and recommendations for program placement shall be reported to the court, the tribal prosecutor, the juvenile and the

person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, and the attorney of the juvenile.

D. The hearing to determine final eligibility shall be set not less than three (3) judicial days nor more than seven (7) judicial days from the date of the initial hearing for consideration, unless extended by the court.

E. 1. Any statement made by the juvenile to any supervising staff during the course of any drug court investigation or subsequent to the admission of the juvenile to the juvenile drug court program, as well as any report of findings and recommendations, shall not be admissible in any case pending against the juvenile, nor shall such be grounds for the revocation of a juvenile from the program.

2. The restrictions provided in this section shall not preclude the admissibility of statements or evidence obtained by the Choctaw Nation from independent sources.

#### **Section 2-2-507. Hearing to Determine Final Eligibility**

A. The juvenile drug court judge shall conduct a hearing to determine final eligibility of the juvenile for the juvenile drug court program by considering:

1. Whether the juvenile is appropriate for placement in drug court, as provided in subsection A of Section 2-2-506 of this title;

2. The findings and recommendations of the juvenile drug court investigation;

3. Whether there is an appropriate treatment program available to the juvenile and whether there is a recommended treatment plan; and

4. Any information relevant to determining eligibility. A juvenile shall not be denied admittance to any juvenile drug court program based upon the inability of the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, to pay court costs or other costs or fees.

B. The judge shall require the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, to demonstrate support for the participation of the juvenile in the program. In order for the juvenile to be admitted to the program, every person responsible for the health or welfare of the juvenile shall accept the personal jurisdiction of the court. Any adult who establishes a permanent residence in the home where the juvenile resides after the juvenile has been admitted to the program shall also accept the personal jurisdiction of the court. Failure of the adult responsible for the health or welfare of the juvenile or the adult who resides in the home with the juvenile to accept personal jurisdiction of the court shall result in either contempt of court proceedings for the adult, removal of the juvenile from the home, or

both. A juvenile shall not be removed from the drug court program based solely on the failure of the adult to comply with the provisions of this subsection.

C. When the court accepts the treatment plan, the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, must have voluntarily signed the necessary court documents before the juvenile may be admitted to treatment. The court documents shall include:

1. A written treatment plan which is subject to modification at any time during the program, as set forth in paragraph 4 of subsection B of Section 2-2-506 of this title;
2. A statement requiring the juvenile to enter the treatment program as directed by the court and to participate until completion, withdrawal, or removal by the court; and
3. A statement signed voluntarily by the person or persons responsible for the health or welfare of the juvenile that such person will comply with the orders of the court and any conditions of the treatment program and supervising staff for as long as the juvenile participates in the juvenile drug court program.

D. If admission into the juvenile drug court program is denied, the case shall be returned to the traditional juvenile docket and shall proceed as provided for any other juvenile case.

E. At the time a juvenile is admitted to the juvenile drug court program, any bond, bail or undertaking on behalf of the juvenile shall be exonerated.

F. 1. A juvenile shall actively participate in treatment for a period of not less than six (6) months while participating in the juvenile drug court program. Any person admitted to a juvenile drug court program who becomes eighteen (18) years of age shall be eligible to complete the drug court program.

2. All participating treatment providers shall be certified by the Oklahoma Department of Mental Health and Substance Abuse Services. Treatment programs shall be designed to be completed within twelve (12) months and shall have relapse prevention and evaluation components.

**Section 2-2-508. Progress Reports and Periodic Review-Access to Information-Modifications to Treatment Plan, Plea Agreement, and Responsibilities for Health and Welfare of Juvenile**

A. The district court shall make all judicial decisions concerning any case assigned to the juvenile drug court docket or program. The court shall require progress reports and a periodic review of each juvenile during their period of participation in the drug court program or for purposes of collecting costs and fees after completion of the treatment portion of the program. Reports from the treatment providers and the supervising staff shall be presented to the court as specified by the treatment plan or as ordered by the court.

B. The district court may establish a regular schedule for progress hearings for any juvenile in the drug court program. The tribal prosecutor shall not be required to attend regular progress hearings, but shall be required to be present upon the motion of any party to a drug court case.

C. The treatment provider, the supervising staff, the tribal prosecutor, and the attorney for the juvenile shall be allowed access to all information in the drug court case file of the juvenile and all information presented to the court at any periodic review or progress hearing.

D. 1. The court shall recognize relapses and restarts in the program which are considered to be part of the rehabilitation and recovery process.

2. The court shall order progressively increasing sanctions or provide incentives, rather than removing the juvenile from the program when relapse occurs, except when the conduct of the juvenile requires removal from the program.

3. Any removal from the drug court program shall require notice to the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, and other participating parties in the case and a hearing.

4. At the hearing, if the juvenile is found to have violated the conditions of the treatment plan and disciplinary sanctions have been insufficient to gain compliance, the juvenile shall be removed from the program, returned to the regular juvenile court docket and set for redispotion.

E. Upon application of any participating party to a drug court case, the court may modify a treatment plan at any hearing when it is determined that the treatment is not beneficial to the juvenile. The primary objective of the court in monitoring the progress of the juvenile and the treatment plan shall be to keep the juvenile in treatment for a sufficient time to change behaviors and attitudes. Modification of the treatment plan requires a consultation with the treatment provider, supervising staff, tribal prosecutor, and the attorney of the juvenile in open court.

F. The court shall be authorized to modify the responsibilities of any person responsible for the health and welfare of the juvenile, as defined in Section 2-1-103 of this title, for noncompliance with any condition established by the court. The court is also authorized to sanction the person responsible for the health and welfare of the juvenile or any adult residing with the juvenile, for noncompliance of such person with any condition established in the court.

### **Section 2-2-509. Costs and Fees**

A. 1. The court may order the juvenile or the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, to pay court costs, treatment costs, drug-testing costs, and supervision fees. The court shall order the juvenile or the person responsible for the health or welfare of the juvenile to pay a program user fee, not to exceed Twenty Dollars

(\$20.00) per month.

2. The court may establish a schedule for the payment of costs and fees.

B. 1. The cost for treatment, drug testing and supervision fees shall be set by the juvenile drug court team and shall reflect actual expenses and made part of the order of the court for payment.

2. The court clerk shall collect all costs and fees ordered.

C. 1. No court order for costs and fees shall be limited by any term of supervision, treatment, or extension thereof.

2. Court orders for costs and fees shall remain an obligation of the juvenile and the person responsible for the health or welfare of the juvenile, as defined in Section 2-1-103 of this title, with court monitoring until fully paid.

### **Section 2-2-601. Appeals**

A. Any interested party aggrieved by any order or decree may appeal to the Choctaw Nation Court of Appeals in the same manner as other appeals are taken to the Court of Appeals.

B. The record on appeal of an order of adjudication shall be completed and the appeal perfected within sixty (60) days after the date of the order.

C. The pendency of an appeal thus taken shall not suspend the order of the district court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child has been committed, unless the Choctaw Nation Court of Appeals Court shall so order. The pendency of an appeal from an order of adjudication shall not prevent the district court from holding a dispositional hearing unless the appellate court shall so order. If the Choctaw Nation Court of Appeals does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the district court and remand the child to the jurisdiction of that court for supervision and care; and thereafter the child shall be and remain under the jurisdiction of the district court in the same manner as if such court had made such order without an appeal having been taken.

D. In the opinions of the Choctaw Nation Court of Appeals in juvenile proceedings under the Choctaw Nation Juvenile Code, the initial of the surname of the child shall be used rather than the surname of the child.

### **Section 2-2-701. Authority to order parents, legal guardians, or child's custodian to be present at proceedings, participate in rehabilitation, and perform other actions—Contempt**

A. When it is determined to be in the best interests of the child, the court may order a parent,

legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title to be present at or bring the child to any proceeding under the provisions of the Choctaw Nation Juvenile Code. The court may issue a bench warrant for any parent, legal guardian or custodian of the child, or any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title who, without good cause, fails to appear at any proceeding.

B. In any proceeding under the Choctaw Nation Juvenile Code, the court shall enter an order specifically requiring a parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title to participate in the rehabilitation process of a child including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program unless the court determines that such an order is not in the best interests of the child.

1. Any parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title willfully failing to comply with an order issued under this section without good cause may be found in indirect contempt of court.

2. The court may issue a bench warrant for any parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title who, without good cause, fails to appear at any juvenile proceeding or court-ordered program.

3. For purposes of this section, “good cause” shall include, but not be limited to, a situation where a parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title:

a. has employment obligations that would result in the loss of employment,

b. does not have physical custody of the child and resides outside the territorial jurisdiction of the Choctaw Nation of Oklahoma, and

c. resides within the territorial jurisdiction of the Choctaw Nation of Oklahoma but is outside the jurisdiction at the time of the juvenile proceeding or court-ordered program for reasons other than avoiding participation or appearance before the court and participating or appearing in the court will result in undue hardship to the parent or guardian.

4. Nothing in this section shall be construed to create a right for any child to have his or her parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title present at any juvenile proceeding or court-ordered program at which such child is present.

C. A parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title may be ordered by the court to:

1. Report any probation, parole or conditional release violations; or
2. Aid in enforcing terms and conditions of probation, parole or conditional release or other orders of the court.

Any person placed under an order to report any probation, parole or conditional release violations or aid in enforcing terms and conditions of probation, parole or conditional release or other orders of the court and who fails to do as ordered may be found in indirect contempt of court. Punishment for any such act of contempt shall not exceed a fine of Five Hundred Dollars (\$500.00), or imprisonment for not more than six (6) months in jail if the violator is an adult, or both such fine and imprisonment. The pursuit and prosecution of an indirect contempt of court judgment shall be initiated by the tribal prosecutor.

D. As used in this section, “guardian” or “custodian” shall not include any private or public agency having temporary or permanent custody of the child. Provided, nothing in this subsection shall allow the agency to fail to comply with a writ of habeas corpus issued by the court.

#### **Section 2-2-702. Reserved**

#### **Section 2-2-703. Expenses for care and maintenance of child**

A. If, after notice to the parent or parents of the child or other persons legally obligated to care for and support the child, and after affording said person or persons an opportunity to be heard, the court finds that the parent or parents of the child or other person is able to pay all or part of the costs and expenses set forth in paragraphs 1 through 4 of this subsection, the court may order the person or persons to pay the same and prescribe the method of payment, as follows:

1. Reimburse the court fund, in whole or in part, for any disbursements made from the court fund in conjunction with the case, including, but not limited to, court-appointed attorney fees, expert witness fees, service fees, witness fees, transcripts and postage;
2. Pay for the care and maintenance of the child, including, but not limited to, all or some part of placement services, medical care and behavioral health services, and reasonable monthly expenses, as authorized by law;
3. Reimburse the Choctaw Nation Department of Children and Family Services, in whole or in part, for any costs and expenses incurred by them in providing any services or authorized actions taken pursuant to the Choctaw Nation Juvenile Code for the child; and
4. Reimburse any law enforcement agency, in whole or in part, for any costs or expenses

incurred by the law enforcement agency for custodial services or other authorized actions taken pursuant to the Choctaw Nation Juvenile Code. The court may also order the assignment of benefits of medical insurance coverage for the child to the Choctaw Nation Department of Children and Family Services for the period of time the child is in the custody of the Department.

B. The court shall use the child support guidelines provided for in Section 118 of the Choctaw Nation Marriage Act in determining the amount a parent is to pay for care and maintenance of a child. If any parent is financially able but has willfully failed to pay any costs or reimbursements as ordered by the court pursuant to this section, the parent may be held in indirect civil contempt of court and, upon conviction, shall be punished pursuant to Section 566 of the Choctaw Nation Criminal Code.

C. The court shall have the right, upon conducting an evidentiary hearing, to modify its orders for care and maintenance, as the conditions or needs of the child or children may require and the ability of the person or persons held to pay may afford.

### **Section 2-2-801. Procedures and requirements for placement of adjudicated children**

A. 1. Whenever the court transfers custody of a child as provided in this title, the person, institution, agency, or department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, medical care, education, and discipline for the child, and to authorize and consent to medical care for the child provided by a qualified health care professional. The person, institution, agency or department may provide or arrange for the provision of inpatient treatment of such minor only as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to said minor, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or

b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including behavioral health care or treatment, to the person, institution, agency or Department having custody of the child, or

c. abrogate the right of the child to any benefits provided through public funds for which the

child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority. No tribal employee shall be liable for the costs of any medical care or behavioral health services provided to any child in the custody of the Choctaw Nation Department of Children and Family Services.

B. The person, institution, agency, or department having legal custody of a child pursuant to an order of the court shall receive notice of court proceedings regarding the child as provided in Sections 2-2-107 and 2-2-501 of this title and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not limited to: adjudication, disposition, review of disposition, termination of parental rights and proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

#### **Section 2-2-802. Termination of parental rights**

A. The finding that a child is delinquent or in need of supervision shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a parent to a child for any reason authorized in the Choctaw Nation Children's Code. The provision of the Choctaw Nation Children's Code shall govern termination of parental rights.

B. Whenever parental rights of the parents of a child have been terminated and the child is committed to the Choctaw Nation Department of Children and Family Services, the Executive Director of the Department of Children and Family Services shall serve as the legal guardian of the estate of the child, until another guardian is legally appointed, for the purpose of preserving the child's property rights, securing for the child any benefits to which he may be entitled under social security programs, insurance, claims against third parties, and otherwise, and receiving and administering such funds or property for the care and education of the child.

#### **Section 2-2-803. Review and assessment of children committed to the Choctaw Nation Department of Children and Family Services**

A. The Choctaw Nation Department of Children and Family Services shall review and assess each child committed to its custody to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child and, in the case of delinquent children, the protection of the public. Such review and assessment shall include an investigation of the personal and family history of the child, and his environment, and any physical or mental examinations considered necessary.

B. In making such review, the Department may use any facilities, public or private, which offer

aid to it in the determination of the correct placement of the child.

#### **Section 2-2-804. Child in need of behavioral health treatment**

A. The Choctaw Nation Department of Children and Family Services may provide for the care of a child who is in its custody and found by a court to be a minor in need of treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

B. In providing for the outpatient behavioral health care and the treatment of children in its custody, the Choctaw Nation Department of Children and Family Services shall utilize to the maximum extent possible and appropriate the services available through:

1. Tribal mental health and substance abuse programs;
2. The guidance centers operated by the Oklahoma Department of Health;
3. The Oklahoma Department of Mental Health and Substance Abuse Services;
4. The Oklahoma Department of Human Services; and
5. Community-based private agencies and organizations.

#### **Section 2-2-805. Commitment of child to custody of Choctaw Nation Department of Children and Family Services—Delivery to designated institution**

When a child is committed to the custody of the Choctaw Nation Department of Children and Family Services under the provisions of this title, the court shall order the child to be delivered by tribal police or by a private contractor pursuant to the provisions of Section 2-3-103 of this title to an institution, or other place, designated by the Department, and the cost of transportation shall be paid from the appropriate tribal fund.

### **Chapter 3. Detention**

#### **Section 2-3-101. Conditions of detention of child—Detention or confinement in adult facility**

A. When a child is taken into custody pursuant to the provisions of the Choctaw Nation Juvenile Code, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public.

1. a. No pre-adjudicatory or pre-disposition detention or custody order shall remain in force and effect for more than thirty (30) days. The court, for good and sufficient cause shown, may extend

the effective period of such an order for an additional period not to exceed sixty (60) days.

b. Whenever the court orders a child to be held in a juvenile detention facility, an order for secure detention shall remain in force and effect for not more than fifteen (15) days after such order. Upon an application of the tribal prosecutor and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed fifteen (15) days after such hearing. The total period of pre-adjudicatory or pre-disposition shall not exceed the ninety (90) day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, “telephone conference communication” means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

2. No child alleged or adjudicated to be deprived or in need of supervision or who is or appears to be a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or who appears to be a minor in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care or, with regard to a child who appears to be a minor in need of treatment, a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, or released to the custody of the parents of the child or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the court may order the child placed in a juvenile detention facility pending court proceedings if it finds the detention to be essential for the safety of the child.

B. No child shall be placed in secure detention unless:

1. The child is an escapee from any delinquent placement;
2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction;
3. The child is seriously assaultive or destructive towards others or self;

4. The child is currently charged with any criminal offense that would constitute a felony if committed by an adult; or a misdemeanor, and:

- a. is on probation or parole on a prior delinquent offense,
- b. is on pre-adjudicatory community supervision, or
- c. is currently on release status on a prior delinquent offense, or

5. The child has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings.

6. A warrant for the child has been issued on the basis that:

- a. the child is absent from court-ordered placement without approval by the court,
- b. the child is absent from designated placement by the Department of Children and Family Services,
- c. there is reason to believe the child will not remain at said placement, or
- d. the child is subject to an administrative transfer or parole revocation proceeding.

C. A child who has violated a court order and has had the order revoked or modified pursuant to Section 2-2-503 of this title may be placed into a Choctaw Nation Department of Children and Family Services-designated sanction detention bed or a Choctaw Nation Department of Children and Family Services-approved sanction program.

D. Priority shall be given to the use of juvenile detention facilities for the detention of juvenile offenders through provisions requiring the removal from detention of a juvenile with a lower priority status if an empty detention bed is not available at the time of referral of a juvenile with a higher priority status and if the juvenile with a higher priority status would be more of a danger to the public than the juvenile with the lower priority status.

E. 1. Except as otherwise provided in this section, no child shall be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

- a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and
- b. the child is awaiting an initial court appearance, and
- c. the initial court appearance of the child is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and
- d. there is no existing acceptable alternative placement for the child, and

e. the jail, adult lockup or adult detention facility provides sight and sound separation for juveniles, pursuant to standards required by subsection E of Section 2-3-103 of this title, or

f. the jail, adult lockup or adult detention facility is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

(1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities,

(2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities, and

(3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile training school or from a group home from being held in any jail certified by the Oklahoma State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a jail or other adult detention facility a person provided for in Section 2-3-102 of this title if written or electronically transmitted confirmation is received from the state seeking return of the individual that the person is a person provided for in Section 2-3-102 of this title and if, during the time of detention, the person is detained in a facility meeting the requirements of Section 2-3-103 of this title.

4. Nothing in this section shall preclude detaining a person, whose age is not immediately ascertainable and who is being detained for the commission of a felony, in a jail certified by the State Department of Health, a police station or similar law enforcement office for up to twenty-four (24) hours for the purpose of determining whether or not the person is a child, if:

- a. there is a reasonable belief that the person is eighteen (18) years of age or older,
- b. there is a reasonable belief that a felony has been committed by the person,
- c. a court order for such detention is obtained from a judge of the district court within six (6) hours of initially detaining the person,
- d. there is no juvenile detention facility that has space available for the person and that is within thirty (30) miles of the jail, police station, or law enforcement office in which the person is to be detained, and
- e. during the time of detention the person is detained in a facility meeting the requirements of subparagraph f of paragraph 1 of this subsection.

The time limitation provided for in this paragraph shall include the time the person is detained prior to the issuance of the court order. The time limitation provided for in this paragraph shall not include the actual travel time required for transporting the person to the jail, police station, or similar law enforcement office. If the time limitation established by this paragraph is exceeded, this circumstance shall not constitute a defense in any subsequent delinquency or criminal proceeding.

**Section 2-3-102. Persons under 18 years of age who have fled from another jurisdiction considered adults for purposes of detention only in certain cases**

Whenever a person under eighteen (18) years of age, who has fled from another jurisdiction, is taken into custody, that person shall be considered an adult only for the purposes of detention if:

1. The person has been charged with commission of an offense in the other jurisdiction which is considered a felony in that jurisdiction; and
2. The person is certified as an adult in that jurisdiction for the purpose of criminal prosecution for said felony or has reached the statutory age of majority in that jurisdiction; and
3. The other jurisdiction is seeking the return of the individual to its jurisdiction and provides written or electronically transmitted confirmation, which is received within forty-eight (48) hours after the person is taken into custody.

**Section 2-3-103. Temporary detention of children—Detention facilities, services, and centers—Transportation**

A. Provision shall be made for the temporary detention of children in a juvenile detention facility or the court may arrange for the care and custody of such children temporarily in private homes, subject to the supervision of the court, or the court may provide shelter or may enter into a

contract with any institution or agency to receive, for temporary care and custody, children within the jurisdiction of the court. The Choctaw Nation Department of Children and Family Services shall not be ordered to provide detention unless it has designated and is operating detention services or facilities.

B. Tribal police, their designee, private contractors under contract with the Choctaw Nation Department of Children and Family Services for transportation services, or juvenile court officers shall provide for the transportation of juveniles to and from secure detention for purposes of admission, inter-facility transfer, discharge, medical or dental attention, court appearance, or placement designated by the Choctaw Nation Department of Children and Family Services. No private contract for transportation services shall be entered into unless the private contractor demonstrates to the satisfaction of the Department of Children and Family Services that such contractor is able to obtain insurance or provide self-insurance to indemnify the Choctaw Nation against possible lawsuits and meets the requirements of subparagraphs a, b and d of paragraph 4 of subsection C of this section. The Choctaw Nation Department of Children and Family Services shall not be ordered to provide transportation for a juvenile who is detained in or is destined for secure detention.

C. 1. The Department of Children and Family Services shall provide for the temporary detention of a child who is or who may be subject to secure detention and may with the express consent of the Tribal Council construct a building or rent space for such purpose.

3. In order to operate the juvenile detention facilities designated in this section, the Department of Children and Family Services shall:

a. operate the juvenile detention facility subject to the supervision of the district court, or

b. operate the juvenile detention facility with the express consent of the Tribal Council by employing a manager who may employ personnel and incur other expenses as may be necessary for its operation and maintenance, or

c. contract with a public agency, private agency, federally recognized tribe, or a governmental trust authority for the operation of the juvenile detention facility. In the event the Department of Children and Family Services contracts with a public or private agency or a federally recognized tribe, pursuant to the provisions of this section, the Department is authorized to directly contract with and pay such public or private agency or federally recognized tribe for provision of detention services. Any contract with a federally recognized tribe shall become effective upon approval by the Tribal Council.

4. The Department of Children and Family Services may, upon the opening of such facility, contract with the operators for the use of the facility for the temporary detention of children who are subject to secure detention; provided, however, a jail, adult lockup, or other adult detention facility may be used for the secure detention of a child as provided for in Section 2-3-101 of this

title.

5. Expenses incurred in carrying out the provisions of this section shall be paid from funds lawfully appropriated by the Tribal Council for such purposes or from private funds that are available for such purposes.

6. The operation of a juvenile detention facility by the Department of Children and Family Services shall constitute a quasi-judicial function and is also hereby declared to be a government function of the Choctaw Nation of Oklahoma and immune from liability pursuant to the sovereign immunity of the Choctaw Nation of Oklahoma unless and until expressly waived by the Tribal Council. In addition, no contract authorized by the provisions of this section for the providing of transportation services or for the operation of a juvenile detention facility shall be awarded until the contractor demonstrates to the satisfaction of the Choctaw Nation that the contractor has obtained liability insurance in the amounts specified by the Tribal Council to protect against lawsuits arising from the operation of the juvenile detention facility by the contractor, or if the contract is for the providing of transportation services, the contractor has obtained liability insurance with the limits specified by Tribal Council to protect against lawsuits arising from the transportation of juveniles as authorized by this section.

#### **Section 2-3-104. Reserved**

#### **Section 2-3-105. Educational Needs and Opportunities**

Any child under eighteen (18) years of age who is detained or held for any offense pursuant to any provision of the Choctaw Nation Juvenile Code, shall be identified within seventy-two (72) hours of such detention and the Choctaw Nation Department of Education shall assess the educational needs of the child and such child shall be afforded such reasonable educational opportunities as may be suitable for the child as determined by the Choctaw Nation Department of Education without delay while said child is detained.

#### **Chapter 4. Reserved**

#### **Chapter 5. Reserved**

#### **Chapter 6. Records**

#### **Section 2-6-101. Court to keep records—Definitions**

A. The court shall make and keep records of all cases brought before the court pursuant to the Choctaw Nation Juvenile Code. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

B. As used in the Choctaw Nation Juvenile Code:

1. “Records” or “record” shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recordings pertaining to a juvenile proceeding or a child, and shall include information entered into and maintained in an automated or computerized information system;

2. “Juvenile court record” means legal and social records other than adoption records, including but not limited to agency, law enforcement and tribal prosecutor’s records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the Choctaw Nation Juvenile Code;

3. “Agency record” means records prepared, obtained or maintained by a public or private agency with regard to a child who is or has been under its care, custody or supervision or with regard to a family member or other person living in the home of such child and shall include but not be limited to:

a. any study, plan, recommendation, assessment or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care or treatment of such child, or

b. any records made in the course of any investigation or inquiry conducted by an agency to determine whether a child is a delinquent child or a child in need of supervision;

4. “Tribal prosecutor’s records” means any records prepared or obtained by an office of a tribal prosecutor relating to a juvenile case and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child;

5. “Law enforcement records” means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this chapter as a delinquent child or a child in need of supervision. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. “Non-directory education records” means any records maintained by a public or private school, including a technology center school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to the federal Family Educational Rights and Privacy Act of 1974 and any rules promulgated pursuant to the act;

7. “Legal record” means any petition, docket, motion, finding, order, judgment, pleading, paper or other document, other than social records, filed with the court; and

8. “Social record” means family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies, even if attached to court reports prepared by the agency.

### **Section 2-6-102. Confidential juvenile record**

A. Except as provided by this section or as otherwise specifically provided by the laws of the Choctaw Nation or federal laws, the following juvenile records are confidential and shall not be open to the general public, inspected, or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. Tribal prosecutor’s records;
4. Law enforcement records;
5. Non-directory education records; and
6. Social records.

B. The confidentiality limitation of subsection A of this section shall not apply to statistical information or information of a general nature obtained pursuant to the provisions of the Choctaw Nation Juvenile Code.

C. The confidentiality requirements of subsection A of this section for juvenile court records and law enforcement records shall not apply to a violation or alleged violation of any provision of the Choctaw Nation Traffic Code;

D. When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the delinquent child whether or not the juvenile record is confidential or open.

E. Except as otherwise required by tribal or federal law, the confidential records listed in subsection A of this section may only be inspected, released, disclosed, corrected or expunged pursuant to an order of the court. Except as otherwise provided specifically by the Choctaw Nation Statutes or any provision of this chapter, no subpoena or subpoena duces tecum purporting to compel disclosure of confidential information or any confidential juvenile record

shall be valid.

F. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest. Except for records of the tribal prosecutor, any court order authorizing the disclosure, release or inspection of a confidential juvenile record may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

G. Any agency or person may seek an order from the juvenile court prohibiting the release of confidential information subject to disclosure without an order of the court pursuant to any provision of this chapter. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

H. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and shall state specifically the type of information which may be reviewed and reported. Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of juveniles, parents and other persons as may be required by the court to be confidential will remain confidential.

I. Nothing contained in this section shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;
2. Authorizing the disclosure of information required to be kept confidential by the Choctaw Nation Adoption Code or disclosure of any other confidential record pursuant to the provisions of this chapter;
3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;
4. Limiting or otherwise affecting access of parties to a juvenile proceeding to any records filed with or submitted to the court;
5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review or inspection by contract or as a condition for the receipt of tribal or federal funds or participation in any program administered by the agency;

6. Prohibiting the Choctaw Nation Department of Children and Family Services from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect; or

7. Prohibiting the person or agency conducting a preliminary inquiry relating to an alleged delinquent act from providing information, as to the disposition of the matter by the tribal prosecutor, to the person or agency which referred the matter, including but not limited to whether a petition was filed or an alternative action taken, and the basis for such action and the terms of any agreement entered into by the child for payment of restitution, and including but not limited to provisions for community services.

J. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a public or private school in which the child who is the subject of the record is currently enrolled or has been presented for enrollment. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school, the agency in possession of the records shall provide in writing, digitally, or by delivery to a secure facsimile line, the requested information to the school within five (5) business days upon receipt of the request. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

K. The records of a case for which a petition is not filed shall be subject to the provisions of Chapter 6 of the Choctaw Nation Juvenile Code.

### **Section 2-6-103. Confidentiality of social records**

A. 1. Social records, as defined by Section 2-6-101 of this act, shall not be filed in the court record unless so ordered by the court. If filed in the court record, the records shall be placed in confidential envelopes in the court file and may only be accessed by the person who is the subject of the record, or the attorney for such person.

2. The person or the attorney for the person may obtain a copy of any social record used during the pendency of the delinquent proceedings that has been distributed to any of the parties during the proceedings.

B. Nothing in this section shall prohibit the disclosure of confidential records as permitted by the provisions of Chapter 6 of this Code or any other applicable law.

### **Section 2-6-104. Inspection and disclosure of confidential records without court order**

A. The confidential records listed in subsection A of Section 2-6-102 of this title may be

inspected and their contents disclosed without a court order to:

1. The following, provided that the inspection of records and disclosure authorized by this paragraph may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure:

a. pursuant to the provisions of this title, a person, agency, hospital or clinic authorized or directed by the court or by the Choctaw Nation Department of Children and Family Services to care for, treat, examine, evaluate or supervise a child or to treat, examine or evaluate the parent, legal guardian or other adult person living in the home of the child,

b. a legally recognized school in which the child who is the subject of the record is currently enrolled, and

c. individuals or agencies engaged in legitimate research for educational, scientific or public purposes or for the purpose of an audit authorized by law. No information identifying the subjects of the records shall be made available or disclosed unless it is essential to the research or audit purpose.

B. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor.

### **Section 2-6-105. Inspection and disclosure of juvenile court records without court order**

A. Juvenile court records which are confidential may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to lawful duties:

1. The judge having the child currently before the court in any proceeding pursuant to the Choctaw Nation Juvenile Code, or any judge of the district court to which such proceedings may be transferred;

2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court;

3. A tribal prosecutor and the employees of an office of a tribal prosecutor in the course of their official duties;

4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this chapter. The attorney representing a child or considering representing a child

in a juvenile proceeding may also access other records listed in subsection A of Section 2-6-102 of this title for use in the legal representation of the child;

5. Employees of juvenile bureaus in the course of their official duties;

6. Employees of the Choctaw Nation Department of Children and Family Services in the course of their official duties;

7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;

8. Any individual having court-ordered custody or custody pursuant to Choctaw Nation Department of Children and Family Services placement of the child who is the subject of the record;

9. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child;

10. Any federally recognized Indian tribe in which the child who is the subject of the record is a member, or is eligible to become a member of the tribe due to the child being the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608; provided such Indian tribe member, in the course of official duties:

a. is investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody, or

b. is providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services;

11. Any federally recognized Indian tribe in which the tribe, the district court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings. The records that are to be provided to Indian tribes pursuant to the provisions of this subsection shall include all case records, reports and documents as defined in this chapter;

12. The Chief of the Choctaw Nation or to any person the Chief designates, in writing;

13. Any federal official of the United States Department of Health and Human Services;

14. Any member of the Tribal Council, upon the written approval of the Speaker;

15. Employees or officers of a federal, state, or tribal department of corrections, probation or

parole officer, or similar person in the course of their official duties;

16. Employees of the United States Probation Office, in the course of their official duties.

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

**Section 2-6-106. Inspection and disclosure of the Choctaw Nation Department of Children and Family Services records without court order**

A. The Choctaw Nation Department of Children and Family Services agency records pertaining to a child which are confidential may be inspected and their disclosed without a court order to the following persons upon showing of proper credentials:

1. The judge having the child currently before the court in any proceeding pursuant to this title, any judge of the district court or the court to which any proceedings may be transferred;

2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court;

3. A tribal prosecutor and the employees of an office of a tribal prosecutor in the course of their official duties pursuant to this title or the prosecution of crimes against children, including providing summary dispositional and placement information to the victim of the delinquent acts of the child;

4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this title. The attorney representing a child or an attorney considering representing a child in a juvenile proceeding may access other confidential records listed in subsection A of Section 2-6-102 of this title for use in the legal representation of the child;

5. Employees of juvenile bureaus in the course of their official duties;

6. Employees of a law enforcement agency of the Choctaw Nation of Oklahoma, another Indian tribe, or any state of the United States and employees of a child protective service of another Indian tribe or any state of the United States in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under

eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;

8. Any public or private agency or person authorized by the Choctaw Nation Department of Children and Family Services to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the disclosure may be limited to summaries or to information directly necessary for the purpose of the disclosure;

9. Any federally recognized Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;

10. The parents of the child who is the subject of any records;

11. Any person or agency for research purposes, if all of the following conditions are met:

a. the person or agency conducting the research is employed by the Choctaw Nation of Oklahoma or is under contract with the Choctaw Nation and is authorized by the Department of Children and Family Services to conduct the research, and

b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to any documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

12. The Chief of the Choctaw Nation or to any person the Chief designates, in writing;

13. Any federal official of the United States Department of Health and Human Services, the United States Social Security Administration, the United States Department of Justice, the United States Department of Homeland Security, or any employee of the United States Probation Office;

14. Any member of the Tribal Council, upon the written approval of the Speaker; and

15. Employees or officers of a federal, state, or tribal department of corrections, probation or parole officer, or similar person in the course of their official duties.

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions

of this section shall, upon conviction, be guilty of a misdemeanor.

### **Section 2-6-107. Fingerprinting of persons under 18**

The fingerprinting of persons under eighteen (18) years of age shall be as prescribed by law for the fingerprinting of adults, except as specified by the provisions of this section.

1. When a child is detained or arrested in the course of an investigation of a criminal offense and:
  - a. a comparison of the fingerprints of the child with fingerprints found during the investigation of the offense is negative, or
  - b. a court finds that the child did not commit the alleged offense, all law enforcement records of the arrest and, if applicable, juvenile court and agency records shall be amended to reflect said facts immediately after the comparison or court finding;
2. Fingerprints obtained pursuant to this section shall be retained in a central national depository and in a local depository maintained by a duly constituted law enforcement agency;
3. Fingerprints obtained and maintained pursuant to this section may be used only by law enforcement officers for comparison purposes in connection with the investigation of a crime or to establish identity in instances of death, serious illness, runaways, or emergency; and
4. If a child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card pursuant to the provisions of the Choctaw Nation Minor Identification Act, the provisions of the Choctaw Nation Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian or legal custodian of the child, fingerprints obtained and maintained pursuant to the Choctaw Nation Minor Identification Act may be used by law enforcement officers as provided by paragraph 3 of this section.

### **Section 2-6-108. Effect of adjudication—Sealing of records—Order unsealing sealed records—Destruction of records**

A. No adjudication by the court upon the status of a child in a juvenile proceeding shall operate to impose any of the civil disabilities ordinarily resulting from conviction of a crime, nor shall a child be deemed a criminal by reason of a juvenile adjudication.

B. The court may order the records of a person alleged to be delinquent to be sealed as follows:

1. When the person has been alleged to be delinquent and:
  - a. one (1) year has elapsed from the later of:

- (1) dismissal or closure of the case by the court, or
- (2) notice to the court by the Choctaw Nation Department of Children and Family Services or a juvenile bureau of final discharge of such person from the supervision of the Department, and
  - b. the person has not been found guilty of or admitted to the commission of a subsequent criminal offense in either a juvenile or adult proceeding, and
  - c. no juvenile or adult proceeding for a criminal offense is pending;
2. When a juvenile court intake has been completed and:
  - a. the case has been dismissed, or
  - b. no petition has been filed pending fulfillment of conditions of a voluntary probation, or
  - c. a petition has been filed but no adjudication has occurred pending the fulfillment of conditions of a pre-adjudicatory probation;
3. When a juvenile participates in a court-approved alternative diversion program for first-time offenders and:
  - a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and
  - b. the court dismisses the case at the conclusion of the deferral period; or
4. When a juvenile participates in a court-approved military mentor program and:
  - a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and
  - b. the court dismisses the case at the conclusion of the deferral period.

The records may be sealed one (1) year after such dismissal or completion of the conditions of a voluntary or pre-adjudicatory probation, alternative diversion program for first-time offenders, or military mentor program or upon the person attaining the age of eighteen (18) years in the discretion of the court.

C. The district court shall establish a system for sealing records as required by subsection B of this section and records shall be sealed in accordance with the procedures established pursuant to said system.

D. Upon the sealing of any record of a person alleged to be delinquent pursuant to this title, the record and official actions subject to the order shall be deemed never to have occurred, and the person who is the subject of the record and all juvenile justice agencies may properly reply upon

any inquiry in the matter that no such action ever occurred and no such record exists with respect to such person.

E. 1. Upon the entry of an order to seal a juvenile court record, the court clerk shall seal the juvenile court record indicated in the court's order, except that a confidential index shall be maintained for the purpose of locating records subject to inspection or release pursuant to subsection G of this section.

2. When notified by the court clerk of a court order sealing a juvenile court record, the law enforcement agency having records pertaining to the person shall seal the records as ordered, except basic identification information shall be maintained.

3. Except where such documents are necessary to maintain tribal or federal funding, the juvenile court personnel records pertaining to the person shall be sealed.

F. Members of the judiciary, tribal prosecutors, the defendant, the defendant's counsel and employees of the Choctaw Nation Department of Children and Family Services assigned juvenile court intake responsibilities, and employees or officers of a federal, state, or tribal department of corrections, probation or parole officer, or similar person in the course of their official duties may access records that have been sealed pursuant to this section without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition, or for purposes of sentencing or placement in a case where the person who is the subject of the sealed record is alleged to have committed a subsequent juvenile delinquent act or any adult criminal offense. Provided, any record sealed pursuant to this section may be used in a subsequent juvenile delinquent or adult prosecution only after the issuance of a court order unsealing the record.

G. The court may issue an order unsealing sealed juvenile court records, for use for the following purposes:

1. In subsequent cases against the same child pursuant to this title;

2. In any criminal proceeding pursuant to the United States Code of Federal Regulations;

3. Upon conviction of a criminal offense in an adult proceeding, in connection with the sentencing of such person;

4. If the person is placed in the custody or under the supervision of the department of corrections or similar department or agency of any state, Indian tribe, or the federal government;

5. For the purpose of a criminal investigation; or

6. When the court finds that there is a compelling reason and it is in the interest of justice to order the record unsealed.

H. Any person or agency having a legitimate interest in a delinquency case or proceeding may petition the court for an order unsealing a juvenile court record. Upon the filing of a petition to unseal any juvenile court record, the court shall set a date for a hearing and shall provide thirty (30) days' notice to all interested parties. The hearing may be closed at the court's discretion. If, after a hearing, the court determines that there is any reason enumerated in subsection G of this section and it is necessary for the protection of a legitimate public or private interest to unseal the records, the court shall order the record unsealed.

I. Any record ordered to be sealed pursuant to this section, if not unsealed within ten (10) years of the order, may be obliterated or destroyed at the end of the ten-year period.

### **Section 2-6-109. Expungement of open juvenile court record**

A. A person who is the subject of a juvenile court record, that is not confidential as provided by law, may petition the district court for an order to expunge all or any part of the record pertaining to the person, except basic identification information; provided:

1. The person has attained twenty-one (21) years of age or older;
2. The person has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person at the time of the petition for an expungement;
3. The person has not been subject to any deferred prosecution or deferred sentence, and has not been convicted of any criminal offense; and
4. All court costs, restitution, fines and other court-ordered requirements have been completed for all juvenile proceedings.

B. Upon the filing of a petition for expungement of a juvenile court record, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall provide a thirty (30) days' notice of the hearing to the tribal prosecutor, the Choctaw Nation Department of Children and Family Services, the tribal police and any other person or agency whom the court has reason to believe may have relevant information related to the expungement of any record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order the records, or any part thereof except basic identification information, to be expunged. If the court finds that neither expungement of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to the records. Any order entered pursuant to the provisions of this subsection shall specify those agencies to which the court order shall apply.

D. Upon the entry of an order to expunge any juvenile court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all juvenile and criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the person.

E. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of the records, the tribal prosecutor and only to those persons and for such purposes named in the petition.

F. Employers, educational institutions, government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in any expunged juvenile records. An applicant need not, in answer to any question concerning arrest, juvenile and criminal records, provide information that has been expunged, including any reference to or information concerning expungement and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose information that has been expunged.

G. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

H. For the purposes of this section, expunged materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

I. For the purposes of this act, a district court index reference of sealed material shall be destroyed, removed or obliterated.

J. Any record ordered to be expunged pursuant to this section shall be sealed and, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

K. Subsequent to records being sealed as provided herein, the tribal prosecutor, the Choctaw Nation Department of Children and Family Services, tribal police or other interested persons or agencies may petition the court for an order unsealing any records. Upon filing of a petition, the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

L. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to the Choctaw Nation Evidence Code.

M. A person who has attained eighteen (18) years of age or older may petition the district court

for an order to expunge all or any part of the record pertaining to matters involving truancy provided the person has met the criteria set forth in paragraphs 2 through 4 of subsection A of this section. The petition shall be reviewed by the district judge with primary responsibility over the juvenile court docket.

#### **Section 2-6-110. Procedures for providing certain records to tribal police—Confidentiality**

The Choctaw Nation Department of Children and Family Services shall, in cooperation with tribal police, develop procedures for providing timely and relevant information to tribal police concerning juvenile court records and agency records of persons who have been adjudicated as delinquent for any criminal offense. The procedures shall be designed to provide the type of information useful and relevant to establishing security level requirements for persons in the custody of the tribal police. The provisions of this section shall not require the disclosure of any records or information which is required by law to be kept confidential.

### **Chapter 7-Juvenile Justice**

#### **Section 2-7-303. Community-based programs**

The Choctaw Nation Department of Children and Family Services, in its role as planner and coordinator for juvenile justice and delinquency prevention services, may recommend contracts to the Tribal Council for the establishment and, maintenance of community-based facilities, services and programs which may include, but are not limited to: Emergency shelter, diagnosis, crisis intervention, counseling, group work, case supervision, job placement, alternative diversion programs for first-time offenders and for youth alleged or adjudicated to be in need of supervision, recruitment and training of volunteers, consultation, case management services, and agency coordination with emphasis on keeping youth with a high potential for delinquency out of the traditional juvenile justice process and community intervention centers. However, no contract shall be entered except through action of the Tribal Council.

#### **Section 2-7-304. Reserved**

#### **Section 2-7-305. Agreements to establish or maintain community-based youth service programs, shelters and community intervention centers**

A. The Department of Children and Family Services with the express approval of the Tribal Council may enter into contracts to establish or maintain community-based youth service programs, shelters and community intervention centers out of local, state and federal monies.

B. The Department of Children and Family Services shall take all necessary steps to develop and

implement a diversity of community services and community-based residential care as needed to provide for adequate and appropriate community-based care, treatment and rehabilitation of children in the care, custody, and supervision of the Choctaw Nation Department of Children and Family Services. Such community services and residential care shall be consistent with the treatment needs of the child and the protection of the public.

1. The Choctaw Nation Department of Children and Family Services shall, to the extent reasonable and practicable, provide community-based services, community residential care and community intervention centers to children in the custody of the Department.

2. The Department of Children and Family Services shall establish procedures for the letting of grants or contracts, and the conditions and requirements for the receipt of such grants or contracts, for community-based services, community residential care and community intervention centers. A copy of such procedures shall be made available to any member of the general public upon request.

C. Any action taken by the Department of Children and Family Services or the Tribal Council for the establishment of community residential care or treatment facilities for children shall require, as a condition for approval, documented assurance from the agency or organization establishing such facility that appropriate arrangements have been made for providing the educational services to which residents of the facility are entitled pursuant to tribal and federal laws.

D. 1. The Choctaw Nation Department of Children and Family Services shall implement programs for establishment and continued operation of community intervention centers. The Tribal Council must approve the service provider. Any service provider, must have access to the management information system provided for in Section 2-7-308 of this title and must employ qualified staff, as determined by the Department of Children and Family Services or the Tribal Council.

2. The community intervention center shall serve as a short-term reception facility to receive and hold juveniles, who have been taken into custody by law enforcement agencies for the alleged violation of tribal statute and for whom detention is inappropriate or unavailable. The community intervention center may be a secure facility. Juveniles held in the community intervention facility shall not be isolated from common areas other than for short-term protective holding for combative or self-destructive behavior, as defined by the Choctaw Nation Department of Children and Family Services.

3. Juveniles shall not be held in a community intervention center for more than twenty-four (24) hours.

4. The community intervention center shall perform the following functions:

a. enter demographic information into the management information system provided for in Section 2-7-308 of this title,

b. immediately notify the parents or parent, guardian, or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable the adult with whom the juvenile resides, that the juvenile has been taken into custody and to pick up the juvenile, and

c. hold juveniles until they can be released to a parent, guardian, or other responsible adult or until a temporary placement can be secured, but in no event for longer than twenty-four (24) hours.

5. The community intervention center may perform the following functions:

a. gather information to determine if the juvenile is in need of immediate medical attention,

b. conduct an initial assessment pursuant to rules promulgated by the Choctaw Nation Department of Children and Family Services. Such initial assessment may be given without parental consent if the juvenile agrees to participate in the assessment, and

c. conduct an assessment pursuant to a Problem Behavior Inventory or a Mental Status Checklist or an equivalent assessment instrument authorized by rules promulgated by the Department, if written permission to do so is obtained from the parent, guardian or other person legally responsible for the care of the juvenile. Such person and the juvenile may review the assessment instrument prior to the assessment process, must be informed that participation in the assessment is voluntary and that refusal to participate shall not result in any penalty, and must sign a written acknowledgment that they were given an opportunity to review the assessment instrument. The assessment shall be used to develop recommendations to correct the behavior of the juvenile, to divert the progression of the juvenile into the juvenile justice system, to determine if the juvenile is in need of nonemergency medical treatment, and to determine if the juvenile is the victim of violence. Information derived from the assessment shall not be used in any phase of prosecution but may be used by the court following adjudication for the dispositional order and may be used for referrals to social services.

6. A juvenile alleged to have committed an offense which would be a felony if committed by an adult may be fingerprinted at a community intervention center. No other juveniles shall be fingerprinted at community intervention centers.

7. Community intervention centers shall be certified pursuant to standards established and rules promulgated by the Choctaw Nation Children and Family Services.

**Section 2-7-306. Reserved.**

**Section 2-7-307. Reserved.**

**Section 2-7-308. Management information system—Integration with other management information systems—Access to confidential records and reports**

A. The Choctaw Nation Department of Children and Family Services shall implement an agency-wide management information system for all programs and services of the Department related to children, youth and families.

B. The management information system shall:

1. To the maximum extent possible, be based upon the integration, utilization and modification, as necessary, of existing information systems within the Department;
2. Provide for the security of and limited access to the information;
3. Include case-specific information, including outcomes, and have the ability to monitor the status of children and youth receiving services through the Department;
4. Be capable of providing management reports and information regarding the various children and youth programs of the Department, and of providing aggregate information necessary for planning, monitoring and evaluation of said programs and services; and
5. Be designed so that management and analytical reports can be readily generated for those who require them.

C. 1. The management information system implemented by the Choctaw Nation Department of Children and Family Services shall be integrated with the child welfare management information system implemented and, to the extent possible, with the Juvenile Justice Information System.

2. The management information system shall be available to persons authorized to obtain confidential records and reports of the Choctaw Nation Department of Children and Family Services pursuant to Chapter 6 of the Choctaw Nation Juvenile Code.

**Section 2-7-309. Reserved**

**Section 2-7-310. Defining services and programs**

The Choctaw Nation Department of Children and Family Services shall carefully define its services and programs as to their purpose, the population served, the needs of the community if the facility, program or service is community-based, and performance expectations. Planning for new programs and services and major modifications to existing ones shall be made only after evaluation of their effect on other existing programs and services and communication and coordination with other existing public and private children and youth service providers in order to assure successful and cost-effective implementation of the program. An evaluation component

that includes monitoring and evaluation of client outcomes shall be incorporated into all of the programs and services of the Department to children and youth, whether provided directly by the agency or through a contract.

1. All programs and services shall be designed to ensure the accessibility of the program to the persons served. Provision for transportation, child care and similar services necessary in order to assist persons to access the services shall be made. If the service is provided in an office setting, the service shall be available during the evening, if necessary. Services may be provided in a school setting at the request of or with permission of the school.

2. Programs and services shall be targeted to the areas having the greatest need for them. The programs and services shall be designed to meet the needs of the area in which they are located. Programs and services intended for nationwide implementation shall be implemented first in those areas that have the greatest need for them.

3. Requests for proposals developed by the Department shall be based upon documented service needs and identified priorities. The request for proposals shall clearly identify the program or service requirements, the population to be served, and performance expectations. The agency shall adopt clear, written guidelines to ensure uniformity in the management, monitoring and enforcement of contracts for services. If in-state private providers are unable or unwilling to respond to the proposal, then out-of-state providers should be encouraged to respond.

### **Section 2-7-311. Annual review of programs and services—Reports**

A. The Choctaw Nation Department of Children and Family Services shall from time to time, but not less often than annually, review its programs and services and submit a report to the Chief of the Choctaw Nation and the Tribal Council analyzing and evaluating the effectiveness of its programs and services. The report shall include, but not be limited to:

1. An analysis and evaluation of programs and services continued, established and discontinued during the period covered by the report;

2. A description of programs and services which should be implemented;

3. Relevant information concerning the number of children comprising the population of any facility operated by the Department during the period covered by the report;

4. An analysis and evaluation, by age, of the number of children assessed for literacy skills, the number who failed to demonstrate age-appropriate reading skills, and the number who were required to participate in a literacy skills improvement program; and

5. Such other information as will enable a user of the report to ascertain the effectiveness of the programs, services and facilities.

**Section 2-7-501. Intake and probation services—Services related to juvenile offenders**

A. The Choctaw Nation Department of Children and Family Services shall provide intake and probation services for juveniles who come under the purview of the Choctaw Nation Juvenile Code. The Department may participate in federal programs for juvenile probation officers, and may apply for, receive, use and administer federal funds for such purpose.

B. A pre-adjudicatory substance abuse assessment of a child may be conducted in conjunction with a court intake or preliminary inquiry pursuant to an alleged delinquent act or upon admission to a juvenile detention facility through the use of diagnostic tools including, but not limited to, urinalysis, structured interviews or substance abuse projective testing instruments.

1. Information gained from the substance abuse assessment pursuant to this subsection shall be used only for substance abuse treatment and for no other purpose. The results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding or as the sole basis for the revocation of a community-based placement or participation in a community-based program.

2. The results of the substance abuse assessment may be given to the intake, probation or parole counselor of the child, the parent or guardian of the child or to the attorney of the child. The counselor may also provide the results of the substance abuse assessment to medical personnel, therapists, school personnel or others for use in the treatment and rehabilitation of the child.

C. The Choctaw Nation Department of Children and Family Services shall implement:

1. Court intake risk-assessment for children alleged or adjudicated to be delinquent;

2. The imposition of administrative sanctions for the violation of a condition of probation or parole;

3. A case management system for ensuring appropriate:

a. diversion of youth from the juvenile justice system,

b. services for and supervision of all youth on pre-adjudicatory or post-adjudicatory probation or on parole, and for juvenile offenders in the custody of the Choctaw Nation Department of Children and Family Services, and

c. intensive supervision of juvenile offenders and communication between law enforcement and juvenile court personnel and others regarding such offenders; and

4. Guidelines for juvenile court personnel recommendations to tribal prosecutors regarding the disposition of individual cases by tribal prosecutors.

D. 1. The Choctaw Nation Department of Children and Family Services shall establish services including, but not limited to:

- a. misdemeanor and non-serious first-time offender programs,
- b. tracking and mentor services,
- c. weekend detention,
- d. five-day out-of-home sanction placements,
- e. short-term thirty-day intensive, highly structured placements,
- f. transitional programs,
- g. substance abuse treatment and diagnostic and evaluation programs, and
- h. day treatment programs.

2. In implementing these services, the Department shall give priority to those areas of the Choctaw Nation having the highest incidences of juvenile crime and delinquency.

E. 1. The following entities shall conduct, upon adjudication of a child as a delinquent or in need of supervision unless such child has been previously assessed within the six (6) months prior to such intake, a literacy skills assessment:

- a. the Choctaw Nation Department of Children and Family Services, or
- b. a first-time offender program within a designated youth services agency.

2. Such assessment shall be conducted through the use of diagnostic tools which include, but are not limited to:

- a. structured interviews,
- b. standardized literacy testing instruments which measure the educational proficiency of the child, and

c. any other measure used to determine:

- (1) whether a child is reading at an age-appropriate level, and
- (2) the capacity of the child to read at such level.

3. The results of the literacy skills assessment required pursuant to this subsection shall be made available to the court by the tribal prosecutor for use in the disposition phase; provided, however, the results shall not be used in any evidentiary or fact-finding hearing in a juvenile proceeding to determine whether a juvenile should be adjudicated. Provided, further, such results shall not be used as the sole basis for the revocation of a community based placement or participation in a community-based program.

4. a. Upon request, the results of the literacy skills assessment shall be given to the following:

(1) the child's intake, probation or parole counselor,

(2) the parent or guardian of the child, or

(3) the child's attorney.

b. The counselor may also provide the results of the literacy skills assessment to therapists, school personnel or others for use in the training and rehabilitation of the child.

5. a. If the child is a juvenile placed in an institution or facility operated by the Choctaw Nation, the child shall be assessed and a literacy improvement program shall be implemented in accordance with Sections 2-7-601 and 2-7-603 of this title.

b. If the child is adjudicated delinquent or in need of supervision or is being detained as part of a deferral of prosecution agreement, deferral to file agreement or a deferral sentence agreement, and the results of the literacy skills assessment show that the child is not reading at an age-appropriate level but has the capacity to improve his or her reading skills, the child shall be required to actively participate in a literacy skills improvement program which may include, but not be limited to, a program of instruction through a public or private school, including any technology center school. The child shall provide documentation of substantial quantifiable literacy improvement, sufficient to demonstrate reading proficiency at an age-appropriate or developmentally appropriate level; provided, however, failure to demonstrate substantial quantifiable literacy improvement shall not be the sole basis for not dismissing a case against a child.

**Section 2-7-502. Child adjudicated in need of supervision—Placement—Rehabilitative facilities—Mental health treatment**

A. Whenever a child who has been adjudicated by the court as a child in need of supervision has been committed to the Choctaw Nation Department of Children and Family Services, the Department may place the child in the home of the child, the home of a relative of the child, foster home, group home, transitional living program, independent living program, community based setting, rehabilitative facility or child care facility, or in a school for the mentally retarded if eligible for admission thereto. No child in need of supervision shall be placed in a Choctaw Nation Department of Children and Family Services-operated institution, other than a rehabilitative facility.

B. The Choctaw Nation Department of Children and Family Services may establish and maintain, with Tribal Council approval, one or more rehabilitative facilities to be used exclusively for the custody of children in need of supervision. Each such facility shall be, primarily, a non-secure facility having as its primary purpose the rehabilitation of children

adjudicated to be in need of supervision. Such facility shall have a bed capacity for no more than twenty children, and shall minimize the institutional atmosphere and prepare the child for reintegration into the community. Provided however, that such facility may be designed and operated as a secure facility used exclusively for children in need of supervision whom the court has specifically found to be so unmanageable, ungovernable and antisocial that no other reasonable alternative exists for treatment or restraint other than placement in such a secure facility. Such facility shall not rely on locked rooms, fences, or physical restraints.

C. A child in need of supervision who has been found by a court to be a minor in need of treatment shall be placed as provided by Section 2-2-804 of this title and the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

**Section 2-7-503. Delinquent children—Intent of Tribal Council—Powers and duties of the Choctaw Nation Children and Family Services**

A. It is the intent of the Tribal Council to provide for the creation of all reasonable means and methods that can be established for:

1. The prevention of delinquency;
2. The care and rehabilitation of delinquent children; and
3. The protection of the public.

It is further the intent of the Tribal Council, through the Choctaw Nation Department of Children and Family Services, establish, maintain and continuously refine and develop a balanced and comprehensive program for children who are potentially delinquent or are delinquent.

B. Except as provided in subsection C of this section, whenever a child who has been adjudicated by the court as a delinquent child has been committed to the Department, the Department shall provide for placement pursuant to any option authorized by paragraphs 1 through 7 of this subsection; provided, nothing in this subsection shall be construed to establish a priority in regard to the selection of an option or to mandate the exclusive use of one particular option:

1. Place the child in a training school or other institution or facility maintained by the Choctaw Nation or any of its contractors for delinquent children if the child has:
  - a. exhibited seriously violent, aggressive or assaultive behavior,
  - b. committed a serious felony constituting violent, aggressive and assaultive behavior,
  - c. habitually committed delinquent acts if such acts would constitute felonies if committed by an adult,
  - d. committed multiple serious delinquent acts, or

e. violated any condition of probation or parole, to the extent that it is necessary for the protection of the public. For purposes of placement, all deferred prosecutions for serious, habitual, violent, aggressive or assaultive crimes shall count toward placement decisions;

2. Place the child in a facility maintained by the Choctaw Nation or any of its contractors for children, or in a foster home, group home, transitional living program or community residential center;

3. Allow the child his liberty, under supervision, in an independent living program;

4. Allow the child his liberty, under supervision, either immediately or after a period in one of the facilities referred to in paragraphs 1 and 2 of this subsection;

5. Place the child in a school for mentally retarded, if the child is eligible for admission thereto;

6. Place the child in a private facility deemed by the Choctaw Nation Department of Children and Family Services to be in the best interest of the child; or

7. Place the child as provided by Section 2-2-804 of this title and the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, if the delinquent child has been found by a court to be in need of mental health or substance abuse treatment.

C. The Department shall place priority on the placement of delinquent youth held in secure juvenile detention facilities.

D. Placement of a juvenile pursuant to this section or any other provision of law shall be the responsibility of the Choctaw Nation Department of Children and Family Services and shall occur as soon as reasonably possible after adjudication and after the selected placement option becomes available. The court shall not have authority to require specific placement of a juvenile in a time frame which would require the removal of any other juvenile from such placement.

### **Section 2-7-504. Discharge of children adjudicated delinquent—Retention of custody and jurisdiction**

A. Except as otherwise provided by law, all children adjudicated delinquent and committed to the Choctaw Nation Department of Children and Family Services shall be discharged at such time as the Department determines there is a reasonable probability that it is no longer necessary, either for the rehabilitation and treatment of the child, or for the protection of the public, that the Department retain legal custody. Following a hearing, the court may also order that a child adjudged delinquent and committed to the Department shall be discharged by the Department provided the child is on parole status and the court deems the discharge in the best interest of the child and public. The Department shall give a fifteen (15) day notice to the court and the tribal prosecutor before discharging from legal custody any child committed and confined in a secure

facility.

B. Except as otherwise provided by law, all children adjudged delinquent and committed to the Choctaw Nation Department of Children and Family Services and not discharged under subsection A of this section shall be discharged when the child becomes eighteen (18) years of age, unless the Department is authorized by the court to retain custody of the child until nineteen (19) years of age. Upon the court's own motion or motion of the Department or the tribal prosecutor, which must be filed prior to the date the child becomes eighteen (18) years of age, the court, after notice to the delinquent child and to the parents and attorney of said child, may authorize the Department to retain custody of the child until the child reaches nineteen (19) years of age in order for the child to complete the previously adopted plan of rehabilitation or achieve reasonable treatment objectives. If the court sustains a motion to retain custody, the delinquent child during the extended period shall be considered as a child for purposes of receiving services from the Department. If a criminal offense is committed by the individual during the extended period, said offense shall be considered as having been committed by an adult. Except to the extent necessary to effectuate the purposes of this section, an individual after age eighteen (18) years is considered an adult for purposes of other applicable law.

C. The Choctaw Nation Department of Children and Family Services shall not place a child under ten (10) years of age in an institution maintained for delinquent children.

D. The court may retain jurisdiction over a child adjudged delinquent beyond the age of eighteen (18) years to the extent necessary for the child to complete payment of court costs. The court may institute contempt proceedings pursuant to the Choctaw Nation Criminal Code against any person adjudged delinquent and ordered to pay court costs who neglects or refuses to pay such court costs. Any child referred to in this subsection over whom the court retains jurisdiction solely for payment of court costs shall not be considered to be in the custody of or under the supervision of the Department.

E. Following a hearing, the court may order that any child shall be discharged by the Choctaw Nation Department of Children and Family Services provided the child is on parole status and the court deems the discharge in the best interest of the child and public. The Department shall give a fifteen-day notice to the tribal prosecutor before discharging from legal custody any child committed and confined in a secure facility.

**Section 2-7-601. Juveniles placed in Department-operated institutions and facilities— Powers and duties of Department**

A. In addition to the other powers and duties prescribed by law, the Choctaw Nation Department of Children and Family Services shall have the following duties and powers with regard to juveniles placed in Department-operated institutions and facilities:

1. Provide for the care, education, training, treatment and rehabilitation of juveniles who are placed in the institutions and facilities. The Department shall provide for a uniform system of assessment of the reading ability of each juvenile upon initial placement in a Department-operated institution or facility. The assessment shall include, but not be limited to, the following skills:

- a. the level of word decoding skills of the juvenile,
- b. the level of vocabulary and spelling ability of the juvenile, and
- c. the comprehension level of the juvenile.

The Department may give assistance to local school districts in providing an education to such juveniles, may supplement such education, and may provide facilities for such purposes. It shall be the duty of the Department to assure that juveniles in the aforesaid institutions and facilities receive educational services which provide each juvenile with a balanced and comprehensive reading program, which includes as its primary and foundational components:

- (1) an organized, systematic, explicit skills program that may include phonics, word recognition strategies and other word decoding skills to address the needs of the individual juvenile as determined by the entry level needs assessment,
- (2) a strong language arts and comprehension program that includes a balance of oral and written language, an ongoing individualized evaluation and diagnosis that informs the teacher and an assessment that assures accountability, and
- (3) writing, mathematics, science and vocational-technical education;

2. Transfer from a juvenile institution to another facility under the jurisdiction of the Department, a juvenile who has been adjudicated delinquent, if the Department believes it advisable to do so; transfer from a facility for juveniles in need of supervision to another such facility, a juvenile who has been adjudicated in need of supervision, provided that such transfer is consistent with the treatment needs of the juvenile; transfer from a juvenile institution or facility to a school for the mentally retarded, any juvenile eligible for admission thereto, if the juvenile appears to be in need of the care and treatment provided at such school; transfer from a facility for delinquent or in need of supervision juveniles to an appropriate facility for any juvenile found by the court to be a minor in need of treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act and committed to inpatient mental health or substance abuse treatment as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. If a transfer is made pursuant to this paragraph, the Department shall comply with the notification requirements of Section 2-2-504 of this title;

3. Release on parole a juvenile previously adjudicated to be delinquent, subject to terms and conditions specified by the Department, whenever the Department determines that such release

will not be detrimental to society and that the juvenile is ready to be returned to the community and revoke said parole for violation of the specified terms or conditions of parole pursuant to the provisions of this section and the rules and procedures established by the Department for such revocation;

4. Release any juvenile from a juvenile institution for placement in a group home, transitional living program, independent living program, other community-based facility or program or out-of-home care subject to terms and conditions specified by the Department; and

5. Provide parole services for juveniles released on parole from juvenile institutions, and aftercare services for juveniles discharged from juvenile institutions or facilities. Persons designated as juvenile parole officers by the Department shall have the power to serve process and to apprehend and detain juveniles and make arrests in accordance with the laws of the Choctaw Nation of Oklahoma.

B. The transfer of a juvenile from a non-secure placement to a secure placement shall be subject to an administrative transfer hearing and any revocation of parole shall be subject to a parole revocation hearing.

1. In any administrative transfer or parole revocation proceeding, the following minimum standards shall apply:

a. the juvenile shall have the right to notice of the proposed transfer or parole revocation hearing and the alleged violation of administrative or parole rules on which the proposed transfer or parole revocation is based,

b. the juvenile shall have the right to representation by an attorney,

c. the juvenile shall have the right to present evidence on behalf of the juvenile, and

d. the juvenile shall have a right to bail, except that said right to bail shall not be construed to require that a juvenile who is in residence in an Department-operated institution or other facility at the time of an alleged violation leading to an administrative transfer proceeding be released from such institution or facility.

2. The situs of said hearings shall be the county in which the alleged violation of administrative or parole rules occurs. The district court shall aid the administrative transfer or parole revocation process of the Department by:

a. determining eligibility for and amount of bail;

b. deciding any intermediate custody or placement issue; and

c. if legal counsel for the juvenile has not otherwise been obtained, appointing legal counsel for the juvenile and fixing the amount of compensation for the legal counsel. Said judge shall also

determine if the juvenile is eligible for free legal services. If the juvenile is not eligible for free legal services, the court shall order the parents or legal guardian of the juvenile to pay for such services.

3. If legal counsel for the juvenile has not otherwise been obtained, the appointment of legal counsel for the juvenile, the setting of the amount of compensation for such counsel, and the determination of whether or not the juvenile is eligible for free legal services shall be provided for pursuant to the Choctaw Nation Public Defender Act. If the juvenile is not eligible for free legal services, the court shall order the parents or legal guardian of the juvenile to pay for such services.

C. The Department may participate in federal programs relating to delinquent juveniles, or juveniles in need of supervision, or institutions and services for such juveniles and apply for, receive, use and administer federal funds for such purposes.

#### **Section 2-7-602. Methods of administration—Superintendent as guardian**

A. The Choctaw Nation Department of Children and Family Services shall establish and maintain such methods of administration and shall promulgate such rules as it deems necessary for the efficient and effective operation of the juvenile institutions and facilities operated by the Department.

B. The superintendent of a juvenile institution or facility shall be the guardian of the person of each juvenile in the institution or facility for the limited purpose of providing care and protection for any life-threatening situation that may arise.

#### **Section 2-7-603. Rules, policies and procedures required in facilities**

A. The Department of Children and Family Services with the express approval of the Tribal Council shall promulgate written rules, outline policies and procedures governing the operation of those facilities, operated by the Choctaw Nation or through contract, wherein juveniles may be housed. Said policies and procedures shall include, but not be limited to, standards of cleanliness, temperature and lighting, availability of medical and dental care, provision of food, furnishings, clothing and toilet articles, supervision, appropriate and permissible use of restriction and confinement, procedures for enforcing rules of conduct consistent with due process of law and visitation privileges.

B. The policies prescribed shall, at a minimum, ensure that:

1. A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits, or solitary confinement;

2. A child shall have the opportunity to participate in physical exercise each day;
3. A child shall be allowed daily access to showers and the child's own clothing or individualized clothing which is clean. When a child is participating in an outdoor adventure program that takes the child away from the permanent facility, the child shall be provided with the opportunity to wash with soap and water daily;
4. A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the presence of the child, without being read, to inspect for contraband, or to inspect for material harmful to minors. Provided that, when based on legitimate facility interests of order and security as determined by the facility superintendent, mail addressed to a child or sent by a child may be read, censored, or rejected, except that mail addressed to a child from the attorney of the child or sent by the child to the attorney of said child shall not be opened, censored, or withheld in any way. The child shall be notified when incoming or outgoing mail is withheld in part or in full;
5. A child shall have reasonable opportunity to communicate and to visit with the child's family on a regular basis and to communicate with persons in the community;
6. A child shall have immediate access to medical care as needed and shall receive necessary behavioral health services;
7. A child in the custody or care of the Choctaw Nation Department of Children and Family Services shall be provided access to education including teaching, educational materials and books, provided, that such policies shall provide emphasis upon basic literacy skills, including but not limited to curricula requirements stressing reading, writing, mathematics, science, vocational-technical education, and other courses of instruction designed to assure that such children will be capable of being assimilated into society as productive adults capable of self-support and full participation;
8. A child shall have reasonable access to an attorney upon request;
9. A child shall be afforded a grievance procedure, including an appeal procedure;
10. The behavioral health needs and mental well-being of a child will be met, protected and served through provision of guidance, counseling and treatment programs, staffed by competent, professionally qualified persons, serving under the supervision of licensed psychologists, psychiatrists or licensed clinical social workers; and
11. Upon leaving the custody of the Choctaw Nation Department of Children and Family Services, a child shall be afforded a copy of the literacy progress section of the individualized service plan developed for the child for continued use at the next school placement of the child.

**Section 2-7-604. Physical force, when authorized—Mechanical restraints—Chemical agents**

A. Use of physical force in institutions and other facilities operated by or through contract with the Choctaw Nation wherein children are housed shall be permitted only under the following circumstances:

1. For self-protection;
2. To separate juveniles who are fighting; or
3. To restrain juveniles in danger of inflicting harm to themselves or others; or
4. To restrain juveniles who have escaped or who are in the process of escaping.

B. When use of physical force is authorized, the least force necessary under the circumstances shall be employed.

C. Staff members of residential and nonresidential programs who are assigned to work with juveniles shall receive written guidelines on the use of physical force, and that, in accordance with staff disciplinary procedures, loss of employment may result if unauthorized use of physical force is proven.

D. Use of mechanical restraints in institutions and other facilities operated by or through contract with the Choctaw Nation wherein children are housed shall be minimal and shall be prohibited except as specifically provided for in the rules of the Choctaw Nation Department of Children and Family Services or other applicable law.

E. Use of chemical agents and electroshock weapons in secure facilities operated by or through contract with the Choctaw Nation shall be minimal and shall be prohibited except as specifically provided for in the rules of the Department of Children and Family Services.

**Section 2-7-605. Escape or run away from institutional placement**

A. Upon discovery that a juvenile has run away or is absent without leave (AWOL) from a staff-secure or non-secure placement, the Choctaw Nation Department of Children and Family Services may notify any law enforcement officer or agency who shall use any reasonable method to notify law enforcement agencies and personnel. All law enforcement agencies and personnel shall be authorized to apprehend and detain such juvenile.

B. Running away or being absent without leave (AWOL) by a juvenile from a staff-secure or non-secure placement shall be considered by the court of juvenile jurisdiction as a delinquent act.

**Section 2-7-606. Reserved.**

**Section 2-7-607. Reserved.**

**Section 2-7-608. Reserved**

**Section 2-7-609. Facilities and residential programs—Legislative intent**

It is the intent of the Tribal Council that the facilities and residential programs established or contracted by the Choctaw Nation affirm the dignity of self and respect for others; promote the value of education, work, and self-discipline; and develop useful skills and abilities that can be applied when the juvenile is reintegrated into the community.

**Section 2-7-610. Reserved**

**Section 2-7-611. Secure facilities—Violations**

A. For purposes of this section, “electronic communication” means any transfer of signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system, and includes, but is not limited to, the transfer of that communication through the Internet.

B. Any person, including a resident of the facility, who knowingly, willfully and without authority brings into or has in his or her possession in any secure facility or juvenile detention facility any gun, knife, bomb or other dangerous instrument, any controlled dangerous substance, any intoxicating beverage or low-point beer, any cellular phone or electronic device capable of sending or receiving any electronic communication, money, or financial documents for a person other than the juvenile or relative of the juvenile, shall be guilty of a felony and is subject to imprisonment for not less than one (1) year or more than five (5) years, or a fine of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00), or both such fine and imprisonment.

C. Any person, including a resident of the facility, who knowingly, willfully and without authority brings into or has in his or her possession in any secure facility or juvenile detention facility any cigarettes, cigars, snuff, chewing tobacco, or any other form of tobacco product shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment not to exceed one (1) year, or by a fine not exceeding Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

**Section 2-7-612. Reserved.**

### **Section 2-7-613. Foster Care Program for Children in Custody of the Department**

A. The Department shall establish a program of foster care for children in the custody of the Department, and in implementing the program of foster care, shall:

1. Recruit foster families for children in the custody of the Department;
2. Exercise supervision over all foster placements with whom the Choctaw Nation has a contract for foster care services;
3. Establish rules and standards for providing foster care services;
4. Require initial and ongoing foster parent training and education programs; and
5. Establish a grievance procedure in accordance with rules promulgated by the Department of Children and Family Services, including a statement of foster parent rights, for foster parents with whom the Choctaw Nation contracts.

B. The Department shall not be liable for any costs or expenses expended voluntarily by a foster parent for a foster child which are in excess of the funds authorized for providing foster care services to the foster child.

### **Section 2-7-614. Foster Care Placements for Children in Custody of the Department**

A. Except as otherwise provided by this section, no child in the custody of the Department shall be placed with any foster placement unless the foster placement meets standards as required by rules promulgated by the Department and is otherwise approved for foster care by the Department for children within its custody.

B. Except as otherwise provided by this section, no person shall receive a child for foster care or provide foster care services to a child unless such person meets standards as required by the Department, and is otherwise approved by the Department for children within its custody.

### **Section 2-7-615. Contracts with Foster Care Placement Providers**

A. The Department of Children and Family Services with the express approval of the Tribal Council may enter into a written contract with the foster care placement provider. The contracts shall provide, at a minimum:

1. That the Department shall have access at all times to the child and to the foster placement;
2. A listing of any specific requirements, specific duties or restrictions in providing foster care services;

3. That any foster child shall have access to and be accessible by any court-appointed special advocate for the foster child and the foster child's attorney;
4. That any foster care placement provider shall comply with performance standards required pursuant to the rules promulgated by the Department;
5. Information regarding the amount of payment to be made for foster care services, including but not limited to a description of the process involved in receiving payment, including projected time frames, information related to reimbursements for eligible costs and expenses for which the foster parent may be reimbursed and any information concerning the accessibility and availability of funds for foster parents;
6. Except as provided in this section, the Department may remove a child in its custody from a foster placement whenever the agency determines that removal is in the best interests of the child or consistent with the Choctaw Nation's interest in the protection of the public; and
7. Such other information required by the Department of Children and Family Services or the Tribal Council.

B. The Department shall provide the following information to the foster parent at the time of placement, along with a copy of the written contract required pursuant to subsection A of this section:

1. The names and telephone numbers of the child's caseworkers;
2. A copy of applicable policy and procedures of the Department as pertaining to placement operations as established by the Department;
3. The name and telephone number of any foster parent association in the county of residence of the foster parent;
4. A copy of the statement of foster parent rights; and
5. A copy of any applicable policies and procedures of the Department, which pertain to placement operations of the Department.

### **Section 2-7-801. Juvenile Offender Victim Restitution Work Program**

A. There is hereby created a program of juvenile crime victim restitution to be administered by the Choctaw Nation Department of Children and Family Services. The program shall be known as the "Juvenile Offender Victim Restitution Work Program".

B. The Department shall promulgate rules necessary for the implementation of the provisions of this section.

C. The programs developed under the provisions of this section shall provide restitution to a victim by requiring the juvenile to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from such a program. Restitution shall be made through the employment of the juvenile in work programs. The supervised work or service program shall not deprive the juvenile of schooling which is appropriate to the age, need, and specific rehabilitative goals of the juvenile. The program shall not prohibit the juvenile from fulfilling restitution obligations through jobs the juvenile has found, by performing volunteer services for the community, or by doing work for the victim.

D. Agreements for participation in the programs under this section may include restitution not in excess of actual damages caused by the juvenile which shall be paid from the net earnings of the juvenile received through participation in a constructive program of service or education acceptable to the juvenile, the victim, the Department, the tribal prosecutor and/or the district court. During the course of such service, the juvenile shall be paid no less than the federal minimum wage. In considering a restitution agreement, the Department, the tribal prosecutor and/or the district court shall take into account the age, physical and mental capacity of the juvenile. The service shall be designed to relate to the juvenile a sense of responsibility for the injuries caused to the person or property of another. If a petition has not been filed, the tribal prosecutor shall approve the nature of the work, the number of hours to be spent performing the assigned tasks and shall further specify that as part of a plan of treatment and rehabilitation, that seventy-five percent (75%) or more of the net earnings of the juvenile shall be used for restitution in order to provide positive reinforcement for the work performed. If a petition has been filed, the district court may approve the nature of the work, the number of hours to be spent performing the assigned tasks and may further specify that as part of a plan of treatment and rehabilitation, that seventy-five percent (75%) or more of the net earnings of the juvenile shall be used for restitution.

E. The Department of Children and Family Services with the express approval of the Tribal Council may enter into contracts with private service providers for implementation of the program required by this section. The Department may require, as a condition of the contract, that the service provider pay restitution directly to the victim or victims and pay any amounts due to the juvenile directly to the juvenile. The records of any service provider that contracts with the Nation pursuant to this section shall be subject to inspection by any employee of the Department of Children and Family Services or employees designated by the Chief of the Choctaw Nation. The Choctaw Nation may subsidize the employment of a juvenile for the purposes of participation in a work program as provided by this section.

F. Any person, entity or political subdivision who is an employer of juveniles or recipient of services from a juvenile, pursuant to an agreement with the Juvenile Offender Victim Restitution Work Program shall not be liable for ordinary negligence for:

1. Damage to the property of the juvenile or injury to the juvenile except as to the liability

established by the Workers' Injury Code if the juvenile is covered thereunder; or

2. Damage to any property or injury to any person which results from the services of the juvenile pursuant to this section.

### **Section 2-7-802. Juvenile Justice Public Works Program**

A. This act shall be known and may be cited as the "Juvenile Justice Public Works Act".

B. As used in the Juvenile Justice Public Works Act:

1. "Director" means the Executive Director of the Choctaw Nation Children and Family Services;

2. "Public works project" means a project that has been determined by the Director of the Choctaw Nation Department of Children and Family Services to be necessary for the public well-being and conducive to rehabilitation and the reduction of recidivism among participating juveniles; and

3. "Juvenile" means any person who is under the custody and control of the Choctaw Nation Department of Children and Family Services.

C. The Department shall establish and maintain the Juvenile Justice Public Works Program. The purpose of the Juvenile Justice Public Works Program shall be to:

1. Provide labor for community service projects in order to develop lands pursuant to public works projects;

2. Provide improvements and beautification to public lands and buildings; and

3. Reduce recidivism for juvenile offenders by aiding such individuals in transitioning between institutions and the community.

D. No juvenile shall be assigned to any public works project if the offender:

1. Is deemed by the Director to be a threat to public safety; or

2. Has escaped or attempted to escape from an institution or other placement within the last year.

E. The Choctaw Nation Department of Children and Family Services shall promulgate rules as necessary to implement the provisions of the Juvenile Justice Public Works Act. At a minimum, the rules shall provide guidelines that establish criteria for selection and assignment to the Juvenile Justice Public Works Program and the duties to be performed by the participants in the program.

F. The Juvenile Justice Public Works Act shall not be construed to restore, in whole or in part,

the civil rights of any juvenile. No juvenile participating in the Juvenile Justice Public Works Program shall be considered an employee of the Choctaw Nation or the Department. Any eligible juvenile assigned to the Juvenile Justice Public Works Program shall be exempt from the provisions of the Workers' Injury Code.

G. 1. All government agencies, nonprofit organizations, community service agencies, educational programs and other treatment programs are immune from liability for torts committed by or against any eligible juvenile assigned to the Juvenile Justice Public Works Program, except that the Department shall provide basic or necessary medical and dental care to the juveniles placed in the program in such instances.

2. Without waiving the immunity of the Choctaw Nation, the Executive Director of the Choctaw Nation Department of Children and Family Services may authorize the repair or replacement of the personal property of a third party if the personal property is damaged or destroyed by a juvenile or who is in the custody of the Department and while participating in the Juvenile Justice Public Works Program. Any personal property repaired or replaced shall be comparable in kind, quality and cost to the original property. Reimbursement shall not duplicate insurance coverage carried by the third party.

### **Juvenile Offender Tracking Program**

#### **Section 2-7-901. Purpose—Short title**

A. There is hereby created the Juvenile Offender Tracking Program for the purpose of:

1. Establishing an accurate and accessible data base with information on juvenile offenders readily available to law enforcement agencies, juvenile court personnel, tribal prosecutors, and others who require such information; and
2. Enhancing community control of crime through information sharing regarding juvenile offenders that can be used by patrol officers and criminal investigators for the early identification of offenders and assist in the reduction of crime.

B. Sections 2-7-901 through 2-7-905 of this title shall be known and may be cited as the "Juvenile Offender Tracking Program".

#### **Section 2-7-902. Definitions**

As used in the Choctaw Nation Juvenile Code:

1. "Agencies and programs comprising the juvenile justice system" means:

- a. the courts, the tribal prosecutor and office of the tribal prosecutor, law enforcement agencies, juvenile bureaus, the Choctaw Nation Department of Children and Family Services, and any other agency responsible for the care, custody or supervision of youth alleged or adjudicated to be delinquent, and
  - b. to the extent that they are responsible for the provision of services to youth alleged or adjudicated to be delinquent, including but not limited to educational, treatment or residential services, schools and other public and private agencies not otherwise specifically included in subparagraph a of this paragraph, comprising the “children and youth service system”;
2. “Children and youth service system” means health, mental health, social, rehabilitative assistance and educational services provided to children and youth by and through the courts and public and private agencies;
  3. “Juvenile court personnel” means those persons responsible for juvenile court intake, probation and parole supervision and services to youth alleged or adjudicated to be delinquent;
  4. “Juvenile Justice Information System” means the automated information system established by Section 2-7-905 of this title;
  5. “Juvenile offender” means a delinquent child or juvenile as defined by Section 2-1-103 of this title; and
  6. “Juvenile Offender Tracking Program” means the program of information, information sharing and case tracking established by Section 2-7-903 of this title.

### **Section 2-7-903. Juvenile Offender Tracking Program—Components**

The Juvenile Offender Tracking Program shall include, but not be limited to:

1. The Juvenile Justice Information System pursuant to the provisions of Section 2-7-905 of this title; and
2. Specific procedures for identifying juvenile offenders for the purpose of communication between law enforcement and juvenile court personnel and others regarding said offenders.

### **Section 2-7-904. Implementation of Program—Duties of agencies**

For the purpose of achieving full implementation of the Juvenile Offender Tracking Program, the Choctaw Nation Department of Children and Family Services, the tribal prosecutor, courts of the Choctaw Nation, local law enforcement agencies, and other agencies comprising the juvenile justice system shall:

1. Develop and implement the Juvenile Offender Tracking Program;

2. Develop and implement the Juvenile Justice Information System;
3. Adopt rules, policies, procedures, standards, protocols and guidelines, as appropriate, for the development and implementation of the Juvenile Offender Tracking Program and the Juvenile Justice Information System; and
4. Recommend contracts to the Tribal Council as appropriate for the purpose of implementing the Juvenile Offender Tracking Program and the Juvenile Justice Information System.

**Section 2-7-905. Juvenile Justice Information System—Functions—Duties of agencies-Plan for implementation**

A. For the purpose of information sharing and management of the Juvenile Offender Tracking Program, there is hereby created the Juvenile Justice Information System. The information system shall be an automated, databased, system for tracking juvenile offenders from arrest through final closure of the case and shall include information provided by all of the components of the juvenile justice system in accordance with the provisions of the Juvenile Offender Tracking Program. The information system shall be fully integrated with other information systems related to services to children and youth and shall:

1. Be based upon the integration, utilization and modification, as necessary, of existing information systems;
2. Provide for the accuracy of the information and for the security of and limited access to the information;
3. Include case specific information, including client outcomes, and have the ability to monitor juveniles in the juvenile justice system; and
4. Be capable of providing management reports and information to the various components of the juvenile justice system, and of providing aggregate information necessary for planning, monitoring, evaluating and managing programs and services provided to youthful offenders as well as for system-wide analysis of the Juvenile Offender Tracking Program.

B. The Choctaw Nation Department of Children and Family Services, the tribal prosecutor, courts of the Choctaw Nation, local law enforcement agencies, and other agencies comprising the juvenile justice system, in accordance with guidelines established by the Juvenile Offender Tracking Program, shall jointly:

1. Identify information to be shared by agencies on a regular basis;
2. Develop procedures for processing case-profiles as cases move through agencies that come in contact with juvenile offenders;

3. Establish training programs in the use of the system;
4. Conduct a pilot project to test the system; and
5. At least annually, evaluate the implementation of the Juvenile Justice Information System and submit any necessary modifications of the existing plan to the Juvenile Offender Tracking Program and to the Chief of the Choctaw Nation and the Tribal Council, and each agency affected by said plan.

## **Chapter 8. Juvenile Sex Offender Registration Act**

### **Section 2-8-101. Short title**

This act shall be known and cited as the “Juvenile Sex Offender Registration Act”.

### **Section 2-8-102. Juvenile sex offender defined**

As used in this act, “juvenile sex offender” means a person who was not less than fourteen (14) years of age but who was less than eighteen (18) years of age at the time the qualifying sex offense was committed and who:

1. On or after July 1, 2014, was adjudicated delinquent for an action that would be an offense for which an adult would be required to register as a sex offender pursuant to the Choctaw Nation Statutes;
2. As of July 1, 2014, is serving formal probation or commitment to the custody of the Choctaw Nation Department of Children and Family Services as the result of adjudication for an action for which an adult would be required to register as a sex offender pursuant to the Choctaw Nation Statutes;
3. Was adjudicated delinquent in another Indian tribe, any state of the United States, or in the United States for any offense for which an adult would be required to register as a sex offender pursuant to the Choctaw Nation Statutes; or
4. Is required to register as a juvenile sex offender in another Indian tribe, any state of the United States, or in the United States for having committed a sex offense in that jurisdiction regardless of the date of the offense or its adjudication.

### **Section 2-8-103. Juvenile sex offender registry—Information included**

The Choctaw Nation Department of Children and Family Services shall establish and maintain a registry for juvenile sex offenders required by the court to register. The registry shall include

fingerprints, photographs, and information collected from forms submitted and other communications relating to notice of duty to register, sex offender registration, and notice of change of name or address. Information in the juvenile sex offender registry is subject to release to law enforcement agencies and may be released to the public pursuant to court order as provided in Section 2-8-104 of this title.

**Section 2-8-104. Application register—Criteria for qualifying—Court order**

A. When a person meets the definition of a juvenile sex offender pursuant to Section 2-8-102 of this title, the tribal prosecutor may make an application to include the juvenile in the juvenile sex offender registry. Upon the application of the tribal prosecutor, the court shall appoint two persons who are qualified sex offender treatment professionals to evaluate the juvenile and report to the court on the treatment prognosis and likelihood that the juvenile offender represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. One appointee shall be currently licensed as a physician or psychologist with a minimum of two hundred (200) hours of clinical experience in juvenile sex offender treatment. Other criteria for qualifying as a sex offender treatment professional shall include, but not be limited to, current licensure as a medical or mental health professional with a minimum of two hundred (200) hours of clinical experience in juvenile sex offender treatment, or current licensure as a medical or mental health professional with a minimum of two (2) years' combined clinical experience in child abuse treatment, child or adolescent anger management treatment, juvenile delinquency or criminal behavior treatment, sexual abuse treatment, child or adolescent psychology, or therapeutic social work. A list of sex offender treatment professionals meeting the established criteria shall be provided to the court by the Choctaw Nation Department of Children and Family Services. Where professionals are appointed to conduct an evaluation in such cases, the court may set reasonable compensation and order the payment out of the court fund. In the event two qualified sex offender treatment professionals are not available to the court to evaluate the juvenile sex offender, the Department may, at the court's request, select additional qualified sex offender treatment professionals employed by the agency to assist with the evaluation report.

B. The court shall, after consideration of the evaluation report required by subsection A of this section, make a finding of whether the juvenile offender represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. If the court finds the juvenile represents such threat, the court shall order the juvenile to register on the juvenile sex offender registry as provided in this act.

C. The court, in its discretion, may order information on any juvenile sex offender released from the juvenile sex offender registry to any person or to the public at large when the evaluation report considered by the court indicates a likelihood of an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age. If the court orders release of this information to the public at large, it shall promptly be made available for public inspection or

copying pursuant to rules promulgated by the Department. If the court orders the release of this information through community notification, the notification shall be carried out by the local law enforcement authority applicable to the person's residence.

D. The court may review the treatment prognosis of any registered juvenile sex offender at any time and may, in its discretion, order release of additional information from the juvenile sex offender registry, as deemed appropriate for the protection of the public.

**Section 2-8-105. Juvenile sex offenders ordered to probation—Notification of duty to register**

On or after July 1, 2014, when the court orders a juvenile sex offender to register on the juvenile sex offender registry as provided in Section 2-8-104 of this title, the court shall provide at the time of the order written notification of the duty to register. The written notification shall be a form provided by the Choctaw Nation Department of Children and Family Services and shall be signed by the juvenile and a parent or guardian who has custody and control of the juvenile. One copy shall be retained by the court, one copy shall be provided to the juvenile offender, and one copy shall be submitted within three (3) working days to the juvenile sex offender registry.

**Section 2-8-106. Annual registration—Notification of change of name and address**

An adjudicated juvenile sex offender ordered to register on the juvenile sex offender registry shall be subject to annual registration and change of name and address notification pursuant to this act, except during periods when the juvenile is in the custody of the Choctaw Nation Department of Children and Family Services.

**Section 2-8-107. Failure to register or provide notification of change of name or address**

A. A juvenile sex offender who fails to register or provide notification of a change of name or address is guilty of a misdemeanor.

B. A parent or guardian who has custody and control of a juvenile sex offender commits a misdemeanor offense of failure to supervise a child if the juvenile offender fails to register or provide notification of a change of name or address as required by this act. A person convicted of this offense is punishable by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for up to six (6) months, or by both fine and imprisonment.

**Section 2-8-108. Transfer of registration to adult sex offender registry—Petition**

When a registered juvenile sex offender reaches twenty-one (21) years of age or is otherwise released from the custody of the Choctaw Nation Department of Children and Family Services,

the tribal prosecutor may petition the court to transfer the person's registration to the adult sex offender registry. After notice, if the court determines at a hearing that the person who is registered on the juvenile sex offender registry is likely to or does pose an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age, the court shall order that the delinquent act be deemed an adult criminal conviction for the purpose of registration, notification, and public information access pursuant to Choctaw Nation Sex Offender Registration Act. If no petition is filed within ninety (90) days following the twenty-first birthday of the person or the date of release from custody, or if the court determines the person is not likely to or does not pose an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age, the juvenile's name and information shall be deleted from the juvenile sex offender registry, and the person may not be included in the adult sex offender registry.

#### **Section 2-8-109. Juveniles not subject to act**

The provisions of this act do not apply to a juvenile who is subject to registration and notification requirements of the Choctaw Nation Sex Offender Registration Act, because the offender was convicted of a sex offense as an adult.

#### **Section 2-8-110. Disclosure of information—Immunity from liability**

A. No person or governmental entity, other than those specifically charged in this act with a duty to collect information regarding registered sex offenders, has a duty to inquire, investigate or disclose any information regarding registered sex offenders.

B. No person or governmental entity, other than those specifically charged in this act with an affirmative duty to provide public access to information regarding registered sex offenders, shall be held liable for any failure to disclose any information regarding registered sex offenders to any other person or entity.

C. Every person or governmental entity who, acting without malice or criminal intent, obtains or disseminates information under this act shall be immune from civil liability for any damages claimed as a result of such disclosures made or received.

#### **Section 2-8-111. Use of information to commit crime or cause physical harm or damage to property—Penalties**

Any person who uses information obtained pursuant to this act to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor upon conviction, and, in addition to any other punishment, shall be punished by imprisonment for a term not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

## **Section 2-8-112. Rules, procedures, and forms**

The Choctaw Nation Department of Children and Family Services shall promulgate rules, procedures, and forms necessary for the implementation of a juvenile sex offender registry.

## **Crimes Involving Juveniles**

### **Section 2-8-221 - Transmission of Child Pornography**

A. Whenever the tribal prosecutor has reasonable cause to believe that an individual over whom the Choctaw Nation otherwise has jurisdiction, with knowledge of its content, is engaged in sending a transmission or causing a transmission to originate within the Choctaw Nation containing obscene material or child pornography, the tribal prosecutor, may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the transmission.

The individual sending the transmission specified in this section may be charged and tried in the jurisdiction wherein the transmission is sent or in which it is received by the person to whom it was transmitted.

For purposes of any criminal prosecution pursuant to a violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of Choctaw Nation by the sending of information into the Choctaw Nation by any computer, cellular phone, or other computer-related or satellite-operated device, regardless of the actual residence of the violator.

B. Any individual under eighteen (18) years of age who engages in the original or relayed transmission of obscene or erotic material via electronic media in the form of digital images, videos, or other depictions of real persons under the age of eighteen (18) years, and:

1. The original or relayed transmission is of another minor over thirteen (13) years of age and is made with the consent of the pictured individual and is transmitted to five or fewer individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Five Hundred Dollars (\$500.00) for the first offense,

b. a fine not to exceed One Thousand Dollars (\$1,000.00) for a second and subsequent offense,

c. up to forty (40) hours of community service, or

d. a referral to the Choctaw Nation Department of Children and Family Services to propose a probation plan which shall be adopted through disposition;

2. The original or relayed transmission is of another minor over thirteen (13) years of age and is made without the consent of the pictured individual, or is sent to six or more individual destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Seven Hundred Dollars (\$700.00) for the first offense,

b. a fine not to exceed One Thousand Four Hundred Dollars (\$1,400.00) for a second or subsequent offense,

c. up to sixty (60) hours of community service, and

d. a referral to the Choctaw Nation Department of Children and Family Services to propose a probation plan which shall be adopted through disposition; and

3. The original or relayed transmission is of another minor thirteen (13) years of age or younger, with or without the pictured individual's consent, and is transmitted to any number of destinations, known or unknown, shall be guilty of a misdemeanor violation of this section punishable by:

a. a fine not to exceed Nine Hundred Dollars (\$900.00) for the first offense,

b. a fine not to exceed One Thousand Eight Hundred Dollars (\$1,800.00) for a second or subsequent offense,

c. up to eighty (80) hours of community service, and

d. a referral to the Choctaw Nation Department of Children and Family Services to propose a probation plan which may be adopted through disposition.

C. The fact that the individual making the transmission and the individual pictured are the same does not alter the criminality provided in this section.

### **Section 2-8-222 - Intoxicating beverages—Possession by persons under age 21 unlawful**

It shall be unlawful for any person under the age of twenty-one (21) years to be in the possession of any intoxicating beverage containing more than three and two-tenths percent (3.2%) alcohol by weight or any low-point beer while such person is upon any public street, road, or highway or in any public building or place.

1. For purposes of this section, "low-point beer" means and includes beverages containing more than one-half of one percent (1/2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or

similar products.

2. For purposes of this section, “intoxicating beverage” means all beverages containing more than three and two-tenths percent (3.2%) alcohol by weight and all mixed beverage coolers, regardless of percent of alcoholic content, are hereby declared to be intoxicating.

3. For purposes of this Section, “mixed beverage coolers” means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a “wine cooler”.

### **Section 2-8-223 - Penalties**

Any person violating the provisions of Section 2-8-222 of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment not to exceed thirty (30) days or by payment of a fine not to exceed Five Hundred Dollars (\$500.00) or by both such fine and imprisonment.

### **Section 2-8-224 - Tobacco Purchase by Person Under 18 Years of Age Prohibited**

A. It is unlawful for a person who is under eighteen (18) years of age to purchase, receive, or have in their possession a tobacco product, or to present or offer to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products when required in the performance of the employee’s duties.

B. A violation of subsection A of this section is punishable by:

1. A fine not to exceed One Hundred Dollars (\$100.00) for a first offense, and

2. A fine not to exceed Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.

C. The Choctaw Nation Department of Children and Family Services shall establish rules to provide for notification to a parent or guardian of any minor cited for a violation of this section.

### **Chapter 9. Reserved**

## **Chapter 10. Reserved**

## **Chapter 11. Choctaw Nation Minor Identification Act**

### **Section 11-101. Short title**

This act shall be known and may be cited as the “Choctaw Nation Minor Identification Act”.

### **Section 11-102. Definitions**

For purposes of the Choctaw Nation Minor Identification Act:

1. “Fingerprint” means the impression of the lines upon the fingertip taken with ink and placed upon a paper or plastic card for the purpose of identification;
2. “Local law enforcement agency” means the Choctaw Nation Tribal Police or any other law enforcement agency, office, or department authorized by law with the duties to maintain public order, make arrests, and enforce the criminal laws;
3. “Minor or child” means a person under eighteen (18) years of age; and
4. “Parent” means the natural or adoptive parent who has legal custody of the minor.

### **Section 11-103. Issuance of Fingerprint Identification Card**

A. Upon request of a parent, legal guardian or legal custodian of a minor and the presentation of the minor at a local law enforcement agency, the local law enforcement agency shall take a complete set of fingerprints of the minor and issue a fingerprint identification card to the parent, legal guardian, or legal custodian which shall contain the fingerprints of such minor.

B. The local law enforcement agency taking the fingerprints and issuing a fingerprint identification card shall use forms and cards provided by the Oklahoma State Bureau of Investigation, if available.

### **Section 11-104. Intent of the Tribal Council**

It is the intent of the Tribal Council that the children of the Choctaw Nation of Oklahoma be provided certain safeguards. It is important that children entering and attending school be fingerprinted in accordance with the provisions of the Choctaw Nation Minor Identification Act and said fingerprints be used for locating or identifying any child who is reported lost, missing, kidnapped, or killed.

## **Section 11-105. School fingerprinting programs**

A. Each public or private school may develop a fingerprinting program for students within the school system. If developed, the program shall be developed in conjunction with local law enforcement agencies having jurisdiction where the school is located or in conjunction with any organization providing such services on a voluntary basis. Such local law enforcement agencies shall cooperate fully with the school in the development of its fingerprinting program.

B. Such fingerprinting program shall be developed for the sole purpose of providing a means by which a missing child might be located or identified and shall be operated on the following basis:

1. No student shall be required to participate in the program;
2. In order for a student to participate in the program, the parent, legal guardian, or legal custodian of the student shall authorize the student's participation by signing a form that shall be developed for the program by the principal or chief administrative officer of the school. No student shall be fingerprinted unless a signed authorization form is in the possession of school officials;
3. The fingerprinting of students shall be performed by members of the local law enforcement agencies or members of any organization volunteering to provide such service;
4. Two copies of a student's fingerprints shall be made. One copy shall be given to the student's parent, legal guardian, or legal custodian and one copy shall be retained in the student's records by the school and transferred with other school records of the student until the student's eighteenth birthday. The copy of the student's fingerprints retained by the school may be destroyed by such school on the student's eighteenth birthday;
5. The name, sex, hair and eye color, height, weight, and date and place of birth of the student shall be indicated on the fingerprint card;
6. The fingerprint card shall include in a conspicuous place on the card a statement that the card may be used for identification purposes only and may not be used in any juvenile or criminal investigation or proceeding conducted against the student. A fingerprint card prepared pursuant to the Choctaw Nation Minor Identification Act may be used by a law enforcement agency only to help identify a student who is lost, missing, kidnapped, or killed; and
7. The fingerprinting program developed pursuant to this section shall be offered on a periodic basis. Parents, legal guardians, and legal custodians in the communities served by the schools shall be notified at least two (2) weeks prior to the date set for commencement of the fingerprinting program. These notifications may be given by means of memoranda or letters sent to such parents, legal guardians, or legal custodians.