

TITLE XI
CHOCTAW YOUTH CODE

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CHAPTER 1. GENERAL PROVISIONS

§11-1-1 Purpose and Construction

This Title may be cited as the Choctaw Youth Code. It is the purpose of this Youth Code to secure for each child coming before the Choctaw Tribal Court such care, guidance, and control, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the child and the best interests of the Tribe, the State of Mississippi, and the United States; to preserve and strengthen the child's cultural and ethnic identity wherever possible; to implement and further the ties whenever possible, removing him from the custody of his parents or guardian or other custodian only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal; and, when the child is removed from his own family, to secure for him custody, care and discipline, as nearly as possible, equivalent to that which should have been given by his parents. The laws relating to Youth Court proceedings under this Title shall be liberally construed to carry out these purposes.

§11-1-2 Definitions

As used in this Youth Code, the defined in this section shall be given the following meanings:

- (1) "Abandon" means when a parent leaves a child without communication or fails to support a child and there is not indication of the parent(s) willingness to assume his parental role(s) for a period up to one year;
- (2) "Adult" means a person eighteen (18) years of age or older;
- (3) "Youth Court" means the Choctaw Court when exercising jurisdiction under this Title;
- (4) "Youth Court Judge" means any duly appointed judge of the Choctaw Court when exercising jurisdiction under this Title;
- (5) "Custodian" means one who has physical custody of a minor and who is providing food, shelter, and supervision to him;
- (6) "Delinquent Act" includes:
 - (a) an act which, if committed by an adult, would be designated a crime under federal law or Tribal code;
 - (b) the act of running away from the minor's legal parent, custodian or guardian. However, it shall not constitute an offense under this section if the minor is a victim of an illegal act; or
 - (c) the act of a minor child who is repeatedly truant from his or her designated school and who is not enrolled in a GED program or has not received the equivalent of/or a high school diploma.
- (7) "Detention" means The placement of a minor in a physically restrictive facility;

- (8) “Guardian” means a person other than the minor’s parent who is by law responsible for that minor;
- (9) “Juvenile Offender” means a person who commits a delinquent act prior to his 18th birthday.
- (10) “Least Restrictive Alternative” means the term in the Youth Code directing the court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the court’s objectives and must be the least restrictive way of achieving that objective;
- (11) “Minor” means
 - (a) a person under eighteen (18) years of age.
 - (b) a person eighteen (18) years of age or older concerning whom proceedings are commenced in Youth Court prior to his eighteenth (18th) birthday.
 - (c) a person eighteen (18) years of age or older who is under the continuing jurisdiction of the Youth Court.
- (12) “Minor in Need of Care” means a minor who:
 - (a) has no parent, guardian or custodian available and willing to care for him;
 - (b) has suffered or is likely to certainly suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;
 - (c) has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being;
 - (d) Has been sexually abused; or
 - (e) Has been committing delinquent acts as a result of parental pressure, guidance or approval.
- (13) “Parent” means the natural or adoptive parent of a child.
- (14) “A child welfare worker” means a person who will work in cooperation with the Child Advocacy Program. The duties of Mississippi Band of Choctaw Indians Social Services or any other program dealing with children will be as follows:
 - (a) make reports of suspected child abuse/neglect and cooperate with the necessary investigations on these reports;
 - (b) prepare social history investigations and make recommendations to the court on behalf of the child(ren) and family;

- (c) Provide direct counseling to families and their child(ren) involved in abusive and/or neglective acts;
 - (i) maintain a comprehensive and continuing file on each child and family with whom they work;
 - (ii) make the appropriate referral to other agencies when needed and follow up on each referral that is made; or
 - (iii) act as an agent to the Choctaw Tribal Court, with an obligation to act in the best interest of the child.

- (15) “Peacemaker Court” means a separate division of the MBCI Tribal Court with full authority to settle disputes according to the Peacemaker Code and the MBCI customary and traditional law;

- (16) “House Arrest” means the placement of a minor under the care of his parents, guardian or custodian where the parents are assuming the responsibility for restricting the minor to the family home as ordered by the Youth Court Judge;

- (17) “Presenting Officer” means a person authorized by the Tribe who prepares and/or presents the cases of the youth accused of the delinquent offense;

- (18) “Guardian Ad Litem” means a guardian who is appointed by the court to represent a ward in legal proceedings;

- (19) “Defense Counsel” means one who has been authorized by the Tribe to represent the youth accused of the delinquent offense; or

- (20) “Probation” means a legal status created at the disposition for a delinquent act by a juvenile offender and monitored by the probation officer; the terms and conditions shall be tailored by the court based on the nature of the delinquent act and the circumstances surrounding the act.

§11-1-3 Jurisdiction

- (1) The Choctaw Tribal Court shall have original and exclusive jurisdiction over:
 - (a) any child custody proceeding, as defined in 25 U.S.C. §1903(1), or
 - (b) any other proceedings of any kind or nature whatsoever involving an Indian child who resides or is domiciled within the Choctaw Indian Reservation.

- (2) The court shall also have concurrent jurisdiction over:
 - (a) any child custody proceeding, as defined in 25 U.S.C. §1903(1), or
 - (b) any other proceeding of any kind or nature whatsoever brought in this court and involving an Indian child under the age of eighteen (18) not domiciled or residing

within the Choctaw Indian Reservation but either a member of or eligible for membership in the Mississippi Band of Choctaw Indians.

- (3) In the case of an Indian child under the age of eighteen (18) not domiciled or residing within the Choctaw Indian Reservation who is a member of the Mississippi Band of Choctaw Indians and is also a member of another Tribe, or in the case of an Indian child who is eligible for membership in the Mississippi Band of Choctaw Indians and another Tribe, but has had the more significant contacts with this Tribe, the Choctaw Court may exercise concurrent jurisdiction over:
 - (a) any child custody proceeding, as defined in 25 U.S.C. §1903(1), brought in this court as to such child, or
 - (b) any other proceeding of any kind or nature whatsoever respecting said child.
- (4) The Choctaw Tribal Court may acquire transfer jurisdiction over any child custody proceeding:
 - (a) as defined in 25 U.S.C. §1903(1), or
 - (b) any other proceeding of any kind or nature whatsoever, involving an Indian child under the age of eighteen (18) as defined hereinabove not domiciled or residing within the Choctaw Indian Reservation in which such proceedings were initiated in any state court but thereafter transferred to this court, and whenever such transfer jurisdiction is accepted all subsequent proceedings in the Choctaw Tribal Court shall proceed in conformity with the provisions of this Title.
- (5) The Choctaw Tribal Court is hereby vested with exclusive jurisdiction over all other actions brought under this Title involving Indian minors where the cause of action arises within the “Indian Country” of the Choctaw Indian Reservation and the court is hereby empowered to accept transfer jurisdiction over all such other proceedings involving Indian minors under any of the circumstances defined in subsection (1), (2) or (3) above where the proceedings were initiated in any state court but thereafter transferred to this court; provided, however, that all subsequent proceedings in such cases shall be conducted under the provisions of this Title.

§11-1-4 Choctaw Youth Court Designation

The Choctaw Court, when in session regarding any matter relating to a child and under the provisions of this Title, shall be known as the “Choctaw Youth Court” and any duly appointed judge of the Choctaw Court, when hearing any such matter, shall be known as the “Youth Court Judge.”

§11-1-5 Proceedings Non-Criminal

No adjudication upon the status of any child in the jurisdiction of the Youth Court shall be deemed criminal or be deemed a conviction of a crime, unless the Youth Court refers the matter to the criminal court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court. All matters over which the Youth

Court has jurisdiction must be released by order of the Youth Court Judge to be considered in another court.

§11-1-6 Authority of Court

- (1) The Choctaw Youth Court is authorized to cooperate fully with any federal, state, Tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants in aid to carry out the purposes of this Title. The Choctaw Youth Court shall utilize such social services as may be furnished by any Tribal, federal or state agency.
- (2) The Choctaw Youth Court, at the Court's discretion, may refer a delinquent juvenile to a Tribally approved detention, rehabilitation or training facility which specifically deals with juvenile offenders.

§11-1-7 Youth Court Counselor

- (1) The Choctaw Youth Court may appoint a Youth Court Counselor to carry out the duties and responsibilities set forth in this Title. The Youth Court Judge of the Choctaw Tribal Court shall annually certify to the Tribal Council's Judicial Affairs Committee the number of qualified Youth Court counselors needed to carry out the purposes of this Title.
- (2) The Youth Court Counselor must have an educational background and/or prior experience in the field of delivering social services to youth.
- (3) The Youth Court Counselor shall identify and develop resources on the Choctaw Indian Reservation designated to enhance each minor Tribal member's potential as a viable member of the Tribal community.
- (4) The Youth Court Counselor shall not be employed as or perform the duties of a prosecutor, presenting officer or law enforcement official.

§11-1-8 Probation Officer

The Choctaw Youth Court shall appoint a Probation Officer to supervise juvenile offenders of the MBCI under the jurisdiction of the Youth Court with the purpose of guiding offenders toward a responsible and productive adulthood. The Youth Court Judge shall annually certify to the Tribal Council's Judicial Affairs Committee the number of qualified Youth Court Probation Officers needed to carry out and enforce the purposes of this Title.

- (1) Roles and Responsibilities of the Youth Court Probation Officer:
 - (a) must have an educational background including two (2) years of college, and/or prior experience in the field of working with Native American youth.
 - (b) shall work in cooperation with the Youth Court Counselor and other social service and law enforcement agencies to ensure the enforcement of this Title.

- (c) shall ensure compliance with court orders of the Youth Court in a manner designated to enhance each minor Tribal member's potential as a viable member of the Tribal community.
- (d) shall not be employed as or perform the duties of a presenting officer or social services employee.

§11-1-9 Guardian ad litem

The Choctaw Youth Court, under any proceeding(s) authorized by this Title, shall appoint, for the purposes of that proceeding(s), a guardian ad litem for a minor. Where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship:

- (1) a guardian ad litem shall zealously represent the child's best interests with respect to matters arising pursuant to the provisions of this Title; and
- (2) a guardian ad litem shall represent the child during any appellate proceedings;
- (3) any party may petition the court for an order to remove a guardian ad litem on the grounds that the guardian ad litem has a conflict of interest or is unwilling or unable to zealously represent the child's best interest;
- (4) when a child's circumstances render the following duties and responsibilities reasonable and appropriate, the guardian ad litem shall:
 - (a) meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Choctaw Youth Code;
 - (b) present the child's declared position to the court;
 - (c) communicate with health care, mental health care and other professionals involved with the child's case;
 - (d) review medical and psychological reports relating to the child and the respondents;
 - (e) contact the child prior to any proposed change in the child's placement;
 - (f) contact the child after changes in the child's placement; and
 - (g) attend status review hearings concerning the child and if unable to attend the hearings, forward or receive setting forth the child's status.
- (5) In the event of a change of division, or for purposes of appeal, the originating guardian ad litem shall remain on the case until a new guardian ad litem is appointed by the court in the new venue and the new guardian ad litem has communicated with the former guardian ad litem.

§11-1-10 Care and Treatment in Shelter Care and Detention Facilities

The Youth Court Judge of the Choctaw Tribal Court shall enforce policies and procedures governing the administration of Tribal and non-Tribal detention and shelter care facilities.

CHAPTER 2. TRANSFER PROCEDURES FOR JUVENILE OFFENDERS TO ADULT COURT OR PEACEMAKER COURT

§11-2-1 Transfer to Adult Court

In any proceedings brought under Chapter 3 of this Title if the minor is four-teen (14) years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult, the presenting officer of the minor may file a petition requesting the Choctaw Youth Court transfer the minor to the Criminal Court.

§11-2-2 Transfer Hearing

- (1) Timelines
 - (a) Upon the filing of a Petition to Transfer to Criminal Court, the Choctaw Youth Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Criminal Court. The transfer hearing shall be held not more than ten days after the petition is filed. Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least seventy-two (72) hours prior to the hearing.
- (2) At the time of the scheduled transfer hearing, if not before, the Youth Court Judge shall advise the respective parties as follows:
 - (a) the Youth Court Judge shall inform the minor and his parents, guardian or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation;"
 - (b) the Youth Court Judge shall further inform the minor and his parents, guardian or custodian of their right to have the proceedings continued if they need additional time to seek counsel;
 - (c) if the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation;
 - (d) the Youth Court Judge shall inform the minor that he does not have to be a witness against, or otherwise incriminate, himself; and
 - (e) the minor and the minor's parents, guardian or custodian shall be told that they are entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.
- (3) The following factors shall be included in any petition to transfer jurisdiction of the minor to criminal court:
 - (a) The nature and seriousness of the offense with which the minor is charged; and

- (b) The nature and condition of the minor, as evidenced by his age, mental and physical condition, past record of offenses and responses to past Youth Court efforts at rehabilitation.

§11-2-3 Transfer to Peacemaker Court

In any proceeding brought under Chapter 3 of this Title, the Choctaw Youth Court may transfer the minor to the Peacemaker Court under the following circumstances:

- (1) The Choctaw Youth Court Judge may recommend transferring the jurisdiction of the minor to the Peacemaker Court on a case by case basis upon voluntary consent of the minor, his parents, guardian or custodian and defense counsel; or
- (2) The minor and minor's parents, guardian or custodian and defense counsel may, on their own volition, request a transfer to Peacemaker Court. The request may be informal and handwritten;
 - (a) The Choctaw Youth Court may transfer jurisdiction of the minor to Peacemaker Court to resolve the matter according to the transitional MBCI methods of dispute resolution.
- (3) When a minor is transferred to the Peacemaker Court, the Youth Court shall issue a written transfer order which shall go on the docket of the Peacemaker Court;
- (4) If the Peacemaker Court determines that the peacemaking process cannot produce an agreed resolution of the matter, the case shall be transferred back to the Choctaw Youth Court. The case will then be placed on the Youth Court's docket and the Youth Court shall assume jurisdiction over the case.

§11-2-4 Pre-Transfer Report

Prior to the transfer hearing, a study and a report in writing shall be submitted to the Choctaw Youth Court by the Youth Court Counselor. Such report shall be relevant to those factors in §11-2-2(1)(3)(a)-(b).

§11-2-5 Standards of Transfer

- (1) The Choctaw Youth Court may transfer jurisdiction of the minor to Crimianl Court if the Youth Court finds clear and convincing evidence that both of the following circumstances exist:
 - (a) there is no reasonable prospects of rehabilitating the minor through resources available to the Youth Court; and
 - (b) the offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to himself to the public.

- (2) When a minor is transferred to criminal court, the Youth Court shall issue a written Transfer Order containing findings of fact and reasons supporting its order. The Transfer Order constitutes a final order for purposes of appeal in Youth Court.

§11-2-6 Termination of Youth Court Jurisdiction

When a minor is transferred to Criminal Court, and the case is accepted pursuant to the MBCI Criminal Code, the jurisdiction of the Youth Court shall simultaneously and permanently terminate, except that such jurisdiction is not permanently terminated if the criminal court transfers or remands the transferred case to the Youth Court or if the child who has been transferred to Criminal Court is not convicted.

CHAPTER 3. JUVENILE OFFENDER PROCEDURE

§11-3-1 Commencement of Action; Complaint

- (1) Except as otherwise provided in Paragraph (2) of this section, proceedings against alleged juvenile offenders shall be commenced by the filing of a complaint. A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:
 - (a) a citation to the specific statutory provisions of this title which gives the Choctaw Youth Court jurisdiction of the proceedings;
 - (b) a citation to the Tribal Code provision which the minor is alleged to have violated;
 - (c) the name, age and address of the minor who is the subject of the complaint, if known; and
 - (d) a plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.
- (2) As an alternative to filing a complaint, the Youth Court may, with the assistance of the Youth Court Counselor or other designated individuals, make such non-judicial adjustment of the case as is practicable without a complaint and proceedings thereunder. Such adjustments shall be made only in cases in which the facts are admitted and establish prima facie jurisdiction in the court, and further provided that consent is obtained from the parent or other custodians of suitable age and discretion. Efforts to effect a non-judicial adjustment may not extend for a period of more than two months without leave of the Youth Court Judge who may extend the period for an additional two months. A person attempting to effect such non-judicial adjustment shall have no authority to compel any person to appear at or visit any place or to produce any papers or things.
- (3) As an option when filing a complaint in the Youth Court, the Youth Court Judge with the assistance of the Youth Court Counselor or other designated individuals, may work with the minor and his parent/guardian(s) to voluntarily refer the case to the Peacemaker Court. Upon voluntary acceptance and approval by the Youth Court Judge, the case shall be transferred to the Peacemaker Court for resolution.

§11-3-2 Warrant

The Choctaw Youth Court may, in its discretion, issue a "Warrant" directing that a minor be taken into custody if the Youth Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint. In lieu thereof, a summons may be issued for the minor to appear before the court on a specified day and time for further proceedings upon the complaint.

§11-3-3 Custody

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

- (a) the officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
 - (b) a warrant pursuant to §11-3-2 of this Title has been issued for the minor.
- (2) A law enforcement officer who takes a minor into custody pursuant to subsection (1) above shall proceed as follows:
- (a) An arresting officer shall give the following warnings to any minor he takes into custody prior to any questioning:
 - (i) “You have the right to remain silent;”
 - (ii) “Anything you say can be used against you in court;”
 - (iii) “You have the right to the presence of a lawyer during questioning; and”
 - (iv) “If you cannot afford a lawyer, the court will help you obtain the services of one through available Reservation services.”
 - (3) An arresting officer shall release the minor to the minor’s parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.
 - (4) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor’s parent, guardian, or custodian to inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the Youth Court Counselor pursuant to §11-3-4 of this Title.

§11-3-4 Youth Court Counselor’s Duties

- (1) The Youth Court Counselor shall not place a minor in detention unless a complaint is filed in accordance with §11-3-1(1) of this Title or the Youth Court orders that the minor be taken into custody pursuant to §11-3-2 of this Title.
- (2) If the minor’s parent, guardian or custodian has not been contacted, the Youth Court Counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian unless detention or shelter care is immediately necessary.
- (3) If a minor is not released to his parent, guardian or custodian, the Youth Court Counselor shall place the minor in detention or shelter care pending the preliminary inquiry and shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.

§11-3-5 Detention and Shelter Care

- (1) Except as otherwise provided in subsection (2) of this section, a minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) a foster care facility on the Reservation, approved by the Tribe;
 - (b) a detention home on the Reservation, approved by the Tribe;
 - (c) a private family home on the Reservation, approved by the Tribe; or
 - (d) a minor's family home on or off the Reservation under the conditions of "house arrest" when approved by the Youth Court Judge.
- (2) A minor may be detained in a jail or facility used for the detention of adults only if:
- (a) a facility in subsection (1) of this section is not available or would not assure adequate supervision of the minor;
 - (b) detention is in a cell separate and removed from sight and sound of adults whenever possible; and
 - (c) adequate supervision is provided twenty-four (24) hours a day.

§11-3-6 Preliminary Inquiry

- (1) If a minor is placed in detention or shelter care by the Youth Court Counselor pursuant to §11-3-5 of this Title, the Youth Court shall conduct a preliminary inquiry within two(2) days for the purpose of determining:
- (a) whether probable cause exists to believe the minor committed the alleged delinquent act; and
 - (b) whether continued detention or shelter care is necessary pending further proceedings.
- (2) If a minor has been released to his parent, guardian or custodian and charged with a Class C offense, the Youth Court shall not conduct a preliminary inquiry. If a minor has been released to his parent, guardian or custodian and charged with a Class A or B offense, the Youth Court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.
- (3) Under informal proceedings stated in §§11-3-13-14, the Youth Court shall not conduct a preliminary inquiry unless the minor has been detained as stated in subsection (1) of this section.

§11-3-7 Notice of Preliminary Inquiry

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

- (b) the title of the proceedings;
 - (c) a brief statement of the substance of the allegations against the minor; and
 - (d) the date, time and place of the preliminary inquiry.
- (3) The notice shall be delivered by a law enforcement officer, or an appointee of the Youth Court.

§11-3-8 Non-Attendance of Parent, Guardian or Custodian

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

§11-3-9 Rights of Parties

- (1) Right to Counsel:
- (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation."
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The Youth Court shall give the minor, the minor's parent, guardian or custodian and his counsel or person he has selected to represent him, shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-3-10 Scope of Preliminary Inquiry

The Youth Court shall hear testimony concerning the circumstances that gave rise to the complaint or the taking of the minor into custody and the need for detention or shelter care.

§11-3-11 Disposition Upon Preliminary Inquiry

- (1) If, at the preliminary inquiry, the Youth Court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to his parents and ordered to appear at the adjudicatory hearing, unless:
 - (a) the act is serious enough to warrant continued detention or shelter care; and
 - (b) there is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or
 - (c) there is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
- (2) The Youth Court may release a minor pursuant to subsection (1) of this section to a relative or other responsible adult Tribal member if the parent, guardian or custodian of the minor consents to the release.
- (3) Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care, the minor's detention or shelter care shall be continued. The court shall consider the Youth Court Counselor's recommendation prepared pursuant to §11-3-12 of this Title.
- (4) If probable cause to believe the minor committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed and the minor released.

§11-3-12 Investigation By the Youth Court Counselor

- (1) The Youth Court Counselor shall make an investigation within five (5) days of the preliminary inquiry or the release of the minor to his parent, guardian or custodian, to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the Youth Court Counselor may:
 - (a) recommend that no further action be taken;
 - (b) suggest to the minor and his parent, guardian or custodian that they appear for an informal hearing pursuant to §11-3-13 of this Title;
 - (c) request that the presenting officer begin transfer proceedings pursuant to Chapter 2 of this Title; or
 - (d) recommend that the presenting officer file a petition pursuant to §11-3-14 of this Title in the Youth Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

§11-3-13 Informal Hearing

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

- (a) the admitted facts bring the case within the jurisdiction of the Youth Court;
- (b) an informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
- (c) the minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

§11-3-14 Notice of Informal Hearing

- (1) Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (2) The notice shall contain:
 - (a) the name of the court; and
 - (b) the title of the proceedings; and
 - (c) a brief statement of the substance of the allegations against the minor; and
 - (d) the date, time and place of the informal hearing.
- (3) The notice shall be delivered by a law enforcement officer, or an appointee of the Youth Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

§11-3-15 Rights of Parties

- (1) Right to Counsel:
 - (a) The Youth Court ~~Counselor~~ shall inform the minor and his parents, guardian or custodian of their right to retain counsel by telling them “According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation.”
 - (b) If the parties appear at the hearing without counsel, the Youth Court Counselor shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Counselor shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor, the minor’s parent, guardian or custodian, and his counsel or person he has selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine a witnesses.

Deleted: Judge

§11-3-16 Limitations Upon Informal Hearings

- (1) No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this Title.
- (2) At any informal hearing the Youth Court Counselor shall not be authorized to compel any person to appear at any conference, produce any papers or visit any place.

§11-3-17 Disposition Upon Informal Hearing

- (1) At the informal hearing, the Youth Court Counselor may:
 - (a) refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
 - (b) order terms of probation calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform;
 - (c) accept an offer of restitution if voluntarily made by the minor; or
 - (d) recommend that the presenting officer file a petition pursuant to §11-3-18 of this Title.
- (2) Any informal adjustment period shall not exceed six (6) months.
- (3) The Youth Court Counselor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.
- (4) The Youth Court Counselor shall review the minor's progress every thirty (30) days. If, at any time, after the initial thirty (30) day period, the counselor concludes that positive results are not being achieved, the counselor shall recommend that the presenting officer file a petition pursuant to §11-3-18 of this Title.

§11-3-18 Petition

- (1) Proceedings under this Title shall be instituted by a petition filed by the presenting office on behalf of the Tribe and in the interests of the minor. The petition shall state:
 - (a) the name, birth date and residence of the minor;
 - (b) the names and residences of the minor's parent, guardian or custodian;
 - (c) a citation to the specific statutory provision of this Title which gives the Youth Court jurisdiction of the proceedings;
 - (d) a citation to the Tribal Code provision which the minor is alleged to have violated; and

- (e) if the minor is in detention or shelter care, the place of detention or shelter care and the date and time he was taken into custody.

§11-3-19 Setting the Hearing

- (1) Upon receipt of the petition, the Youth Court shall set a date for the hearing which shall not be more than ten days after the Youth Court receives the petition from the presenting officer. If the adjudicatory hearing is not held within ten days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:
 - (a) the hearing is continued upon motion of the minor; or
 - (b) the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Youth Court find the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

§11-3-20 Summons

- (1) At least five (5) days prior to the adjudicatory hearing, the Youth Court shall issue summons to:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian;
 - (c) any person the Youth Court believes necessary for the proper adjudication of the hearing; and
 - (d) any person the minor believes necessary for the proper adjudication of the hearing.
- (2) The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing.
- (3) A copy of the petition shall be attached to the summons.
- (4) The summons shall be delivered personally by a law enforcement officer of this jurisdiction or an appointee of the Youth Court. If the summons cannot be delivered personally, the court may deliver the summons by registered mail. If the summons cannot be delivered personally or by registered mail, the summons may be by publication.
- (5) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

§11-3-22 Rights of Parties

- (1) Right to Counsel:

- (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them “According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation.”
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
 - (3) The minor, the minor’s parent, guardian or custodian and his counsel or person he has selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-3-23 Disposition of Adjudicatory Hearing

- (1) If the minor admits the allegations of the petition, the Youth Court shall proceed to the dispositional stage only if the Youth Court finds:
 - (a) the minor fully understands his rights as set forth in §11-3-22 of this Title and fully understands the potential consequences of his admission;
 - (b) the minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Youth Court action; and
 - (c) the minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- (2) The Youth Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (3) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Youth Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.
- (4) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§11-3-24 Pre-dispositional Report

- (1) The Youth Court Counselor shall prepare a written report including a personal profile of the minor and describe all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition.

- (2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
- (3) Preference shall be given to the dispositional alternatives which are listed in §11-3-28 and the Youth Court Counselor shall select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian.
- (4) The Youth Court Counselor shall present the pre-dispositional report to the Youth Court, the person selected by the minor to represent him and the presenting officer, at least one day before the dispositional hearing.

§11-3-25 Dispositional Hearing

A dispositional hearing shall take place at the conclusion of the adjudication unless, in the discretion of the Youth Court Judge it shall be set at a later date not to exceed ten (10) days. At the dispositional hearing, the Youth Court shall hear evidence on the question of proper disposition.

§11-3-26 Rights of Parties

- (1) Right to Counsel:
 - (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation."
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor, the minor's parent, guardian or custodian and his counsel or person he has selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-3-27 Information Considered

- (1) At the dispositional hearing, the Youth Court shall consider the predisposition report submitted by the Youth Court Counselor and afford the parents an opportunity to controvert the factual contents and conclusions of the report. The Youth Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any.
- (2) The disposition order constitutes a final order for purposes of appeal.

§11-3-28 Dispositional Alternatives

- (1) If a minor has been adjudged a juvenile offender, the Youth Court may make the following dispositions:
 - (a) place the minor on probation subject to conditions set by the Youth Court;
 - (b) upon consent of all parties, transfer disposition to a Court approved alternative disposition forum such as Choctaw Teen Court subject to the terms and conditions of said alternative disposition which shall be approved by the Youth Court; or
 - (c) place the minor in an institution or facility for detention, or in the care of an agency designated by the Youth Court.
- (2) The dispositional orders are to be in effect for the time limit set by the Youth Court, but no order shall continue after the minor reaches the age of twenty-one (21) years of age.
- (3) The dispositional orders are to be reviewed at the Youth Court's discretion, but at least once every six (6) months.

§11-3-29 Modification of Dispositional Order

- (1) A dispositional order of the Youth Court may be modified upon a showing of a change of circumstances.
- (2) The Youth Court may modify a dispositional order at any time upon the motion of the following:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian; or
 - (c) the Youth Court Counselor.
- (3) If the modification involves a change of custody, the Youth Court shall conduct a hearing pursuant to §11-3-30 to review its dispositional order.

§11-3-30 Dispositional Modification Hearing; Notice

- (1) Notice in writing of the hearing for a modification of the dispositional order shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing:
 - (a) The notice shall contain the name of the court, the title of the proceedings, a statement that the hearing is to review the disposition, and the date, time and place of the hearing.

- (b) The notice shall be delivered by a law enforcement officer or an appointee of the Youth Court.

§11-3-31 Rights of Parties

- (1) Right to Counsel:
 - (a) The Youth Court Judge shall inform the minor and his parents, guardian or custodian of their right to retain counsel by telling them “According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation.”
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor, the minor’s parent, guardian or custodian and his counsel or person he has selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-3-32 Dispositional Modification Hearing

- (1) The Youth Court shall review the performance of the minor, the minor’s parent, guardian or custodian and the Youth Court Counselor and other persons providing assistance to the minor and the minor’s family.
- (2) In determining modification and disposition, the procedures prescribed in §§11-3-29-11-3-30 of this Title shall apply.

§11-3-33 Court Records

- (1) A record of all hearings under this Title shall be made and preserved.
- (2) All Youth Court records shall be confidential and shall not be open to inspection and shall not be disclosed to any but the following:
 - (a) the minor;
 - (b) the minor’s parent, guardian or custodian;
 - (c) the Youth Court Counselor;
 - (d) the presenting officer,

- (e) any Tribal government social services agency of the Tribe; or
 - (f) any other person or entity by the order of the court, having a legitimate interest in the case or work of the court.
- (3) A copy of a specific Youth Court record may be made available to the parent or legal guardian, Youth Court Counselor, presenting officer and any other person or entity having a legitimate interest in the work of the case before the court at the discretion of the judge.

§11-3-34 Law Enforcement Records

- (1) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.
- (2) All law enforcement records and files shall be confidential and shall not be open to inspection to any one but the following:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian;
 - (c) the Youth Court Counselor; or
 - (d) the presenting officer.

§11-3-35 Expungement

When a minor who has been the subject of any proceeding before the Youth Court attains his eighteenth (18th) birthday and upon completion of probation whichever is first, the Youth Court Judge shall order the Clerk of the Court to destroy both the court records and the law enforcement records.

§11-3-36 Appeal

- (1) For purposes of appeal, a record of the proceedings shall be made available to the minor, his parent, guardian or custodian. Costs of obtaining this record shall, unless waived by order of the court, be paid by the party seeking the appeal.
- (2) Any party to a Youth Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Youth Court within thirty (30) days of the final order or disposition.
- (3) No decree or disposition of a hearing shall be stayed by such appeal.
- (4) All appeals shall be conducted in accordance with the Tribal Code.

§11-3-37 Contempt of Court

- 1) Any willful disobedience or interference with any order of the Youth Court constitutes contempt of court.
- (2) The Choctaw Youth Court may punish an adult for contempt of court in accordance with the Choctaw Tribal Code.

§11-3-38 Medical Examination

The Youth Court may order a medical examination for a minor who is alleged to be a juvenile offender.

§11-3-39 Recognition of Other Sovereign's Records and Judicial Proceedings

The MBCI Youth Court may give full faith and credit or comity to another sovereign's records and judicial proceedings, as long as it is not against the public policy of the MBCI.

CHAPTER 4. MINOR IN NEED OF CARE PROCEEDINGS

§11-4-1 Indian Child Welfare Act; Portions Applicable

All proceedings instituted under this Chapter of the Choctaw Youth Code shall be deemed “child custody proceedings” as defined in 25 U.S.C. §1903(1) of the Indian Child Welfare Act. Nothing in this Section shall be construed in any way to abridge the rights of the MBCI to exercise jurisdiction over child custody matters as defined in accordance with the Federal Indian Child Welfare Act of 1978.

§11-4-2 Complaint; Form Of And By Whom Filed

- (1) A complaint may be filed by the MBCI Social Services Department upon the basis of knowledge of the facts alleged. The complaint shall be signed by the Director of the MBCI Social Services Department or any MBCI Social Services Department staff member authorized by the Director to file complaints. The complaint shall contain:
 - (a) a citation to the specific statutory provisions of this Title which gives the Youth Court jurisdiction of the proceedings;
 - (b) name, age and address of the minor who is the subject of the complaint, if known; and
 - (c) a plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.
- (2) Any private individual, program other than the MBCI Social Services Department or other agency or entity desiring Youth Court proceedings involving a minor alleged to be in need of care shall request that the Tribal MBCI Social Services Department file a complaint in accordance with subsection (1) of this section and if, pursuant to request, the action is filed, the individual, other program, agency or entity may join as of right as a co-plaintiff in the action.
- (3) If the MBCI Social Services Department, upon request made in accordance with subsection (2) of this section, fails or refuses within ten (10) days to initiate court action and the private individual, other program, agency or entity feels aggrieved by such failure or declination, review by the Choctaw Youth Court may be petitioned for on the grounds that the failure or refusal was arbitrary, capricious and contrary to the interests of the minor alleged to be in need of care and naming the MBCI Social Services Department as the sole respondent in the action.
- (4) If, upon a hearing granted on a petition filed pursuant to subsection (3) of this section, the Choctaw Youth Court determines that the failure or refusal of the MBCI Social Services Department was arbitrary, capricious and contrary to the interests of the minor alleged to be in need of care, the court may order the respondent to proceed in accordance with subsection (1) of this section and permit the individual or other program, agency or entity to join as co-plaintiff in the action or, in its discretion, authorize the petitioner to file as the sole plaintiff.

- (5) Except as may be otherwise authorized by court order pursuant to subsection (4) of this section, no proceedings initiated under this Chapter by a private individual, program other than the MBCI Social Services Department or other agency or entity against a parent, legal guardian, or other lawful custodian or involving a minor alleged to be in need of care shall be entertained by the Choctaw Youth Court and any such action filed shall be dismissed by the court on its own motion.

§11-4-3 Warrant

The Choctaw Youth Court may, in its discretion, enter an order called a warrant directing that a minor be taken into custody if the Youth Court finds there is probable cause to believe the minor is a minor in need of care. In lieu thereof, a summons may be issued for the minor to appear before the court on a specified day and time for further proceedings upon complaint.

§11-4-4 Custody

- (1) A minor may be taken into custody by a law enforcement officer or child welfare worker if:
 - (a) the officer has reasonable grounds to believe that the minor is a minor in need of care and that the minor is in immediate danger from his surroundings and that his removal is necessary; or
 - (b) a warrant pursuant to §11-4-3 of this Title has been issued for the minor.
- (2) A law enforcement officer who takes a minor into custody pursuant to subsection (1) above shall proceed as follows:
 - (a) release the minor to the minor's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate, unless shelter care is necessary;
 - (b) if the minor is not released, the law enforcement officer shall make immediate and recurring efforts to notify the minor's parent, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the Choctaw Social Services Division Caseworker assigned to the particular case pursuant to §11-4-5; or
 - (c) if the minor is not released, the law enforcement officer shall immediately notify the Choctaw Social Services Division Caseworker. It shall be at this point that law enforcement and Social Services are to assist each other in getting the child placed in a safe and secure shelter care pending further action.

§11-4-5 Caseworker's Duties

- (1) The Caseworker shall not place a minor in shelter care unless a complaint is filed in accordance with §11-4-2 of the Tribal Code or the Youth Court orders that the minor be taken into custody pursuant to §11-4-3 of the Tribal Code.

- (2) If the minor's parent, guardian or custodian has not been contacted, the Caseworker shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian unless shelter care is immediately necessary.
- (3) If a minor is not released to his parent, guardian or custodian, the Caseworker shall place the minor in shelter care pending the preliminary inquiry.
- (4) If a minor is not released to his parent, guardian or custodian, the Caseworker shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the preliminary inquiry.

§11-4-6 Shelter Care

- (1) A minor alleged to be a minor in need of care may be detained, pending a court hearing, in the following places:
 - (a) a foster care facility on the Reservation, approved by the Tribe;
 - (b) a private family home on the Reservation, approved by the Tribe; or
 - (c) a shelter care facility on the Reservation, approved by the Tribe.
- (2) A minor alleged to be a minor in need of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he must be detained in a room separate from the juvenile offenders.

§11-4-7 Preliminary Inquiry

- (1) If the minor is placed in shelter care by the Caseworker pursuant to §11-4-5(3), the Youth Court shall conduct a preliminary inquiry within seventy-two (72) hours (excluding weekends and holidays) for the purpose of determining:
 - (a) whether probable cause exists to believe the minor is a minor in need of care; and
 - (b) whether continued shelter care is necessary pending further proceedings.
- (2) If a minor has been released to his parent, guardian or custodian, the Youth Court shall conduct a preliminary inquiry within the receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor in need of care.

§11-4-8 Notice of Preliminary Inquiry

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

- (a) the name of the court;
 - (b) the title of the proceedings;
 - (c) a brief statement of the substance of the alleged circumstances upon which the minor in need of care allegation is based; and
 - (d) the date, time and place of the preliminary inquiry.
- (3) The notice shall be delivered by a law enforcement officer, or an appointee of the Youth Court.

§11-4-9 Non-Attendance of Parent, Guardian or Custodian

If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Youth Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Youth Court shall recess for not more than twenty-four (24) hours and direct the Caseworker to make continued efforts to obtain the presence of a parent, guardian or custodian. A guardian ad litem may be appointed pursuant to §11-1-9.

§11-4-10 Rights of Parties

- (1) Right to Counsel:
- (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation."
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The Youth Court shall give the minor, the minor's parents, guardian or custodian and his counsel or person he has selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-4-11 Scope of Preliminary Inquiry

The Youth Court shall hear testimony concerning the circumstances that gave rise to the complaint or the taking of the minor into custody and the need for shelter care.

§11-4-12 Disposition Upon Preliminary Inquiry

- (1) If, at the preliminary inquiry, the Youth Court finds that probable cause exists to believe the minor is a minor in need of care, the minor shall be released by the court to his parents and ordered to appear at the adjudicatory hearing, unless:
 - (a) there is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings;
 - (b) there is reasonable cause to believe that the minor is in immediate danger from his parent, guardian or custodian and that his removal from them is necessary, or
 - (c) there is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.
- (2) The Youth Court may release a minor pursuant to subsection (1) of this section to a relative or other responsible adult Tribal member if the parent, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and his parent, guardian or custodian must both consent to the release.
- (3) Upon a finding that probable cause exists to believe that the minor is a minor in need of care and that there is a need for shelter care, the minor's shelter care shall be continued. The court shall consider the Caseworker's recommendation prepared pursuant to §11-4-5(4) of the Tribal Code.
- (4) If probable cause to believe the minor is a minor in need of care and the need for shelter care is not found, the complaint shall be dismissed and the minor released.

§11-4-13 Investigation by the Caseworker

- (1) The Caseworker shall make an investigation within five days of the preliminary inquiry or the release of the minor to his parent, guardian or custodian, to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigation, the Caseworker may:
 - (a) recommend that no further action be taken;
 - (b) suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to §11-4-14 of this Title; or
 - (c) request the presenting officer file a petition pursuant to §11-4-19 of the Tribal Code, in the Youth Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the minor is in shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten days.

§11-4-14

Informal Hearing or Transfer to Peacemaker Court

- (1) The Caseworker may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:
 - (a) the admitted facts bring the case within the jurisdiction of the Youth Court; and
 - (b) an informal adjustment of the matter would be in the best interest of the minor and the Tribe; and
 - (c) the minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.
- (2) The minor, his parent, guardian and a custodian, in cooperation with MBCI Social Services Department, may request a transfer to the Peacemaker Court pursuant to §11-2-3.

§11-4-15 Notice of Informal Hearing

- (1) Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (2) The notice shall contain:
 - (a) the name of the court;
 - (b) the title of the proceedings;
 - (c) a brief statement of the substance of the alleged circumstances upon which the minor in need of care allegation is based; and
 - (d) the date, time and place of the informal hearing.
- (3) The notice shall be delivered by a law enforcement officer or an appointee of the Youth Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

§11-4-16 Rights of Parties

- (1) Right to Counsel:
 - (a) The Caseworker shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation."
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.

- (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-4-17 Limitations Upon Informal Hearings

- (1) No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this Title.
- (2) At any informal hearing, the Caseworker shall not be authorized to compel any person to appear at any conference, produce any papers or visit any place.

§11-4-18 Disposition Upon Informal Hearing

- (1) At the informal hearing, the Caseworker may:
 - (a) refer the minor and the parent, guardian or custodian to a community agency for needed assistance;
 - (b) order terms of supervision calculated to assist and benefit the minor which that regulate the minor's activities and which are within the ability of the minor to perform; or
 - (c) recommend that the presenting officer file a petition pursuant to §11-4-19 of the Tribal Code.
- (2) Any informal adjustment period shall not exceed six (6) months.
- (3) The Caseworker shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.
- (4) The Caseworker shall review the minor's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the counselor concludes that positive results are not being achieved, the Counselor shall recommend that the presenting officer file a petition pursuant to §11-4-19 of the Tribal Code.

§11-4-19 Petition

- (1) Proceedings under this Youth Code involving a minor in need of care shall be instituted by a petition filed by the presenting officer, who shall be one authorized under §11-4-2 of the Tribal Code, and in the interests of the minor. The petition shall state:
 - (a) the name, birth date and addresses of the minor;
 - (b) the names and addresses of the minor's parent, guardian or custodian;

- (c) a citation to the specific statutory provision of this Title which gives the Youth Court jurisdiction of the proceedings; and
- (d) if the minor is in shelter care, the place of shelter care and the time the minor was taken into custody.

§11-4-20 Setting of Hearing

- (1) Upon receipt of the petition, the Youth Court shall set a date for the hearing which shall not be more than ten (10) days after the Youth Court receives the petition from the presenting officer. If the adjudicatory hearing is not held within ten (10) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:
 - (a) the hearing is continued upon motion of the minor; or
 - (b) the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the Youth Court finds the presenting officer has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

§11-4-21 Summons

- (1) At least five (5) days prior to the adjudicatory hearing, the Youth Court shall issue summons to:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian;
 - (c) any person the Youth Court believes necessary for the proper adjudication of the hearing; and
 - (d) any person the minor believes necessary for the proper adjudication of the hearing.
- (2) The summons shall contain the name of the court, the title of the proceedings and the date, time and place of the hearing.
- (3) A copy of the petition shall be attached to the summons issued to persons listed in subsections (1)(a)-(b) of this section, so no one else gets a copy of petition.
- (4) The summons shall be delivered personally by a law enforcement officer of this jurisdiction or an appointee of the Choctaw Youth Court. If the summons cannot be delivered personally, the court may deliver the summons by registered mail. If this summons cannot be delivered personally or by registered mail, the summons may be by publication.
- (5) If a person who has been issued a summons under this Title fails to appear at the hearing, that person shall be held in contempt of court.

§11-4-22 Adjudicatory/Dispositional Hearing

- (1) The Youth Court shall conduct the adjudicatory/dispositional hearing within ten (10) days after the filing of the petition with the Youth Court. The adjudicatory/dispositional hearing shall consist of an adjudicatory stage, and, if necessary, a dispositional stage.
- (2) Adjudicatory Stage: The Youth Court shall conduct the adjudicatory stage for the sole purpose of determining whether the minor is in need of care. The adjudicatory stage of the hearing shall be private and closed.
 - (a) If the minor or the minor's parent, guardian or custodian admit to the allegations of the petition, the Youth Court shall proceed to the dispositional stage only if the Youth Court finds:
 - (i) the minor and the minor's parent, guardian or custodian fully understand their rights as set forth in §11-4-23 and fully understand the potential consequences of their admission; and
 - (ii) the minor and the minor's parent, guardian or custodian voluntarily, intelligently, and knowingly admit to all facts necessary to constitute a basis for Youth Court action; and
 - (iii) the minor and the minor's parent, guardian or custodian have not, in their purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
 - (b) If the allegations of the petition are controverted, the Youth Court shall hear testimony concerning circumstances which gave rise to the complaint and petition. The standard of proof shall be that which is beyond a reasonable doubt, the burden of which shall be borne by the petitioner.
 - (c) If the requirements of either subsection (a) or (b) above are met, then the Youth Court shall find that the minor is a minor in need of care, and immediately proceed to the dispositional stage. A finding that the minor is a minor in need of care shall constitute a final order for purposes of appeal.
- (3) Dispositional Stage: It is at the dispositional stage that the Youth Court shall hear evidence and other relevant information as to proper disposition. Such information considered shall include, but is not be limited to including a personal profile of the minor and a description of all reasonable and appropriate alternative dispositions. The report shall contain:
 - (i) a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition; and
 - (ii) an explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan; and

- (iii) specific reasons for not recommending placement of the minor with his parent, guardian, or custodian, if applicable. Preference shall be given to dispositional alternatives listed in §11-4-25. The alternative that is the least restrictive of the minor's freedom and are most consistent with the interests of the Tribe shall be selected.
- (4) a pre-dispositional report, to be prepared by the Caseworker, which shall contain the following, and which shall be presented by the Caseworker before the Youth Court in the presence of the person selected by the minor to represent him and the presenting officer at the beginning of the dispositional stage of the proceeding.

§11-4-23 Rights of Parties

- (1) Right to Counsel:
 - (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation."
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-4-24 Information Considered

- (1) At the dispositional stage of the proceedings, the Youth Court shall consider the pre-dispositional report submitted by the Caseworker and afford the parties an opportunity to controvert the factual contents and conclusions of the report. The Youth Court shall also consider the alternative pre-disposition report prepared by the minor and his representative, if any, and also any alternative pre-disposition report prepared by the minor's parent, guardian or custodian, or their counsel, if any.
- (2) The dispositional order constitutes a final order for purposes of appeal.

§11-4-25 Dispositional Alternatives

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

- a) permit the minor to remain with his parents, guardian or custodian, subject to such limitations and conditions as the court may prescribe;
 - (b) place the minor with a relative within the external boundaries of the Choctaw Indian Reservation subject to such limitations and conditions as the court may prescribe;
 - (c) place the minor in a foster home within the external boundaries of the Choctaw Indian Reservation which has been approved by the Tribe, subject to such limitations and conditions as the court may prescribe; or
 - (d) place the minor in shelter care facilities designated by the court; or
 - (e) place the minor in a foster home or relative's home outside the external boundaries of the Choctaw Indian Reservation, subject to such limitations and conditions as the court may prescribe; or
 - (f) recommend that termination proceedings begin.
- (2) Whenever a minor is placed in a home or facility located outside the boundaries of the Reservation, the court shall require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.
 - (3) The dispositional orders are to be in effect for the time limit set by the Choctaw Youth Court, but no order shall continue after the minor reaches the age of twenty-one (21) years.
 - (4) The dispositional orders are to be reviewed at the Youth Court's discretion, but at least once every six (6) months.

§11-4-26 Modification of Dispositional Order

- (1) The Youth Court may modify a dispositional order at any time upon the motion of the following:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian; or
 - (c) the Caseworker.
- (2) If the modification involves a change of custody, the Youth Court shall conduct a hearing pursuant to §11-4-29 to review its dispositional order.

§11-4-27 Dispositional Modification Hearing; Notice

- (1) Notice in writing of the hearing for a modification of the dispositional order shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least 48 hours before the hearing:
 - (a) the notice shall contain:

- (i) the name of the court;
 - (ii) the title of the proceedings;
 - (iii) a statement that the hearing is to review the disposition; and
 - (iv) the date, time and place of the hearing.
- (b) the notice shall be delivered by a law enforcement officer or an appointee of the Youth Court.

§11-4-28 Rights of Parties

- (1) Right to Counsel:
- (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them “According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation.”
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall continue the proceedings if they need additional time to seek counsel.
 - (c) If the parties are unable to pay for counsel, the Youth Court Judge shall inform them of any available services that provide representation.
- (2) The minor need not be a witness against, nor otherwise incriminate, himself.
- (3) The minor, the minor’s parent, guardian or custodian and his counsel or person he selected to represent him shall be entitled to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11-4-29 Dispositional Modification Hearing

- (1) The Youth Court shall review the performance of the minor, the minor’s parent, guardian or custodian and the Caseworker and other persons providing assistance to the minor and the minor’s family.
- (2) In determining modification and disposition, the procedures described in §§11-4-25-11-4-26 of the Tribal Code shall apply.
- (3) If the request for review of disposition is based upon alleged violation of a court order, the Youth Court shall not modify its dispositional order unless it finds clear and convincing evidence of its violation.

§11-4-30 Court Records

- (1) A record of all hearings under this Title shall be made and preserved.

- (2) All Youth Court records shall be confidential and shall not be open to inspection to any but the following:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian;
 - (c) the Caseworker; or
 - (d) the presenting officer.

§11-4-31 Appeal

- (1) For purposes of appeal, a record of the proceedings shall be made available to the minor, his parent, guardian or custodian. Costs of obtaining this record shall, unless waived by order of the court, be paid by the party seeking the appeal.
- (2) Any party to a Youth Court hearing may appeal a final order or disposition of the case by filing a written Notice of Appeal with the Youth Court within thirty (30) days of the final order or disposition.
- (3) No decree or disposition of a hearing shall be stayed by such appeal.
- (4) All appeals shall be conducted in accordance with the Tribal Code.

§11-4-32 Contempt of Court

- (1) Any willful disobedience or interference with any order of the Youth Court constitutes contempt of court.
- (2) The Choctaw Youth Court may punish an adult for contempt of court in accordance with the Choctaw Tribal Code.

§11-4-33 Medical Examination

The Youth Court may order a medical examination for a minor who is alleged to be a minor in need of care.

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS

§11-5-1 Indian Child Welfare Act; Portions Applicable

All proceedings instituted under this chapter of the Choctaw Youth Code shall be deemed “child custody proceedings” as defined in 25 U.S.C. §1903(1) of the Indian Child Welfare Act, and the Act’s findings and conclusions, evidentiary standards for termination of parental rights, and requirements for voluntary parental consent to termination of parental rights under state law are hereby made applicable to termination proceedings in the Choctaw Youth Court, to the extent not otherwise provided in this Code.

§11-5-2 Petition; Form of and By Whom Filed

- (1) Parental rights to a child may be terminated by the Choctaw Youth Court according to the procedures in this chapter.
- (2) Proceedings to terminate parental rights shall be instituted by a petition filed by either:
 - (a) the MBCI Social Services Department acting on behalf of the Tribe;
 - (b) both parents of the child pursuant to a voluntary decision to give up their parental rights; or
 - (c) one parent of the child against the other parent thereof.
- (3) The petition shall state at least the following:
 - (a) the name, birth date, and residence of the minor;
 - (b) the names and residences of the minor’s parent, guardian or custodian;
 - (c) if the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and
 - (d) a plain and concise statement of the facts upon which the allegations that parental rights should be terminated are based, including the date, time and location at which the alleged facts occurred.
- (4) The MBCI Social Services Department, may at its election, join with one or both parents in filing for termination of parental rights to a particular child if it is the opinion of the program that this would be in the best interest of the child and of the Tribe.
- (5) In any termination petition not filed by the MBCI Social Services Department, or not joined in by the MBCI Social Services Department as co-complainant, the MBCI Social Services Department shall be named as respondent or co-respondent with the opposing parent (if any).
- (6) In any termination petition filed against a parent or parents, the said parent or parents shall be named as respondent(s).

- (7) The Choctaw Youth Court shall dismiss on its own motion any petition for termination of parental rights which is not filed by a party authorized to file said petition by §11-5-2(2) of this code.
- (8) The Choctaw Youth Court shall dismiss on its own motion any petition for termination of parental rights which does not name the MBCI Social Services Department of the Tribe as complainant or respondent.

§11-5-3 Setting of Hearing

- (1) Upon receipt of the petition, the Youth Court shall set a date for the termination hearing which shall be not more than ten (10) days after the Youth Court received the petition filed by the MBCI Social Services Department or by the parents or guardian of the child. The hearing may be continued:
 - (a) upon motion of the minor's parent, guardian or custodian; or
 - (b) upon motion of the MBCI Social Services Department by reasons of the unavailability of material evidence or witnesses and the Youth Court finds the MBCI Social Services Department has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

§11-5-4 Pre-Termination Report

- (1) Within two (2) days of receiving the petition, the Youth Court Judge shall order the preparation of a pre-termination report by the MBCI Social Services Department.
- (2) The MBCI Social Services Department shall consult with the minor's parents, and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parents, guardian or custodian to determine whether termination of parental rights is consistent with the best interests of the child. The MBCI Social Services Department may also review any of the minor's previous Youth Court records and hospital records.
- (3) The MBCI Social Services Department shall prepare a written report containing the professional opinions of all personnel with whom he has consulted.
- (4) The report shall be presented to the Youth Court and to the minor's parent, guardian or custodian at least two (2) days prior to the termination hearing.

§11-5-5 Summons

- (1) At least five (5) days prior to the adjudicatory hearing, the Youth Court shall issue summons to:
 - (a) the minor;
 - (b) the minor's parent, guardian or custodian;

- (c) any person the Youth Court believes necessary for the proper adjudication of the hearing.
- (2) The summons shall contain the name of the court, the title of the proceedings and the date, time and place of the hearing.
- (3) A copy of the petition shall be attached to the summons issued pursuant to subsection (1)(a)-(b) of this section.
- (4) The summons shall be delivered personally by a law enforcement officer of this jurisdiction or an appointee of the Choctaw Youth Court.
- (5) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

§11-5-6 Termination Hearing

The Choctaw Youth Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

§11-5-7 Rights of Parties

- (1) Right to counsel:
 - (a) The Youth Court Judge shall inform the minor and his parent, guardian or custodian of their right to retain counsel by telling them, “According to the Indian Civil Rights Act, you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees that may be charged for such representation.”
 - (b) If the parties appear at the hearing without counsel, the Youth Court Judge shall inform them of any available services that provide representation.

§11-5-8 Information Considered

- (1) The Choctaw Youth Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.
- (2) No termination of parental rights may be ordered in a proceeding under this Code unless the findings and conclusions and evidentiary standards for termination of parental rights under the Indian Child Welfare Act and under other applicable provisions of Tribal law are met, and in the case of voluntary consent to termination of parental rights, the comparable provisions of said act and of applicable Tribal law must be met.
- (3) The Choctaw Youth Court may terminate the parental rights of the parent(s) to their child only if it further finds beyond a reasonable doubt that:
 - (a) the parent has abandoned the child;

- (b) the minor has suffered physical injuries willfully and repeatedly inflicted by his parent(s) upon the child which caused or created a substantial risk of death, disfigurement or impairment of bodily functions;
- (c) the parent(s) have subjected the minor to willful and repeated acts of sexual abuse; or
- (d) the voluntary written consent of both parents has been given in accordance with 25 U.S.C. 1913 and acknowledged before the court.

§11-5-9 Dispositional Alternatives

- (1) If parental rights to a child are terminated, the Youth Court shall:
 - (a) place the minor in a relative care placement which has been approved by the Youth Court, or
 - (b) place the minor in a foster care or shelter care situation or facility which has been approved by the Tribe; and
 - (c) proceed to the adoption section of the Tribal Code.
- (2) If parental rights to a child are not terminated, the Choctaw Youth Court shall make a disposition according to §§11-4-25-11-7-23 of this Title.
- (3) The termination order constitutes a final order for purposes of appeal, however adoption proceedings shall not be commenced until the parent(s) has exhausted all appeals from orders terminating parental rights.

§11-5-10 Affect on Minor's Tribal Status

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Tribe or the minor's degree of blood quantum of any Tribe.

CHAPTER 6. STATUS OF THIS TITLE

§11-6-1 Application of Title XI

Notwithstanding any other provision of this Code, Title XI shall apply only to American Indians as defined in §1-5-8 of this Code.

§11-6-2 Other Juvenile Matters Not Covered by This Title

All juvenile matters and proceedings and definitions not addressed in of this Code shall be adjudicated in accordance with the provisions of Tribal Ordinance No. 11, provided that any reference to a state or county Department of Welfare or Welfare Department officials in state law provisions incorporated pursuant thereto shall be construed to refer to the MBCI Social Services Department, Mississippi Band of Choctaw Indians or such successor agency or department as the Choctaw Tribal Council shall hereafter designate. Service of process or notice on said department shall be both on the head of the MBCI Social Services Department and on the Tribal Chief, Mississippi Band of Choctaw Indians.

CHAPTER 7. ADOPTION

§11-7-1 General

When natural parents cannot or choose not to be a family resource for their children, adoption is a viable plan for providing these children with a stable, nurturing, permanent family.

Adoption is a social process and a legal process to establish a new parental relationship. It involves becoming a parent through a legal and social process, rather than through the biological way of having children. Adoption provides permanent substitute care for the child when his natural parents are unable, or unwilling, to care for him, or her, and have been legally freed of any ties to the child or children.

§11-7-2 Definitions

- (1) "Adopt" means the act of taking voluntarily the child of other parents as one's own child.
- (2) "Adoption" means the act of adopting or the state of being adopted. It is a permanent plan, offering the most stability to the child who cannot return to his parents.
- (3) "Adoptive Parent" means an adult who has become the mother or father of a child through the legal process of adoption.
- (4) "Indian Child" means an unmarried person who is under age eighteen (18) and is either (a) a member of an Indian Tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe.
- (5) "Guardian" means one who is responsible for the care of the minor child, has the right to make all decisions affecting the minor child, and has legal custody of the minor child.
- (6) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoption under Tribal law or custom. It does not include the unwed father where paternity has not been established.
- (7) "Tribal Court" means a court with jurisdiction over child custody proceedings, which is either a court established and operated under the Code or customs of an Indian Tribe or any administrative body of the Tribe which is vested with authority over custody proceedings.
- (8) "Extended Family Member" means shall be defined by the laws or custom of the Indian child's Tribe, and in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.
- (9) "Pre-adoption Placement" means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
- (10) "Adoption Placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

- (11) “Interlocutory Decree” means An interlocutory decree is a provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree. It is a decree pronounced for the purpose of ascertaining matters of law or fact, preparatory to a final decree.
- (12) “Trial Period” means a time period for the adoptive parent and child, ranging from three (3) to six (6) months, more or less, according to the ruling of the court, to insure proper adoption placements. The trial period is an option, according to the ruling of the court.
- (13) “Reservation” means Indian Country as defined in 18 U.S.C. 1151 and any land, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation.

§11-7-3 Types of Adoption

- (1) Independent Adoption: An independent adoption is an adoption where consent is given by the natural parents to the adoption by adoptive parents, and no third party is involved. In an independent adoption, the necessary parties are the natural parents, adoptive parents and adoptive child.
- (2) Agency Adoption: An agency adoption is an adoption where custody, placement and authority to consent to adoption has been placed with a legally licensed agency. This agency gives consent to the adoptive parents, exclusively or by obtaining same from the natural parents. In an agency adoption the necessary parties are the adoptive parents, the agency and the adoptive child. If parental rights have not been legally terminated, the natural parents are also necessary parties in any agency adoption.

§11-7-4 Jurisdiction Provided Under the Indian Child Welfare Act

Policy: It is the policy of the Indian Child Welfare Act and this code to maintain the relationship between Indian children and the Tribal and cultural communities in which they were born or to which they are otherwise tied. The Mississippi Band of Choctaw Indians, through its Youth Code, commits itself to assuming jurisdiction over all those Choctaw Indian children who are members of or eligible for enrollment in the Tribe.

§11-7-5 Jurisdiction over Adoption

The Mississippi Band of Choctaw Indians shall have full original jurisdiction in adoption matters where the person to be adopted is an enrolled member of the Tribe or eligible for enrollment, and also where the child lives within the Reservation or where the case has been transferred back to the Choctaw Tribal Court from a state court.

§11-7-6 Who May Adopt

- (1) Any minor child subject to the jurisdiction of the Mississippi Band of Choctaw Indians may be adopted by any adult person, Indian or non-Indians (only if the non-Indian is next of kin as provided by the Indian Child Welfare Act of 1978, or there are conditions where the child is without a permanent home) as hereafter provided.
- (2) Any person whose parents are both deceased may be adopted by an adult person or persons. Preference will be given to approved prospective adoptive couples, who are tribal members or to a single parent who is a tribal member.
- (3) The Tribal court may, in its discretion, based on facts presented at a hearing, in the best interest of the child, permit adoption and placement by a person more than 45 years older than the child adopted. In complying with the age requirement, for the younger spouse's age adoptive parents, will be considered.
- (4) In any adoption involving a Choctaw Indian child, preference shall be given to Tribal members of the Mississippi Band of Choctaw Indians (MBCI). Residents of the MBCI Reservation may be given a second preference.
- (5) A married man, who is separated, but not legally divorced from his wife, cannot adopt a child, nor can a married woman, who is separated, but not legally divorced from her husband, adopt a child.

§11-7-7 Petition to Adopt

- (1) A person or persons wishing to adopt a child through the Mississippi Band of Choctaw Indians shall file a petition verified under oath which shall contain the following information:
 - (a) The full name, address, and ages of the adopting parents, plus the names and ages of all other children living in the household, if any;
 - (b) The full name, residence, sex, and birth date of the child whose adoption is sought, plus documentary proof of the child's date and place of birth, if available;
 - (c) Proof of parental or guardian's consent to the adoption or of the termination of the natural parent's or parental rights or of the deserted status of the child, as is appropriate;
 - (d) A full description and statement of value of all property owned or possessed by the child;
 - (e) A statement by the adoptive parents that it is their desire to adopt the child, and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability, if the adoption is granted;
 - (f) A statement by the adopting parent, that the child to be adopted has the right to inheritance from the adoptive parents;

- (2) The petition shall be accompanied by a doctor's certificate showing the physical and mental condition of the child to be adopted.
- (3) All agency adoptions shall be processed through the MBCI Social Services Department. In the event there is not MBCI Social Services Department, agency adoptions shall be processed by any other designated Tribal program.
- (4) The Tribal court may, in its discretion, order a home study of adoptive applicants for an independent adoption. The home study shall be conducted by the MBCI Social Services Department or any other designated Tribal program.
- (5) The Court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" herein shall be construed to refer to the person to be adopted by an adult.

§11-7-8 Preference of Placement in Adoption

The order of preference of placement in adoption, in the absence of good cause to the contrary is:

- (1) a member of the child's extended family;
- (2) other members of the Indian child's Tribe;
- (3) a member of another Indian Tribe; and
- (4) if this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's Tribal affiliation and his special needs.
- (5) Non-Indian placement shall be approved by resolution of the MBCI Tribal council.

§11-7-9 Jurisdiction and the Adoption Process

The Mississippi Band of Choctaw Indians' Tribal court shall have the authority to grant adoptions to all Choctaw parents who have been approved – whether residing on or off Choctaw Indian Reservation.

The court shall determine whether consents for the adoption by the biological parents are valid and whether the agency investigatory reports support the petition of the adoptive parents.

§11-7-10 Consent to Adoption

Written consent of an adoption is not required if:

- (1) the parent has abandoned his child;
- (2) the parent's rights have been terminated;
- (3) the parent has relinquished his parental rights; or

- (4) the parent has been declared incompetent.

§11-7-11 Execution of Consent to Adopt

Written consent to an adoption shall be executed and acknowledged before the Choctaw Tribal Court. Any consent given prior to or within ten (10) days after birth of the Indian child shall not be valid. An interpreter shall be provided, if required by the court.

§11-7-12 Interpreter for Relinquishment of Parental Rights and Consent to Adoption

Parents who want to relinquish their parental rights or consent to adoption shall be provided an interpreter and the voluntary consent form will be read in their own native tongue. In addition, the Choctaw judge will sign a certificate certifying that the biological and/or adoptive parents fully understand the contents thereof.

§11-7-13 Withdrawal to Consent to Adopt

The consent of the parent may be withdrawn for any reason at any time prior to the entry of the final order of adoption.

After entry of the final order of adoption, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud, duress, or coercion.

§11-7-14 Pre-Petition Reports for Adoption

The adoption caseworker shall prepare and present to the Youth Court the following reports:

- (1) Report on prospective adoptive parents within sixty (60) days of an application for adoption. The caseworker shall investigate the prospective parents, and file a written report with the Choctaw Court, with recommendations, for or against, placement with the applicant.
- (2) In the event the prospective adoptive parent lives in another state and MBCI Social Services Department adoption caseworker cannot provide the home study, a similar type program through the state or another bureau program shall be allowed to make a courtesy home investigation on behalf of the prospective parents.
- (3) Within thirty (30) days of the court-ordered investigation of a minor to be adopted, the adoption caseworker shall file a written report with the court.

§11-7-15 Adoption Hearing

An adoption hearing shall be held thirty (30) days of receipt to whom by the Youth Court of an adoption petition. The court shall conduct the hearing to determine if it is in the best interest of the minor to be placed with the petitioners. In determining the best interest of the minor, the court shall examine:

- (1) the validity of the written consent;
- (2) the termination of parental rights order;
- (3) the length of time of the minor's wardship by the court;
- (4) any special conditions of the minor;
- (5) any parental communication with his child;
- (6) the minor's consent to adoption, if he is over twelve (12) years of age,
- (7) the pre-petition reports, and
- (8) the order of preference of placement.

§11-7-16 Transfer Hearing; Time Limits

A transfer hearing shall be held within ten (10) days of receipt of the petition by the court. The Youth Court shall conduct the hearing to determine whether jurisdiction of the minor should be transferred to Tribal Court.

§11-7-17 Full Faith and Credit

The court shall give full faith and credit to state and other Tribes' child custody court orders, as defined by the Indian Child Welfare Act, 25 U.S.C. 1911(d).

§11-7-18 Adoption Records

All records, reports and orders in adoption cases are confidential and permanent records of the court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the court by the adopted person after reaching the age of eighteen (18), or otherwise upon order of the court upon good and sufficient cause shown.

§11-7-19 Contents of the Adoption Order

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and findings of the court upon the evidence adduced at the hearings. Within five days after the final decree of adoption has been entered by the court, the Division of Vital Statistics of the Mississippi State Board of Health shall be notified by the Clerk of the Court that adoption has taken place, giving the full name, sex, birth date, names of the natural parent(s) and full name(s) of the adoptive parent(s), along with a certified true and correct copy of the final decree of adoption, so that a new record of birth on the new name, with the name or names of the adopting parents recorded, can be provided to the adoptive parents.

§11-7-20 Rights and Liabilities of Natural Parents

The natural parents of an adopted child are, from the time of the final decree of adoption, relieved of all parental duties and all responsibility for the child so adopted, and shall have not further rights over him.

§11-7-21 Open Adoptions

The law permits the birth parents, the adoptive parents and the child (if old enough) to enter into a written agreement providing for the child's continuing contact with the birth parents. The decision to enter into an agreement of this type must be made by the participants and the agreement must be presented to the court for approval.

- (1) The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The contact may include exchange of identifying or non-identifying information or visitation between the parents or the parents' relatives and the petitioner or visitation between the parents or the parents' relatives and the adoptee.
- (2) The court may appoint a guardian ad litem for the adoptee. The court shall appoint a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is contemplated. In all adoptions, other than those in which the child is placed by MBCI Social Services Department, the court may assess the parties for the cost of services rendered by the guardian ad litem.
- (3) The court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests.

§11-7-22 Limitation on Invalidation of Adoption

No adoption can be invalidated which has been in effect for one year. If the final decree of adoption is vacated, or the adoption fails, the biological parent or prior Indian custodian may petition for return of custody, which shall be granted, unless the court finds that this would not be in the best interest of the child.

§11-7-23 Guardianship

- (1) The court shall have authority to appoint and remove legal guardians when the minor for whom the guardianship is sought is a member of the Mississippi Band of Choctaw Indians, whether or not he lives on the Choctaw Indian Reservation.
- (2) The court may appoint guardians over the property or over the person, or both, of a minor whose parent, legal guardian or custodian has been determined by the court as being

incapable of managing their affairs or who has voluntarily relinquished their responsibility as the parent, legal custodian or guardian.

- (3) The court may require an appropriate reports from the MBCI Social Services or State of Mississippi or other persons designated by the court to make a report on the parties involved and such other information as the court may order.
- (4) A non-Indian shall not be appointed as guardian of an Indian minor unless the non-Indian proposed guardian has undergone an extensive review by MBCI Social Services and/or the Tribe. A report by MBCI Social Services and/or the Tribe shall be submitted to the Youth Court for consideration.
- (5) Any guardian appointed under this section shall be in the best interest of the child and the guardian shall advise the court by written report at least once a year, of upon request of the court,all actions of the guardian on behalf of the minor or his estate.
- (6) No guardian may dispose of any of the minor's property without approval of the court in advance.
 - (7) Any guardianship over the person of a minor shall automatically terminate when the minor reaches the age of eighteen (18) years.
 - (8) Any guardianship over the property of the minor shall terminate upon application of the guardian or minor for termination of the guardianship to the court and the subsequent approval of the court.
 - (9) A special guardian may be appointed for the special purpose of signing documents on behalf of a minor. The document, to be valid, must be approved by the court.