

DELAWARE TRIBE OF INDIANS
CHILD WELFARE CODE

Title

The Delaware Tribe of Indians Indian Child Welfare Act.

Purpose

The Child Welfare 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 within the jurisdiction of the Delaware Tribe of Indians.
- (2) To preserve unity of the family, preferably by separating the child from his parents only when necessary.
- (3) To take such actions that will best serve the spiritual, emotional, mental and physical welfare of the child and best interests of the Tribe to prevent the abuse, neglect and 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 and other parties who come before the Tribal Court under the provisions of these codes.
- (6) To provide procedures for intervention in those state court proceedings regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to the Delaware Tribal Court whenever deemed necessary and/or appropriate.
- (7) To recognize and acknowledge the Tribal customs and traditions of the Delaware Tribe of Indians regarding childrearing.
- (8) To preserve and strengthen the child's cultural and ethnic identity whenever possible.

CHAPTER 1. JURISDICTION

Sec 101. Territorial Jurisdiction

The Tribal Court shall have exclusive and original jurisdiction of all child welfare proceedings, elsewhere defined in this Chapter, when the subject child is a resident of or domiciled upon the Tribal service area of the Delaware Tribe of Indians.

Sec.102. Jurisdiction - Personal

The Tribal Court shall have and exercise the jurisdiction asserted in the foregoing sections of this subchapter over persons in the following manner:

- (1) Within the exclusive territorial jurisdiction of the Tribal Court, the Tribal Court shall have jurisdiction over proceedings involving any Indian child.
- (2) Within the concurrent jurisdiction of the Tribal Court, the Tribal Court shall have jurisdiction over proceedings involving a child who is a member of the Delaware Tribe of Indians or who is eligible for membership and is the biological child of a Tribal member.
- (3) The Tribal Court shall also have limited personal jurisdiction of persons involved in proceedings entertained by the Tribal Court.

Sec.103. Concurrent Jurisdiction in Case of Conflict

In all child welfare proceedings arising within the concurrent jurisdiction of the Tribal Court, the Tribal Court shall determine, by allegations in the petition and by testimony, whether a prior action has been commenced in a Court of the State of Oklahoma involving the same child. In the event such a proceeding has been commenced in a state court, the Tribal Court shall decline a petition to assert original jurisdiction, but may direct the legal representative of the Tribe to seek transfer of the case to the Tribal Court pursuant to the transfer provisions of the Indian Child Welfare Act, 25 USC §1911. If no state court proceeding has been commenced, the Tribal Court shall proceed as in cases within its exclusive and original jurisdiction, provided personal jurisdiction exists as set forth in §30.202.

Sec.104. Orders of Other Courts

Orders of other courts involving children over whom the Tribal Court could take jurisdiction shall be recognized by the Tribal Court after the Tribal Court has determined:

- (1) That the other court exercised proper subject matter and personal jurisdiction over the parties, and
- (2) Due process was accorded to all interested parties participating in the other court's proceeding.

Sec.105. 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.

Sec.106. Transferred Jurisdiction

Child welfare proceedings transferred to the Tribal Court pursuant to the Indian Child Welfare Act, or the provisions of any other state or federal law shall be deemed to have been commenced within the original and exclusive jurisdiction of the Tribal Court, and further proceedings in the cause shall be identical with proceedings originally filed in the Tribal Court.

Sec.107. Transfer to State Court or Other Tribal Court.

In any proceedings before the Tribal Court, the Tribal Court may transfer the proceedings to an appropriate state court or another 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.

Sec.107. Transfer from Other Tribal Courts.

The Tribal 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.

Sec.108. Jurisdiction - Subject Matter.

(1) The Tribal Court shall have and exercise the jurisdiction asserted in the foregoing sections of this Subchapter and over all proceedings under this Chapter in which it is alleged that an Indian child is alleged to be a child-in-need-of-care.

(2) The Tribal Court shall also have jurisdiction of all proceedings, otherwise within the jurisdiction of the Tribal Court, in which the following relief is sought:

(a) Termination of parental rights.

(b) Adoption of an Indian child.

(c) A determination of custody, other than in divorce, or appointment of a custodian or guardian for a child.

(3) Jurisdiction obtained by the Tribal Court over a child is retained until terminated in any of the following situations:

(a) the child becomes an adult; or

(b) the case is transferred by the Tribal Court to another tribal court; or

(c) when the Tribal Court enters an order terminating jurisdiction.

(4) Tribal Court jurisdiction may be retained until a child reaches the age of 19 years, or completes high school, with the consent of the child.

Sec.109. Jurisdiction - Severability - Saving Clause.

Each of the numbered sections and subsections of this Chapter shall be deemed to be discrete and severable. If any provision of this Chapter granting or asserting jurisdiction, whether territorial, personal, subject matter or otherwise, shall be held to violate federal law or the Constitution and Bylaws of the Tribe, or the United States Constitution, by the final decision of any federal tribal court, or if any such provisions shall be held invalid by the Secretary of the Interior, the validity of each and every other provision shall be unaffected thereby and all such other provisions shall remain in full force and effect.

CHAPTER 2. DEFINITIONS

(a) “Abandonment” means:

- (1.) the continued inability, despite a diligent search, to identify the whereabouts of the parent of a child for a period of at least four (4) months as of the date of the initial hearing; or
- (2.) the complete lack of contact by the parent with his or her child for any period of (6) consecutive months or marginal contact for twenty-four (24) of the past forty-eight (48) months, as the date that the petition is filed; and
- (3.) the failure by a parent to provide adequate and continuous financial support for his or her child for any period of six (6) consecutive months, as of the date that the petition is filed.

Placement of the child with a family member of the parent’s extended family shall not constitute abandonment.

(b) “Abandoned child” means a child who is the victim of abandonment as defined in paragraph (a) of the Section.

(c) “ Abused child” means a child who is the victim of child abuse as defined in paragraph (f) of this Section.

(d) “Adult” means a person who is at least eighteen (18) years of age or older. A person under the age of eighteen (18) years who is a parent may be treated as adult.

(e) “Child” means any Indian and/or natural or adopted child, step-child, foster child, legal ward, or orphan of an Indian eligible for services pursuant to 25 U.S.C § 1680c, who resides in an Indian household on any lands now held, or hereafter acquired by or for the Delaware Tribe of Indians and, is under eighteen (18) years of age.

(f) “Child abuse” means any case in which a child has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or emotional harm upon the child, including excessive corporal punishment or act of sexual abuse;. For purposes of this paragraph:

- (1.) “Physical harm” means but is not limited to any case in which a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdual hematoma or soft tissue swelling and such condition is not justifiably explained or may not be the product of an accidental occurrence.
- (2.) “Sexual abuse” means any cause in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

(a) “Child custody proceeding” means:

- (1.) “foster care placement” which shall mean any action removing a child from his or her parent or custodian for temporary placement in a foster home or institution or the home a guardian where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (2.) “termination of parental rights” which shall mean any action resulting in the termination of the parent child relationship;
- (3.) “pre-adoptive placement” which shall mean the temporary placement of a child in a foster home or institution after the termination of parental right, but prior to or in lieu of adoption placement; and
- (4.) “adoptive placement” which shall mean the permanent placement of a child for adoption, including any action resulting in a final decree of adoption.

For the purposes of Section 103(g) under this Title, child custody proceeding shall not include a placement based upon an award in a divorce proceeding of custody to one of the parents or intra-family custody dispute.

(b) “Child neglect” means:

- (1.) The failure by the parent or custodian of a child, including a person responsible for child’s welfare, to provide the minimal care which a responsibly prudent parent would provide in the circumstances for the subsistence, education and welfare of the child. Neglect includes prenatal neglect; or

- (2.) The neglect or refusal by the parent or custodian of a child , including a person responsible for the child's welfare, to provide a reasonable level of special care for a child who has special physical or mental conditions; or
- (3.) The failure by the parent or custodian of a child, including a person responsible for the child's welfare, to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

A child shall not be deemed to be neglected if the reason for the failure to provide adequate care for the child is the indigence of the parent or guardian. Minimal care shall mean the provision of adequate food, clothing, shelter, medical care and day to day supervision. In determining whether a parent or guardian, including a person responsible for the child's welfare, has provided minimal care, the Delaware Tribe of Indian's shall apply the standards prevailing in the community.

- (c) "Child Protective Services (CPS)" means the designated staff within the Delaware Tribe Social Services Department with the primary responsibility for receiving reports of the children in need of the Delaware Tribe of Indians care and protection, making referrals and coordinating the screening and investigation of the suspected child neglect and abuse, ensuring that protective services and related assistance are provided to the children and families.
- (d) "Custodian/Guardian" means any person who has legal custody of a child or with whom temporary care, custody and control has been placed, by the order of the court of competent jurisdiction or who is responsible for the health, safety and welfare of the child. Such a person has duty and authority to make major decisions affecting such child's welfare, including but not limited to major medical, psychiatric or surgical treatment.
- (e) "Delinquent child" means a child who commits an act which if committed by an adult would be in violation of any provision of this Title of the Delaware Tribe's Comprehensive Codes of Justice. (Criminal Offences). Traffic offences shall be deemed delinquent acts only if committed by an individual under fifteen (15) years of age.
 - (1) This section shall also be applicable in handling of juvenile matters occurring outside of the Delaware Tribe's service area when:
 - (i) The act is also deemed delinquent under this subsection, and;
 - (ii) The case has been referred to Law Enforcement Services and/or Tribal Court for processing.
- (f) "Detention" means the temporary, secure custody of a child in facilities designated by the Delaware Tribal Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the sight or sound contact with incarcerated adult offenders.
- (g) "Diversion" means a course of remedial action taken in matters arising under this Title designed to avoid formal court action and to serve the best interest of the child involved.

- (h) “Domicile” means a person’s permanent home, legal or main residence. The domicile of a child is generally that of the custodial parent or guardian. A child shall be considered a domicile of the Delaware Tribe’s service area where the child’s custodial parent or guardian considers the service area to be his or her permanent home.
- (i) “Foster Care” means the temporary care of a child in a private home or institution approved by the Delaware Tribe’s Indian Child Welfare Manager as appropriate to provide such care.
- (j) “Minor” means a person under the age of eighteen (18) years.
- (k) “Neglected Child” means a child who is the victim of child neglect as defined in paragraph (h) of this Section.
- (l) “Parent” means the biological parent of the child, or any person who has lawfully adopted a child. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.
- (m) “Prenatal neglect” means that unlawful use by a mother during pregnancy of a controlled dangerous substance that results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant’s body.
- (n) “Probable cause” means such facts and circumstances as would convince a reasonable person.
- (o) “Status offender” means a child:
 - (i) who is subject to compulsory school attendance and is habitually truant from school without justification; or
 - (ii) who has committed an offence only by children; or
 - (iii) who is habitually disobedient to the reasonable and lawful commands of the parent or custodian; or
 - (iv) who is habitually absents himself or herself from the home or care of his or her parent(s) or guardian without the consent of his or her parent(s) or guardian; and

CHAPTER 3. TAKING A CHILD INTO CUSTODY BEFORE A COURT HEARING

Sec. 301 Taking a child into Protective Custody

(a) Any Law Enforcement officer who has probable cause to believe a child is a delinquent child and is likely to commit other delinquent acts unless detained may take the child into custody without a court order.

(b) Any licensed physician, Law Enforcement officer, Human Services Department or designated Tribal Indian Child Welfare representative, who has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home may place the child in foster care. Such child may be placed in a private home, protective care or temporary foster home or institution, but not in a facility where the child has sight or sound contact with the alleged delinquents or incarcerated adult offenders.

(c) In no event shall a child be kept in custody without a court order for more than seventy-two (72) hours.

Sec. 302 Application to Court

Any Law Enforcement officer, licensed physician, Human Services Department, or the Delaware Tribe of Indians Child Welfare representative, who takes a child into custody without a court hearing shall:

- (a) immediately notify the Court and make a good faith effort to notify parents of the child; and
- (b) within twenty-four (24) hours submit to the Court a petition under Section 401 of this Title. If the child is taken into custody on a weekend or holiday, the individual taking the child into custody shall have twenty-four (24) hours from the start of the first subsequent work day to file a petition in court.

Sec. 303 Emergency Authorization of Medical Treatment

(a) This Section shall apply to the immediate removal of a child under circumstances as outlined in paragraph 301 (b) of this Chapter.

(b) When a licensed physician indicated that in his or her professional opinion, the life of the child would be greatly endangered or that there is a strong likelihood that the child would suffer permanent and/or serious harm without specified treatment, the protective or foster care parent or the Delaware Tribal Court on an ex parte basis may authorize emergency medical treatment. Every effort shall be made to contact the child's parents and the Delaware Tribes' Indian Child welfare Department before authorization is given. The child's parents or an extended member of the child's family shall be notified of the emergency treatment immediately thereafter.

CHAPTER 4. COURT PROCEDURES

Sec. 401. Petitions

Any person may submit to the Delaware Tribal Court a petition to have a child subject to the jurisdiction of the Court declared abused, neglected, abandoned, delinquent, or as status offender. Such petition shall include:

- (a) the name, address, and telephone number of the applicant, the child and if known, the child's parent(s) or custodian;
- (b) the reason(s) why the applicant believes the child is abused, neglected, abandoned, delinquent, or a status offender; and

(c) supporting credible evidence, including affidavits or written statements from social workers, other child care providers, or professionals, or members of the community. The petition shall indicate whether the child is in protective custody.

Sec 402. Release of protective Custody; Home Study

(a) Where the child is in protective custody, the Delaware Tribal Court shall immediately either direct a Child Protective Services worker or designate the Delaware Tribes' Indian Child Welfare representative or request that the appropriate Bureau of Indian Affairs personnel review the petition, perform a preliminary investigation, and make a recommendation to the Court. The purpose of the investigation shall be to determine whether the preventative detention is still justified under the standards set forth in section 401 of this Title. Upon receiving a recommendation, the Delaware Tribal Court shall order the child released to the custody of the parent or custodian or order continued protective custody pending the initial hearing. The court may also order continued protective custody pending the completion of the preliminary investigation.

(b) Home Study. Upon receiving a petition filed under Section 401 of this Title, the Delaware tribal Court shall direct a Child Protective Services worker or designated Tribal Indian Child Welfare representative or request that the appropriate Bureau of Indian Affairs conduct a home study with respect to the petition, to be submitted to the Court. The Home study shall, if possible, include interviews of the child, parent(s) or custodian and an investigation of the conditions in the home.

(c) In the case of a child who is subject of a petition based on abuse, abandonment, or neglect, the Delaware Tribal Court shall order that a licensed physician examine the child.

(d) Informal resolution.

- (1) Abandonment, neglected or abused children and status offenders. The personnel authorized may recommend counseling, treatment or such other disposition of an abandoned, neglected or abused child or status offender which is in the best interest of the child. Such recommendations shall be implemented, without Court action, only the consent of the parent(s) or custodian with the knowledge that consent is voluntary. Upon receiving consent, the personnel authorized shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separates the child from the parent or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six (6) months.
- (2) Delinquent children. In cases where the child has no previous record of delinquency and the child is alleged to have committed a misdemeanor, the personnel authorized may recommend a diversion program, including counseling or treatment, in the best interest of the child. The court may in its discretion approve such recommendation without a hearing. A child who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed over six (6) months.

Sec 403. Notice of Initial Hearing

(1) Persons Entitled to Notice: The State Court shall insure that the following persons are notified of each hearing.

- (a) The parent or guardian.
- (b) The attorney for the parent or guardian.
- (c) The child or the advocate for the child.
- (d) The petitioner and/or prosecuting attorney.
- (e) The responsible child placing agency.
- (f) The child's Tribe/ Tribal Indian Child Welfare

(2) Notice: Except for preliminary hearings, notice of hearing must be given in writing which may be on the record or mailed to this last known address at least seven (7) days prior to the hearing. At least 14 days prior to a hearing on a petition to terminate parental rights.

(3) Failure to Appear: When a party fails to appear in response to a notice of hearing, the Tribal Court may order the party's appearance by summons or subpoena.

Sec 404. Transfer of Juvenile Proceedings

Upon motion of petitioner or on its own motion, the Delaware Tribal Court may waive juvenile proceedings so that the child may be tried as an adult in the Delaware Tribal Court where:

- (a) the child is sixteen (16) years of age or more and previously been found to be a delinquent; or
- (b) the child is at least seventeen (17) years of age.

In determining whether the child should be tried as an adult, the Delaware Tribal Court shall consider the seriousness of the crime alleged to have been committed; the extent of the child's prior delinquency record; the possibility of the rehabilitation of the child; and the effects of prior attempts to rehabilitate the child. The Tribal Court shall provide the child and the child's authorized representative with prior notice of hearing on this issue, as provided in Section 306 of this title, and shall hold a hearing as provided in that section.

Sec. 405. Fact-Finding Hearing

(a) When a fact-finding hearing shall be held. If the child remains in the custody of his or her parent or custodian/guardian, the fact-finding hearing shall be held within ninety (90) days of the Initial Hearing, unless the child or the child's authorized representative requests a postponement. If the child has been placed in the custody of the Delaware Tribal Court, the fact-finding hearing shall be held within forty-five (45) days of the Initial Hearing, unless the child or the child's authorized representative requests a postponement.

(b) Notice. The Delaware Tribal Court shall serve prior written notice of the date, time, and place of the hearing upon the child, any person authorized to represent the child, and the parent or custodian. Notice shall be served in person or by certified mail, return receipt requested. The notice shall also specify that the child (and any other party served with notice) has a right to retain counsel at his or her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The child may be physically present at the fact-finding hearing in the Delaware Tribal Court's discretion, except that in delinquency cases, the child must be present. Hearings shall be closed to the general public. The Tribal Court may require the testimony of a physician or child care expert based on an examination of the child. The child or his or her authorized representative, and the parent or custodian, may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at their own expense. The Court may call such witnesses as it deems necessary.

(d) Order. If the Delaware Tribal Court shall find, after the fact-finding hearing, that (1) there is a clear and convincing evidence that the child is abused, neglected, abandoned or a status offender, or (2) that there is evidence beyond a reasonable doubt that the child is delinquent, the Court shall determine the proper disposition of the child under Section 407 of this Title. Otherwise, the petition shall be dismissed.

Sec. 406. Dispositional Hearings

(a) When a dispositional hearing shall be held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing. For good cause and in the interests of justice, adequate time between the hearings, not to exceed thirty (30) working days, shall be allowed to permit the Delaware Tribal Court to consider the dispositional alternatives that are in the best interests of the child.

(b) Rights of the parties to the dispositional hearings. All rights provided at the fact-finding hearing shall be provided at the dispositional hearing. The child shall be physically present at the dispositional hearing if over ten (10) years of age unless the Delaware Tribal Court determines that the child would likely suffer severe emotional harm as a result of such presence. Otherwise the presence of the child shall be in the discretion of the Court. The Delaware Tribal Court in its discretion may confer with the child with only the Guardian Ad Litem present in order to determine the child's desires concerning disposition.

(c) Evidence. At the dispositional hearing the Delaware Tribal Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Delaware Tribal Court shall consider all relevant reports submitted at the hearing in making a disposition including any reports prepared by the child and his or her representative.

(d) Disposition.

(1) Best interests of child. The Delaware Tribal Court shall make such disposition as is in the best interests of the child.

(2) Abused, neglected, or abandoned children. If the Delaware Tribal Court has found a child to have been abused, neglected, or abandoned, the Court shall order one of the following dispositions, listed in order of preference:

(i) to the custody of the parent or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the child in the home;

(ii) to the custody of a person related by blood or marriage to the child on or out of the Delaware Tribe's service area;

(iii) to the custody of an Indian foster home or institution;

(iv) to the custody of an approved institution in the Delaware service area provided that such institution cannot be used for delinquents as well; or

(v) to the custody of a non-Indian foster care home or institution out of the Delaware service area, provided that such home or institution shall not be used for delinquent children as well.

In addition, the Court may prescribe such counseling or treatment for the custodial parents as it deems necessary.

(3) Determining and changing placements. In determining which of several relatives shall have placement of the child under subsection (2), the Delaware Tribal Court shall consider their ability to provide adequate food, shelter, medical care, love and emotional support, and day-to-day supervision. The Court shall also take into account the desires of the child.

(4) Delinquents, repeat delinquent offenders or status offenders. If a child is found to be delinquent, repeat delinquent offender or a status offender, the Delaware Tribal Court shall order one of the following dispositions, listed in suggested order of preference:

(i) probation with such conditions as the Court deems necessary;

(ii) to the custody of an approved facility for delinquents, repeat delinquent offenders or status offenders in the Delaware service area; or

(iii) to an approved facility for delinquents, repeat delinquent offenders or status offenders off the Delaware Reservation, provided under subsections (ii) and (iii) that status offenders shall not have sight or sound contact with delinquents.

(iv) counseling to eliminate the removal of the juvenile/status offender from the home.

(5) Term of commitment to facility. No order for commitment of any delinquent, repeat delinquent offender or status offender in an approved facility shall be for a term longer than six (6) months or extend beyond the child's eighteenth (18) birthday. If, after at least five (5) months of a six (6) month term have elapsed, the child care professional in charge of the delinquent, repeat delinquent offender or status offender believes that the child needs further treatment and rehabilitation, he or she shall inform the Delaware Tribal Court and a hearing shall be held. If the Court finds that further treatment or rehabilitation is in the child's best interests, the Court shall order a further commitment of up to six (6) months

(6) Out of Service Area placement. Out of service area placement shall be used only as a last resort, where no reasonable in service area placement is available.

(7) Repeat Delinquent Offender. If the child is found to be a repeat delinquent offender or found to be in Contempt of Court for failure to comply with the terms and conditions of probation and placed in a detention facility, he or she will be responsible for the cost of current detention and previous detention costs expended in all active cases according to the number of offenses as listed:

(i) First Offense. No costs; or

(ii) Second Offense. Fifty percent (50%) of costs incurred for detention; or

(iii) Third Offense. One hundred percent (100%) of costs incurred for detention.

Sec. 407. Confidentiality

All hearings held pursuant to this Title shall be:

(a) conducted in closed and private chambers;

(b) the names of all children involved shall not be published; and

(c) a record of all proceedings shall be made and preserved with the Court.

All Court records concerning children under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order to the following persons or agencies:

(1) the child;

(2) the child's Guardian Ad Litem or other representative;

(3) the child's parent(s) or custodian and their representatives;

(4) the Tribal Indian Child Welfare representative; and

(5) any other person having a legitimate interest in the case and in the performance of their duties, as determined by the Court.

Sec. 408. Expungement of Records

Records of children involved in proceedings under this Title shall be physically sealed when the child reaches the age of eighteen (18) years. Upon reaching the age of eighteen (18) years, any child involved in proceedings under this Title may petition the Delaware Tribal Court to have such Court records destroyed. In any case, the Delaware Tribal Court may order such records, except those dealing with termination of parent-child relationship to be destroyed ten (10) years after the child reaches the age of eighteen (18) years.

Sec. 409. Periodic Review for delinquents and status offenders in approved facilities

Every ninety (90) days, the Delaware Tribal Court shall hold a hearing to determine if the delinquent or status offender should remain in the approved facility to which he or she has been committed. If the Delaware Tribal Court finds that the child is not likely to commit additional delinquent acts or status offenses if released, the Court may release the child, subject to such terms or probation as the Court deems necessary.

Sec. 410. Petition for return of abused, neglected or abandoned child removed from parent or custodian

(1) The child, the child's Guardian Ad Litem, parent or custodian may petition the Delaware Tribal Court for return of an abused, neglected, or abandoned child to the parent or custodian. Such a petition shall not

be filed until three (3) months after the order of disposition and only at six (6) month intervals thereafter. The petition shall be in writing, but need not be in any particular form. Grounds for return include a showing that the child would not be in danger of being abused, neglected or abandoned upon return to the parent or custodian.

(2) Upon receipt of a petition for return of a child, the Delaware Tribal Court shall order the Indian child Welfare Manager to undertake a home study. If after consideration of the petition and home study, the Delaware Tribal Court finds substantial evidence that the child may safely be returned to the home of the parent or guardian, the Court shall order and hold a hearing on the matter.

Sec. 411. Periodic Review for abused, neglected, or abandoned child removed from parent or custodian

Whether or not a petition for return is filed, the Delaware Tribal Court shall each ninety (90) days hold a hearing, to determine if the basis for the original removal still exists. If the Delaware Tribal Court finds that there is no longer clear and convincing evidence that grounds for removal exist, the Court shall order the return of the child to the parent or custodian.

CHAPTER 5. TERMINATION OF PARENTAL RIGHTS

Sec.501. Grounds for Involuntary Termination of Parental Rights.

The Tribal Court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the Tribal Court finds, by clear and convincing evidence, one or more of the following:

(1) Abandonment: The child has been abandoned under either of the following circumstances:

(a) A parent of a child is unidentifiable and has deserted the child for twenty-eight (28) or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent; or

(b) The child has a court appointed guardian and the parent has failed or neglected to provide any substantial support for the child for two (2) years, if a support order has been entered, and the parent has regularly and substantially failed or neglected to visit, contact, or communicate with the child for two (2) years.

(2) Physical Injury or Sexual Abuse: The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

(a) A parent's act caused the physical injury or physical or sexual abuse and the Tribal Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or

(b) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse, failed to do so and the Tribal Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home;

(3) Unrectified Conditions: The parent was a respondent in a proceeding brought under this chapter, twelve (12) or more months have elapsed since the issuance of an initial disposition order or removal of the child, and the Tribal Court, by clear and convincing evidence, finds either of the following:

(a) The conditions that led the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or

(b) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(4) Failure to Provide Proper Care: The parent, without regards to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

(5) Conviction of Violent or Sexual Crime: A parent of the child is convicted of a violent or criminal sexual crime against the other parent or a sibling of the child.

(6) Conviction of a Felony: A parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child.

(7) Imprisonment for More than two (2) Years. The Parent will be imprisoned for over two (2) years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

(8) Parental Rights to Sibling Terminated. Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(9) When a child has been in foster care for fifteen (15) of the most recent twenty-two (22) months.

Sec. 502. Petition

Termination of parental rights shall commence upon filing of a petition by the Indian Child Welfare staff on behalf of the tribe. If the termination is voluntary, the parent(s) or guardian may file a consent to termination in lieu of a petition. The petition shall state:

(1) The name and address of the petitioner, the relationship of the petitioner to the child;

(2) The name, sex, date and place of birth, degree of Indian blood, if known, and residence of the minor;

(3) The names and addresses of the minor's parent(s), guardian or custodian;

(4) If the child is in detention or shelter care, the address of the place of care, and the date the child was taken into custody; and

(5) A concise statement of the grounds upon which termination is sought, including the relevant factual information supporting the grounds for termination.

Sec. 503. Scheduling of the Hearing

Upon receipt of the petition, the Court shall set a date for the termination hearing. The Court shall schedule the hearing no sooner than thirty (30) days nor no later than sixty (60) days after the petition is filed. A hearing continuance may be granted:

(1) Upon motion of the minor's parent(s), guardian, or custodian; the minor; guardian ad litem; or the child protective services worker.

(2) Upon motion of the presenting officer that material evidence or witnesses are unavailable. The Court must find that the presenting officer exercised due diligence to obtain the material evidence or appearance of witnesses, and reasonable grounds exist to believe that the material evidence will soon become available or that the witnesses will soon appear.

Sec. 504. Pre-Termination Report.

(1) Within two (2) days of receiving the petition, the Court shall order the preparation of a pre-termination report by its delegate.

(2) If parental rights are terminated, the Court shall:

(a) Place the child in a licensed foster care or shelter care facility; and

(b) Proceed to the adoption provisions of this Ordinance.

(3) If parental rights are not terminated, the Court shall make a disposition pursuant to Section 405 of this Title.

Sec. 505. Termination Hearing

The sole purpose of the termination hearing is to determine whether parental rights should be terminated. A written record of the hearing shall be made. The hearing shall be closed to the public to protect the privacy of the parties involved. The Court shall take testimony and receive evidence concerning:

(a) The circumstances giving rise to the petition; and

(b) The need for termination of parental rights.

Sec. 506. Disposition and Order of Termination.

(1) For involuntary termination of parental rights to be made, the evidence presented must prove beyond a reasonable doubt that:

(a) Active efforts have been made to provide remedial and rehabilitative services to the parent(s) or guardian and that efforts have proven futile; and

(b) The child is likely to suffer serious physical, mental, or emotional harm if parental rights are not terminated. Such a finding may be warranted if, but is not limited to, the following:

(i) The parent has abandoned the child;

(ii) The child has suffered physical, mental, or emotional injuries inflicted by the parent(s) or guardian which causes or created a substantial risk of death, disfigurement, or impairment of bodily, mental, or emotional functions; or

(iii) The parent(s), subjected the child to sexual abuse.

(2) A voluntary termination of parental rights shall not be valid unless written consent of the parent(s) or guardian;

(a) The consequences of voluntary termination of parental rights were explained to the parent(s) or guardian;

(b) The consenting parent(s) or guardian fully understood that all parental rights were being permanently and irrevocably relinquished execution of the consent;

(c) The consenting parent(s) or guardian was/were over the age of eighteen (18) years; and

(d) The consent of the parent(s) or guardian was not the result of fraud, duress, financial inducement, or other undue influence.

Sec.507. Disposition Alternatives

(1) If parental rights are terminated, the Court shall:

(a) Place the child in a licensed foster care or shelter care facility; and

(b) Proceed to the adoption provisions of this Ordinance.

(2) If parental rights are not terminated, the Court shall make a disposition pursuant to Section 406.

Sec. 508. Order of Termination Effect

- (1) The termination order constitutes a final order for purposes of appeal.
- (2) No adjudication of parental rights termination shall affect the child's enrollment status as a member of the tribe.

CHAPTER 6. DUTY TO REPORT CHILD ABUSE AND NEGLECT

Sec.601. Duty to Report

Any person who has a reasonable cause to suspect that a child has been sexually, physically, mentally or emotionally abused immediately make a report to the Delaware Tribe of Indians Indian Child Welfare department. Those persons reporting, except those specified in Section 602 below, may remain anonymous.

Sec.602. Persons Specifically Required to Report

- (1) Any person who has reasonable cause to suspect that a child may be a child-in-need-of-care shall make immediately, by phone otherwise, an oral report, or cause an oral report to be made, of the suspected condition to the law enforcement office, Department of Human Services and the Delaware Tribes' Indian Child Welfare department,
 - (a) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider;
 - (b) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant,
 - (c) administrative officer, supervisor of child welfare and attendance, or truancy officer of any public or private school;
 - (d) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker;
 - (e) psychiatrist, psychologist, or psychological assistant;
 - (f) licensed or unlicensed marriage, family, or child counsel or,
 - (g) person employed in the mental health profession, or
 - (h) 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;

(2) A person mandated to report under Section 602 shall immediately report to the, Tribal Indian Child Welfare Manager if the person knows or has reason to suspect that a woman is pregnant and has abused alcohol or used a controlled substance for a non-medical purpose during the pregnancy.

(3) Within 24 hours after making the oral report, the reporting person mandated to report under this section shall file a written report as required in this ordinance. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

Sec.603. Immunity from Liability

All persons or agencies complying in good faith with the provisions of this Title shall be immune from civil liability and criminal prosecution.

Sec.604. Abrogation of Privilege

Any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective Proceeding resulting from a report made pursuant to this Title.

Sec.605. Abuse and Neglect Reports

(1) Form of Report: Those persons mandated to report under Section 602 above shall include the following information in the written report:

- (a) Names, addresses, age, sex and tribal affiliation of the child and his/her parents, guardian, or custodian.
- (b) The grade and school in which the child is currently enrolled;
- (c) Name and address of the child's parents or other person responsible for the child's care.
- (d) The nature and content of the child's abuse or neglect.
- (e) Previous abuse or neglect of the child or his siblings.
- (f) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect.
- (g) The name and address of the person or agency making the report.

(h) Any other information believed to be important to the investigation and disposition of the alleged abuse.

(2) Any agency or child protective services agency receiving a report alleging abuse shall immediately initiate an investigation and shall take immediate, appropriate steps to secure the safety and well-being of the child/children involved.

(3) Upon completion of the investigation, such agency shall prepare a final written report on such allegation.

Sec.606. Confidentiality of Informant

The identity of any person making a report described in Section 602 shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of an Indian tribe, a state or the federal government who needs to know the information in the performance of such employee's duties.