

*Washoe Tribe of Nevada and California*

**Law & Order Code**

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**TITLE 8 - TRIBAL CHILD/FAMILY PROTECTION**

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*[Last Amended 8/24/2012, by Resolution 61-WTC-2012; Effective 10/12/2012; Current Through 10/16/2012]*

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**8-10 SHORT TITLE, PURPOSE AND DEFINITIONS**

**8-10-010 Short Title**

Title 8 (Chapters 8-10 through 8-250) shall be entitled "The Tribal Child and Family Protection Code" (Code).

**8-10-020 Purpose**

The Tribal Child and Family Protection Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To provide for the welfare, care, and protection of the children and families of the Washoe Tribe of Nevada and California;
2. To preserve the unity of the family, preferably by separating the child from his/her parents only when necessary;
3. To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children;
4. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community-based alternatives;
5. To secure the rights of and ensure fairness to the children, parents, guardians, custodians, or other parties who come before the Children's Court under the provisions of this Code;
6. To ensure that off-Reservation courts will be willing to return Tribal children to the Reservation by establishing this Code; and
7. To recognize and acknowledge the Tribal customs and traditions of the Washoe Tribe of Nevada and California with regard to child-rearing

through the involvement of extended family members at all stages of proceedings involving Washoe children.

### 8-10-030 Definitions

As used in this Code:

1. “Abandon” means 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 six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
2. “Abandoned infant” An abandoned infant is deemed to be a child under the age of six (6) months who has been voluntarily surrendered relevant to a state pursuant to safely surrendered baby laws and who has not been reclaimed within thirty (30) days of surrender.
3. “Abuse” means the infliction of physical, emotional, or mental injury on a child, or sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his/her health, moods, or emotional well-being is endangered.
4. “Adult” means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
5. “Child” means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
6. “Child Protection Team” means a team established to involve and coordinate the child protection services of various agencies as set forth in Chapter 8-60 of this Code.
7. “Court” or “Children’s Court” means the Children’s Court of the Washoe Tribe of Nevada and California. .
8. “Custodian” means a person, other than a parent or guardian, to whom legal custody of the child has been given.
9. “Domicile” means a person’s permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.
10. “Emergency Foster Home” means placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).

11. “Extended Family” means defined according to the Tribal customs and traditions of the child’s Tribe.
12. “Foster Home” means placement with a family whose home has been licensed under this Code.
13. “Guardian” means a person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child (see “Permanent Guardian,” “Temporary Guardian,” “Guardian Ad Litem,” and “Guardian of Property”).
14. “Guardian Ad Litem” means a person appointed by the Court to represent the child’s interests before the Court.
15. “Guardian of Property” means a person appointed by the Court to manage the property of a child or incompetent person as set forth in this Code.
16. “He/His” means he or she, his or her, and the singular includes the plural.
17. “Incompetent” means an insane person or person who is for any cause mentally incompetent to take care of himself and to manage his property.
18. “Indian” means any person who is:
  - (1) Of a federally recognized Indian tribe, band or community, including those tribes, bands, or groups terminated since 1940, a descendant, in the first or second degree of any such member, or an adopted child of any such member;
  - (2) Alaska Natives; or
  - (3) A person considered by the community to be Indian.

*[Amended 10/11/02, by Resolution No. 112-WTC-2002]*

19. “Juvenile Offender” means a child who commits a “juvenile offense” prior to the child’s eighteenth (18<sup>th</sup>) birthday (see Juvenile Justice Code).
20. “Juvenile Offense” means a criminal violation of the Tribal Code of the Washoe Tribe of Nevada and California which is committed by a person who is under the age of eighteen (18) at the time the offense was committed (see Juvenile Justice Code).
21. “Neglect” means the failure of the parent, guardian, or custodian to provide adequate food, clothing, shelter, medical care, education, or

supervision for the child's health and well-being. "Neglect" shall include "abandoned" children.

22. "Parent" means a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
23. "Open Adoption" means an adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.
24. "Permanent Guardian" means a guardian who has been granted long term guardianship status as set forth in this Code.
25. "Protective Services Worker" means the protective services worker, social services worker, law enforcement personnel, or any person who performs the duties and responsibilities set forth in Chapter 8-50 of this Code.
26. "Reservation" means the lands of the Washoe Tribe of Nevada and California.
27. "Temporary Guardianship" means a guardian who has been granted temporary guardianship status as set forth in this Code.
28. "Tribal Council" means the Tribal Council of the Washoe Tribe of Nevada and California.
29. "Tribal Court" means the Tribal Court of the Washoe Tribe of Nevada and California.
30. "Tribal" means the Washoe Tribe of Nevada and California.

## **8-20 JURISDICTION OF THE JUVENILE COURT IN PROTECTION PROCEEDINGS**

### **8-20-010 General Jurisdiction**

The jurisdiction of the Juvenile Court shall extend to and include all actions brought to insure the safety and well being of children within the exterior boundaries of the Reservation, as well as other children who have been declared to be wards of the Juvenile Court. The Juvenile Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other orders as appropriate.



**8-20-020 Jurisdiction Over Extended Family**

Where the Juvenile Court asserts jurisdiction over a person under Section 8-20-010 above, the Court shall also have jurisdiction over the person's extended family whenever that Court deems it appropriate.

**8-20-030 Continuing Jurisdiction**

Where the Juvenile Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the Reservation.

**8-30 TRANSFER OF JURISDICTION****8-30-010 Application of the Indian Child Welfare Act**

The Juvenile Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, where they do not conflict with the provisions of this Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court unless specifically provided for in this Code.

**8-30-020 Transfer to State Court or Other Tribal Court**

In any proceeding before the Juvenile Court, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe have a significant interest in the child and the transfer would be in the best interest of the child.

**8-30-030 Transfer from Other Courts**

The Juvenile Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from other federal, state, or tribal courts.

**8-30-040 Procedures for Transfer from State Court**

1. Receipt of Notice: The Tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Director of Social Services.
2. Investigation and Pre-Transfer Report: The Director of Social Services shall conduct an investigation and file a written report with the Court within twenty-one (21) days of receipt of notice of state court child custody proceedings.
3. Recommendations for Transfer or Intervention: The Court shall make written recommendations to the Attorney representing Social Services on

whether or not the Tribe should petition for transfer from or intervene in state court.

4. Petition for Transfer: The Tribal petition for transfer shall be filed by the Attorney representing Social Services within five (5) days of receipt of recommendations from the Court.
5. Intervention in state court proceedings:
  - (a) The Tribe may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings; and
  - (b) The Attorney representing Social Services or selected representatives shall file a motion to intervene within five (5) days of receipt of recommendations from the Court.
6. Acceptance of Transfer: The Court will not accept a transfer from state court unless:
  - (a) A parent or Indian custodian's petition to state court for transfer is granted; or,
  - (b) The Tribe's petition to state court for transfer is granted; and,
  - (c) The Director of Social Services pre-transfer report recommends the acceptance of transfer; and
  - (d) The Attorney representing Social Services recommends acceptance.
7. Hearing(s): Upon receipt of transfer jurisdiction from state court, the Attorney representing Social Services shall file a child/family protection petition, and appropriate hearing(s) shall be held in accordance with this Code.

**8-30-050 Full Faith and Credit; Conflict of Laws**

1. State Court Orders: State child custody orders of other tribal courts involving children over whom the Juvenile Court could take jurisdiction may be recognized by the Juvenile Court only after a full independent review of such state proceedings has determined:
  - (a) The state court had jurisdiction over the child;
  - (b) The provisions of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, were properly followed;
  - (c) Due process was provided to all interested persons participating in the state proceeding; and
  - (d) The state court proceeding does not violate the public policies, customs, or common law of the Tribe.
2. Court Orders of Other Tribal Courts: Court orders of other tribal courts involving children over whom the Juvenile Court could take jurisdiction shall be recognized by the Juvenile Court after the court has determined:

- (a) That the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
  - (b) Due process was accorded to all interested parties participating in the other tribal court proceeding.
3. Tribal Interest: Because of the vital interest of the Tribe in its children and those children who may become members of the Tribe, the statutes, regulations, public policies, customs and common law of the Tribe shall control in any proceeding involving a child who is a member of the tribe.

## **8-40 PROCEDURES AND AUTHORIZATIONS**

### **8-40-010 Rules of Procedure**

The procedures in the Juvenile Court shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Title.

### **8-40-020 Cooperation and Grants**

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public, or private agency in order to participate in any foster care, shelter care, treatment, or training program(s) and to receive grants-in-aid to carry out the purposes of this Title.

### **8-40-030 Social Services**

The Juvenile Court, in all proceedings under this Title, may avail itself of all services referred to or defined in sections 10-90-010 through 10-90-030.

## **8-50 PROTECTIVE SERVICES WORKERS**

### **8-50-010 Power and Duties:**

1. The Director of Social Services, as the administrator of the Department of Social Services, may employ as many social workers as authorized by the Tribal Council.
2. The Department of Social Services may cooperate with such state and community agencies as are necessary to achieve the purposes of this Code. The Department shall attend and participate in meetings of Multidisciplinary Child Abuse Prevention Teams (MDT) in Alpine and Douglas Counties, and may attend and participate in similar meetings or Sexual Assault Response Team meetings in El Dorado County or other jurisdictions unless Tribal Council determines such attendance and participation is not in the best interests of the Washoe Tribe and its members. The Department's participation in MDT meetings shall be at the same level as its participation in Washoe Tribal CPT meetings. The

Department may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council.

*[Amended 9/11/2009, by Resolution No. 292-WTC-09]*

3. The Department of Social Services shall:
- (a) Receive reports of neglected, abused, or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis; and,
  - (b) Receive from any source, oral or written, information regarding a child who may be in need of protective services.
  - (c) Upon receipt of any report or information under paragraph (a) or (b) of this subsection, immediately:
    - (1) notify the appropriate enforcement agency; and,
    - (2) conduct a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
  - (d) Utilizing law enforcement officials when necessary, take a child into temporary custody if there are reasonable grounds to believe:
    - (1) that the child is suffering from illness or injury, or
    - (2) is in immediate danger from his surroundings, and
    - (3) that his removal is necessary.
  - (e) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.
  - (f) Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.
  - (g) Within ten (10) days after a referral of a potential child in need of protective services, submit a written report to the Attorney representing Social Services with a recommendation of whether a formal petition alleging that the child or children are in need of protective services should be filed with the Court.
  - (h) The Department of Social Services shall receive reports of elder abuse and investigate those reports. If the Department of Social Services finds that an elder is being abused, it shall report this information to Tribal Law Enforcement immediately, with all documentation supporting the allegations.

*[Amended 3/14/07, by Resolution No. 97-WTC-04]*

4. No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays, and holidays, unless a child/family protection petition is filed.

**8-50-020 Limitations of Authority; Duty to inform**

1. Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in the Juvenile Court.
2. If the family declines the offered services, the worker may initiate a child/family protection petition in Juvenile Court alleging a child in need of protective services if he believes it to be in the child's best interest.

**8-60 CHILD PROTECTION TEAM**

**8-60-010 Policy**

1. The Tribe shall establish a Child Protection Team. Establishment of the Child Protection Team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.
2. Prevention of child abuse and neglect is to be emphasized. The Child Protection Team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the Child Protection Team should initiate protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems which caused the abuse or neglect and prevent it from occurring again. The Child Protection Team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.
3. The Child Protection Team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the Child Protection Team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. The Child Protection Team shall facilitate (not

hinder) the decision-making process. Confidentiality shall be maintained by all Child Protection Team members.

4. The duties of the Child Protection Team shall include the development and implementation of procedures required by this Chapter.

**8-60-020 Providing Oversight**

The Child Protection Team shall:

1. Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.
2. Review and track all child abuse and neglect cases which have been referred.
3. Review case plans for their adequacy.
4. Maintain confidentiality of information.
5. Send local Child Protection Team data to area child protection teams.

**8-60-030 Facilitating Provision of Services**

The Child Protection Team shall:

1. Receive child abuse and neglect referrals and assign case managers to track cases.
2. Identify available community resources, programs, and services.
3. Provide recommendations to various pertinent agencies.
4. Promote cooperation, communication, and consistency among agencies.
5. Provide a forum for debating what actions would best promote the well-being of Indian children.

**8-60-040 Providing Technical Assistance**

The Child Protection Team shall:

1. Develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services.
2. Provide information and technical recommendations to decision-making agencies.

3. Educate communities about child abuse and neglect problems and solutions.
4. Identify danger signs which prompt intervention and/or preventive actions.
5. Assist in the development and implementation of plans to promote the long-term well-being of children and their families.
6. Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

**8-70 DUTY TO REPORT CHILD ABUSE AND NEGLECT**

**8-70-010 Duty to Report**

Any person who has a reasonable cause to suspect that a child has been abused, neglected, or abandoned shall immediately report the abuse, neglect, or abandonment to the Department of Social Services and/or to any Tribal law enforcement officer. Those persons reporting, except those specified in section 8-70-020 below, may remain anonymous.

**8-70-020 Persons Specifically Required to Report**

Those persons who are mandated to report suspected abuse or neglect include the following:

1. Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider;
2. Teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, federal, public, or private school;
3. Administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, federal, public or private school;
4. Child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker;
5. Psychiatrist, psychologist, or psychological assistant;

6. Licensed or unlicensed marriage, family, or child counselor;
7. Person employed in the mental health profession;
8. Law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders; and
9. Judge, attorney, court counselor, clerk of the court, or other judicial system official.

**8-70-030 Immunity from Liability**

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.

**8-70-040 Penalty for Not Reporting**

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action proceeding in Tribal Court.

**8-70-050 Abuse and Neglect Reports**

1. Form of Report: Those persons mandated to report under section 8-70-020 above shall promptly make an oral report to the Department of Social Services and then follow with a written report as soon thereafter as possible.
2. Contents of Written Report: The following information shall be included in the written report:
  - (a) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian;
  - (b) The child's age;
  - (c) The nature and content of the child's abuse or neglect;
  - (d) Previous abuse or neglect of the child or his siblings, if known;
  - (e) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known; and
  - (f) The name and address of the person or agency making the report.
3. Photograph of Visible Trauma: Persons reporting suspected abuse or neglect may photograph or cause X-rays to be taken of the child suspected of abuse, and, upon proper foundation, such photographs or X-rays may be introduced into evidence at a hearing.



**8-70-060 Central Registry**

1. The Department of Social Services shall maintain a central registry of reports, investigations, and evaluations made under this Code.
2. The registry shall contain the information furnished by Tribal personnel throughout the Reservation, including protective service workers, probation officers, caseworkers, and Indian Child Welfare Program employees.
3. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Juvenile Court orders that individual records shall be kept on file beyond that date in order to protect other siblings).
4. Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Juvenile Court, social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe.
5. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

**8-80 INVESTIGATION AND REMOVAL****8-80-010 Investigation**

A report alleging child abuse or neglect shall be investigated within twenty-four (24) hours by the Department of Social Services or other appropriate agency, and a report detailing the results of that investigation shall be prepared within ten (10) days from the date such investigation begins, unless the Juvenile Court directs otherwise.

**8-80-020 Authority to Remove**

If a party investigating a report of child abuse or neglect finds that the grounds for removal, listed in section 8-80-030 below, have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

**8-80-030 Grounds for Emergency Removal**

No child shall be removed from the home of the child's parent, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Juvenile Court, except as follows:

1. When the parent has subjected the child(ren) to aggravated circumstances. Aggravated circumstances are circumstances when
  - a. When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm; or,
  - b. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.
  
2. When the parent has been convicted of:
  - a. Murder of another child of the parent
  - b. Voluntary Manslaughter of another child of the parent
  - c. Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such voluntary manslaughter; or
  - d. Felony assault that results in serious bodily injury to the child or another child of the parent.
  
3. When the parental rights of the parent with respect to a sibling of the child have been involuntarily terminated.
4. When the child has been found by the Court to be an “abandoned infant”

**8-80-040 Power to Remove**

The Director of Social Services, the Captain of the Tribal Police or the Tribal Probation Officer shall have the power to remove a child pursuant to this Section provided that:

1. Reasonable grounds existed at the time of the removal to believe the removal was necessary; and
2. The person removing the child ensures the safety and well-being of the child, until such time as the Juvenile Court assumes control of the matter; and
3. The person removing the child complies with the notice provisions contained in Chapter 8-90 of this Code.

**8-90 NOTICE OF REMOVAL**

**8-90-010 Notice to the Juvenile Court**

After a child is removed from his home, the person who removed the child shall attempt to contact the Juvenile Court within twenty-four (24) hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m.

**8-90-020 Notice to the Parent, Guardian, or Custodian**

The Court shall make all reasonable efforts to notify the parents, guardian, or custodian, within twelve (12) hours of the Court knowing that the child was removed. Reasonable efforts shall include personal, telephonic, or written contacts at their residence, place of employment, or other location where the parent, guardian, or custodian is known to frequent with regularity. If the parent, guardian, or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian, or custodian and/or the extended family of the child.

**8-100 RESTRICTIONS ON PLACEMENT OF CHILDREN**

**8-100-010 Detention**

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

**8-100-020 Relatives**

When possible, a child alleged to be neglected or abused shall be placed with a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian, or custodian without the prior approval of the Court.

**8-100-030 Other Placements**

A child alleged to be neglected or abused who cannot be placed with a relative may be placed in a:

1. Foster home or a home otherwise approved by the Director of Social Services to provide foster care, group care, protective residence; or
2. Facility operated by a licensed child welfare services agency; or
3. Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the Department of Social Services.

**8-110 FILING CHILD/FAMILY PROTECTION PETITION**

**8-110-010 Authorization to File Petition**

Formal child/family protection proceedings shall be instituted by a child/family protection petition filed by the Attorney representing Social Services on behalf of the tribe and in the best interests of the child.

**8-110-020 Time Limitations**

If a child has been removed from the home, then a child/family protection petition shall be filed with the Juvenile Court no later than seventy-two (72) hours following the removal.

**8-110-030 Contents of Petition**

The child/family protection petition shall set forth the following with specificity:

1. The name, birth date, sex, residence and tribal affiliation of the child;
2. The basis for the Court’s jurisdiction;
3. The specific allegations of abuse, neglect, or abandonment;
4. A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time, and location at which the alleged facts occurred;
5. The names, residences and tribal affiliation of the child’s parents, guardians, or custodians, if known; and
6. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement, and the date and time of the placement.

**8-120 INITIAL HEARING**

**8-120-010 Hearing Date**

An initial hearing shall be held regarding the removal of a child within forty-eight (48) hours of the removal of the child excluding weekends and Court holidays.

**8-120-020 Purpose**

The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.

**8-120-030 Advise of Rights**

During the hearing, the Court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in Chapter 8-130 of this Code.

**8-120-040 Nature of Hearing**

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

**8-120-050 Admission or Denial**

At the initial hearing the parents, guardian, or custodian may admit or deny all or part of the allegations in the petition. In the event that there is an admission of the entire petition the Court shall proceed to order a disposition report as defined in Chapter 8-180. In the event that any part of the petition is denied the Court shall set a date for a formal hearing on the issues as contemplated in section 8-120-080.

**8-120-060 Possible Outcomes of Initial Hearing:**

1. The child/family protection petition may be dismissed and the child returned to the home.
2. The child may be returned to the home of the parents, guardian, or custodian under the supervision of the Court and another hearing held within thirty (30) days.
3. The child may be continued in the out-of-home placement and a thirty (30) day hearing will be held.

**8-120-070 Notice of Initial Hearing**

The Court shall make all reasonable efforts to advise the parents, guardian, or custodian of the time and place of the initial hearing. The Court may require that the parent, guardian, or custodian be present for the hearing. Reasonable efforts shall include personal, telephone, and written contacts at their residence, place of employment, or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent, guardian, or custodian, notice shall be given to members of the extended family of the parent, guardian, or custodian and/or the extended family of the child. Failure to appear by any required party who received actual notice may be punished as a contempt.

**8-120-080 Unresolved Issues**

If the problems are not resolved at the initial hearing, the Court will set a date for a formal hearing on the issues. Such date will be no later than thirty (30) days after the filing of the child/family protection petition.

**8-130 NOTIFICATION OF RIGHTS**

All parties accused of abuse or neglect under this Title of the Code shall be advised by the Court that they are entitled to be represented by counsel at all stages of the proceedings and their right to have counsel appointed for them at the Tribe's expense if the parties are unable to afford counsel. All parties shall be entitled to advance copies of Court documents, including petitions and reports, unless deemed inappropriate by the Court.

**8-140 FORMAL TRIAL ON THE ISSUES****8-140-010 Time Limitation**

Except upon stipulation of the parties and approval of the Court the formal trial on the issues will be set for no later than thirty (30) days following the filing of the child/family protection petition.

**8-140-020 Closed Hearing**

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

**8-140-030 Advise of Rights**

During the hearing, the Court shall advise the party(s) of the reason for the hearing and of their basic rights as provided in Chapter 8-130 of this Code.

**8-140-040 Child Witnesses**

Except upon unusual circumstances mandated by the best interests of the child, the Court shall require testimony of a child to be presented as any other witness. In those circumstances where the best interests of the child mandate otherwise and an exception to the general rule does not violate the rights of a party, the Court may allow the child to testify by means of a videotaped deposition, closed circuit television, or other appropriate method. If the Court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.

**8-140-050 Burden of Proof**

The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protection petition are:

1. Established by preponderance of the evidence; and
2. That the best interests of the child will be served by continued Court intervention.

**8-140-060 Outcome of Hearing**

The Court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition, unless by necessity, the hearing shall be continued to a date certain to allow for the presentation of further evidence.

**8-140-070 Return to Home**

The Court may find the allegations of the child/family protection petition to be true, but that out-of-home placement is not needed to protect the child. In those instances the Court may continue intervention and supervision as appropriate.

**8-140-080 Grounds for Continuing Removal From the Home**

The Court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are that:

1. A child has no parent, guardian, or custodian available, willing, and capable to care for the child;
2. The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions;
3. The child has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his /her parent, guardian, or custodian, which is necessary for the child's health and well being;
4. The child has been sexually abused or sexually exploited;
5. The child has committed juvenile offenses as a result of parental pressure, guidance, or approval;
6. The child has been emotionally abused or neglected; or

7. The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

**8-140-090 Court Order for Continuing Removal**

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

**8-140-100 Return of Child-to Parent, Guardian or Custodian**

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

**8-140-110 Out-of-Home Placement**

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

**8-140-120 Written Order**

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

**8-150 NOTICE OF FORMAL TRIAL ON THE ISSUES**

**8-150-010 Requirement of Attendance**

The Court shall make all reasonable efforts to advise the parents, guardian, or custodian of the time and place of the initial hearing. The Court shall summon the parent, guardian, or custodian to be present for the hearing. If the Court is unable to cause a summons to be served upon the parent, guardian, or custodian, notice shall be given to members of the extended family of the parent, guardian, or custodian and/or the extended family of the child. Failure to appear by any required party who received actual notice may be punished as a contempt.

**8-150-020 Attachments to Summons**



A copy of the child/ family protection petition shall be attached to each summons. The court shall also attach a notice to the parent, guardian, or custodian which advises them of their rights under Chapter 8-130 of this Code.

**8-150-030 Personal service**

If the parties to be served with a summons can be found within the exterior boundaries of the Reservation, the summons, a copy of the child/ family protection petition, and the notice of rights shall be personally served upon them at least ten (10) Court days before the formal trial on the issues.

**8-150-040 Mail service**

If the parties are within the exterior boundaries of the Reservation but cannot be personally served, and if their address is known, the summons, petition, and notice of rights may be served by registered mail with a return receipt requested, at least ten (10) days before the formal trial.

**8-150-050 Notice to Extended Family**

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

**8-150-060 Service of Summons**

Service of summons may be made under the direction of the Court by any person eighteen (18) years of age or older who is not a party to the proceedings.

**8-150-070 Contempt Warning**

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

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO TRIBAL CODE. THE COURT MAY FIND THE PARENT, GUARDIAN, OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

**8-160 DEFAULT JUDGMENT**

**8-160-010 When Appropriate**

If the parent, guardian, or custodian fail to appear for the formal trial, the Court may find the parent, guardian, or custodian in default, and enter a default order of child/ family protection and order necessary intervention and appropriate steps the parents, guardian, or custodian must follow to correct the underlined problem.

**8-160-020 Notice Determination**

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

**8-160-030 Written Order**

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

**8-170 SIX (6) MONTH REVIEW**

**8-170-010 Review Requirement**

The status of all children subject to a child/family protection Code shall be reviewed by the Court at least every six (6) months at a hearing to determine whether Court supervision shall continue, except that the first review following a formal trial on the issues shall be held within ninety (90) days of the formal trial on the issues.

**8-170-020 Return to Home**

A child shall be returned home at the review hearing unless the Court finds that a reason for removal as set forth in section 8-140-090 of this Code still exists. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision as appropriate.

**8-170-030 Written Order**

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

1. What services have been provided or offered to the parent, guardian, or custodian, to help correct the underlying problem(s);

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

**8-170-040 Additional Steps**

The Court at the review hearing may order that a petition to terminate the parent/child relationship be filed when the criteria defined in section 8-220-230 appears to have been met.

**8-180 SOCIAL SERVICE REPORT**

**8-180-010 Requirement of a Social Study**

To aid the Court in its decision the Department of Social Services shall prepare a report of matters relevant to the disposition of the case.

**8-180-020 Contents of a Social Study**

The report by the Department of Social Services shall include the following points, and be made available to the Court, and the parties as deemed appropriate by the Court, three (3) days prior to a child/family protection review hearing:

1. A summary of the problem(s);
2. What steps, if any, the parent, guardian, custodian, or social services personnel have already taken to correct the problem(s);
3. What services could be of benefit to the parent, guardian, or custodian, but are not available in the community;

4. A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves;
5. Dates of contacts with parent, guardian, or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed;
6. If there have been no contacts with the parent, guardian, custodian or social worker, what efforts have been made to contact such parties;
7. An assessment of when the child is expected to return home;
8. A list of who the extended family members are and a list of contacts, or attempts to contact such family members regarding placement of child; and
9. The social services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
  - (a) A treatment plan for the parents,
  - (b) Future placement of the child, and
  - (c) What services should be provided for the child, if services are needed.

**8-190 PLACEMENT PREFERENCES**

**8-190-010 Least Restrictive Setting**

If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in Chapter 8-100 of this Code shall be followed.

**8-190-020 Order of Preferences**

Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

1. Members of the extended family.
2. An Indian family of the same tribe as the child.
3. People who have a relationship with the child, but who are not related to the child.

4. An Indian family.
5. Any other family which can provide a suitable home for such a child.

#### **8-200 EMANCIPATION**

A child over the age of sixteen (16) may petition the Court for emancipation. The Court shall grant such status when the child proves to the Court that the child is capable of functioning as an independent and responsible member of the community.

#### **8-210 AUTHORIZATION OF MEDICAL TREATMENT**

At any time whether or not a child is under the authority of the Court, the Court may authorize medical or surgical care for a child under the following circumstances:

1. A parent, legal guardian, or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case.
2. The child's life is endangered.
  - (a) A physician informs the Court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian, or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent(s), guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.
  - (b) In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Tribal customs or traditions or religions, if the child or his parent, guardian, or legal custodian are adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical treatment, or practices in fact the Tribal customs or traditions or religion upon which is relied for such treatment of the child.
  - (c) After entering any authorization under this section, the Court shall reduce the circumstances, findings, and authorization in writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital, or both, that was involved.
  - (d) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or

treatment in reliance on the Court’s authorization, and any function performed thereunder shall be regarded as if it were performed with the child’s and the parent’s authorization.

## **8-220 TERMINATION OF PARENTAL RIGHTS**

### **8-220-010 Tribal Council Declaration and Findings**

1. The Tribal Council declares that the preservation and strengthening of family life is a part of the public policy of this Tribe.
2. The Tribal Council finds that:
  - (a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.
  - (b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this Tribe.
  - (c) The continuing needs of a child for proper physical, mental, and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.

### **8-220-020 Definitions**

As used in this Title, unless the context otherwise requires, the words and terms defined in sections 8-220-030 to 8-220-120, inclusive, have the meanings ascribed to them in those sections.

### **8-220-030 “Abandoned Mother” Defined**

A mother is “abandoned” if the father has not provided for her support during her pregnancy or has not communicated with her for a period beginning no later than 3 months after conception and extending to the birth of the child.

### **8-220-040 “Abandonment of a Child” Defined**

1. “Abandonment of a child” means any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.
2. If a parent or parents of a child leave the child in the care and custody of another without provision for his support and without communication for a period of six (6) months, or if the child is left under such circumstances that the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within three (3) months after he is found, the parent or parents are presumed to have intended to abandon the child.

**8-220-050 “Case Plan” Defined**

1. A written agreement between the parents of a child who is a ward of the Juvenile Court and the agency having custody of the child; or
2. Written conditions and obligations imposed upon the parents directly by the Juvenile Court, which have a primary objective of reuniting the family or, if the parents neglect or refuse to comply with the terms and conditions of the case plan, freeing the child for adoption.

**8-220-060 “Child” Defined**

“Child” means a person under the age of 18 years.

**8-220-070 “Injury” Defined**

1. “Injury” to a child’s health or welfare occurs when the parent, guardian, or custodian:
  - (a) Inflicts or allows to be inflicted upon the child, physical, mental, or emotional injury, including injuries sustained as a result of excessive corporal punishment;
  - (b) Commits or allows to be committed against the child sexual abuse as defined in Title 5, Section 5-50-020;
  - (c) Neglects or refuses to provide for the child proper or necessary subsistence, education, or medical or surgical care, although he is financially able to do so or has been offered financial or other reasonable means to do so; or
  - (d) Fails, by specific acts or omissions, to provide the child with adequate care, supervision or guardianship under circumstances requiring the intervention of Washoe Tribal Social Services or an agency authorized by the Juvenile Court to receive and investigate reports of child abuse and neglect, or of the Court itself.
2. A child’s health or welfare is not considered injured solely because his parent or guardian in the practice of his religious beliefs, selects and depends upon non-medical remedial treatment for the child, if such treatment is recognized and permitted under the laws of the Tribe.

**8-220-080 “Mental Injury” Defined**

“Mental Injury” means an injury to the intellectual or psychological capacity of a child as evidenced by an observable and substantial impairment in his ability to function within his normal range of performance and behavior.

**8-220-090 “Neglected Child” Defined**

“Neglected Child” includes a child:

1. Who lacks the proper parental care by reason of the fault or habits of his parent, guardian, custodian;
2. Whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well-being;
3. Whose parents, guardians, or custodians neglect or refuse to provide the special care made necessary by his physical or mental condition;
4. Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or
5. Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of himself or others, and the parent’s neglect need not be willful.

**8-220-100 “Parent and Child Relationship,” “Parent” Defined**

1. “Parent and Child Relationship” includes all rights, privileges, and obligations existing between parent and child, including rights of inheritance.
2. As used in this section, “Parent” includes an adoptive parent.

**8-220-110 “Putative Father” Defined**

“Putative father” means a person who is or is alleged or reputed to be the father of an illegitimate child.

**8-220-120 “Unfit Parent” Defined**

“Unfit parent” is any parent of a child who, by reason of his fault or habit or conduct toward the child or other persons, fails to provide such child with proper care, guidance, and support.

**8-220-130 Jurisdiction of the Tribal Court**

The Tribal Court has jurisdiction in all cases and proceedings involving termination of parental rights. The jurisdiction of the Tribal Court extends to any child who should be declared free from the custody and control of either or both of his parents.

**8-220-140 Who May File Petition; Investigation**



Any person, including the mother of an unborn child, may file with the Clerk of the Court a petition under the terms of this title, or any agency or person designated by the Court shall make such investigations at any stage of the proceedings as the Court may order or direct.

**8-220-150 Entitlement of Proceedings; Contents of Verified Petition**

1. The proceedings must be entitled, “In the Matter of the Parental Rights as to a Minor.”
2. A petition must be verified and may be upon information and belief. It must set forth plainly:
  - (a) The facts which bring the child within the purview of this Title;
  - (b) The name, age, and residence of the child;
  - (c) The names and residences of his parents;
  - (d) The name and residence of the person or persons having physical custody or control of the child;
  - (e) The name and residence of his legal guardian, if there is one; and
  - (f) The name and residence of the child’s nearest known relative residing within the Tribal jurisdiction, if no parent or guardian can be found.
3. If any of the facts required by subsection 2 are not known by the petitioner, the petition must so state.
4. If the petitioner is a mother filing with respect to her unborn child, the petition must so state and must contain the name and residence of the father or putative father, if known.

**8-220-160 Notice of Hearing: Contents and Personal service**

After a petition has been filed, unless the party or parties to be served shall voluntarily appear and consent to the hearing, the Court shall direct the Clerk to issue a notice, reciting briefly the substance of the petition and stating the date set for the hearing thereof, and requiring the person served therewith to appear before the Court at the time and place if such person desires to oppose the petition. The father or mother of such minor person, if residing within the Tribe’s jurisdiction, and if his residence and relationship are known to the petitioner, shall be personally served with the notice herein described.

**8-220-170 Service of Notice of Hearing by Publication**

1. When the father or mother of such minor child on whom service is to be made resides out of the Tribe’s jurisdiction, or has departed from the Tribe’s jurisdiction or cannot, after due diligence, be found within the Tribe’s jurisdiction, or conceals himself or herself to avoid the service of

the notice of hearing, and the fact appears, by affidavit, to the satisfaction of the Court or Judge thereof, and it appears, either by affidavit or by a verified petition on file, that the named father or mother with respect to whom the service is to be made is a necessary or proper party to the proceedings, such Court or Judge may grant an order that the service be made by the publication of the notice of hearing. When the affidavit is based on the fact that the father or mother on whom service is to be made resides out of the Tribe's jurisdiction and the present address of the father or mother is unknown, it shall be a sufficient showing of such fact if the affiant states generally in such affidavit that at a previous time such person resided out of the Tribe's jurisdiction in a certain place (naming the place and stating the latest date known to the affiant when such person so resided there); that such place is the last place in which such person resided to the knowledge of affiant; that such person no longer resides at such place; that affiant does not know the present place of residence of such person or where such person can be found; and that affiant does not know and has never been informed and has no reason to believe that such person now resides in the Tribe's jurisdiction; and, in such case, it shall be presumed that such person still resides and remains out of the Tribe's jurisdiction and such affidavit shall be deemed to be a sufficient showing of due diligence to find the father or mother.

2. The order shall direct the publication to be made in a newspaper, to be designated by the Court, for a period of four (4) weeks, and at least once a week during such time. In case of publication, where the residence of a nonresident or absent father or mother is known, the Court or Judge shall also direct a copy of the notice of hearing and petition to be deposited in the post office, directed to the person to be served at his place of residence or if the actual residence of the parent is unknown, to his last known address and additionally written notice shall be provided to the nearest known blood relative of the parent. When publication is ordered, personal service of a copy of the notice of hearing and petition, out of the Tribe's jurisdiction, shall be equivalent to completed service by publication and deposited in the post office, and the person so served shall have twenty (20) days after such service to appear and answer or otherwise plead. The service of the notice of hearing shall be deemed complete in cases of publication at the expiration of four (4) weeks from the first publication, and in cases when a deposit of a copy of the notice of hearing and petition in the post office is also required, at the expiration of four (4) weeks from such deposit.
3. Personal service outside the Tribe's jurisdiction upon a father or mother over the age of eighteen (18) years may be made in any action where the person served is a Washoe Tribal resident. When such facts appear, by affidavit, to the satisfaction of the Court or Judge thereof, and it appears, either by affidavit or by a verified petition on file, that the person in respect to whom the service is to be made is a necessary or proper party

to the proceedings, such Court or Judge may grant an order that the service be made by person outside the Tribe’s jurisdiction. Such service shall be made by delivering a copy of the notice of hearing together with a copy of the petition in person to the person served. The methods of service are cumulative, and may be utilized with, after or independently of other methods of service.

- 4. Whenever personal service cannot be made, the Court may require, before ordering service by publication or by publication and mailing, such further and additional search to determine the whereabouts of a parent or parents as may be, warranted by the facts stated in the affidavit of the petitioner to the end that actual notice to a parent or parents shall be given whenever possible.
- 5. If one or both of the parents of such minor is unknown, or if the name of either or both of his parents is uncertain, then such facts shall be set forth in the affidavit and the Court shall order the notice to be directed and addressed to either the father or the mother of such person, and to this person; or, to above-named minor as all persons claiming to be the father or mother of the person. Such notice, after the caption shall be addressed substantially as follows: “To the father and mother of the above-named person, and to all persons claiming to be the father or mother of such person.”

**8-220-180 Form of Notice**

The notice must be in substantially the following form:

WASHOE TRIBAL COURT IN AND FOR THE WASHOE TRIBE OF NEVADA AND CALIFORNIA  
\*\*\*\*\*

In the Matter of Parental Rights,  
as to \_\_\_\_\_ a minor,  
To \_\_\_\_\_, the father or \_\_\_\_\_ the mother of the above-named person; or, to the father and mother of the above-named person, and to all persons claiming to be the father or mother or related to. You are hereby notified that there has been filed in the above-entitled Court a petition praying for the termination of parental rights over the above-named minor person, and that the petition has been set for hearing before the Washoe Tribal Court of Nevada and California at the Washoe Tribal Headquarters, U.S. Highway 395 south of Gardnerville in Douglas County, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o’clock \_\_.m., at which time and place you are required to be present if you desire to oppose the petition.

DATED: \_\_\_\_\_

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Clerk of Court

[Revised 5/10/96]

**8-220-190      Petition by Mother of Unborn Child: Notice to Father, Putative Father; Time of Hearing**

When the mother of an unborn child files a petition for termination of the father's parental rights, the father or putative father, if known, shall be served with notice of the hearing in the manner provided for in sections 8-220-160 to 8-220-180, inclusive. The hearing shall not be held until the birth of the child or six (6) months after the filing of the petition, whichever is later.

**8-220-200      Hearing; Evidence and Postponement**

1. At the time stated in the notice, or at the earliest time thereafter to which the hearing may be postponed, the Court shall proceed to hear the petition.
2. The hearing shall be conducted by the Juvenile Court only, without a jury. All provisions of this Title relating to Juvenile Court procedure, including but not limited to those requiring closed proceedings and closed records, shall apply.
3. The standard of proof to be adduced in the proceedings is a preponderance of the evidence.
4. In the event of postponement, all persons served, who are not present or represented in Court at the time of the postponement, must be notified thereof in the manner provided by the order of the Court.

**8-220-210      When Putative Father Presumed to Have Intended to Abandon Child**

If the putative father of a child fails to acknowledge the child or petition to have his parental rights established in a Court of competent jurisdiction before a hearing on a petition to terminate his parental rights, he is presumed to have intended to abandon the child, unless he intervenes pursuant to section 8-220-220.

**8-220-220      Intervention in Termination Hearing by Person Claiming Parenthood**

1. Proper Parties to Intervene - A person who claims parenthood of a child shall be allowed to intervene in a termination proceeding as a matter of right.
2. Supplementary Hearing Upon Parenthood of Intervener - When a person intervenes in a termination hearing pursuant to this Section, a supplementary hearing shall be held by the Court to consider the claim of parenthood. Such a hearing shall be conducted in accord with the rules and standards established for determination of parenthood in Title 9, Domestic Relations.
3. Standard of Proof - If the supplementary hearing establishes that it is more probable than not that the person claiming parenthood is in fact a parent of the child, a decree of parenthood shall be entered by the Court.
4. Effect of Decree - A decree of parenthood establishes parental rights and the parent-child relationship between the child and the claiming party.

**8-220-230 Grounds for Terminating Parental Rights: Basic Considerations**

An order of the Court for termination of parental rights may be made on the grounds that the termination is in the child’s best interest in light of the considerations set forth in this section and sections 8-220-240 to 8-220-260, inclusive:

1. Abandonment of the child;
2. Neglect of the child;
3. Unfitness of parent;
4. Risk of serious physical, mental, or emotional injury to the child if he were returned to, or remains in, the home of his parent or parents;
5. Only token efforts by the parent or parents:
  - (a) To support or communicate with the child;
  - (b) To prevent neglect of the child;
  - (c) To avoid being an unfit parent;
  - (d) To eliminate the risk of serious physical, mental or emotional injury to the child; or
6. With respect to termination of the parental rights of one parent, the abandonment by that parent.

**8-220-240 Specific Considerations in Determining Neglect by or Unfitness of Parent**

In determining neglect by or unfitness of a parent, the Court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time.
2. Conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature.
3. Excessive use of intoxicating liquors, controlled substances, or dangerous drugs which renders the parent consistently unable to care for the child.
4. Repeated or continuous failure by the parent or parents, although physically and financially able, to provide the child with adequate food, clothing, shelter, education, or other care and control necessary for his physical, mental, and emotional health and development, but a person who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.
5. Conviction of the parent or parents for commission of a felony if the facts of the crime are of such a nature as to indicate the unfitness of the parent or parents to provide adequate care and control to the extent necessary for the child's physical, mental, or emotional health and development.
6. Unexplained injury or death of a sibling of the child.
7. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

**8-220-250 Specific Considerations Where Child is Not in Physical Custody of Parent**

If a child is not in the physical custody of the parent or parents, the Court, in determining whether parental rights should be terminated, shall consider, without limitation:

1. The services provided or offered to the parent or parents to facilitate a reunion with the child.
2. The physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the Court determines he is of sufficient capacity to express his desires.

3. The effort the parent or parents have made to adjust their circumstances, conduct or conditions to make it in the child’s best interest to return him to his home after a reasonable length of time, including but not limited to:
  - (a) The payment of a reasonable portion of substitute physical care and maintenance, if financially able;
  - (b) The maintenance of regular visitation or other contact with the child which was designed and carried out in a plan to reunite the child with the parent or parents; and
  - (c) The maintenance of regular contact and communication with the custodian of the child.
  
4. Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent or parents within a predictable period of time. For purposes of this section, the Court shall disregard incidental contributions, contacts, and communications.

**8-220-260 Specific Considerations Where Child Has Been Placed in Foster Home**

If a child is in the custody of a public or private agency and has been placed and resides in a foster home and the custodial agency institutes proceedings pursuant to this chapter regarding the child, with an ultimate goal of having the child’s foster parent or parents adopt him, the Court shall consider whether the child has become integrated into the foster family to the extent that his familiar identity is with that family, and whether the foster family is able and willing permanently to treat the child as a member of the family. The Court shall consider, without limitation:

1. The love, affection, and other emotional ties existing between the child and the parents, and the child’s ties with the foster family;
2. The capacity and disposition of the child’s parents from whom the child was removed as compared with that of the foster family to give the child love, affection, and guidance and to continue the education of the child;
3. The capacity and disposition of the parents from whom the child was removed as compared with that of the foster family to provide the child with food, clothing, and medical care and to meet other physical, mental, and emotional needs of the child;
4. The length of time the child has lived in a stable satisfactory foster home and the desirability of his continuing to live in that environment;
5. The permanence as a family unit of the foster family;

6. The moral fitness, physical, and mental health of the parents from whom the child was removed as compared with that of the foster family;
7. The experiences of the child in the home, school, and community both when with the parents from whom he was removed and when with the foster family; and
8. Any other factor considered by the Court to be relevant to a particular placement of the child.

**8-220-270 Order Terminating Parental Rights**

Whenever the procedure described in this chapter has been followed, and upon finding grounds for termination of parental rights pursuant to section 8-220-230 at a hearing upon the petition, the Court shall make a written order, signed by the Judge presiding in the Court, judicially depriving the parent or parents of the custody and control of ,and terminating the parental rights of, the parent or parents with respect to the child, and declaring the child to be free from such custody or control, and placing custody and control in some person or agency qualified by the laws of the Tribe to provide services and care to children, or to receive any children for placement. Termination of parental rights shall not affect a child's eligibility for Indian benefits.

**8-220-280 Effect of Order**

Any order made and entered by the Court under the provisions of Section 2-220-270 is conclusive and binding upon the person declared to be free from the custody and control of his parent or parents, and upon all other persons who have been served with notice by publication or otherwise, as provided by this chapter. After the making of the order, the Court has no power to set aside, change or modify it, but nothing in this chapter impairs the right of appeal.

**8-220-290 Notice to Produce; Warrant of Arrest; Contempt**

At any time after the filing of the petition, notice may issue requiring any person having the custody or control of such minor person, to appear with such person at a time and place stated in the notice. In case such notice cannot be served, or the party served fails, without reasonable cause, to obey it, a warrant of arrest shall issue on the order of the Court against the person so cited, or against the minor himself, or against both; or, if there is no party to be served with such notice, a warrant of arrest may be issued against the minor person. If any party noticed, as provided for in this section, fails without reasonable cause to appear and abide by the order of the Court, or to bring such minor person, such failure shall constitute a contempt of Court.



**8-220-300 Termination of Parental Rights of Father When Child Becomes Subject of Adoption**

1. If a mother relinquishes or proposes to relinquish for adoption a child who has:
  - (a) A presumed father under Title 9 of this Code;
  - (b) A father whose relationship to the child has been determined by a Court; or
  - (c) A father as to whom the child is a legitimate child under Title 9, under prior law of this Tribe or under the law of another jurisdiction, and the father has not consented to the adoption of the child or relinquished the child for adoption, a proceeding must be brought pursuant to this chapter and a determination made of whether a parent and child relationship exists and if so, if it should be terminated.
  
2. If a mother relinquishes or proposes to relinquish for adoption a child who does not have:
  - (a) A presumed father under Title 9;
  - (b) A father whose relationship to the child has been determined by a Court;
  - (c) A father as to whom the child is a legitimate child under Title 9, under prior law of this Tribe or under the law of another jurisdiction; or
  - (d) A father who can be identified in any other way, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child shall file a petition in the Tribal court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a Court.
  
3. In an effort to identify and protect the interests of the natural father, the Court which is conducting a proceeding pursuant to this Title shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following:
  - (a) Whether the mother was married at the time of conception of the child or at any time thereafter;
  - (b) Whether the mother was cohabiting with a man at the time of conception or birth of the child;
  - (c) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; and
  - (d) Whether any man has formally or informally acknowledged or declared his possible paternity of the child

4. If, after the inquiry, the natural father is identified to the satisfaction of the Court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with Subsection 6 of this Section. If any of them fails to appear or, if appearing, fails to claim custodial rights, such failure constitutes abandonment of the child. If the natural father or a man representing himself to be the natural father, claims custodial rights, the Court shall proceed to determine custodial rights.
5. If, after the inquiry, the Court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the Court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of any appeal, upon the expiration of six (6) months after an order terminating parental rights is issued under this Subsection, or this Chapter, the order cannot be questioned by any person in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.
6. Notice of the proceeding must be given to every person identified as a natural father or a possible natural father in the manner provided by law for the service of process in a civil action, or in any manner the Court directs. Proof of giving the notice must be filed with the Court before the petition is heard.

## **8-230 MODIFICATION, REVOCATION OR EXTENSION OF COURT ORDERS**

### **8-230-010 Motion to Modify, Revoke or Extend Court Order**

The Court may hold a hearing to modify, revoke, or extend a Court order under this Code at any time upon the motion of:

1. The child;
2. The child's parent, guardian or custodian;
3. The child's counselor guardian ad litem;
4. The Attorney representing Social Services; or
5. The Court on its own motion.

*[Revised 5/10/96]*

### **8-230-020 Hearing Procedure**

Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

**8-240 CHILD/FAMILY PROTECTION RECORDS**

**8-240-010 Juvenile Court Records**

A record of all hearings under this Code shall be made and preserved. All Juvenile Court records shall be confidential and shall not be open to inspection to any but the following:

1. The child;
2. The child's parent, guardian or custodian;
3. The child's counsel or guardian ad litem; or
4. The Juvenile Court personnel directly involved in the handling of the case.

**8-240-020 Law Enforcement and Social Services Records.**

Law Enforcement, Tribal Court, juvenile probation, Attorney representing Social Services, and social services records and files concerning a child shall be kept separate from the records and files of adults. All of these files and records shall be confidential and shall not be open to inspection to any person but the following:

1. The child; or
2. The child's parent, guardian, or custodian; or
3. The child's counsel or guardian ad litem; or
4. Employees of the Washoe Tribe, authorized agents or contract providers of the Tribe having a legitimate, job related reason or purpose to have access to these records; or
5. Outside law enforcement, social services, juvenile probation, Attorney representing Social Services or other prosecutorial personnel working directly on matters involving the juvenile; or
6. A victim or parent of a victim in a juvenile delinquency matter to the extent permitted by Court order after hearing and a showing of good cause.

Records of any Order of Protection, Restitution Order, or other specified terms within a Court Order issued in a Juvenile Court proceeding that would affect public safety, are exempt from the provisions of this Section and may be released to specified agencies or persons after hearing and a showing of good cause as ordered by the Juvenile Court.

*[Amended 9/11/2009, by Resolution No. 292-WTC-09; Amended 11/15/2011, by Resolution 106-WTC-2011]*

**8-250 JUVENILE COURT APPEALS**

**8-250-010 Who Can Appeal**

Any party to a Juvenile Court hearing may appeal a final Juvenile Court order.

**8-250-020 Time Limit for Appeal**

Any party seeking to appeal a final Juvenile Court order must file a written notice of appeal with the Court within thirty (30) days of the final order.

**8-250-030 Record**

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, the child’s counsel and others upon Court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

**8-250-040 Stay of Appeal**

A Court order may be stayed by such appeal.

**8-250-050 Conduct of Proceedings.**

All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure as long as those provisions are not in conflict with the provisions of this Children’s Code.

**8-260 ADOPTION PROCEDURES**

**8-260-010 Person Who May Adopt**

Any person within the jurisdiction of the Washoe Tribe may petition for a decree of adoption of another person under the age of twenty-one (21) years. The Petitioner must be at least five (5) years older than the person to be adopted. Adoption of siblings may be accomplished through the filing of one petition.

The Court may place a child in an adoptive home located outside the exterior boundaries of Washoe Tribal lands.

**8-260-020 Adoption Petition**

The person wishing to adopt a minor shall start an adoption proceeding by filing a petition in writing with the Tribal Court. A married petitioner, or one not lawfully separated from their spouse under Tribal law, state law, or Tribal custom, must be joined by their spouse in the petition unless the spouse is a natural parent or extended family member of the child. Social Services may assist a person seeking to adopt a minor child if the child has been found to be a minor in need of care.

**8-260-030 Contents of Petition**

A petition for adoption of a minor child shall state at least the following information:

- 1) Name, age, and address of the minor child and Petitioner(s);
- 2) Tribal affiliation, if any, of the minor child and Petitioner(s);
- 3) Date and place of birth of the minor child;
- 4) The name and address of the parent, guardian or Indian custodian who last had physical custody of the child;
- 5) Whether the natural parents have voluntarily consented to the adoption;
- 6) Whether the parental rights of the natural parents have been terminated;
- 7) Whether the petitioner intends to change the child's name;
- 8) The period of time the child has lived in the adoptive home prior to filing the petition.

**8-260-040 Notice of Petition**

The Court Clerk shall serve a copy of the Petition on the natural parents of the child if their parental rights have not yet been terminated. The Court Clerk shall also serve a copy of the Petition on the guardian or Indian custodian who last had custody of the child prior to the filing of the Petition. The parent, guardian, or Indian custodian must have at least fourteen (14) days notice from the time the notice is sent, prior to the Court holding a hearing on the matter. Service shall be by personal service if the person to be served is located on Washoe Tribal lands. Otherwise, service may be accomplished by first-class mail.

**8-260-050 Length of Time in Adoptive Home**

A child must reside in the adoptive home for a period of three (3) months prior to the Court issuing a final decree of adoption.

**8-260-060 Social Services Investigation**

Social Services shall investigate adoptive homes located within the boundaries of Washoe Tribal lands and provide an investigative report to the Court. Social Services may make other necessary arrangements to have homes located outside the boundaries of Washoe Tribal lands investigated. The investigation may be waived by the Court if the person wishing to adopt a child is married under Tribal law, state law, or Tribal custom to a natural parent of the child.

**8-260-070 Consent to Adoption; Voluntary Relinquishment of Parental Rights**

Social Services may accept voluntary relinquishment of parental rights or consent to adoptions by natural parents. The consent shall be in writing, and contain the statements that adoption is irrevocable, the parent may not have any right to visit with the child or to know where the child resides, that extended family members may not have any right to visit with the child or know where the child resides, and that there will no longer be a parent-child relationship. The consent must be signed by the parent. The consent or voluntary relinquishment must either be presented to the Court with the parent or be notarized for the Court to finalize a termination of parental rights.

**8-260-080 Placement Preferences**

If the child is an Indian child, the Court shall adhere to the following placement preferences for adoptive homes:

- 1) Extended family members;
- 2) Other Tribal members;
- 3) Other Indian families;
- 4) Other homes available within the vicinity of the child's Tribe.

If the child is not an Indian child, the court shall first look to extended family members for placement in an adoptive home. If extended family members are not available, the Court may approve an adoptive home that is in the best interests of the child.

**8-260-090 Courtesy Notice to Other Tribes**

If the child is a member or eligible for membership in a tribe other than the Washoe Tribe of Nevada & California, the Court may cause a courtesy notice to be sent to the other Tribe(s) that this adoption proceeding is pending.

**8-260-100 Medical Documentation**

Adoptive parents shall receive all medical documentation concerning the child from the natural parents or Social Services after a decree of adoption is entered.

**8-260-110 Registry for Adopted Children**

The Court shall maintain records of Indian children adopted before the Washoe Tribal Court. Once that child becomes eighteen (18) years of age, the child may petition the Court to release any information to protect any Tribal affiliation the child may have. If confidentially will not permit the Court to release parents' identifying information, the Court may release that information to enrollment officers of Tribes, if not to the child.

**8-260-120 Visitation by Extended Family Members**

Extended family members may have visitation rights of an adopted child if approved by the natural parents consenting to the adoption, the adoptive parents and the child. If the natural parents' rights were terminated, only the adoptive parents and the child must consent. Such visitation must be referenced in the adoption decree.

**8-260-130 Petition Hearing**

The Court may hold a hearing on the Petition after it determines the parents, Indian custodian or guardian had at least fourteen (14) days notice of the petition. If the Court determines that the adoption is in the best interests of the child and the child has lived in the adoptive home for at least three (3) months, the Court shall issue a written adoption decree. The best interests of the child are to be determined in accordance with Tribal practice and custom. If the child is over the age of ten (10), his or her wishes regarding the adoption shall be given substantial weight in the Court's consideration.

*[Amended 6/28/06, by Resolution No. 96-WTC-42]*