

**TITLE 3 – COURTS AND RULES OF COURT  
PART II- RULES OF COURT  
CHAPTER 2-6 – RULES OF JUVENILE COURT**

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**SUBCHAPTER A       GENERAL PROVISIONS**

**Section 10       Juvenile Court Procedure (3 PYTC §2-6-10 Former PYT R.Juv.P. Rule 10)**

- (A) No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed a conviction of a crime unless the Juvenile Court transfers jurisdiction to the Tribal Court.
- (B) The adjudication, disposition and evidence presented before the Juvenile Court shall be inadmissible as evidence against the child in any proceeding in any other court, including Tribal Court.
- (C) The procedures of the Juvenile Court shall be governed by the rules of procedure of the Tribal Court which are not in conflict with this Chapter.

**Section 20       Rights of the Parties (3 PYTC §2-6-20 Former PYT R.Juv.P. Rule 20)**

- (A) Privilege against self incrimination: A child alleged to be a juvenile offender or a minor in need of control, from the time of being taken into custody shall be accorded and advised of his privilege against self-incrimination. From the time the child is taken into custody, he shall not be questioned except to determine identity, to determine the name(s) of the child's parents, or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under 5 PYTC § 7-380 when the child's health and well being are in serious jeopardy.
- (B) The right to the presence of counsel during questioning, and at all stages of the proceedings
- (C) A child alleged to be delinquent or a child in need of control who is in custody shall not be fingerprinted and photographed for criminal identification purposes except by order of the Juvenile Court. If such an order is given, the fingerprints and photographs shall only be used as specified by the Court and will remain part of the Juvenile Court file and not become a public record.
- (D) At his first appearance before the Juvenile Court and at each subsequent appearance, the child alleged to be an offender or minor in need of control and the child's parents, guardian or custodian shall be informed by the Court of the following:

- (1) Allegations against him.
  - (a) The right to counsel if he or she is not represented, and of the provisions of 3 PYTC§2-2-310(B) apply, counsel will be provided at no cost to the juvenile defendant if the court determines that the juvenile's parents or guardian are indigent.
- (2) The right to testify or remain silent and that any statement made by him may be used against him.
- (3) The right to cross-examine witnesses.
- (4) Right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf.
- (5) The possible consequences if the allegations in the petition are found to be true.
- (6) The right to appeal decisions of the Juvenile Court to the Court of Appeals.

**Section 30 Custodial Warrants and Custody Orders (3 PYTC §2-6-30 Former PYT R.Juv.P. Rule 30)**

- (A) The Court may issue a warrant/order directing that a juvenile may be taken into custody if:
  - (1) The Court finds probable cause exists to believe the juvenile has committed the acts alleged in the petition.
  - (2) The Court finds probable cause exists to believe that the juvenile has violated either his conditions of release or conditions of probation.
- (B) The Court may issue a warrant authorizing a law enforcement officer to search for a juvenile if there is probable cause to believe that the juvenile is within the Court's jurisdiction and a custodial warrant has been issued for the child.
- (C) The Court may issue a warrant authorizing a law enforcement officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act or is designed or intended for use or which is or has been used as a means of committing an "offense" or would be material evidence in a juvenile offender proceeding.
- (D) Bench warrant. The Court may issue a warrant for a person's arrest for contempt of Court immediately upon the failure to appear in Court as directed, either in person or by counsel.

**SUBCHAPTER B JUVENILE OFFENSES**

**Section 40 Detention Hearings (3 PYTC §2-6-40 Former PYT R.Juv.P. Rule 40)**

- (A) Purpose. The purpose of the detention hearing is to determine:
  - (1) Whether probable cause exists to believe the child committed the alleged "juvenile offense".
  - (2) Whether continued detention is necessary pending further proceedings.

- (B) Notice. Notice of the detention hearing shall be given by personal notice to the child and the child's parents, guardian or custodian and the child's advocate or counsel, as soon as the time for the detention hearing has been set. The notice shall contain:
- (1) Name of the Court.
  - (2) Title of the proceedings.
  - (3) A brief statement of the "juvenile offense" the child is alleged to have committed.
  - (4) The date, time and place of the detention hearing.
- (C) Procedure. Detention hearings shall be conducted by the Juvenile Court separate from other proceedings. At the commencement of the detention hearing, the Court shall notify the child and child's parents, guardian or custodian, of their rights under 3 PYTC §2-6-20. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Court shall be admitted.
- (D) Standards. The Court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in 5 PYTC §§ 7-70, 7-90.
- (E) Finding at Detention Hearing. The Court shall issue written findings stating the reasons for release or continued detention of the child. If the Court determines that there is a need for continued detention, the Court shall specify where the child is to be placed until the adjudicatory hearing.
- (F) Rehearing. If the child is not released at the initial detention hearing, and a parent, guardian or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the hearing, the Court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

**Section 50 Filing and Contents of a Petition (3 PYTC §2-6-50 Former PYT R.Juv.P. Rule 50)**

- (A) Formal "juvenile offender" proceedings shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interests of the child. The petition shall be titled "in the Matter of (name of the child), a child" and shall set forth with specificity:
- (1) The name, birth date, residence and tribal affiliation of the child.
  - (2) The names and residences of the child's parents, guardian or custodian.
  - (3) A citation of the specific sections of the Code which give the Court jurisdiction over the proceedings.
  - (4) A citation to the criminal statute or other law or ordinance which the child is alleged to have violated.
  - (5) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred.
  - (6) Whether the child is in custody and if so, the place of detention and time he was taken into custody.

- (B) Issuance of Summons. After a "juvenile offender" petition has been filed, the Court shall direct the issuance of summons to:
  - (1) The child.
  - (2) The child's parents, guardian or custodian.
  - (3) The child's counsel.
  - (4) Appropriate medical and/or alcohol rehabilitation experts.
  - (5) To any other person the Court deems necessary for the proceedings.
- (C) Contents of Summons. The summons shall contain the name of the Court, the title of the proceedings, and the date, time and place of the initial hearing. The summons shall also advise the parties of their applicable rights under 3 PYTC §2-6-20 above. A copy of the petition shall be attached to the summons.
- (D) Service of Summons. The summons shall be served upon the parties at least 14 days prior to the hearing. The summons shall be delivered personally by a law enforcement officer or an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver it by registered mail. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

**Section 60      Transfer to Adult Court (3 PYTC §2-6-60 Former PYT R.Juv.P. Rule 60)**

- (A) Transfer Petition. Upon completion of the preliminary investigation, the presenting officer may file a petition requesting the Juvenile Court to transfer the child the jurisdiction of the adult court if the child is 16 years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.
- (B) Transfer Hearing. The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to Tribal Court. The transfer hearing shall be held within ten days of receipt of the Transfer Petition by the Court. Written notice of the time, place and purpose of hearing shall be given to the child and the child's parents, guardian or custodian at least three days before the hearing. At the commencement of the hearing, the Court shall notify the child and the child's parents, guardian or custodian of their rights under 3 PYTC §2-6-20.
- (C) Deciding Factors in Transfer Hearing. The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:
  - (1) The nature and seriousness of the offense with which the child is charged.
  - (2) The nature and condition of the child, as evidenced by his age, mental and physical condition.
  - (3) The child's past record of offenses.
- (D) Standard of Proof. The Juvenile Court may transfer jurisdiction of the child to Tribal Court only if the Court finds clear and convincing evidence that both of the following circumstances exist:
  - (1) There is no reasonable prospect for rehabilitating the child through the resources available to the Juvenile Court.

- (2) The offenses alleged committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.

**Section 70 Consent Decree (3 PYTC §2-6-70 Former PYT R.Juv.P. Rule 70)**

- (A) The Consent Decree is the written agreement reached at an informal adjustment conference. It shall contain the agreements, conditions and disposition agreed upon by all the parties.
- (B) At any time after a petition has been filed, the Court may on motion of the juvenile presenting officer or of counsel for the minor, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile presenting officer and agreed to by all parties affected thereby reaching an informal adjustment.
- (C) Objections. If the juvenile objects to the consent decree, the Court shall proceed to formal findings, adjudication and disposition of the case. If the juvenile does not object, but an objection is made by the presenting officer, the Court shall after considering the objections and reasons given proceed to determine whether it is appropriate to enter a consent decree and may, at its own discretion, enter the consent decree.
- (D) Duration. A consent decree shall remain in force for six months unless the child is discharged sooner by the Court, in consideration with the juvenile presenting officer. Prior to the expiration of the six month period, and upon the application of the presenting officer or any other agency supervising the juvenile under the consent decree, the Court may extend the decree for an additional six months in the absence or objection to extension by the juvenile. If the juvenile objects, the Court shall hold a hearing and make a determination on the issue of extension.
- (E) Failure to Fulfill Terms and Conditions. If, either prior to discharge by the Court or expiration of the consent decree, the child fails to fulfill the terms of the decree, the presenting officer may file a motion to revoke the consent decree. Proceedings on the motion shall be conducted according to 3 PYTC §2-6-50 130. If the child is found to have violated the terms of the consent decree, the Court may:
  - (1) Extend the period of the decree.
  - (2) Make any other disposition which would have been appropriate in an adjudication proceeding.
- (F) New Offense Complaint. If, either prior to discharge or expiration of the consent decree, a new "juvenile offender" complaint is filed against the juvenile and the juvenile presenting officer has conducted a preliminary investigation and has authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the presenting officer may:
  - (1) File a motion to revoke the consent decree.
  - (2) File a petition on the basis of the new complaint which has been filed against the juvenile.
- (G) Dismissal of Petition. A child who is discharged by or who completes a period under supervision without reinstatement of the original "juvenile offense" petition shall not be proceeded against in any Court for the same offense alleged in the petition or an offense based on the same conduct and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the juvenile for damages arising from this conduct.

**Section 80 Initial Hearing (3 PYTC §2-6-80 Former PYT R.Juv.P. Rule 80)**

An initial hearing shall be held as follows:

- (A) If the child is in a detention or shelter care facility, the date set for the hearing shall be no later than 15 days from the filing of the petition.
- (B) If the child is not detained, the date shall be set no later than 30 days from the filing of the petition.
- (C) The Court shall conduct the initial hearing for the purpose of advising the parties of their rights as outlined in 3 PYTC §2-6-20, to determine whether the allegations contained in the petition are admitted or denied, to set the case for adjudication or disposition, and to determine whether the juvenile shall be detained pending adjudication or disposition.

**Section 90 Adjudication Proceedings (3 PYTC §2-6-90 Former PYT R.Juv.P. Rule 90)**

- (A) Purpose. The Court shall conduct the adjudicatory hearing for the sole purpose of hearing evidence and determining whether the child has committed a "juvenile offense."
- (B) Time Limitations.
  - (1) If the child remains in custody, either in detention or shelter care facility, the adjudicatory hearing shall be held within 14 days of the initial hearing.
  - (2) If the child is released from custody or was not taken into custody, the adjudicatory hearing shall be held within 30 days of the initial hearing.
- (C) Notice. Notice of the adjudicatory hearing shall be given to the child, the child's parents, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least five days prior to the hearing in accordance with 3 PYTC §2-6-50(C) and (D).
- (D) Admission of Allegations. If at the adjudicatory hearing, the juvenile changes his denial to an admission of the allegation of the petition, the Court shall consider a disposition of the matter pursuant to 3 PYTC §2-6-110 after a finding that:
  - (1) The child fully understands his rights under 3 PYTC §2-6-20 and fully understands the consequences of his admission.
  - (2) The child voluntarily, intelligently and knowingly admits all the facts necessary to constitute a basis for a Juvenile Court action.
  - (3) The child has not, in his statements on the allegations, set forth facts which if found to be true, would be a defense to the allegations.
- (E) Findings.
  - (1) After admission, if the Court finds that the child has validly admitted the allegations contained in the petition, the Court shall make and record its finding and schedule a disposition hearing in accordance with 3 PYTC §2-6-5-110. Additionally, the Court shall specify in writing whether the child is to be continued in an out-of-home placement pending the disposition.

- (2) After a hearing, if the Court finds on the basis of proof beyond a reasonable doubt, that the child committed the offense, it shall make and record its findings and schedule a disposition hearing pursuant to 3 PYTC §2-6-110, making appropriate orders regarding custody of the minor.
- (3) If the Court finds at the adjudication that the minor did not commit a juvenile offense, the child shall be released, if in custody, and the proceedings shall be terminated.

**Section 100 Predisposition Studies (3 PYTC §2-6-100 Former PYT R.Juv.P. Rule 100)**

- (A) Study and Report. The Court shall direct the juvenile probation officer to prepare a written predisposition study and report for the Court concerning the child, the child's family, environment and any other matter relevant to the need for treatment or other appropriate disposition of the case when:
  - (1) The child has been adjudicated as a "juvenile offender".
  - (2) A notice of intent to admit or admission of the allegations of the petition has been filed.
- (B) Contents. The report shall contain a specific plan for the child, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.
- (C) Submission. The predisposition report shall be submitted to the Court no later than three days prior to the scheduled hearing date.

**Section 110 Disposition Proceedings (3 PYTC §2-6-110 Former PYT R.Juv.P. Rule 110)**

- (A) Purpose and Conduct. The Court shall conduct the disposition hearing to determine how to resolve a case after a juvenile has been adjudicated to be a "juvenile offender." The Court shall make and record its dispositional order in accordance with 3 PYTC §2-6-110(D). At the disposition hearing, the child, the child's parents, guardian or custodian shall have the applicable rights listed in 3 PYTC §2-6-60.
- (B) Time Limitations. If the child remains in custody, the disposition hearing shall be held within ten days of the adjudicatory hearing resulting in a finding. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within 20 days of an adjudication finding.
- (C) Notice. Notice of the disposition hearing shall be given in the same manner as the summons in 3 PYTC §2-6-50(D) at least five days prior to hearing.
- (D) Disposition Alternatives. If a child is found by the Court to be a "juvenile offender", the Court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:
  - (1) Permit the child to remain with his parents, guardian or custodian subject to such conditions and limitations as the Court may prescribe.
  - (2) Place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe.

- (3) Order the child to pay restitution.
- (4) Order the child under protective supervision under such conditions and limitations as the Court may prescribe.
- (5) Place the child on probation under such conditions and limitations as the Court may prescribe.
- (6) Place the child in a juvenile facility designated by the Court, including alcohol or substance abuse emergency shelter or half-way house, emergency foster care, foster home, group home shelter home, or a secure juvenile detention facility.

**Section 120 Medical Assessment/Treatment (3 PYTC §2-6-120 Former PYT R.Juv.P. Rule 120)**

- (A) The Juvenile Court may order a medical assessment of a child arrested or detained for a "juvenile offense" relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well being.
- (B) Where there are indications that the child may be emotionally disturbed or developmentally disabled, the Court, on motion from the presenting officer or the child's counsel, may order the child to be tested by a qualified psychiatrist, psychologist, or licensed psychometrician prior to a hearing on the merits of a petition. An examination made prior to the hearing or as part of the predisposition study and report, shall be conducted on an outpatient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.
- (C) The Court may order an examination of a child adjudicated as a "juvenile offender" by a physician, psychiatrist or psychologist. The Court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the Court at the disposition hearing.
- (D) The Court may order that a child adjudicated as a "juvenile offender" be transferred to an appropriate facility for a period of not more than 60 days for the purposes of diagnosis with direction that the Court be given a written report at the end of the period indicating the disposition which appears most suitable.
- (E) Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the Court no later than three days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

**Section 130 Review, Modification, Revocation, Extension or Termination of Dispositional Orders (3 PYTC §2-6-130 Former PYT R.Juv.P. Rule 130)**

- (A) Mandatory Review. Dispositional orders are to be reviewed at the Court's discretion at least once every six months.
- (B) Modification, Revocation or Extension. The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:
  - (1) The child.

- (2) The child's parents, guardian or custodian.
  - (3) The child's counsel.
  - (4) The juvenile presenting officer.
  - (5) The institution or agency vested with legal custody of the child or responsibility for protective supervision.
  - (6) The Court of its own motion.
- (C) Hearing. A hearing to modify, revoke or extend a disposition order shall be conducted according to 3 PYTC §2-6-110(A) and (C).
- (D) Automatic Termination. When a Juvenile reaches 18 years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one year of the juvenile's 18th birthday or after the youth had reached 18 years of age, in which case the disposition order may not continue for more than one year. The records concerning the youth shall not be destroyed except pursuant to Order of the Court upon motion of the juvenile.

**SUBCHAPTER C STATUS OFFENSES**

**Section 140 Filing and Contents of Petition (3 PYTC §2-6-140 Former PYT R.Juv.P. Rule 140)**

- (A) Formal "minor in need of control" proceedings shall be instituted by a petition filed by the juvenile presenting officer on behalf of the Tribe and in the interests of the child and the child's family. The petition shall be entitled "In the Matter of (name of child), a "minor child" and shall set forth with specificity:
- (1) The name, birth date, residence and tribal affiliation of the child.
  - (2) The names and residences of the child's parents, guardian or custodian.
  - (3) A citation of the specific sections of the Chapter which give the Court jurisdiction over the proceedings.
  - (4) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred, including a citation of this Code which defines the actions as those of a "minor in need of control."
  - (5) Whether the child is in interim care custody and if so, the placement facility and the time he was placed into the care facility.
- (B) Issuance of Summons. After a "minor in need of control" petition has been filed, the Court shall direct the issuance of a summons in the manner enumerated in 3 PYTC §2-6-50(B), (C) and (D).

**Section 150 Initial Hearing (3 PYTC §2-6-150 Former PYT R.Juv.P. Rule 150)**

An initial hearing shall be held in each "minor in need of control" proceeding as follows:

- (A) If the youth is in an interim care facility, the initial hearing shall be held no later than ten days from the filing of the petition.

- (B) If the child is not in an interim care, the initial hearing shall be held no later than 20 days from the filing of the petition.
- (C) The Court shall conduct the initial hearing for the purpose of advising the parties of their rights as outlined in 3 PYTC §2-6-20, to determine whether the allegation contained in the petition is admitted or denied to set the cause of adjudication or disposition, to determine if the youth shall be retained in interim care pending adjudication or disposition.

**Section 160 Adjudication Proceedings (3 PYTC §2-6-160 Former PYT R.Juv.P. Rule 160)**

- (A) Purpose. The Court shall conduct the adjudication hearing for the sole purpose of hearing evidence and determining if the youth is a "minor in need of control."
- (B) Time Limits:
  - (1) If the youth remains in interim care, the adjudication hearing shall be held within 14 days of the initial hearing.
  - (2) If the youth is not in interim care custody, the adjudication hearing shall be held within 20 days of the initial hearing.
- (C) Notice. Notice of the adjudication hearing shall be given to the child, child's parents, guardian or custodian, the child's counsel and any other person the Court deems necessary for the hearing at least five days prior to the hearing in accordance with 3 PYTC §2-6-50(C) and (D) and 3 PYTC §2-6-40(C).
- (D) Admission of Allegations. If at the adjudication hearing, the youth changes his denial to an admission of the allegations of the petition, the court shall consider a disposition of the matter pursuant to 3 PYTC §2-6-110(D) only after a finding that:
  - (1) The child fully understands his rights under 3 PYTC §2-6-20 and fully understands the consequences of his admission.
  - (2) The child voluntarily, intelligently and knowingly admits all the facts necessary to constitute a basis for this action.
  - (3) The youth, has not in his statements on the allegations, set forth facts which if found to be true would be a defense to the allegations.
- (E) "Minor In Need of Control" Finding:
  - (1) After an admission, if the Court finds the child has validly admitted the allegations contained in the petition, the Court shall make and record its finding and schedule a disposition hearing pursuant to 3 PYTC §2-6-110(A)-(C). Additionally, the Court shall specify in writing whether the child is to be continued in interim care placement pending a disposition.
  - (2) After a full hearing, if the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its finding and schedule a disposition hearing pursuant to 3 PYTC §2-6-110 (A)-(C). Additionally, the Court shall specify in writing whether the child is to remain in interim care pending disposition.

- (F) Dismissed. If the Court finds that the allegations contained in the "minor in need of control" petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the youth released from any interim care custody imposed in connection with the proceeding.

**Section 170 Predisposition Study/Report (3 PYTC §2-6-10 Former PYT R.Juv.P. Rule 170)**

- (A) Study and Report. The Court shall direct the juvenile probation officer to prepare a written report pursuant to 3 PYTC §2-6-100 when:
- (1) The youth has been adjudicated a "minor in need of control".
  - (2) The youth has admitted or given notice of an interest to admit the allegations of the petition.
- (B) "Minor in need of control" disposition shall be conducted pursuant to 3 PYTC §2-6-110(A)-(C).

**Section 180 Disposition Alternatives (3 PYTC §2-6-180 Former PYT R.Juv.P. Rule 180)**

If the youth is adjudicated by the Court to be a "minor in need of control" the Court may make and record any of the following orders of disposition for the child's supervision and care and giving due weight to the need to preserve the family unit whenever possible:

- (A) Permit the youth to remain in the custody of his parents, guardian or custodian subject to such conditions and limitations as the Court may prescribe.
- (B) Place the youth in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe.
- (C) Place the youth under protective supervision by a social service agency under such conditions and limitations as the Court may prescribe.
- (D) Place the youth on probation under such conditions and limitations as the Court may prescribe.
- (E) Place the youth in a juvenile facility designated by the Court, including alcohol or substance abuse emergency shelter or half-way house, emergency foster care, foster home, group home or shelter home.
- (F) Referral of the child and his parents, guardian or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the Court.

**Section 190 Restrictions on Placement (3 PYTC §2-6-190 Former PYT R.Juv.P. Rule 190)**

This child shall not be confined in an institution established for the care and rehabilitation of "juvenile offenders" unless the youth as a "minor in need of control" is also adjudicated to be a "juvenile offender". Under no circumstances shall a youth be judged to be a "minor in need of control" be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

**Section 200 Medical Assessment/Treatment (3 PYTC §2-6-200 Former PYT R.Juv.P. Rule 200)**

The Court may order medical assessment and/or treatment pursuant to 3 PYTC §2-6-120.

**Section 210 Modification, Revocation or Extension (3 PYTC §2-6-210 Former PYT R.Juv.P. Rule 210)**

The Court may hold a hearing to modify, revoke or extend a disposition order at any time pursuant to 3 PYTC §2-6-130(B) and (C).

**Section 220 Termination (3 PYTC §2-6-220 Former PYT R.Juv.P. Rule 220)**

Any disposition of a "minor in need of control" shall remain in force for a period not to exceed six months. The disposition order concerning such a youth shall be automatically terminated when the child reaches his 18th birthday or is legally emancipated by the Court.

**SUBCHAPTER D CHILD AND FAMILY PROTECTION PROCEDURES**

**Section 230 Child in Need of Protection Petition (3 PYTC §2-6-230 Former PYT R.Juv.P. Rule 230)**

- (A) Child in Need of Protection petition shall be verified and set forth the following:
- (1) The name, birth date, sex, residence, and tribal affiliation of the child;
  - (2) The basis for the Court's jurisdiction;
  - (3) A plain and concise statement of the facts to support the conclusion that the child is a "child in need of protection",
  - (4) The names, residences, and tribal affiliation of the child's parent(s), guardian(s) or custodian(s), if known;
  - (5) If the child was involuntarily removed and placed outside of the home,
    - (a) Where the child is placed; and
    - (b) The facts necessitating the removal and placement outside the child's home; and
    - (c) The date and time of removal.
  - (6) A plain and concise statement what reasonable efforts were made by the Social Services Department to prevent or eliminate the need for removing the child from his or her home.
- (B) The petition shall be served upon the child, parent(s), guardian(s) or custodian(s) who was caring for the child at the time of removal or the filing of the petition.

**Section 240 Initial Hearing (3 PYTC §2-6-240 Former PYT R.Juv.P. Rule 240)**

- (A) Hearing Date.

An initial hearing shall be held within two (2) working days after the filing of the Child in Need of Protection petition.

(B) Purpose.

The purpose of the initial hearing is to determine whether there is probable cause to support the petition and whether the child's continuing absence from the homes necessary to protect the well-being of the child.

(C) Advise of Rights.

During the hearing, the Court shall advise the party or parties of the reason for the hearing and of their basic rights as provided for in 3 PYTC §2-6-20 and to ask the parents whether they admit or deny the allegations contained within the petition.

(D) Nature of Hearing.

The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence shall not be excluded at this hearing so long as it is relevant and otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, the child, their counsel, witnesses, the child's extended family, the child's placement, and other persons determined to be appropriate by the Court, shall be admitted.

(E) Possible Cause Hearing.

- (1) If a parent(s), guardian(s), custodian(s) or the child requests a hearing to challenge whether there is probable cause that the child is a child in need of protection, then the Court shall hear evidence to determine whether the petition is supported by probable cause.
- (2) Whether there probable cause that the child is a "child in need of protection" shall be based upon the allegations contained in the petition, the submitted social services report, and other evidence or testimony presented by the parties at the initial hearing.
- (3) If the Court finds probable cause that the child may be a "child in need of care," then the Court shall set a trial no later than ninety (90) days after the filing of the petition and a pretrial conference no less than forty-five (45) days after the initial hearing.
- (4) If the Court does not find probable cause that the child is a "child in need of protection," then the Court may dismiss the petition and order the child returned home.

(F) Temporary Custody; Contrary to Welfare; Reasonable Efforts.

- (1) At the initial hearing, the Court shall determine whether it would be contrary to the welfare of the child to remain in the home and the current placement is safe and appropriate.
- (2) If the Court finds it contrary to the child's welfare to be returned home, the Court shall:
  - (a) Order the continued legal custody of the child to the Social Services Department and affirm the current placement; and
  - (b) Determine whether the Social Services Department made reasonable efforts to prevent or eliminate the need for removing the child from the child's home.

- (3) If the Court does not find it contrary to the welfare of the child to be returned home, the Court shall order the immediate return home of the child.

(G) Exception: Reasonable Efforts.

- (1) The Court may find that reasonable efforts are not required if:
  - (a) The Court finds that the child has been subjected to aggravated circumstances and cannot be safely returned to the home, or
  - (b) The parent has:
    - (i) Committed the murder of another child of the parent, or
    - (ii) Committed the voluntary manslaughter of another child of the parent, or
    - (iii) Aided or abetted, attempted or solicited to commit such murder or manslaughter, or
    - (iv) Committed felonious assault of another child of the parent, or
    - (v) Has his or her parental rights involuntarily terminated to a sibling of the child.
- (2) If the Court find that the child was subjected to aggravated circumstances or the parent was convicted of a crime listed in subsection (G) (1) (b) of this subsection, the Court shall set a permanency hearing within thirty (30) days of the initial hearing to evaluate an appropriate permanent plan goal.
- (3) If the Court finds grounds exists pursuant to (G)(1) this subsection, then the Court shall state in its order that reasonable efforts to prevent or eliminate the need for removing the child from the child's home were not required.

(H) Reunification Services

At the initial hearing, the Court shall receive recommendations from the Social Services Department as to what services should be offered to the parent(s), guardian(s) or custodian(s) that are necessary to overcome the barriers to reunification. The Court shall order the Social Services Department to make those services available to the parent, guardian or custodian and child as soon as practical.

(I) Notice of Initial Hearing.

The Court shall make all reasonable efforts to advise the parents, guardian or custodian, of the time and place of the initial hearing; such efforts shall include written contact at their place of residence, telephone and personal contacts at their residence, place of employment and/or other location where the person is known to frequent with regularity. The Court shall request the parent(s), guardian(s) or custodian(s), to be present at the initial hearing. If the Court is unable to contact the parent(s), guardian(s) or custodian(s), notice shall be given to the extended family of the parent(s), guardian(s) or custodian(s).

**Section 250 Pre-Trial Conference (3 PYTC §2-6-250 Former PYT R.Juv.P. Rule 250)**

(A) Purpose.

The purpose of the pretrial conference is to determine whether the parties can reach a non-trial resolution of the petition and for the court to reassess whether removal of the child continues to be necessary to protect the well-being of the child.

(B) Hearing Procedure.

If the parties cannot reach a non-trial resolution, the Court shall affirm the trial date and enter any orders necessary to facilitate trial preparation. The Court shall review the care and custody of the child and the services being offered the parent(s), guardian(s), or custodians(s). The Court shall enter any orders necessary regarding the continuing care and custody of the child as well as the appropriateness of the services being offered.

**Section 260 Formal Trial on the Issues (3 PYTC §2-6-260 Former PYT R.Juv.P. Rule 260)**

(A) Time Limitations.

The formal trial on the issues will be set for no later than 90 days following the filing of the child in need of protection petition.

(B) Closed Hearing.

The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by this Court, shall be admitted.

(C) Advise of Rights.

During the hearing, the Court shall advise the party or parties of the reason for the hearing and of their basic rights as provided for in 3 PYTC §2-6-20.

(D) Child Witnesses.

If the Court determines that it is in the best interest of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the Court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.

(E) Burden of Proof.

The burden of proof lies with the petitioner. The petitioner must prove the allegations raised in the child in need of protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.

(F) Outcome of Hearing

If the Court finds the petition is supported by a preponderance of evidence, the Court shall declare the status of the child to be "a child in need of protection".

(G) Return to Home.

The Court may find the allegations of the child in need of protection petition to be true, but that out-of-home placement is not needed to protect the child. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision as appropriate.

(H) Grounds for Continuing Removal from the Home.

The Court may find the allegations of the child in need of protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian is that it is contrary to the welfare of the child to be returned home.

(I) Court Order for Continuing Removal.

The Court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian, must follow to correct the underlying problem.

(J) Return of Child to Parent, Guardian or Custodian.

The Court may find the allegations of the child in need of protection petition to be true and out-of-home placement necessary, but with the accomplishment of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the Court will specify actions, and the time frames for such actions, that parents, guardians or custodians, must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

**Section 270 Out-of-Home Placement Orders (3 PYTC §2-6-270 Former PYT R.Juv.P. Rule 270)**

(A) Finding.

The Court may find the allegations of the child in need of protection petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this Court. The Court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the Court will consider at a subsequent hearing to determine whether or not the child should be returned.

(B) Written Order.

The Court shall specify in writing the facts, grounds, and code sections, upon which it relied to make its decision.

**Section 280 Notice of Formal Trial on the Issues (3 PYTC §2-6-280 Former PYT R.Juv.P. Rule 280)**

(A) Summons and Petition.

(1) The Court shall issue a summons to the parent(s), guardian(s) or custodian(s), and such other person as appear to the Court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the Court at the time set for the formal trial.

- (2) A copy of the child in need of protection petition shall be attached to each summons. The Court shall also attach a notice to the parent(s), guardian(s) or custodian(s), which advises them of their rights under 3 PYTC §2-6-20.

(B) Personal Service.

If the parties to be served with a summons can be found within the exterior boundaries of the reservation, the summons, a copy of the child in need of protection petition, and the notice of rights, shall be personally served upon them at least 15 calendar days before the formal trial on the issues.

(C) Mail Service.

If the parties are within the exterior boundaries of the reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by registered mail with a return receipt requested, at least 15 calendar days before the formal trial.

(D) Notice to Extended Family.

If the Court cannot accomplish personal or mail service, the Court shall attempt to notify the parent(s), guardian(s) or custodian(s), by contacting members of the extended family of the parent(s), guardian(s), custodian(s), and/or the extended family of the child.

(E) Service of Summons.

Service of summons shall be made under the direction of the Court by a law enforcement officer or an appointee of the Court. A party, other than the child, may waive service of summon by written stipulation or by voluntary appearance in Court prior to the formal trial on the issues.

(F) Publication.

- (1) In a child in need of protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian is a nonresident of the reservation, or that their name, place of residence or whereabouts is unknown, and where personal service or service by registered mail has been unable to be effected, the Court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least 21 days prior to the date fixed for the hearing.

- (2) Such notice shall be directed to the parent(s), guardian(s) or custodian(s) if their names are known, or if unknown a phrase to whom it may concern, be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, the name of the child, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Tribe. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this section.

- (G) Contempt Warning.

The summons issued by the Court shall conspicuously display the words:

**NOTICE: VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO TRIBAL CODE TITLE 4, CHAPTER 4, SECTIONS 160 THROUGH 180, THE COURT MAY FIND THE PARENT, GUARDIAN, OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDER.**

**Section 290 Default Judgment (3 PYTC §2-6-290 Former PYT R.Juv.P. Rule 290)**

- (A) Default Judgment.

If the parent(s), guardian(s) or custodian(s) fails to appear for the formal trial, the Court may find the parent(s), guardian(s) or custodian(s) in default, and enter a default order of child in need of protection petition and order necessary intervention and appropriate steps the parent(s), guardian(s) or custodian(s) must follow to correct the underlined problem.

- (B) Notice Determination.

Prior to finding a parent(s), guardian(s) or custodian(s) in default, the Court must be satisfied actual notice has been given or that all reasonable efforts have been taken to provide notice of the formal trial to the parent(s), guardian(s) or custodian(s). The Court must also find that the petitioner can prove the elements of the child in need of protection petition.

- (C) Written Order.

If the parent(s), guardian(s) or custodian(s), is found in default, the Court shall specify the facts, grounds, and code sections, upon which it relied to make the decision.

**Section 300 Review Hearings (3 PYTC §2-6-300 Former PYT R.Juv.P. Rule 300)**

- (A) Review Requirement.

The status of a child in need of protection petition shall be reviewed every six (6) month. The first review hearing shall be set six (6) months from the date of the initial hearing.

- (B) Court Findings. The Court shall:

- (1) Determine whether the child continues to be a “child in need of protection”.
- (2) Determine the safety of the child and the continuing necessity for and appropriateness of the out of home placement,
- (3) Determine the extent of the parent(s), guardian(s) or custodian(s) participation in Court order case plans towards alleviating or mitigating the causes necessitating placement in foster care,
- (4) Project a likely date by which the child may be returned to their home or placed in a permanent legal guardianship or adoptive home.

- (5) Determine what steps Social Services Department has taken to ensure the foster home or child care institution is following reasonable and prudent parenting standards, and whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.
- (C) A child shall be returned home at the review hearing unless the Court finds that a reason for removal as set forth in 3 PYTC §2-6-260(I) of this Chapter still exists. The Court may also, due to unresolved problems in the home, continue Court intervention and supervision as appropriate after a child is returned home.

(D) Written Order.

If continued Court intervention is determined to be necessary, the Court shall set forth the following in a written order:

- (1) What services have been provided or offered to the parent(s), guardian(s) or custodian(s), to help correct the underlying problem(s).
- (2) The extent to which the parent(s), guardian(s) or custodian(s), has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.
- (3) Whether the parent(s), guardian(s) or custodian(s), is cooperative with the Court.
- (4) Whether additional services should be offered to the parent(s), guardian(s) or custodian(s).
- (5) Whether the parent(s), guardian(s) or custodian(s) should be required to participate in any additional programs to help correct the underlying problem(s).
- (6) When the return of the child can be expected, or if the child is returned home and Court supervision continued, when such supervision will be terminated.

(E) Additional Steps.

The Court at the review hearing may order that petition to terminate the parent/child relationship be filed, or that a guardianship petition be filed.

(F) Notice.

Notice shall be provided to the parents(s), guardian(s), custodian(s), the child or their legal representatives fourteen (14) days prior to the date set for the review hearing. Notices shall be sent to the placement or pre-adoptive parent(s).

(G) Advise of Rights.

The Court shall advise the parent(s), guardian(s) or custodian(s) of the child about their rights as provided by 6 PYTC §6-2-20.

**Section 305      Permanency Hearing (3 PYTC §2-6-305)**

- (A) The Court shall set a permanency hearing twelve (12) months from the date of the initial hearing.

(B) The Court shall set a permanency hearing thereafter every six (6) months in conjunction with the status review hearings while the child is in the legal custody of the Social Services Department.

(C) If the Court found the child was subjected to aggravating circumstances or the parent was convicted of an enumerated circumstances in Section 240 (G) (1) (b), then the Court shall set a permanency hearing within thirty (30) days from the date of the Court order finding aggravated circumstances.

(D) Findings. The Court shall make the following findings:

(1) Whether the Department of Social Services made reasonable efforts to finalize a permanency plan for the child. The permanency plan shall have a permanency goal that shall include any of the following options: reunification, adoption, permanent legal guardianship, placement with a fit and willing relative, or, in the case of a child over sixteen (16) years of age, placement in another planned permanent living arrangement.

(2) If the planned permanency goal is placement in another planned permanent living arrangement, the Court shall determine by compelling reason that such placement is in the child's best interest.

(3) Whether the existing placement continues to be appropriate and whether the out of home placement is in the child's best interest.

(4) If the child is over fourteen (14) years of age, whether the Social Services Department is providing services to the child to assist the child in transitioning from foster care to adulthood. If the Social Services Department is not providing such services, the Court shall order the department to make such services available to the child.

(5) Whether Social Services Department is taking appropriate steps to ensure the foster family follows reasonable and prudent parenting standards and whether the child has been provided regular opportunities to engage in age or developmentally appropriate activities.

(E) Notice.

The child, parents, guardians or custodians of the child shall be provided notice of the hearing fourteen (14) days before the date set for the hearing. Further, the placement or pre-adoptive parent are also entitled such notice.

(F) Advise of Rights.

The Court shall advise the parents, guardians, or custodians of the child about their rights as provided by 6 PYTC §6-2-20.

(G) Consultation.

The Court shall consult with the child, if the child is of an age to understand the proceedings, about the proposed permanency plan.

(H) Court Order. The Court shall set forth in a written order:

(1) The Court's finding per subsection (D) of this section.

(2) What services have been offered the parent, guardian or custodian to remove the barriers to reunification.

- (3) Whether the parent, guardian or custodian of the child has participated in those services and demonstrated a benefit.
  - (4) Whether the parent, guardian or custodian of the child has regularly participated in Court order visitation with the child.
  - (5) Whether the case plan services should be modified
  - (6) A date by which reunification, permanent guardianship or adoption can be achieved.
- (I) A foster parent, pre-adoptive parent, or relative placement who are providing care for the child shall have the right to be heard at the permanency hearing. They may submit written comments not less than five (5) working days prior to the hearing. A foster parent, pre-adoptive parent, or relative placement who is providing care for the child shall not be accorded party status by virtue of the notice and right to comment requirements of this section.

**Section 310 Social Service Report (3 PYTC §2-6-310 Former PYT R..Juv.P. Rule 310)**

- (A) Requirement of a Social Study.

To aid the Court in its decision, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the Social Services Department.

- (B) Contents of a Social Study.

The social study shall include the following points, and be made available to the Court, and the parties as deemed appropriate by the Court, five (5) days prior to a child in need of protection review hearing:

- (1) A summary of the problem(s).
- (2) What steps, if any, have the parent(s), guardian(s), custodian(s), or Social Services personnel, already taken to correct the problem(s).
- (3) What services could be of benefit to the parent(s), guardian(s), or custodian(s), but are not available in the community.
- (4) A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any changes in placement, the report will contain the reason for such changes.
- (5) Dates of contacts with parent(s), guardian(s), custodian(s), and the child, since the first hearing was held, method of contact, duration, and subjects discussed.
- (6) If there have been no contacts by Social Services with the parent(s), guardian(s), custodian(s), or social worker, what efforts have been made to contact such parties.
- (7) An assessment of when the child is expected to return home.
- (8) A list of the extended family members, or attempts to contact such family members regarding placement of the child, or the name of extended family who wish to care for the child.

- (9) The Social Services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
  - (a) A treatment plan for the parents.
  - (b) Future placement of the child.
  - (c) What services should be provided for the child, if services are needed.

**Section 320 Placement (3 PYTC §2-6-320 Former PYT R.Juv.P. Rule 320)**

If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in 5 PYTC §§ 7-210, 7-360 shall be followed. In making the placement, the Court will consider the availability of the placement, the expediency in which the placement may be made, and the best interests of the child.

**SUBCHAPTER E TERMINATION OF PARENTAL RIGHTS**

**Section 330 Petition for Involuntary Termination (3 PYTC §2-6-330 Former PYT R.Juv.P. Rule 330)**

- (A) A petition for Involuntary Termination of parental rights may be filed by:
  - (1) Either parent when termination is sought with respect to the other parent.
  - (2) The Juvenile Presenting Officer.
  - (3) Any other person possessing a legitimate interest in the matter.
- (B) No parental rights may be terminated unless the petition has first been filed, notice has been given, and a hearing held in accordance with the provisions of this subchapter.
- (C) The petition for involuntary termination of parental rights shall include the following to the best information and belief of the petitioner:
  - (1) The name, place of residence, and tribal affiliation of the petitioner (if other than Juvenile Presenting Officer).
  - (2) The full name, sex, date and place of birth, residence, and tribal affiliation of the child.
  - (3) The basis of the Court's jurisdiction.
  - (4) The relationship of the petitioner to the child or the fact that no relationship exists.
  - (5) The names, addresses, tribal affiliations, and dates of birth, of the parents.
  - (6) Where the child's parent is him/herself a child, the names and addresses of the parent's parent or guardian. Where the parent has no parent or guardian, the members of the parent's extended family.

- (7) The name and address of the person or agency having legal or temporary custody of the child.
  - (8) The grounds on which the termination is sought under Title 5, Chapter 7, Section 400(A).
  - (9) A statement that the pre-filing requirements set forth in Title 5, Chapter 7, Section 400(B) have been met.
  - (10) A list of the assets of the child together with a statement of the value thereof.
  - (11) When any of the facts required by this section are unknown, the petition shall so state. The Petitioner shall sign and date the petition.
- (C) Notice.
- (1) After a petition for the involuntary termination of parental rights has been filed, the Court shall set the time and place for hearing and shall cause a notice thereof to be given to the petitioner, the parent(s) of the child, guardian of the person of the child, the person having legal custody of the child and the child's extended family as determined by the Court.
  - (2) When the child's parent is himself a child, notice shall be given to the parents of the parent or guardian of the person unless the Court is satisfied, in exercise of its discretion, that said notice is not in the best interests of the parent and that it would serve no useful purpose.
  - (3) Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Court may authorize service by publication in either the Tribal newspaper of the Reservation or a newspaper of general circulation in the county where the Court is located, once a week for four consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten days prior to the date set for the hearing. No hearing can be held sooner than ten days after the last publication where service is made.
  - (4) Notice and appearance may be waived by a parent in writing before the Court in the presence of and witnessed by a Clerk of the Court, provided that such parent has been appraised by the Court of the meaning and consequences of the termination action. The parent who has executed such a waiver shall not be required to appear at the hearing. Where the parent is a minor, the waiver shall be effective only upon approval of the Court.

**Section 340 Pre-Termination Report (3 PYTC §2-6-340 Former PYT R.Juv.P. Rule 340)**

- (A) Upon the filing of a petition under this chapter for the involuntary termination of parental rights, the Court shall request that the Social Services Department or other qualified agency prepare and submit to the Court a report in writing. The report shall be submitted to Court no later than ten days before the hearing with copies given to the parents. The purpose of the report is to aid the Court in making a determination of the petition and shall be considered by the Court prior thereto. The Court may request additional reports where it deems necessary.
- (B) The report shall include the circumstances of the petition, the investigation, the present condition of the child and parent(s), proposed plans for the child and other such facts as may be pertinent to

the parent/child relationship and the report submitted shall include a recommendation and the reasons therefore as to whether or not the parent/child relationship should be terminated.

**Section 350 Termination Hearing (3 PYTC §2-6-350 Former PYT R.Juv.P. Rule 350)**

- (A) The procedures for termination of parental rights hearings shall be in accordance with 3 PYTC §2-6-260.
- (B) The burden of proof lies with the petitioner to prove that the allegations in the involuntary termination petition are supported by clear, cogent and convincing evidence and that the best interests of the child will be served by termination of parental rights.
- (C) The Court will make formal findings of fact and conclusions of laws as a basis for the written order terminating the parent/child relationship.
- (D) If upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the Court shall commit the child to the custody of the Social Services Department for the purpose of placing the child for adoption, or in the absence of an adoptive home, the Department may place the child in a licensed foster home or with a relative, or take other suitable measures for the care and welfare of the child. The custodian shall have the authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical or other medical treatment for the child and consent to such matter as might normally be required of the child's parent.

**Section 360 Future Review Hearings (3 PYTC §2-6-360 Former PYT R.Juv.P. Rule 360)**

If a child has not been adopted or permanently placed within six months of the termination order, a six month review hearing will be held, pursuant to 3 PYTC §2-6-300. Such six month review hearings will continue until the child is adopted or permanently placed.

**SUBCHAPTER F ADOPTIONS**

**Section 370 Petition for Adoption (3 PYTC §2-6-370 Former PYT R.Juv.P. Rule 370)**

- (A) Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said parent shall not be required to join in the petition.
- (B) The Petition for adoption shall include the following, to the best information and belief of the petitioner:
  - (1) The full name, address and tribal affiliation of the petitioner.
  - (2) The full name, sex, residence, date and place of birth and tribal affiliation of the proposed adoptee.
  - (3) The name by which the proposed adoptee shall be known if the petition is granted.
  - (4) The basis for the Court's jurisdiction.
  - (5) If the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest.

- (6) The relationship of the petitioner to the proposed adoptee.
  - (7) The names and addresses of any person or agency whose consent to aid adoption is necessary.
  - (8) Where there is more than one proposed adoptee and these proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.
  - (9) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by the Clerk of the Court.
- (C) Notice shall be provided in accordance with the notice procedures set forth in 3 PYTC §2-6-330(C), except that the Court may determine that it is unnecessary to give notice to specific individuals, including a parent whose parental rights have been terminated.
- (D) Home Studies.

When a petition for the adoption of a child is filed with the Court, the Court shall immediately request that the Social Service Department or other qualified agency, conduct a home study on the petitioner and report on the child. The home study and report shall relate to the circumstances of the home, the petitioner and his ability, both physical and mental, to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child. The home study will also address the issue of whether or not the home closely resembles that of the child's culture, identity and where applicable, his tribal affiliation. The home study or report shall not be required where the proposed adoptee is an adult.

No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Court. The home study shall be submitted to the Court no later than ten days before the hearing. The home study and report may be consolidated into one document. The Court may order additional home studies as it deems necessary.

**Section 380 Adoption Preferences (3 PYTC §2-6-380 Former PYT R.Juv.P. Rule 380)**

The preference of placement in adoption shall be in the following order unless the Court determines that the child's best interests require deviation from the preference:

- (A) Extended family members and godparents.
- (B) Person who has a relationship with the child but is not related.
- (C) A tribal member or person eligible for tribal membership of the same Tribe.
- (D) Other Indian persons.
- (E) Any other person who meets with requirements of the child/adoptee and can provide a suitable home.

**Section 390 Adoption Hearing (3 PYTC §2-6-390 Former PYT R.Juv.P. Rule 390)**

- (A) An adoption hearing shall be held within 90 days of the receipt of an adoption petition from the prospective parent(s). The Court shall conduct the hearing to determine if it is in the best interest of the child to be placed with the petitioners. In determining the best interests of the child, the Court shall examine:
- (1) Validity of written consent.
  - (2) Termination of parental rights order.
  - (3) Length of time of the child's wardship by the Court.
  - (4) Special conditions of the child.
  - (5) Parent communications with his child.
  - (6) Minor's consent to adoption, if he is over 12 years of age.
  - (7) Home studies or other reports.
  - (8) Order of preference of placement.
- (B) The petitioner and the proposed adoptee shall appear personally at the hearing. The judge shall examine all persons separately and may, if satisfied that all other requirements of this subchapter have been met, enter a final decree of adoption or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six months prior to entering a final decree of adoption.
- (C) If the Court is satisfied that the adoption will not be in the child's best interests, or finds that all of the requirements to this subchapter have not been met, it may deny the petition and make any order it deems necessary for the care and custody of the child not inconsistent with this subchapter.
- (D) Proceedings for termination of the parent/child relationship proceedings for adoption may be consolidated and determined at one hearing provided that all the requirements governing terminations are complied with fully.
- (E) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family, and other persons determined to be appropriate by the Court, shall be admitted.

**Section 400 Adoption Decree (3 PYTC §2-6-400 Former PYT R.Juv.P. Rule 400)**

- (A) If the Court finds that the requirements have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.
- (B) A person when adopted may take the name of the person adopting and the two shall thenceforth sustain toward each other the legal relation of parent and child and shall have all the rights and shall be subject to all the duties of that relation of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the Pascua Yaqui Tribe Probate Code.

**SUBCHAPTER G        EMANCIPATION OF MINOR**

**Section 410        Petition for Declaration of Emancipation (3 PYTC §2-6-410 Former PYT R.Juv.P. Rule 410)**

- (A)     A minor may petition the Juvenile Court for a declaration of emancipation. The petition shall be verified and shall set forth with specificity all of the following facts:
- (1)     That he or she is at least 16 years of age.
  - (2)     That he or she willingly lives separate and apart from his or her parents or legal Guardian with the consent or acquiescence of his or her parents or legal guardian.
  - (3)     That he or she is managing his or her own financial affairs.
  - (4)     That the source of his or her income is not derived from any activity declared to be a crime by the laws of the Tribe, State of Arizona or the laws of the United States.

**Section 420        Notice Requirements to Parents, Guardian, or Custodian (3 PYTC §2-6-420 Former PYT R.Juv.P. Rule 420)**

A copy of the filed petition, and notice of hearing, shall be served on the petitioner's parent(s), guardians or custodian at least 30 days before the emancipation hearing. Service shall be in accordance with the laws of the Tribe for service of process, but no summons is required. Service is waived if proof is made to the Court that one address of the parent(s), guardian or custodian is unavailable or unascertainable. When the minor is a ward or dependent of the Court, services shall be made upon the minor's supervising agency.

**Section 430        Granting the Petition; Criteria (3 PYTC §2-6-430 Former PYT R.Juv.P. Rule 430)**

- (A)     When the emancipation petition is heard before the Court, the Court must be satisfied as to the following facts:
- (1)     That the petitioner is 16 years of age or older;
  - (2)     That the petitioner is a resident of or can demonstrate intent to reside within the State or reservation;
  - (3)     That the petitioner has the ability to manage his or her financial affairs; and
  - (4)     That the petitioner has the ability to manage his or her personal, social, and non-financial affairs.

The burden of proof is on the minor as to these facts.

- (B)     If the Court is satisfied as to the facts outlined in Sub rule (A), the court must grant the petition unless those opposing the Petition, or the Court itself, can show that a grant of emancipation would be detrimental to the interests of the minor. The burden of proof for this subsection is on those opposing the petition or on the Court.
- (C)     The Court may enter an order declaring that the minor is emancipated if the Court, after hearing, finds that:

- (1) The minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; or
- (2) The minor is on active duty with any of the armed forces of the United States of America; or
- (3) The minor willingly lives separate and apart from his parents or guardian, with or without the consent of the parents or guardian, and that the minor is managing his own financial affairs, regardless of the source of any lawful income; or
- (4) For good cause shown, it is in the best interest of either or both parties.

**Section 440      Petition to Rescind Declaration of Emancipation (3 PYTC §2-6-440 Former PYT R.Juv.P. Rule 440)**

- (A) A minor declared emancipated under 3 PYTC §2-6-420 or his conservator may petition the Juvenile Court to rescind the declaration issued under 3 PYTC §2-6-430.
- (B) Before the petition is heard, such notice as the Court deems reasonable must be given to the minor's parents or guardian, or proof made to the Court that their addresses are unknown, or that for other reasons such notice cannot be given, however, no liability shall accrue to any parent or guardian not given actual notice, as a result of rescission of the declaration of emancipation, until such parent or guardian is given actual notice.
- (C) The Court shall sustain the petition and rescind the Declaration of emancipation if it finds that the minor is indigent and has no means of support.
- (D) If the petition is sustained, the Court shall forthwith issue a Court order rescinding the declaration of emancipation granted under 3 PYTC §2-6-430, which shall be filed by the Court Clerk. Any identification card issued stating emancipation shall be invalidated.
- (E) Rescission of the declaration of emancipation shall not alter any contractual obligations or rights or any property rights of interests which arose during the period that the declaration was in effect.

**SUBCHAPTER H      MODIFICATION, REVOCATION OR EXTENSION OF COURT ORDERS; APPEALS**

**Section 450      Motion to Modify, Revoke or Extend Court Order (3 PYTC §2-6-450 Former PYT R.Juv.P. Rule 450)**

- (A) The Court may hold a hearing to modify, revoke or extend a Court order under this Chapter at any time upon the motion of:
  - (1) The Child.
  - (2) The child's parent, guardian or custodian.
  - (3) The prospective adoptive parent(s) upon Court order.
  - (4) The child's counsel or guardian ad litem.
  - (5) The Juvenile Presenting Officer.

- (6) The institution, agency or person vested with the legal custody of the child or responsibility for protective supervision.
- (7) The Court on its own motion.
- (B) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

**Section 460 Appeals (3 PYTC §2-6-460 Former PYT R.Juv.P. Rule 460)**

- (A) Appeals under this Chapter shall be taken pursuant to the Pascua Yaqui Tribal Rules of Appellate Procedure.
- (B) For purposes of appeal, a record of the proceedings shall be made available to the juvenile, his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal. The cost may be waived if the juvenile, parent, guardian or custodian show that they cannot pay.

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