

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 6

CHILDREN’S CODE

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TITLE 6
SOUTHERN UTE INDIAN TRIBAL CODE
CHILDREN'S CODE

Article 1. GENERAL PROVISIONS

6-1-101. Legislative Declaration. The Southern Ute Indian Tribal Council declares that the purposes of this Code are as follows:

- (1) To secure for each child subject to this Code such care, guidance and control, preferably in his own home, as will best serve his welfare, the welfare of his family and the interests of the Southern Ute Indian Tribe;
- (2) To insure that each child's physical, emotional and psychological well-being is protected;
- (3) To preserve and strengthen family ties whenever possible, including improvement of home environment and parental responsibility;
- (4) To preserve and strengthen the child's cultural and ethnic identity whenever possible;
- (5) To remove a child from the custody of his natural parents or legal guardians only when his welfare and safety or the protection of the public would otherwise be endangered, with the understanding that the parents retain the responsibility for the child's support even though the child is no longer in their custody;
- (6) To secure for any child removed from the custody of the natural parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of society, and when possible, to place him in a permanent family situation in which he can enjoy the rights and security of being a family member;
- (7) To take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (8) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis on prevention, early intervention and community-based alternatives;

- (9) To secure the rights of and ensure fairness throughout these procedures to the children, parents, guardians, custodians or other interested parties who come before the Children's Court under the provisions of this Code;
- (10) To use the placement preferences pursuant to the Indian Child Welfare Act in all cases requiring the placement of a child outside of his own home, when consistent with the best interests of the child; and
- (11) To establish a Children's Court system on the Southern Ute Indian Reservation, which will be recognized as a court of competent jurisdiction by all other courts.

6-1-102. Interpretation.

- (1) **Legislative.** To carry out these purposes, the provisions of this Code shall be liberally construed to serve the best interests of children and the interests of the Southern Ute Indian Tribe.
- (2) **Conflict with Other Code Provisions.** To the extent that any provision of the Children's Code is construed to conflict with any other provision of the Tribal Code, the Children's Code provision shall supersede and be given effect.
- (3) **Gender.** Words used in the masculine gender, whenever appropriate, shall be construed to include the feminine gender.

6-1-103. Definitions.

- (1) **Abandonment.** The failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of 6 months shall constitute prima facie evidence of abandonment; however, arranging for custody with extended family members or voluntary consent to placement does not constitute abandonment, so long as such arrangements are mutually agreeable to the parties involved.
- (2) **Abuse or Child Abuse.** An act or omission in one of the following categories which threatens the health or welfare of a child:
 - (a) Any case in which a child exhibits evidence of physical injury such as skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death, and such condition or death is not justifiably explained; where the history given concerning such condition or death is at variance with the degree or type of such condition or death; or where circumstances indicate that such condition or death may not be the product of an accidental occurrence;

- (b) Any case in which the child's parent, legal guardian or custodian fails to take actions that a prudent parent would take to provide adequate food, clothing, shelter, supervision, education or medical care;
 - (c) Any case in which a child is exploited or overworked, endangering his health or emotional well-being;
 - (d) Any case in which a child is subjected to sexual assault or molestation, sexual exploitation, sexual contact or prostitution; or
 - (e) Any case in which a child is subjected to actions which are harmful to the emotional or mental well-being of the child.
- (3) **Adult.** A person 18 years of age or older.
- (4) **Best Interest of a Child.** The standard by which the court shall evaluate all placements and treatment plans. The court shall consider all relevant factors including, but not limited to, the following:
- (a) The preference of the child's parents as to his custody;
 - (b) The preference of the child as to his custodians;
 - (c) The interaction and interrelationship of the child with his parents, siblings, and any other persons who may significantly affect a child's best interest;
 - (d) The child's adjustment to his home, school and community;
 - (e) The mental and physical health of all individuals involved; and
 - (f) The cultural and tribal affiliation of the child.
- (5) **BIA.** The Bureau of Indian Affairs of the Department of the Interior.
- (6) **Child.** Any person who is less than 18 years of age.
- (7) **Child in Need of Supervision.** A child who is beyond the control of his parent, guardian or custodian; who has committed a status offense; or whose behavior or condition is such as to endanger his own or another's welfare.
- (8) **Child Placement Agency.** An agency approved by the Southern Ute Indian Tribal Council, upon the recommendation of Tribal Social Services, to place a child in another's custody. If such agency is located off the reservation, it shall also be licensed or approved as required by the law of that jurisdiction.

- (9) **Child Protection Team.** A multidisciplinary team established by the Southern Ute Indian Tribal Council which serves in an advisory role to review all reports of suspected child abuse and neglect.
- (10) **Children's Court.** The Tribal Court of the Southern Ute Indian Tribe when exercising jurisdiction under this Code.
- (11) **Curfew.** A time deadline beyond which juveniles may not be in public places. The tribal curfew prohibits any child under the age of 16 years from being or remaining upon any street or alley or being or remaining in any establishment open to the public after the hour of 10:00 p.m., or prior to the hour of 6:00 a.m., except for lawful employment or unless there exists a reasonable necessity therefor; or unless such child is accompanied by a parent, guardian, custodian or other person 18 years of age or older who has permission from the parent, guardian or custodian to have the care or custody of such child. On Friday and Saturday nights the curfew hour for children over the age of 14 shall be 12:00 midnight.
- (12) **Custody.** Legal custody is the right to make and the responsibility for making major decisions affecting the best interest of a child, such as educational, religious and medical decisions, and the duty to provide food, clothing, shelter, medical care, education and discipline for a child. Physical custody means actual possession or control of a child.
- (13) **Dependent and Neglected Child.**
- (a) A child whose parent, guardian or legal custodian has abandoned him or has subjected him to mistreatment or abuse or whose parent, guardian or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;
 - (b) A child who lacks proper parental care through the actions or omissions of the parent, guardian or legal custodian;
 - (c) A child whose environment is injurious to his welfare;
 - (d) A child whose parent, guardian or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care or any other care necessary for his health, guidance or well-being;
 - (e) A child who is homeless, without proper care, or not domiciled with his parent, guardian or legal custodian through no fault of such parent, guardian or legal custodian.

- (14) **Foster Home.** A home which is licensed by Tribal Social Services or another authorized department of social services.
- (15) **Guardian.** A person appointed by a court and vested with the authority to make major decisions affecting a child.
- (16) **Guardianship.** The legal responsibility for a minor child's support, care and education and the right to make decisions, including all of those powers and responsibilities of a parent, except the authority to consent to marriage or adoption.
- (17) **Guardian Ad Litem.** A person appointed by the court to represent the best interests of a child in proceedings under this Code.
- (18) **Indian.** For purposes of this Code, a person who is a member of a federally recognized Indian tribe, eligible for enrollment in a federally recognized Indian tribe, or a one-fourth degree or more blood quantum descendant of a member of a federally recognized Indian tribe.
- (19) **Interfamilial Abuse.** Any case of abuse that occurs within a family context which is caused or allowed by a child's parent, stepparent, guardian, legal custodian, relative, a spousal equivalent, or any person who is regularly in the child's home for the purpose of exercising authority over or caring for the child. Interfamilial abuse shall not include abuse by a person who is regularly in the child's home as a paid caretaker and is not related to the child.
- (20) **Least Restrictive Alternative.** A placement involving restrictions on the child which are reasonably related to the court's objectives and the least confining method available to achieve those objectives.
- (21) **Neglect.** An act or omission which falls under the definition of Abuse or Child Abuse in this Section.
- (22) **Presenting Officer.** The Southern Ute Tribal Prosecutor or other authorized counsel for Tribal Social Services.
- (23) **Reservation.** The Southern Ute Indian Reservation.
- (24) **Residual Parental Rights and Duties.** Those rights and duties remaining with a parent after legal custody or guardianship or both have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption and the right to reasonable visitation unless restricted by court order.

- (25) **Shelter.** A physically non-restrictive facility providing for the temporary care of a child pending disposition, placement or location of the parents or legal guardians.
- (26) **Status Offense.** An act, as set forth below, committed by a child:
 - (a) Failure to attend school without legal justification;
 - (b) Failure to obey any applicable curfew;
 - (c) Possession or consumption of ethyl alcohol or illegal drugs; or
 - (d) Use of a vapor-releasing substance for the purpose of intoxication.
- (27) **Termination of Parental Rights.** The permanent elimination by court order of all parental rights and duties.
- (28) **Tribal Court.** The Southern Ute Indian Tribal Court.
- (29) **Tribal Social Services.** The Southern Ute Indian Tribal Division of Social Services.
- (30) **Tribe.** The Southern Ute Indian Tribe.

6-1-104. Jurisdiction.

- (1) **General Jurisdiction.** The jurisdiction of the Children’s Court shall extend to all proceedings under the Children’s Code except for appeals of determinations made by the Child Protection Team, which will be reviewed by the Administrative Appeals and Hearings Office. The Children’s Court shall have the authority to issue all orders necessary to insure the safety of children within the boundaries of the reservation, as well as other children who have been declared wards of the Children’s Court or are otherwise subject to the continuing jurisdiction of the Children’s Court.
- (2) **Exclusive Jurisdiction.** The Children’s Court has exclusive original jurisdiction over the following:
 - (a) Any person who is an enrolled member of the Southern Ute Indian Tribe residing within the exterior boundaries of the Reservation;
 - (b) Any person who is eligible for enrollment in the Southern Ute Indian Tribe residing within the exterior boundaries of the Reservation; and
 - (c) Any child who has been declared a ward of the Children’s Court, whether or not residing within the exterior boundaries of the Reservation.

- (3) **Concurrent Jurisdiction.** The Children’s Court has concurrent jurisdiction over the following:
 - (a) Any person residing within the exterior boundaries of the Reservation; and
 - (b) Any person residing off the Reservation, who is a member of the Southern Ute Indian Tribe or eligible for enrollment in the Tribe, involved in proceedings covered by the Indian Child Welfare Act in state courts or other tribal courts.
- (4) **Jurisdiction Over Extended Family.** Where the Children’s Court asserts jurisdiction over a child under this Code, the court shall also have jurisdiction over the child’s extended, family when necessary to further the best interests of the child.
- (5) **Continuing Jurisdiction.** The Children’s Court shall retain continuing jurisdiction over children and their extended families who, while subject to the Children’s Court jurisdiction, leave the Reservation.

6-1-105. Transfer.

- (1) **Transfer to State Court or Other Tribal Court.** In any proceeding before the Children’s Court, the court may transfer the proceedings to an appropriate state court or other tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in, the best interest of the child.
- (2) **Transfer from State Court or Other Tribal Court.** The Children’s Court may accept the transfer of Children’s Court cases from state courts or other tribal courts in accordance with the following procedures:
 - (a) In Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., (“ICWA”) cases the following procedures shall apply:
 - (i) In accordance with the ICWA Tribal-State Agreement, notice of state court child custody proceedings as defined by the ICWA is given both by telephone and registered mail to Tribal Social Services. Upon receipt of such notice, the Director of Tribal Social Services shall notify the Tribal Chairman.
 - (ii) Tribal Social Services shall conduct an investigation and file a written report, including recommendations as to transfer of the proceedings, with the Tribal Chairman and the tribal attorney’s office within 5 days of receipt of notice of an ICWA proceeding or a request for transfer from another tribe or state.

- (b) When a case is transferred to or from the Children’s Court, the court shall issue a written transfer order containing specific findings and reasons for the transfer. The transfer order constitutes a final order for purposes of appeal.
- (c) Upon transfer of jurisdiction from a state or tribal court, Tribal Social Services shall arrange for transportation and placement of the child, if required.
- (d) Upon transfer of jurisdiction from a state or tribal court, the Presenting Officer shall file a petition alleging that the child is dependent and neglected or in need of supervision.

6-1-106. Reporting Suspected Child Abuse or Neglect.

- (1) **Duty to Report.** Any person specified in this Section, who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which could reasonably result in abuse or neglect, shall immediately report such fact to Tribal Social Services or to tribal law enforcement.
- (2) **Persons Required to Report.** Persons required to report suspected abuse or neglect shall include the following:
 - (a) Physician or surgeon, including a physician in training;
 - (b) Emergency medical technician or paramedic;
 - (c) Medical examiner or coroner;
 - (d) Dentist or dental hygienist;
 - (e) Osteopath;
 - (f) Optometrist;
 - (g) Chiropractor;
 - (h) Chiropodist or podiatrist;
 - (i) Pharmacist;
 - (j) Physician’s assistant, registered nurse or licensed practical nurse;
 - (k) Hospital personnel;

- (l) Physical therapist;
 - (m) Traditional health practitioner;
 - (n) School official or employee;
 - (o) Social worker or worker in a foster home, child care center, shelter or group home;
 - (p) Psychologist or psychologist assistant;
 - (q) Mental health professional or technician;
 - (r) Substance abuse counselor;
 - (s) Guardian ad litem;
 - (t) Law enforcement officer or worker in a juvenile rehabilitation or detention facility;
 - (u) Probation officer;
 - (v) Victim advocate; and
 - (w) Licensed or unlicensed marriage, family or child counselor.
- (3) **Penalties.** In addition to federal criminal penalties, any person who fails to report known or suspected child abuse or neglect pursuant to this Section shall be subject to the following civil penalties:
- (a) A civil penalty not to exceed \$5,000;
 - (b) Actual damages resulting from the failure to report;
 - (c) Administrative costs incurred by the Tribe as a result of the violation;
 - (d) Court costs; and
 - (e) Notification of any appropriate regulatory or licensing entity.
- (4) **Immunity from Liability.** Unless the court determines that such person's behavior was reckless or intentional or malicious, any person, other than the perpetrator or an accomplice, shall be immune from any liability, civil or criminal, or termination of employment, when acting in good faith in the following situations:
- (a) In making a report;

- (b) In a judicial proceeding held pursuant to this Code;
 - (c) In taking photographs or X-rays;
 - (d) In placing a child in temporary protective custody; or
 - (e) In otherwise performing his duties or acting pursuant to this Section. The good faith of any person described above shall be presumed.
- (5) **Evidence Not Privileged.** A claim of privileged communication between persons required to report and their clients or patients and between husband and wife shall not be grounds for excluding evidence in any judicial proceeding resulting from a report.

Article 2. TRIBAL LAW ENFORCEMENT

6-2-101. Temporary Emergency Custody. A child may be taken into temporary custody by a law enforcement officer, which shall not be deemed an arrest, without an order of the court in the following circumstances:

- (1) When the child is abandoned, lost or seriously endangered in his surroundings and immediate removal appears to be necessary for his protection;
- (2) When the officer reasonably believes that the child has run away from his home or from a court-ordered placement; or
- (3) When an arrest warrant is executed for his parent, guardian or custodian and there is no other responsible caretaker available to provide for the child.

6-2-102. Notification. When a child is taken into temporary custody, the officer shall make reasonable efforts to notify a parent, guardian, or custodian without unnecessary delay. Such notification may be made to a person with whom the child is residing or to an extended family member if a parent, guardian or custodian cannot be located. The officer taking the child into custody shall also notify Tribal Social Services immediately.

6-2-103. Referral to Tribal Social Services. In any case in which a law enforcement officer has contact with a child who appears to be a child in need of supervision or a child who appears to be abused or dependent and neglected, a referral shall be made immediately to Tribal Social Services.

Article 3. TRIBAL SOCIAL SERVICES

6-3-101. Authority. Tribal Social Services is the agency responsible for provision of child protective services to eligible Indian children and their families. All cases involving abused or dependent and neglected children or children in need of supervision shall be referred immediately to Tribal Social Services. Tribal Social Services may negotiate agreements with other jurisdictions relevant to provision of child protective services, provided that such agreements are approved by the Southern Ute Indian Tribal Council. Tribal Social Services may also cooperate with agencies of other jurisdictions, as necessary, to achieve the purposes of this Code.

6-3-102. Duties.

(1) **Investigation.** Upon receipt of a report of child abuse or neglect or child in need of supervision, Tribal Social Services shall immediately commence a thorough investigation, the immediate concern of which shall be the protection of the child. In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture in which the child participates and acts which could be construed to be a reasonable exercise of parental discipline. The investigation shall include:

- (a) Preparation of a written report which shall address the following:
 - (i) The nature, extent and cause of the abuse or neglect;
 - (ii) The location where the abuse or neglect occurred;
 - (iii) The identity of the person or persons responsible for such abuse or neglect;
 - (iv) The names of other children who may be subject to similar abuse or neglect because of proximity to or association with the suspected perpetrators;
 - (v) A summary of any interview with the child and a description of any visible evidence of abuse or neglect;
 - (vi) A safety assessment; and
 - (vii) All other relevant data.
- (b) Photographs of physical evidence, which shall be taken as soon as reasonably possible.

(2) **Notification of Other Agencies.** Upon the receipt of a report, if Tribal Social Services reasonably believes that an incident of abuse or neglect has occurred, it

shall immediately notify the law enforcement agency responsible for investigation of child abuse.

- (3) **Coordination of Investigation.** Tribal Social Services shall be the agency responsible for the coordination of investigations of all reports of known or suspected incidents of interfamilial abuse or neglect. Tribal Social Services shall be available at all times to respond to such reports. Tribal Social Services shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. Tribal Social Services shall conduct investigations in conjunction with tribal law enforcement or other agencies to the extent joint investigations are possible and deemed appropriate. Tribal Social Services may also arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill.
- (4) **Offer of Services.** Upon receipt of a report, if Tribal Social Services reasonably believes that an incident of interfamilial abuse or neglect has occurred, it shall immediately offer services to the child and the family and may request that the Presenting Officer file a petition in the Children's Court.
- (5) **Protection.** If, before the investigation is completed, the opinion of Tribal Social Services is that immediate removal is necessary to protect the child or other children under the same care from further abuse or neglect, Tribal Social Services shall seek an Emergency Protective Custody Order. Upon request by Tribal Social Services, law enforcement officials shall cooperate with Tribal Social Services personnel to remove a child from the custody of his parent, guardian or custodian.
- (6) **Return of Child.** In every case in which an emergency protective custody order has been issued, Tribal Social Services shall return the child to the parent, guardian or custodian and notify the court of the status of the case, unless a petition is filed within 5 calendar days of the issuance of the order or the order is extended by the court.

6-3-103. Access to Residence or Child. If admission to the child's residence or access, to the child cannot be obtained, the Children's Court, upon good cause shown and without notice, may order the responsible person(s) to allow interviews, examinations, photography and/or investigation. Should the responsible person(s) refuse to allow interviews, examinations, photography and/or investigation, the Children's Court shall hold an immediate hearing to show cause why the responsible person(s) should not be held in contempt of court.

- 6-3-104. Child Protection Team Presentation.** Every report of child abuse or neglect investigated by Tribal Social Services shall be presented to the Child Protection Team for review.
- 6-3-105. Notice of Findings.** If, after review, the Child Protection Team determines that the report is founded, Tribal Social Services shall immediately notify the subject of the report of the Child Protection Team's findings and of the right to appeal this determination to the Administrative Appeals and Hearings Office before a report of founded abuse or neglect is sent to any child abuse registry.
- 6-3-106. Appeals of Child Protection Team Determinations.**
- (1) **Filing.** Any appeal of a Child Protection Team determination that a child abuse or neglect report is founded must be with the Administrative Appeals and Hearings Office in accordance with any rules established by or for that office within 15 days of the date the Child Protection Team's Notice of Findings is either mailed to or otherwise served upon the person to whom the finding applies, whichever occurs first.
 - (2) **Limitation on Further Appeal.** The appeal procedure set forth in this section is intended to provide an impartial review process within the tribal system with guarantees of minimum due process before a report is made to a central registry. However, in order to avoid delay in reporting founded cases, which delay could result in putting children at risk of abuse, there shall be no right to appeal the Administrative Appeals and Hearings Office's decision under this section to the Children's Court, a federal court, or to a tribal or inter-tribal court of appeals.
- 6-3-107. Stay of Appeal Proceedings.** In the event a dependency and neglect, child in need of supervision, or criminal proceeding for an offense stated in SUITC §5-1-105 case is filed during the pendency of the appeal of the Child Protection Team finding, the Administrative Appeals and Hearings Office shall stay the appeal pending the outcome of the other proceeding. In the event of an adjudication in a dependency and neglect or child in need of supervision case, or a conviction or a deferred judgment for offenses listed in SUITC §5-1-105, the Administrative Appeals and Hearings Office will dismiss the appeal.
- 6-3-108. Report to Child Abuse Registry.** If no appeal is filed in accordance with SUITC §6-3-106, Tribal Social Services shall send a report of the Child Protection Team's finding to the federal child abuse registry, if any, and to the State of Colorado Central Registry of Child Protection. If an appeal is filed, Tribal Social Services shall not send the report until and unless the Administrative Appeals and Hearings Office rules that the report is founded or dismisses the appeal without deciding whether the report was founded.

Article 4. CHILD PROTECTION TEAM

- 6-4-101. Purpose.** The purpose of the Child Protection Team is to review all cases of alleged child abuse or neglect reported to Tribal Social Services; to evaluate and determine if they are founded or unfounded; and to assess the timeliness and appropriateness of Tribal Social Services intervention. In founded cases, the Child Protection Team will also make recommendations for appropriate services and treatment to promote the well-being of children and to reduce child abuse and neglect on the Reservation.
- 6-4-102. Authority and Function.** The Child Protection Team shall be a multi-disciplinary group appointed by Tribal Council and shall be advisory in nature. It is not intended to undermine the authority and responsibility of individual agencies, but it is designed to promote cooperation, communication and consistency among agencies.
- 6-4-103. Confidentiality.** Strict confidentiality shall be maintained by all Child Protection Team members. A violation of confidentiality shall constitute cause for termination of membership on the Child Protection Team.
- 6-4-104. Membership.**
- (1) The Child Protection Team shall consist of ten members, which must include the following:
 - (a) A foster parent, parent, or community member;
 - (b) A medical doctor;
 - (c) A social worker;
 - (d) A representative from Indian Health Service or Tribal Health Services;
and
 - (e) A Southern Ute Police Department officer.
 - (2) The remaining five members shall be appointed from the following agencies:
 - (a) Office of the Tribal Prosecutor;
 - (b) La Plata County Social Services;
 - (c) Ignacio or Southern Ute School System;
 - (d) Southern Ute Probation;
 - (e) Southern Ute Victim Services;

- (f) Southern Ute Headstart;
- (g) Peaceful Spirit; or
- (h) Any category in subsection (1) above.

6-4-105. Coordinator. The Division Head for Tribal Social Services shall serve as the coordinator of the Child Protection Team.

6-4-106. Duties. The duties of the Child Protection Team include the following:

- (1) Reviewing all child abuse and neglect cases which have been referred, including the investigatory reports and the diagnostic and treatment services being offered to the family in connection with the reported abuse, and determining whether reports are founded;
- (2) Making recommendations to Tribal Social Services with suggestions for further action or a statement that the team has no recommendations or suggestions;
- (3) Making recommendations related to the filing of dependency and neglect petitions, when appropriate;
- (4) Monitoring child abuse and neglect cases to insure that adequate preventive, protective and corrective services are provided;
- (5) Reviewing Tribal Social Services responses to reports of child abuse and neglect and determining if such responses were timely and adequate;
- (6) Maintaining confidentiality of information;
- (7) Providing assistance to Tribal Social Services in the assessment process within the areas of expertise of the individual team members;
- (8) Providing support to Tribal Social Services and other community agencies involved in the protection of children; and
- (9) Educating the community about child abuse and neglect problems and solutions.

Article 5. THE CHILDREN'S COURT

6-5-101. Establishment. There is hereby established for the Southern Ute Indian Tribe a court to be known as the Southern Ute Children's Court to exercise the jurisdiction prescribed by Article 1 of this Code.

6-5-102. Personnel.

- (1) **Judges.** Any judge of the Tribal Court may act as Children's Court Judge.
- (2) **Presenting Officer.** The Southern Ute Tribal Prosecutor or other authorized counsel for Tribal Social Services shall act as presenting officer and represent the interest of the Tribe in all proceedings under this Code.

6-5-103. Authority. In carrying out the provisions of this Code, the Children's Court shall have the authority to issue arrest warrants, search warrants and all such orders necessary to carry out the duties of the court, including contempt citations.

6-5-104. Rights of Parties. All parties to proceedings brought under this Code shall have the following rights:

- (1) To be informed of the nature of the proceedings, including notice of the allegations of the petition and the possible consequences if the allegations of the petition are proven;
- (2) To be represented by counsel at their own expense;
- (3) To introduce evidence, to testify and to call and cross-examine witnesses at all evidentiary hearings;
- (4) To have subpoenas issued by the court for the attendance of witnesses;
- (5) To be informed of the dispositional alternatives available to the court if the allegations of the petition are proven; and
- (6) To appeal any final order of the Children's Court. Any order for out-of-home placement, other than a temporary protective custody order, shall constitute a final order for purposes of appeal.

6-5-105. Identification of Natural Parents.

- (1) **Unknown Parents.** If the identity of a natural parent remains unknown despite reasonable inquiry by Tribal Social Services, the court shall hold a hearing to determine who should receive notice of the proceedings. The known parent and any other person who might have information or knowledge concerning this issue may be subpoenaed to testify.
- (2) **Persons Identified as Parents.** If, after the inquiry, the unknown natural parent is identified to the satisfaction of the court or if more than one person is identified as a possible parent, each shall be given notice of the proceedings in accordance with this Section. If a person representing himself to be the natural parent appears and claims parental rights, the court shall proceed to determine parentage. If the court determines that the person is the natural parent, the court

shall conduct a preliminary investigation to determine whether the interests of the child or of the Tribe require that further action be taken.

- (3) **Notice by Publication.** If after the inquiry, the court is unable to identify the natural parent, the court shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and/or notice and, if so, shall order publication and public posting at times and in the places and manner it deems appropriate.

6-5-106. Notice.

- (1) **Contents.** The notice shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.
- (2) **Service.** The notice shall be served on the following persons:
 - (a) The minor's parent, guardian or custodian;
 - (b) The minor child, if the child is at least twelve years old;
 - (c) The Presenting Officer; and
 - (d) Tribal Social Services.

6-5-107. Service of Process.

- (1) **Initial Notice.** The summons or notice, together with a copy of the pleading initiating the action, shall be served personally by a tribal law enforcement officer or other person authorized by the court to serve process. In the event that personal service cannot be obtained after reasonable efforts, service can be made in accordance with the Civil Procedure Code of the Southern Ute Indian Tribe or pursuant to the order of the court.
- (2) **Subsequent Notice.** All subsequent notices may be served by first class mail to the party's last known address, with the exception of notice of termination proceedings.

6-5-108. Hearing Procedure.

- (1) **Closed Hearings.** All Children's Court hearings shall be closed to persons not directly involved in the proceedings unless authorized by the court.
- (2) **Record of the Proceedings.** A verbatim record, either stenographic or tape recorded, shall be made of all proceedings except for interviews of the child conducted by the judge in chambers.

- (3) **Interview of the Child.** The court may interview the child in chambers, off the record, and order counseling, if appropriate.
- (4) **Appointment of Guardian Ad Litem.** In all cases under this Code, the court may appoint a guardian ad litem to represent the interests of the child. The guardian ad litem shall be provided with all reports relevant to the case, including but not limited to:
 - (a) reports of examination of the child or persons alleged to be responsible for the abuse, neglect or dependency of the child;
 - (b) reports relevant to a child in need of supervision;
 - (c) guardianship reports;
 - (d) reports related to termination of the parent-child relationship; and
 - (e) adoptive studies.
- (5) **Evidentiary Standards.** In all proceedings under the Children’s Code, with the exception of proceedings to terminate parental rights, the burden of proof shall be a preponderance of the evidence. In proceedings to terminate parental rights, the petitioner must prove the grounds for termination by clear and convincing evidence.

6-5-109. Emergency Protective Custody Order.

- (1) **Procedure.** Upon motion by the Presenting Officer, the court may issue a written emergency protective custody order if the court finds, based upon a sworn statement that there is probable cause to believe that (a) the child is a child in need of supervision or an abused, or dependent and neglected child; and (b) that immediate removal is reasonably necessary to protect the child from further abuse or neglect. The motion and sworn statement must be filed simultaneously.
- (2) **Duration of Order.** Emergency protective custody shall not exceed 5 calendar days, unless a hearing is held at which the parents, guardians or custodians are afforded an opportunity to contest the removal and such order is extended by the court for good cause shown.
- (3) **Notification of Other Agencies.** Upon the receipt of a report, if Tribal Social Services reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the law enforcement agency responsible for investigation of child abuse.

- (4) **Return of Child.** In every case in which an emergency protective custody order has been issued, Tribal Social Services shall return the child to the prior custodian and notify the court of the status of the case unless a petition is filed within 5 calendar days of the issuance of the order or the order is extended by the court.

6-5-110. Temporary Protective Custody.

- (1) **Hearing.** Whenever a child has been removed from his parent, guardian or custodian pursuant to an emergency protective custody order, the Children's Court shall conduct a hearing on the issue of the necessity of continuing temporary protective custody pending the filing of a petition.
- (2) **Time.** A hearing regarding temporary custody shall be held within 5 calendar days. In the event such a hearing is not held within that time frame, except for instances in which the court has granted a continuance, the child shall be returned to his parent, guardian or custodian. If a continuance is granted, the court shall make specific findings regarding the necessity of the continuance, and the rescheduling of the matter shall take priority over other matters on the Children's Court docket except other matters of the same nature.
- (3) **Purpose.** The only issue at the temporary protective custody hearing shall be whether it is reasonable to believe that the child would be at substantial risk due to abuse, neglect or lack of supervision if returned to the custody of his parent, guardian or custodian.
- (4) **Advisement of Rights.** The child and his parent(s), guardian(s) or custodian(s) shall be informed by the court of the purpose of the hearing and of their legal rights, including the right to be represented by counsel at their own expense.
- (5) **Evidentiary Standards.** Tribal Social Services, through the Presenting Officer, shall have the burden of going forward and presenting evidence to prove the need for continued temporary protective custody by a preponderance of the evidence.
- (6) **Dispositions Available to the Court.**
 - (a) If the Presenting Officer fails to establish reasonable cause to believe that the child would be at substantial risk if returned to the custody of his parent, guardian or custodian, the order for temporary protective custody shall be dissolved and the child returned.
 - (b) If the Presenting Officer establishes reasonable cause to believe that the child would be at substantial risk if returned to the custody of his parent(s), guardian(s) or custodian(s), the court shall enter a temporary

protective custody order pending a hearing on the petition, which petition shall be filed within 5 calendar days.

- (c) If the child is returned to the custody of his parent(s), guardian(s) or custodian(s), and the Presenting Officer has not yet filed a petition for dependency and neglect or child in need of supervision, the court may order Tribal Social Services to supervise the placement pending the filing of the petition and a hearing. The court may impose conditions upon the parent, guardian or custodian necessary to protect the child's welfare.

6-5-111. Temporary Protective Custody Orders. The court in its order shall state the findings upon which it relied in making its decision. Copies of the order shall be furnished to all parties. Every order for temporary protective custody must include the following findings:

- (1) That continuation in the home would be contrary to the child's welfare or removal from the home is in the child's best interest; and
- (2) That reasonable efforts have been made to prevent placement; or
- (3) That in emergency situations, the lack of preventive services was reasonable; or
- (4) That reasonable efforts need not be made with respect to the parent, guardian or custodian of a child if a court of competent jurisdiction has determined that:
 - (a) The parent, guardian or custodian has subjected the child to aggravated circumstances, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse; or
 - (b) The parent, guardian or custodian has committed murder of another child, committed voluntary manslaughter of another child; aided or abetted or attempted, conspired, or solicited to commit such a murder or voluntary manslaughter, or committed a felony assault that results in serious bodily injury to the child or another child; or
 - (c) The parental rights of the parent to a sibling have been terminated involuntarily.

6-5-112. Confidentiality of Children's Court Records.

- (1) **Automatic Access.** All children's court records are confidential and shall not be open to inspection, except by court order, to any but the following:
 - (a) The child's parent, legal guardian or legal custodian;
 - (b) The parties to the case; and

- (c) The child's counsel and/or guardian ad litem.
- (2) **Access by Court Order.** In determining access to Children's Court records, the court shall weigh the interests of the petitioner in obtaining the information against the rights of the parties to confidentiality. The following persons may petition the court for access by court order:
 - (a) The child, if over twelve years of age; and
 - (b) Other persons having a legitimate interest in the case.
- (3) **Access to Adoption Records.** Records pertaining to adoptions may be accessed as follows:
 - (a) Adult adopted children, biological parents and biological siblings requesting access shall have a right to access when all parties to the adoption have given their consent to such access.
 - (b) Should the parties to the adoption be unavailable or unwilling to consent to access to the records, the child, biological parent or biological sibling may file a petition with the court requesting access.
 - (c) Any person other than those listed in (b) above may petition the court for access to information in adoption records. The court may grant such persons access to information in adoption records only after making written findings of the particular need for the information requested and only to the extent necessary to meet such need.
 - (d) In determining access to adoption records, the court shall weigh the interests of the petitioner in obtaining the information against the rights of the parties to confidentiality.

Article 6. DEPENDENCY, NEGLECT AND CHILDREN IN NEED OF SUPERVISION

6-6-101. Informal Resolution.

- (1) **Conference.** When a dependency and neglect or child in need of supervision referral is received, but it is determined that immediate removal is not necessary, Tribal Social Services may hold a conference with the child's parent(s), guardian(s) or custodian(s) and the child, where appropriate, to discuss alternatives to the filing of a petition if:
 - (a) The facts are admitted to Tribal Social Services, and Tribal Social Services believes that the case is within the jurisdiction of the Children's Court; and

- (b) Written consent to the informal resolution is obtained from the parent(s), guardian(s) or custodian(s) and from the child, if of sufficient age and understanding; and
 - (c) An informal resolution of the matter without court involvement would be in the best interest of the child and the Tribe.
- (2) **Dispositions Available.** At the informal proceedings, Tribal Social Services may:
- (a) Refer the child and the parent(s), guardian(s) or custodian(s) to community agencies or resources for needed assistance; or
 - (b) Formulate a written case plan with the parent(s), guardian(s) or custodian(s), specifying the terms of Tribal Social Services' supervision to assist and benefit the child and the parent(s), guardian(s) or custodian(s) and regulating the activities of the child and the parent(s), guardian(s) or custodian(s). The case plan must be reasonable and within the abilities of the parent(s), guardian(s) or custodian(s), and the child. Copies of all case plans shall be furnished to the parent(s), guardian(s) or custodian(s).
- (3) **Duration of the Case Plan.** The period covered by the case plan shall not exceed 180 days. Tribal Social Services shall regularly review progress under the plan. If at any time during this period Tribal Social Services concludes that the terms of the case plan have not been met, the Presenting Officer may file a petition. If 180 days have expired since the case plan was initiated, and the child continues to be in need of supervision or abused, dependent or neglected, the Presenting Officer may file a petition with the Children's Court.

6-6-102. Filing of Petitions. In any case in which an informal resolution or a voluntary case plan has not been reached or has failed and a child is in need of protection, a petition may be filed by the Presenting Officer. The petition shall contain the following:

- (1) A statement of the facts which give the Children's Court jurisdiction over the proceedings;
- (2) The name, birth date, address and tribal affiliation of the child who is the subject of the petition, if known;
- (3) The names and addresses of the child's parents, guardians, custodians, stepparents or of his nearest known relatives, if no parent, guardian, custodian or stepparent is known;
- (4) A plain and concise statement of the facts upon which the petition is based, including the approximate date, time and location of the alleged incident; and

- (5) The following notice: “Termination of the parent-child legal relationship is possible if a petition alleging that a child is dependent or neglected is proven. Termination of the parent-child legal relationship means that you may lose your legal rights to the child and the child could be adopted. A separate hearing must be held before such termination is ordered. To protect your legal rights, you should be present at all hearings.”

6-6-103. Adjudicatory/Dispositional Hearing.

- (1) **Time.** Upon receipt of a dependency and neglect petition or a child in need of supervision petition, the court clerk shall set a date for a hearing, which date shall be no later than 30 days from the date of the filing of the petition.
- (2) **Notice.** Notice shall be issued by the court clerk in accordance with the provisions of this Code.
- (3) **Advisement of Rights.** Parties to the proceeding shall be informed by the court of the purpose of the hearing and of their legal rights, including the right to be represented by counsel at their own expense.
- (4) **Purpose.** At the adjudicatory stage of the hearing, the court shall determine whether the allegations in the petition are proven.

6-6-104. Evidentiary Standards.

- (1) **Burden of Proof.** The Presenting Officer has the burden of going forward and presenting evidence on the issues concerning dependency and neglect or the need for supervision. The Presenting Officer has the burden of proof and must prove the allegations in the petition by a preponderance of the evidence.
- (2) **Amendments to Conform to Evidence.** If the evidence presented at the hearing raises issues not alleged in the petition, the court may consider the additional matters raised by the evidence. The court may then order the petition amended to conform to the evidence, and the court may grant a continuance at the request of a party, or on its own motion, in the interest of justice.
- (3) **Prima Facie Evidence.** Credible evidence that child abuse or non-accidental injury has occurred shall constitute *prima facie* evidence that such child is dependent and neglected, and such evidence shall be sufficient to support an adjudication under this Section.

6-6-105. Adjudication. If the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child returned to the custody of his parent(s), guardian(s) or custodian(s). If the court finds that the allegations of the petition are supported by a preponderance of the

evidence, the court shall sustain the petition and shall issue an order of adjudication finding that the child is dependent and neglected or in need of supervision.

6-6-106. Dispositions Available to the Court.

- (1) **Placement.** When a child has been adjudicated dependent and neglected or in need of supervision, the following dispositions are available:
 - (a) The child may be placed under the care, control and supervision of Tribal Social Services for a specified period of time, and physical custody of the child returned to the parent(s), guardian(s) or custodian(s), subject to such limitations or requirements as the court may prescribe;
 - (b) The child may be placed in foster care under the care, control and supervision of Tribal Social Services;
 - (c) The child may be placed in a group home, residential treatment facility, boarding school or a rehabilitative program, which may benefit the child, under the care, control and supervision of Tribal Social Services;
 - (d) Medical or physical examination or treatment of the child may be ordered, which may include placing the child in a hospital or other suitable facility for such purpose, under the care, control and supervision of Tribal Social Services;
 - (e) The child may be placed in a vocational education or training program under the care, control and supervision of Tribal Social Services;
 - (f) The child may be placed in the legal custody of a relative or other suitable person, with or without protective supervision by Tribal Social Services; and
 - (g) Other dispositions that the court deems appropriate in the best interest of the child may be ordered; however, any out-of-home placement requiring funding through Tribal Social Services must be approved by Tribal Social Services.
- (2) **Case Plan.** The court shall approve an appropriate case plan containing clear, measurable treatment goals and expected outcomes. The case plan shall involve the child and each respondent named and served in the action, unless the court finds that an appropriate case plan cannot be devised as to a particular respondent because the child has been abandoned or as a result of other circumstances. Appropriate case plan, as used in this paragraph, means a plan approved by the court which is reasonably calculated to render the particular

respondent fit to provide adequate parenting to the child within a reasonable time and which relates to the child's needs.

- (3) **Enrollment.** As part of the disposition and/or case plan, the court may order Tribal Social Services to investigate the eligibility of the child for enrollment, if the child is not yet enrolled. Tribal Social Services may require the parents to pursue tribal enrollment, as part of the case plan, in the best interests of the child.

6-6-107. Court Orders. At the conclusion of the adjudicatory/dispositional hearing, the court shall issue a written order with specific findings within 10 days. Copies of the order shall be furnished to all parties. In every case in which out of home placement is ordered, the order must include the following findings:

- (1) Continuation in the home would be contrary to the child's best interests or removal from the home is in the child's best interests; and
- (2) Reasonable efforts have been made to prevent placement, or in emergency situations the lack of preventive services was reasonable, or the plan for the child is not to return home.

6-6-108. Responsibility for Payment. When the court orders a child into out-of-home placement, the court shall order Tribal Social Services to complete an assessment of the natural parents' ability to contribute to the cost of such out-of-home care. If a determination is made that a natural parent is able to contribute, such contribution shall be ordered to be paid through the Children's Court. The court may consider relevant standard ability to pay scales, existing child support orders and other relevant factors in determining the amount of the contribution.

6-6-109. Periodic Review Hearings.

- (1) **Time.** In any case in which the disposition includes continued court supervision, the court shall, at the time of the adjudicatory/dispositional hearing, set a review hearing to be held within 90 days to determine if further supervision is necessary. Following the first review hearing, regular periodic review hearings must be held at least every six months for all children subject to the continuing jurisdiction of the Children's Court.
- (2) **Periodic Review Factors.** Periodic reviews must address the following:
 - (a) The extent of compliance with the case plan;
 - (b) The progress toward eliminating the need for out-of-the-home placement;

- (c) The continuing need for placement and the appropriateness of the placement;
 - (d) Whether the plan for the child is not to return home or whether the child should be returned to the parents, guardians or custodians;
 - (e) Whether continued placement in out-of-home care is in the best interests of the child;
 - (f) Whether reasonable efforts have been made to reunite the child and family; and
 - (g) A possible date for returning the child home or permanency planning.
- (3) **Purpose.** Periodic review hearings may serve the purposes of both periodic review and the permanency planning hearing, if they meet the requirements of both. The purpose of the periodic review is to assess the child's case plan. Periodic reviews assure that children subject to court supervision are receiving appropriate attention and services, that cases are being properly managed and that plans and activities are specifically directed towards returning the child home or a permanent placement for the child.

6-6-110. Dispositional/Permanency Planning Hearings.

- (1) **Purpose.** The permanency planning hearing in the Tribal Court is hereby designated as the dispositional hearing for the purpose of federal requirements. The permanency planning hearing is held to determine the future status of the child, that is, to determine a specific permanent goal for the child and set a target date for attainment.
- (2) **Time.** For all children in out-of-home placement for 12 months, a Tribal Court permanency planning hearing must be held prior to the twelfth month.
- (3) **Dispositional Alternatives.** The permanency planning hearing will determine one of the following permanent placement goals for the child:
 - (a) Return home;
 - (b) Adoption;
 - (c) Independent living;
 - (d) Long term permanent foster care, specifying a particular foster home and a specific date foster care will terminate;
 - (e) Legal guardianship; or

(f) Other permanent placement alternatives appropriate to the best interests of the child.

(4) **Review.** The permanency plan must be reviewed at least every 6 months while the child remains under the court's jurisdiction. Two categories of children are exempt from the subsequent 6 month permanency planning reviews, but remain subject to periodic reviews:

(a) Children in specifically named foster care placement, which is meant to last during their entire stay in foster care and which is clearly documented in a court order; or

(b) Children free for adoption who have been placed in an adoptive home pending finalization.

6-6-111. Additional Procedural Safeguards. The following requirements must be met and documented whenever children are in out-of-home placement:

(1) The court must be notified within 5 calendar days by Tribal Social Services if there are changes in the child's placement; and

(2) Reasonable efforts must be made by Tribal Social Services to notify the parent(s), guardian(s) or custodian(s). The parents need not be notified if such notice would endanger the child; however, parents must be notified of any changes affecting visitation rights.

6-6-112. Social Services Report. Social Services shall file its report with the court at least 5 calendar days prior to every review hearing and shall furnish copies to the parties. The report, which shall be signed and dated by the person preparing it, shall contain, but not be limited to, the following information:

(1) A brief summary of the problems which necessitated the court's intervention;

(2) A summary of the last court-approved case plan;

(3) A description of the efforts made by the parent(s), guardian(s) or custodian(s) and Tribal Social Services to meet the requirements of the case plan;

(4) A description of the child's adjustment in placement, an explanation of any change in placement and a review of all services provided to the child or family;

(5) A summary of efforts made to contact the parent(s), guardian(s) or custodian(s);

(6) An assessment of the appropriateness of the case plan which addresses the child's health and safety as a primary concern;

- (7) Recommendations for continued placement or return of the child, including a justification for each recommendation; and
- (8) Recommendations for an updated case plan.

6-6-113. Review Orders. At the conclusion of each review hearing, the court shall state the findings upon which it relied in making its decision and shall issue a written order within ten days. Copies of the order shall be furnished to all parties. Every review order must include the following findings:

- (1) A finding that the child should be returned to the parent(s), guardian(s) or custodian(s); or
- (2) A finding that continued placement in out-of-home care is in the best interests of the child and reasonable efforts have been made to reunite the child and family, and, therefore:
 - (a) The child should be placed for adoption; or
 - (b) The child should be placed with a legal guardian; or
 - (c) The child should be continued in foster care on a permanent or long-term basis; or
 - (d) The child should be continued in foster care or group home care for a specified period.
- (3) A date for the next regular review hearing.

Article 7. GUARDIANSHIP

6-7-101. Authority. The court shall have authority, whenever it appears necessary, to appoint a guardian for the person and/or the property of any child who is subject to the jurisdiction of the Children's Court.

6-7-102. Appointment of Guardian by Will. Matters concerning the guardianship of a child in connection with the probating of an estate shall be referred to the Children's Court for appointment of a guardian. When there is a valid will, which names a guardian for a minor child, the court may appoint the person designated as guardian of the child. If the person named in the will is unable or unwilling to serve or if such person's appointment is objected to by any child over 12 years of age, by a relative or by Tribal Social Services, or if the court determines it to be in the minor's best interest, a guardianship hearing shall be held.

- 6-7-103. Temporary Guardianship.** The court may appoint a temporary guardian under such terms and conditions as the court deems appropriate. Temporary guardianship shall be for a limited duration, and the length of the guardianship shall be set forth in the court order along with such other terms and conditions as the court finds appropriate. A temporary guardianship may be terminated if the court determines that it is in the child's best interests to change guardians or to return the child to the parent(s) or custodian(s).
- 6-7-104. Permanent Guardianship.** A permanent guardianship awards permanent care and control of a child to a person other than the child's parent(s), although there is no termination of parental rights. The court may appoint a permanent guardian for a child under such terms and conditions as the court deems appropriate. There shall be a presumption of continued permanent guardianship in order to provide stability for the child.
- 6-7-105. Visitation with Extended Family.** The child's parents, grandparents and other family members shall be granted reasonable visitation rights, unless the court finds that the visitation would endanger the child or significantly impair his emotional development.
- 6-7-106. Petition for Guardianship.**
- (1) **Filing.** Except in connection with a dependency and neglect or child in need of supervision proceeding, guardianship proceeding shall be started by the filing of a petition for guardianship. Any person 18 years of age or older, or the child, if he is 12 years of age or older, may file a petition.
 - (2) **Eligibility and Preference.** Any competent person 18 years of age or older may serve as guardian. Preference shall be given to relatives and to the person preferred by a child 12 years of age or older; however, in all cases, the court shall determine the guardian on the basis of the best interests of the child.
 - (3) **Contents of Petition.** The petition shall contain the following:
 - (a) The basis for the court's jurisdiction;
 - (b) The full name, address and tribal affiliation, if any, of the petitioner;
 - (c) The full name, sex, date of birth, residence and tribal affiliation of the child;
 - (d) The petitioner's relationship to the child;
 - (e) The name and address of the person or agency having custody of the child;

- (f) The names and addresses of the child's parents, stepparents, grandparents, adult siblings and any person who has had physical custody of the child in the one year period immediately preceding the filing of the petition, insofar as these are known to the petitioner;
- (g) The scope of the guardianship powers requested;
- (h) Whether the guardianship requested is temporary or permanent;
- (i) A full description and statement of the value of all property, real or personal, owned or possessed by the child or in which the child has an interest, wherever it is located; and
- (j) The circumstances which require the appointment of a guardian.

6-7-107. Home Study and Report. Upon the filing of a guardianship petition, the court may order that Tribal Social Services or another appropriate person or agency conduct a home study and prepare a report. The report shall contain information necessary to determine the best interests of the child, including data pertaining to the child, the biological parents, the extended family and the circumstances requiring the appointment of a guardian. The court may order such medical and psychological examinations as are necessary to the preparation of the report. The court may assess and order payment of reasonable fees for such services, as appropriate. The report shall be submitted to the court and copies shall be furnished to all parties no later than 5 calendar days before the hearing.

6-7-108. Court Order. The court shall set forth the findings upon which it relied in making its decision and issue a written order. The terms and conditions of the guardianship shall be clearly set forth, together with any bond requirements. Copies of the order shall be furnished to all parties.

6-7-109. Inventory and Appraisal. Within 30 days after the appointment of a guardian, the guardian shall prepare and file with the court an inventory and an estimate of value of the child's property. The court may order an appraisal by a disinterested person, who shall submit the appraisal under oath and may receive reasonable compensation for this service.

6-7-110. Duties and Powers of Guardians.

(1) **Fiduciary Duties of Guardian.** Every guardian shall:

- (a) Stand in a fiduciary relationship to the child;
- (b) Exercise a high degree of care in managing the child's property;

- (c) Derive no personal benefit of any kind from his management of the child's property; and
 - (d) Be liable to the child for any losses attributable to breach of these duties.
- (2) **Scope of Guardianship.** Except as otherwise ordered or limited by the court, a guardian shall:
- (a) Have legal custody of the child and be required to provide for the child's health, safety, welfare, education and medical care;
 - (b) Provide opportunity for appropriate cultural education and training and encourage the child to attend tribal cultural activities;
 - (c) Have the authority to represent the interests of the child in actual, threatened or contemplated litigation or other proceedings of a legal nature. The guardian may employ counsel and may settle or compromise suits or claims subject to the approval of the court; and
 - (d) Have authority to invest, manage and dispose of the child's property in a prudent and reasonable manner. The guardian may expend such portions of the property, income and principal as shall be reasonably necessary for the education and care of the child, unless the guardianship order limits this authority or states that the child's property may not be used for the child's care and support, but rather that it be managed for the child until he reaches the age of 18.
- (3) **Petition for Authority to Act.** A guardian may petition the court at any time for authority to do any act, if he is uncertain of his authority. The court may grant such authority, after notice and hearing, if this appears to be consistent with the best interests of the child.

6-7-111. Statute of Limitations. Any action against the guardian shall be brought by the child or a subsequently appointed guardian on behalf of the child within 2 years after the appointment of a new guardian, attainment of the age of 18 by the child or the discovery of the guardian's breach of duties.

6-7-112. Compensation. A guardian may receive reasonable compensation in an amount approved by the court. No guardian shall receive any compensation without prior approval of the court.

6-7-113. Management of the Child's Property.

- (1) **Bond.** In the event the guardian receives any funds or property of the child at the time of appointment or during the term of his guardianship, he may be

required by the court to post a bond in such amount as the court may order to assure the guardian's faithful performance of his duties. Any surety of such bond must consent to the jurisdiction of the court for purposes of an action against the bond.

- (2) **Initial Inventory.** The guardian shall prepare and submit to the court an initial inventory of the child's funds and property at the time of appointment, or within 30 days thereafter.
- (3) **Federal Trust Property.** The guardian may be appointed to manage federal trust property of a child. Any lease, sale or encumbrance of an interest in federal trust property belonging to the child must be for adequate consideration and must be approved by the court and the BIA, if required by federal law.
- (4) **Annual Accounting.** The guardian shall submit an annual accounting and inventory under oath, to the court for approval. The annual inventory shall contain information on property acquisitions and disposals of any items of significance. The accounting shall contain information on all additions to and withdrawals from the funds of the child. Supporting documentation, such as copies of canceled checks, vouchers, receipts or bank statements, may be required by the court.

6-7-114. Termination of Guardianship and Discharge/Replacement of Guardian.

- (1) **Termination of Guardianship.** A permanent guardianship under the Children's Code terminates when the child turns 18. The guardian of a child, or the child himself, may petition the court on or after the date of the child's eighteenth birthday to have the guardianship terminated and the property under the control of the guardian turned over to the child. The court shall grant such termination upon receipt of sufficient evidence that the child has reached the age of eighteen unless the child appears to be incompetent, in which case a hearing shall be held to determine such fact.
- (2) **Discharge/Replacement of Guardian.** Every guardian shall serve until discharged by the court. Any interested person may file a petition to replace a guardian for failure to perform his duties. The court shall retain the current guardian unless:
 - (a) The guardian agrees to the discharge;
 - (b) The child has been integrated into the family of another with the consent of the current guardian;
 - (c) The child's present environment endangers his health or significantly impairs his emotional development and the harm likely to be caused by a

change of environment is outweighed by the advantage of a change to the child; or

- (d) The guardian fails to cooperate with orders of the court or attend court hearings regarding the guardianship.

Article 8. TERMINATION OF PARENTAL RIGHTS

6-8-101. Legislative Declaration and Purpose. The purpose of this Article is to provide for voluntary and involuntary terminations of the parent-child relationship in accordance with the rights guaranteed under this Code, the Constitution of the Southern Ute Indian Tribe and the Indian Civil Rights Act of 1968. The provisions of this Article shall be construed in a manner consistent with the philosophy that the family unit is of most value to the tribal community and to the individual family members when the family remains united. Involuntary termination of the parent-child relationship, therefore, should be used only as a last resort when, in the opinion of the court, all reasonable efforts have failed to render the parents fit and it is in the best interests of the child to terminate the parent-child relationship.

6-8-102. Voluntary Relinquishment.

- (1) **Petition.** If a parent desires to relinquish his parental rights, he may petition the Children's Court on forms supplied by the court. Upon receipt of a petition, the court shall promptly set the matter for hearing.
- (2) **Relinquishment Counseling.** Any parent desiring to relinquish his or her parental rights shall obtain relinquishment counseling from a tribal or county department of social services or such other person or agency approved by the court. Relinquishment interrogatories or an affidavit shall be filed with the court verifying that the parent has received counseling and fully understands the implications of the relinquishment and confirming that no undue pressure has been placed on the parent.
- (3) **Court Order.** If the court finds that a relinquishment is not in the best interests of the child, it shall enter an order dismissing the action. If the court is satisfied that all the procedural requirements of this Section have been met and that the relinquishment would best serve the interests of the child, it may enter an order of relinquishment. The court shall not issue an order of relinquishment unless it is satisfied that:
 - (a) Notice has been properly given to all parties;
 - (b) The relinquishing parent(s) and the child, if 12 years of age or older, have received relinquishment counseling;

- (c) The consequences of the relinquishment are fully understood by all parties;
- (d) The parent requesting relinquishment is not solely motivated by a desire to avoid obligations of financial support to the child; and
- (e) It is in the child's best interests for an order of relinquishment to be entered.

6-8-103. Placement of Child Following Voluntary Relinquishment of Parental Rights.

- (1) **Placement Procedures.** When Tribal Social Services is involved in the relinquishment proceedings, only Tribal Social Services, or a licensed child placement agency approved by Tribal Council, may arrange placement of the child. In cases involving an unborn child whose parents are planning to relinquish parental rights at the time of the child's birth, reasonable efforts shall be made by Tribal Social Services to conduct a pre-adoption home study of the prospective adoptive placement prior to the child's birth, so that interim foster care can be avoided. Tribal Social Services may place a child pending a court hearing on the relinquishment, provided that the home meets the minimum standards set by Tribal Social Services for pre-adoptive placements. Tribal Social Services shall place every child who is voluntarily relinquished in the home which affords the most likely probability of being a permanent adoptive home.
- (2) **Petition for Approval of Placement.** A petition requesting approval of the placement shall be filed in the Children's Court within 5 days of the child's placement. The petition shall set forth the following:
 - (a) The basis of the court's jurisdiction;
 - (b) The full name, sex, date of birth, residence and tribal affiliation of the child and the parent(s), if known; and
 - (c) A statement as to the child's availability for adoption and the placement plan for the child.
- (3) **Court Order.** The court, upon review of the petition, shall issue a written order and make findings, including that the child is a ward of the Children's Court under the care, control and supervision of Tribal Social Services until such time as a final order of adoption is issued or, in those cases involving non-adoptive placement, until further order of the court.

6-8-104. Involuntary Termination. Before filing a petition for involuntary termination, the Presenting Officer shall determine whether the case meets the following criteria:

- (1) That Tribal Social Services has made a good faith attempt to offer or provide all court ordered and/or necessary services reasonably available to help the parent(s) resolve the underlying problem(s); and
- (2) That the child has been adjudicated dependent and neglected for a period of at least six months; and
 - (a) The court entered an order which included a case plan with clear, measurable treatment goals and expected outcomes, which has not been reasonably complied with by the parent(s) for a period of six months; or
 - (b) The child has been adjudicated dependent and neglected and the court has found that no appropriate case plan can be devised to address the unfitness of the parent(s).

6-8-105. Involuntary Termination Factors. In considering the termination of parental rights, the court shall give primary consideration to the best interests of the child. In determining unfitness, conduct or condition for purposes of this Section, the court shall consider whether continuation of the parent-child relationship is likely to result in a risk of death, serious injury or severe emotional or psychological harm or whether the condition or conduct of the parent renders the parent unable or unwilling to give the child reasonable parental care. In making such determinations, the court shall consider, but not be limited to, the following factors:

- (1) Abandonment;
- (2) Reasonable efforts have failed to render the parent fit or the unfitness of the parent or parents is such that no appropriate treatment plan is feasible based on:
 - (a) Emotional illness, mental illness or mental deficiency of the parent or parents, which renders the parent(s) unlikely to be able to care for the child within a reasonable time; or
 - (b) A single incident resulting in a gravely disabling injury to the child or a sibling due to parental abuse or neglect;
- (3) Parental conduct towards a child of a physically, sexually, emotionally or psychologically abusive nature;
- (4) A history of exposing the child to violent behavior;
- (5) Excessive use of alcohol or controlled substances which affects the ability of the parent(s) to care and provide for the child; and
- (6) Parental neglect of the child.

6-8-106. Petitions for Involuntary Termination. Petitions for termination of parental rights may be filed on behalf of Tribal Social Services by the Presenting Officer or by the child's parent, guardian or custodian. A petition for termination of parental rights shall contain the following:

- (1) The full name, sex, date of birth, residence and tribal affiliation of the child;
- (2) The basis for the court's jurisdiction;
- (3) The names, addresses and tribal affiliation of the child's parents, if known;
- (4) In cases where the child's parent is a child, the names and addresses of the parent's parents, guardians or custodians;
- (5) The name and address of the person or agency having legal and/or physical custody of the child;
- (6) The grounds for termination; and
- (7) A statement that continuation of the parent-child relationship is not in the best interest of the child.

6-8-107. Notice. Upon receipt of a petition, the court shall give notice to the parties and set the matter for an advisement hearing.

6-8-108. Representation by Counsel. Parties shall have the right to counsel at their own expense. A guardian ad litem shall be appointed to represent the child's best interests in any proceedings involving the involuntary termination of the parent-child relationship. The guardian ad litem shall be an attorney or advocate admitted to practice before the Tribal Court, or another person with appropriate training or experience. Whenever possible, the guardian ad litem shall be the child's previously appointed counsel. Such representation shall continue until there is a permanent placement of the child or until the court terminates the appointment.

6-8-109. Termination Hearing Report. Upon the filing of a petition for involuntary termination of parental rights, the court shall immediately order that Tribal Social Services be responsible for the preparation of a termination hearing report. The report shall contain information necessary to determine the best interests of the child, including specific data related to the criteria and grounds for termination of parental rights, the present condition of the child and the parents, proposed plans for the child and any other facts relevant to the parent-child relationship. The report shall contain a detailed account of any efforts to render the parent fit, all efforts made by the parent to comply with a case plan and the results of such efforts. The court may request additional reports whenever necessary. The termination hearing report shall be

submitted to the court, and copies shall be furnished to all parties no later than 10 days prior to the hearing.

6-8-110. Grounds for Termination. The court may order termination of parental rights only upon a finding that:

- (1) The identity of the parent is unknown and reasonable efforts to identify and locate the parents have failed; or
- (2) The court has accepted and approved a voluntary relinquishment of parental rights; or
- (3) The child has been adjudicated dependent and neglected and all of the following exist:
 - (a) A case plan approved by the court has not been reasonably complied with by the parent or has not been successful, or the court has found that an appropriate case plan could not be devised;
 - (b) The parent is unfit; and
 - (c) The conduct or condition of the parent is unlikely to change within a reasonable period of time.

6-8-111. Court Order. If the court finds that the burden of proof has not been met or that termination of parental rights would not be in the child's best interests, it may enter an order continuing or dismissing the action. If the court is satisfied that all the procedural requirements have been met, that the grounds for termination have been proven by clear and convincing evidence and that the best interests of the child will be served by termination of parental rights, it shall enter an order of termination. The court shall set forth the facts and findings upon which it relied in making its decision to terminate parental rights and issue a written order, which shall be furnished to all parties.

6-8-112. Effects of Termination Order.

- (1) **General Effect.** Except as provided in this Section, an order for termination of parental rights terminates all rights, powers, privileges, immunities, duties and obligations, except for past due child support, between the parent and child, including rights to custody, control, visitation and future support. The rights of one parent may be terminated without affecting the rights of the other parent.
- (2) **Right to Notice.** After the termination of parental rights, a parent whose rights have been terminated is not entitled to notice of further court proceedings

concerning the child nor to participate in any proceedings nor to object to adoption.

- (3) **Right to Inherit.** An order for termination of parental rights shall not prevent a child/person from inheriting property from that parent in the same manner as any other natural child of that parent.
- (4) **Right to Benefits/Enrollment.** No order terminating parental rights shall deprive a child/person of any benefit, including past due child support or tribal enrollment, to which he is entitled from any third person or agency, including but not limited to any Indian tribe, any state or the United States.

6-8-113. Placement of Child Following Involuntary Termination. At the conclusion of a hearing resulting in termination of a parent-child relationship, if there remains no parent having parental rights, the court may declare or continue the child as a ward of the Children's Court and initiate or continue the child's care, control and supervision by Tribal Social Services or order another appropriate placement. When consistent with the best interests of the child, Tribal Social Services shall be responsible for placing the child in accordance with the placement preferences contained in the Indian Child Welfare Act.

6-8-114. Review Hearing.

- (1) **Time.** The court shall order that a review hearing be held within 90 days of any termination of parental rights. Unless the child is adopted or placed under permanent guardianship, the court shall set hearings at least every six months to review the child's placement and efforts toward permanency planning.
- (2) **Reports.** At the hearing Tribal Social Services shall report to the court on the welfare of the child and make recommendations with regard to permanent placement. The guardian ad litem shall also submit a report to the court, based on an independent investigation, and make recommendations with regard to permanent placement.

Article 9. ADOPTION

6-9-101. Legislative Declaration and Purpose. The purpose of adoptive placement is to provide the child with a permanent home. The child shall have an absolute right, absent a compelling reason to the contrary, to information and knowledge about his biological family and his tribal heritage. It is the intent of the Children's Code to encourage the child's knowledge of his tribe and the child's relationship with his biological family, whenever such relationship is in the child's best interest.

6-9-102. Availability for Adoption. A child is available for adoption only upon an order of a court of competent jurisdiction terminating all parental rights or written and verified consent of a biological parent in a stepparent adoption in which the other biological parent is deceased or his parental rights have been terminated.

6-9-103. Petition for Adoption.

- (1) **Filing.** Any person 18 years of age or older, including a foster parent, may file a petition for adoption. The petition shall be filed by the person proposing to adopt.
- (2) **Contents.** Every petition for adoption of a child shall be signed under oath and shall contain the following:
 - (a) The basis for the court's jurisdiction;
 - (b) The name, date of birth, place of birth, tribal affiliation and place of residence of the child to be adopted, if known;
 - (c) The name, date of birth, place of birth, tribal affiliation and place of residence of the petitioner(s) and the date of marriage, if any, of the petitioner(s);
 - (d) The relationship, if any, of the child to the petitioner(s);
 - (e) The full name by which the child shall be known after adoption;
 - (f) A full description and statement of value of all property owned or possessed by the child or in which the child has an interest;
 - (g) The names of the biological parents and siblings of the child, if known, and the address of each living parent, if known;
 - (h) The names and addresses of any person or agency to whom custody, guardianship or care, control and supervision has been given by the court; and
 - (i) The names and birth dates of all other children, both biological and adopted and both living and deceased, of the petitioner(s).
- (3) **Statement of Fees, Costs and Expenses.** In those cases involving a private adoption agency, a statement of all fees, costs or expenses charged in connection with the adoption shall be submitted to the court with the petition and shall include a statement of any additional fees to be charged.

- (4) **Time.** The petition for adoption shall be filed no later than 30 days after the date on which the child was placed in the home of the petitioner(s) for the purpose of adoption, unless the court finds that there was reasonable cause for not filing the petition within such time limit. The court shall set a date for the hearing within 90 days of the filing of the petition.

6-9-104. Placement Pending Adoption. No adoptive placement of any child, except for stepparent adoptions, shall be made except by Tribal Social Services or by a licensed child placement agency approved pursuant to this Code. In adoptions in which Tribal Social Services or another child placement agency has care, control and supervision during the interval between initial placement and the final order of adoption, Tribal Social Services or the child placement agency shall supervise the placement. After notice to all parties and a hearing, the court may terminate said placement for good cause if, at any time prior to the final order of adoption, it appears to the court that the placement is not in the best interests of the child. All children who have been placed for adoption shall be wards of the court until the final order of adoption has been entered.

6-9-105. Contents of Pre-Adoption Home Study. Except in stepparent adoptions, Tribal Social Services shall be responsible for the preparation of a pre-adoption home study, which shall include the following information:

- (1) The reasons the child is available for adoption, including background information concerning the biological parents;
- (2) The length of time the child has been in the care of the petitioner(s) and the adjustment of the child to that living arrangement;
- (3) An evaluation of the physical, mental and emotional health of the petitioner(s), all other members of the household and the child who is the subject of the petition;
- (4) A criminal history of the petitioner(s);
- (5) An evaluation of the proposed physical setting in which the child will be placed with attention to safety issues;
- (6) A discussion of how the proposed placement is compatible with the child's culture, identity and tribal affiliation;
- (7) A discussion of the plans and ability of the petitioner(s) to promote the child's healthy growth, development and understanding of the child's tribal and cultural heritage; and

- (8) A recommendation for placement which specifically addresses the best interests of the child.

6-9-106. Hearings. The hearing shall be informal in nature, and all interested parties may present evidence relevant to the proposed adoption. The purpose of the adoption hearing shall be to determine if the best interests of the child will be served through adoptive placement with the petitioner(s). In determining best interests the court shall consider:

- (1) Any orders terminating parental rights; and
- (2) All adoptive assessments, agency home studies, medical or psychological reports and any other evidence relevant to the proposed adoption.

6-9-107. Court Orders. If the court finds that the adoption will not be in the child's best interests, or finds that the procedural requirements have not been met, it may dismiss the petition or continue the matter and make those orders it deems necessary for the care, control and supervision of the child. If the court finds that the requirements of this Code have been met and that the adoption is in the child's best interests, it shall issue an interim order of adoption pending the final hearing on the matter. Except upon good cause shown, the court shall not enter a final decree of adoption sooner than six months from the date of the initial hearing. The court shall set forth the facts and findings upon which it relied in making its decision and issue a written order. Copies of the order shall be furnished to all parties.

6-9-108. Legal Effects of Final Decree of Adoption.

- (1) **General Effect.** Upon entry of a final decree of adoption, the adoptive parent shall assume all of the rights and responsibilities of a biological parent with respect to the child, and the adopted child shall be entitled to all the legal rights and privileges and be subject to all the obligations of a biological child of the adoptive parent. Nothing in this article shall be construed to divest the child or parent retaining parental rights of any legal right or obligation where the adopting parent is a stepparent.
- (2) **Right to Inherit.** A final decree of adoption shall not prevent a child/person from inheriting property from a biological parent in the same manner as any other child of that parent.
- (3) **Right to Benefits/Enrollment.** No final decree of adoption shall deprive a child/person of any benefit, including past due child support or tribal enrollment, to which he is entitled from any third person or agency, including but not limited to, any Indian tribe, any state or the United States.

- 6-9-109. Official Records.** Upon entry of a final decree of adoption, the court shall forward a copy of the decree to the Tribal Vital Statistics Office. The adopting parents or their counsel shall send to the state registrar an application for a birth certificate, signed by the adopting parents.
- 6-9-110. Compensation.** No person shall offer, give, charge or receive any money or other consideration or thing of value in connection with an adoption, except attorney fees and such other charges and fees as may be approved by the court. Any person who violates the provisions of this Section is subject to civil penalties in the discretion of the court and forfeiture of any money or thing of value received.
- 6-9-111. Reversing a Final Decree of Adoption.** A final decree of adoption shall be subject to challenge only on grounds of fraud, lack of jurisdiction or substantial procedural error. No final decree shall be challenged or subject to reversal after the expiration of one year following the entry of the final decree, unless the affected parent did not learn of the basis for challenging the decree during that one-year period. In such circumstances, the affected parent shall be entitled to a period of one year from the date of discovery of the facts underlying the reasons for reversal to file a petition requesting reversal of the adoption.

TITLE 6

CHILDREN'S CODE

History and Amendments¹

The Southern Ute Indian Tribal Code adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 25, 1981.

Approved revised version of the Children's Code by Resolution No. 85-104, on September 27, 1985.

Repealed the entire Children's Code and replaced it with the revised Children's Code as Title 6 by Resolution No. 00-172, approved by the Bureau of Indian Affairs and effective when approved.

Approved revised provisions of the Children's Code as Title 6, Article 1, section 104 and Article 3, sections 105 - 108 by Resolution No. 2014-215, approved by the Bureau of Indian Affairs and effective on December 12, 2014.

Title 6 – Children's Code repealed and replaced (Resolution No. 2021-151) with a reformatted version for online publication, approved by the Bureau of Indian Affairs and effective on July 28, 2023.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.