

**Revision note.** Slightly reworded for purposes of statutory form.

## **Annotations**

### **1. Authority of state court**

Where will had been admitted to probate in Navajo Tribal Court of Indian Offenses, Arizona Superior Court, on petition to admit will to probate, did not have authority to inquire into execution of will, and should have admitted it to probate. *In re Lynch's Estate*, 9 Ariz. 354, 377 P.2d 199 (1962).

### **2. Oral dispositions**

If all of his immediate family are present and agree that his wishes will be honored after his death, a Navajo may, under custom, orally state who shall have his property after his death. *In re Estate of Lee*, 1 Nav. R. 27 (Nav. Ct. App. 1971).

### **3. Wrongful death actions**

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

### **4. Custom**

"The family court applied a rule of Navajo common law that insurance proceeds should be distributed to the 'immediate family.' This rule, as it is applied to distribution of an estate without a will, under Navajo custom, states that non-producing property (i.e., money) should go to the 'immediate family.' *In the Matter of the Estate of Boyd Apachee*, 4 Nav. R. 178, 182-183 (Window Rock Dist. Ct. 1983)." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7-8 (Nav. Sup. Ct. January 31, 2001).

### **5. Generally**

*In the Matter of the Estate of Howard*, 7 Nav. R. 262 (Nav. Sup. Ct. 1997).

## **Title 9**

### **Domestic Relations**

#### **Chapter 1. Marriage**

##### **§ 1. Validity generally**

A. Marriages contracted outside of the Navajo Nation are valid within the Navajo Nation if valid by the laws of the place where contracted, with the exception of marriages that are void and prohibited by Section 2 of this Title.

B. Marriages may be validly contracted within Navajo Indian Country by meeting the requirements of 9 N.N.C. §§ 4 and 5.

#### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

CF-2-54, February 11, 1954.

1922-1951 Res. p. 84, July 8, 1944.

CJ-2-40, June 3, 1940.

#### **§ 2. Plural marriages void**

A. All plural marriages contracted, whether or not in accordance with Navajo custom, shall be void and prohibited.

B. Marriage between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of one-half degree, as well as whole blood, and between uncles and nieces, aunts and nephews and between first cousins, is prohibited and void.

C. Marriage between persons of the same sex is void and prohibited.

#### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

1922-1951 Res. p. 86, July 12, 1945.

**Note.** Former § 2, "Mixed marriages", was rescinded by CAP-36-93. § 2 was formerly codified at § 3 and reenacted at § 2.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **Cross References**

Bigamy, see 17 N.N.C. § 451.

#### **§ 3. Purposes**

The purposes of marriage on the Navajo Nation are to promote strong families and to preserve and strengthen family values.

## **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

### **§ 4. Methods of contracting marriage**

A marriage may be contracted within the Navajo Nation by any of the following procedures:

A. The parties may contract marriage by signing a Navajo Nation marriage license in the presence of two witnesses. The witnesses shall also sign the license to acknowledge that the license was signed by the parties. In such cases the marriage shall be valid regardless of whether or not a ceremony is held; or

B. The contracting parties may marry according to the rites of any church, in which case they, the officiating clergyman, and two witnesses shall sign in the places provided on the face of the marriage license. The authority to officiate at marriages of any person signing a Navajo Nation marriage license as a clergyman shall not be questioned; or

C. The contracting parties may be married by any judge of the Navajo Nation Courts where the parties have first signed and completed a marriage license; or

D. The contracting parties engage in a traditional Navajo wedding ceremony which shall have substantially the following features:

1. The parties to the proposed marriage shall have met and agreed to marry;

2. The parents of the man shall ask the parents of the woman for her hand in marriage;

3. The bride and bridegroom eat cornmeal mush out of a sacred basket;

4. Those assembled at the ceremony give advice for a happy marriage to the bride and groom;

5. Gifts may or may not be exchanged;

6. The person officiating or conducting the traditional wedding ceremony shall be authorized to sign the marriage license, or

E. The contracting parties establish a common-law marriage having the following features:

1. Present intention of the parties to be husband and wife;

2. Present consent between the parties to be husband and wife;

3. Actual cohabitation;

4. Actual holding out of the parties within their community to be married.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

**Note.** Previously codified at § 3.

**Revision note.** Slightly reworded for purposes of statutory form.

### **Annotations**

#### **1. Common law marriage**

"As established by the Navajo Nation Code, a 'common-law' marriage is a marriage that includes four necessary elements: 1) a present intention of the parties to be husband and wife, 2) a present consent between the parties to be husband and wife, 3) actual cohabitation, and 4) an actual holding out of the parties within their community to be married." *In the Matter of the Marriage of Lilirae Smith*, No. SC-CV-45-05, slip op. at 3 (Nav. Sup. Ct. July 19, 2006).

"A 'common law' marriage under the Navajo Nation Code is different than one arising out [of] a traditional wedding ceremony. See 9 N.N.C. § 3(D), (E) [Now 9 N.N.C. § 4(D), (E)]. A 'common law' marriage is defined as a marriage, other than through the signing of a marriage license before witnesses or the performing of a church, civil, or Navajo traditional ceremony, that includes four necessary elements: 1) a present intention of the parties to be husband and wife, 2) a present consent between the parties to be husband and wife, and 3) actual cohabitation, and 4) an actual holding out of the parties within their community to be married. 9 N.N.C. § 3(E) [Now 9 N.N.C. § 4(E)]." *Begay v. Chief*, No. SC-CV-08-03, slip op. at 2 (Nav. Sup. Ct. May 18, 2005).

"There cannot be a marriage without a voluntary agreement or consent between the parties to be married. And a husband cannot be a mere boyfriend. Ms. Medina, defendant's alleged spouse, has testified to her belief that the defendant is her boyfriend, therefore the mutual present consent to be husband and wife is lacking." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct. 1988).

#### **2. Evidence of marriage**

"The parties must carry out their agreement to be husband and wife by actual cohabitation. In other words, they must openly live together in the same place as husband and wife." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct.

1988).

## **§ 5. Requirements generally**

In order to contract a Navajo Nation marriage, the following requirements must be fulfilled:

A. Both parties must be unmarried. If either party has been previously married, the marriage must have been dissolved by death of the spouse or by a valid decree of divorce.

B. Both parties must be at least 18 years of age.

C. In cases where the female is pregnant, the Courts of the Navajo Nation may authorize the marriage of minors with consent of the parents or legal guardian of the minors.

D. Parties who are Navajo Nation members, or who are eligible for enrollment, may not be of the same maternal clan or biological paternal clan. The provisions of this Subsection shall not affect the validity of any marriages legally contracted and validated under prior law.

E. Parties may not be related within the third degree of affinity. The provisions of this Subsection shall not affect the validity of any marriage legally contracted and validated under prior law.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

**Note.** Previously codified at § 4.

### **Annotations**

#### **1. Intention to be married**

"There cannot be a marriage without a voluntary agreement or consent between the parties to be married. And a husband cannot be a mere boyfriend. Ms. Medina, defendant's alleged spouse, has testified to her belief that the defendant is her boyfriend, therefore the mutual present consent to be husband and wife is lacking." *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct. 1988).

#### **2. Jurisdiction**

"[R]equires a jurisdictional foundation in the judicial district where the cause of action is held." *In the Matter of Validation of Marriage of: Whitehorse and Bekis*, No. SC-CR-30-00, slip op. at 2, fn 1, (Nav. Sup. Ct.

March 17, 2003).

### **3. Necessity of divorce**

"Section 4(A) [Now 9 N.N.C. § 5(A)] states that to contract a marriage within the Navajo Nation, both parties must be unmarried. 9 N.N.C. § 4(A) (1995). When, as here, either party has been previously married, that Section requires that 'the marriage must have been dissolved by ... a valid decree of divorce.' " *Begay v. Chief*, No. SC-CV-08-03, slip op. at 4 (Nav. Sup. Ct. May 18, 2005).

"Absent any reference to other rules of statutory interpretation, we take our discussion in *Slowman* to be a plain language analysis. However, even assuming *Slowman* is not a plain language case, and therefore not binding, Section 407 is directly on point, and states clearly that parties who were married through a traditional ceremony must receive a court decree for any alleged divorce to be recognized. Nothing in § 4(A) [Now 9 N.N.C. § 5(A)] contradicts this, the only difference being that the word 'court' does not appear before 'decree.' The absence of 'court', without more, does not make the word 'decree' unclear. When read together, the Council clearly intended that divorces must have a court decree to be valid." *Begay v. Chief*, No. SC-CV-08-03, slip op. at 6 (Nav. Sup. Ct. May 18, 2005).

### **4. Common law marriage**

"The court erred in rejecting the common-law marriage due to the alleged violation of traditional law. As 'common-law' marriage exists only by statute, the elements to fulfill and the prohibitions that may invalidate a common-law marriage are defined exclusively by statute. The Code includes several reasons for rejecting a marriage, including prohibitions deriving from traditional law, such as being the same clan." *In the Matter of the Marriage of Lilirae Smith*, No. SC-CV-45-05, slip op. at 4-5 (Nav. Sup. Ct. July 19, 2006).

### **§ 6. Marriage licenses--Issuance**

A. The Navajo Office of Vital Records shall issue Navajo Nation marriage licenses and shall keep a record of such. Licenses are not required in order to establish a marriage under the provisions of this part.

B. Before issuing any marriage license, the Navajo Office of Vital Records shall ascertain by questioning the applicants, by requiring them to fill out a form, that they meet all the requirements of 9 N.N.C. § 5.

C. Any person authorized to issue Navajo Nation marriage licenses may issue such licenses to qualified applicants regardless of their places of residence.

D. A fee of fifteen dollars (\$15.00) shall be paid upon the issuance of a license.

E. No license shall be issued by the Navajo Office of Vital Records until three days after the parties first apply for a license and only after the parties submit the results of a blood test.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

**Note.** Previously codified at § 5.

**§ 7. Form**

The form of Navajo Nation marriage licenses shall be substantially as follows:

NAVAJO NATION

MARRIAGE LICENSE

Authority is hereby given for the marriage of the following named persons:

<COL>Man<COL> <COL>Woman

<COL>\_\_\_\_\_ <COL>Name<COL>\_\_\_\_\_

<COL>\_\_\_\_\_ <COL>Census Number<COL>\_\_\_\_\_

<COL>\_\_\_\_\_ <COL>Residence<COL>\_\_\_\_\_

<COL>\_\_\_\_\_ <COL>Age<COL>\_\_\_\_\_

<COL>\_\_\_\_\_ <COL>Mother's Clan<COL>\_\_\_\_\_

<COL>\_\_\_\_\_ <COL>Father's Clan<COL>\_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Title

MARRIAGE CERTIFICATE

I, the man named above, hereby take the woman named above for my lawful wife; and I, the woman named above, hereby take the man named above for my lawful husband.

I hereby certify that the man and woman named above were married this day in a ceremony at which I officiated. (This Paragraph may be crossed out if the

parties are not married before a clergyman, medicineman, or traditionalist.)

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_ day of \_\_\_\_\_  
in the presence of the witnesses whose names appear below.

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL>Witness<COL>Contracting party

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL>Address of Witness<COL> \_\_\_\_\_

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL>Witness<COL>Contracting party

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL>Address of Witness<COL> \_\_\_\_\_

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> <COL> \_\_\_\_\_

<COL> <COL>Clergyman/Medicineman

<COL> <COL>Traditionalist

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> <COL> \_\_\_\_\_

<COL> <COL>Address of Clergyman

<COL> <COL>Medicineman/Traditionalist

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

RETURNED AND FILED FOR RECORD this \_\_\_ day of \_\_\_\_\_, and recorded in  
Book \_\_\_\_\_ of Marriage Licenses and Certificates on page \_\_\_, Number  
\_\_\_\_\_.

<COL> \_\_\_\_\_ <COL> \_\_\_\_\_

<COL> <COL> \_\_\_\_\_

<COL> <COL>Navajo Agency Census Clerk



### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

CJ-59-57, July 29, 1957, validated marriages which might have been invalid because the wrong form of license was returned to the Navajo Agency Census Office between January 1, 1957, and January 1, 1958, inclusive.

**Note.** Previously codified at § 6.

### **§ 8. Return**

A. Persons obtaining a Navajo Nation marriage license must return the same to the Navajo Office of Vital Records within 30 days, whether or not they go through with the contemplated marriage.

B. Failure to return the license shall not affect the validity of any marriage.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993. CJA-1-59, January 6, 1959, adopted the Law and Order regulations of the Department of the Interior contained in 25 CFR, Part 11.

CO-54-56, October 29, 1956.

**Note.** Previously codified at § 7.

### **§ 9. Validation of marriage**

All purported marriages contracted within the territorial jurisdiction of the Navajo Nation, wherein the parties were or are recognized as man and wife in their community, may be validated and recognized as valid marriages from the date of their inception. The Family Courts of the Navajo Nation shall have subject matter jurisdiction pursuant to this Section to make a judicial determination that a marriage meets the requirements of §§ 4 and 5 for contracting of a marriage, and to cure any defect in a ceremony which does not exactly conform to the requirements for a ceremony set forth in § 4. The Peacemaker Courts may also make this determination upon referral from the Family Court. Marriages need not be solemnized by church, state, or Navajo custom ceremony to be recognized as valid under § 4(D) of this part.

## History

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CF-2-54, February 11, 1954.

**Tribal Council Res.** 1922-1951 Res. p. 84, July 18, 1944.

**Note.** Previously codified at § 8.

**Revision note.** Slightly reworded for purposes of statutory form.

## Cross References

Validation of marriages where wrong form of license returned, see note under § 7 of this Title.

## Annotations

### 1. Intent

The intent of this Section seems to be to cure defects in form and procedure in otherwise lawful marriages. *In re Daw*, 1 Nav. R. 1 (1969).

### 2. Common law marriages

Marriages in which the partners were recognized as being married prior to February 1, 1954 are clearly validated but the Tribal Council did not specifically outlaw common law marriages after that date. *In re Daw*, 1 Nav. R. 1 (1969).

## § 10. Procedure for judgment of validity

A. Any person, claiming that his or her marriage may be validated pursuant to 9 N.N.C. § 9, may file a petition in the Family Court or Peacemaker Court of the Navajo Nation for a judgment declaring that such marriage be validated. If the petitioner's spouse in such alleged marriage is known to the petitioner to be living, such spouse must also sign the petition, or be named as defendant and notified of the suit. If the petitioner's spouse in such alleged marriage is not known to the petitioner to be living, the petitioner must prove to the satisfaction of the court that such spouse is dead or has been absent for five successive years, without being known to the petitioner within that time to be living, or the petition shall be dismissed.

B. If the petitioner, having complied with Subsection (A) of this Section, proves to the satisfaction of the court that he or she and his or her alleged spouse were recognized as man and wife in their community, the court shall issue a judgment that such petitioner and spouse were validly married. if feasible, the Court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment.

C. Any judgment of validity of marriage issued by a Court of the Navajo Nation in accordance with Subsection (B) of this Section may be forwarded to the Navajo Office of Vital Records which may then cause the marriage to be recorded and a certificate of marriage to be issued to the petitioner.

D. In cases where a child whose parents are deceased contends that such parents' marriage may be validated by 9 N.N.C. § 9, such child may file a petition in the Family Court or Peacemaker Court of the Navajo Nation for a judgment that such marriage be so validated. If such petitioner proves to the satisfaction of the court that his parents are deceased and that they were recognized as man and wife in their community, the court shall issue a judgment that such parents were validly married on such date. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment. Such judgment may be forwarded to the Navajo Office of Vital Records for recording and issuance of a certificate of marriage.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

CF-14-57, February 4, 1957.

**Note.** Previously codified at § 9.

### **Annotations**

#### **1. Construction and application**

"The statute only states that the petition must prove 'to the satisfaction of the court that he or she and his or her alleged spouse were recognized as man and wife in their community.' 9 N.N.C. § 10(B) (2005). The statute is then silent on what standard should apply, requiring this Court to establish a standard." *In the Matter of the Marriage of Lilirae Smith*, No. SC-CV-45-05, slip op. at 6 (Nav. Sup. Ct. July 19, 2006).

#### **2. Common law marriage**

"As common-law marriage is not recognized under Navajo tradition, for such marriages to be validated under the statute, the Court concludes that each statutory element must be supported by substantial evidence." *In the Matter of the Marriage of Lilirae Smith*, No. SC-CV-45-05, slip op. at 7 (Nav. Sup. Ct. July 19, 2006).

### **§ 11. Governmental determinations**

All marriages recorded on any official document of the Navajo Office of Vital Records or any Navajo Nation Tribal Enrollment Office shall be deemed to be valid marriages under Navajo law, whether these marriages are contracted by Navajo custom, or pursuant to a Navajo Nation or state license. These

documents shall be deemed to constitute a governmental determination of the Navajo Nation as to the existence and validity of the marriage noted in the record. This Section shall apply retroactively and prospectively to all marriages recorded in official documents of the Navajo Nation.

### **History**

CJN-34-05, June 3, 2005, Override of Presidential Veto, CAP-29-05, April 22, 2005, Enacting the Diné Marriage Act of 2005; Amending Title 9 of the Navajo Nation Code.

CAP-36-93, April 23, 1993.

**Note.** Previously codified at § 10.

## **Chapter 3. Husband and Wife**

### **United States Code**

Evidence of marriage of white men and Indian women, see 25 U.S.C. § 183.

Rights of Indian women marrying white men; Tribal property, see 25 U.S.C. § 182.

Rights of white men marrying Indian women; Tribal property, see 25 U.S.C. § 181.

### **§ 201. Antenuptial agreements**

A. Parties intending to marry may enter into agreements not contrary to good morals or law. They shall not enter into an agreement or make a renunciation the object of which is to alter the law of descent of property, either with respect to themselves or inheritance by their children or posterity which either may have by another person, or with respect to their common children.

B. A minor capable of contracting matrimony may enter into an agreement authorized by Subsection (A) of this Section with the written consent of both parents if both are living, and if not, with the consent of the survivor. If both parents are dead, the minor may enter such agreements with the written consent of his/her guardian.

C. A matrimonial agreement must be acknowledged before an officer authorized to acknowledge deeds.

D. No matrimonial agreement shall be altered after the solemnization of the marriage.

### **History**

CJ-42-56, July 18, 1956.

**Revision note.** In Subsection (A) "good morals of law" was changed to "good

morals or law" for purpose of clarity (1978).

#### **§ 202. Separate property-Definitions**

A. All property, real and personal, of the husband, owned or claimed by him before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is his separate property.

B. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is her separate property.

C. The earnings and accumulations of the wife and the minor children in her custody while she lives separate and apart from her husband are the separate property of the wife.

#### **History**

CJ-42-56, July 18, 1956.

#### **§ 203. Liability for debts**

The separate property of the husband or wife is not liable for the debts of the other contracted before marriage.

#### **History**

CJ-42-56, July 18, 1956.

#### **§ 204. Married women**

Married women have the sole and exclusive control of their separate property. The separate property of a married woman is not liable for the debts or obligations of the husband, and it may be sold, mortgaged, conveyed or bequeathed by the woman who owns it as if she were not married.

#### **History**

CJ-42-56, July 18, 1956.

#### **§ 205. Community property-Definition**

All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife and her minor children while she lives separate and apart from her husband, is the community property of the husband and wife.

#### **History**

CJ-42-56, July 18, 1956.

#### **Annotations**

## **1. Construction and application**

"We do not believe that Section 205 plays no role in the division of marital property pursuant to Section 404. We believe that Section 205 means that the trial court shall distribute the property based on a preference for equal division of community property." *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

"Property acquired during the marriage is presumed to be community property unless shown to be separate. [... ] Inherited property is separate, even if acquired during the marriage. [... ] Separate property comingled with community property is still separate if it can be clearly traced and identified." *In the Matter of the Estate of Benally*, 5 Nav. R. 174, 177 (Nav. Sup. Ct. 1987).

## **2. Community property, generally**

"The Begays' [Mutual Help Housing] 'lease purchase' agreement is community property, and its disposition is not governed by the agreement; therefore, it is subject to Navajo Nation laws controlling disposition of community property." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

### **§ 206. Capacity of persons under age of majority**

A. Lawfully married men and women 18 years of age or over shall not be under legal disability by reason of their minority with regard to any transaction affecting their real or personal community property, and they shall as to such property possess all the rights and liabilities in estates and property usually attached to and assumed by persons of the age of 21 years and over.

B. A dissolution of marriage shall not deprive either party who is 18 years of age or over at the time of dissolution of authority to enter into transactions affecting the community property acquired during coverture and which may be vested in either or both of them as the result of dissolution of the marriage.

#### **History**

CJ-42-56, July 18, 1956.

### **§ 207. Personal property; disposition**

During coverture, community personal property may be disposed of by the husband only.

#### **History**

CJ-42-56, July 18, 1956.

**Revision note.** Word "community" was inserted before the word "personal" for the purpose of clarity (1978).

**§ 208. Liability for community debts**

The community property of the husband and wife is liable for the community debts contracted by the husband during marriage unless specially excepted by law.

**History**

CJ-42-56, July 18, 1956.

**§ 209. Legal capacity of married women—Generally**

Married women of the age of 21 years and upwards have the same legal rights and are subject to the same legal liabilities as men of the age of 21 years and upwards except the right to make contracts binding the common property of the husband and wife.

**History**

CJ-42-56, July 18, 1956.

**§ 210. Necessaries—Power of wife to contract debts**

The wife may contract debts for necessaries for herself and her children upon the credit of her husband.

**History**

CJ-42-56, July 18, 1956.

**§ 211. Action to collect debt; order of execution**

In an action to collect a debt for necessaries for the wife and her children, the wife and her husband shall be sued jointly and the court shall decree that execution be levied first upon the common property, second upon the separate property of the husband and third upon the separate property of the wife.

**History**

CJ-42-56, July 18, 1956.

**Cross References**

Execution generally, see 7 N.N.C. § 705.

**§ 212. Marital rights in property acquired after moving into Navajo Indian Country**

Marital rights in property acquired in Navajo Indian Country during marriage by Navajo Indians shall be controlled by the laws of the Navajo Nation.

**History**

CJ-42-56, July 18, 1956.

## Chapter 5. Divorce

### History

**Revision note.** Jurisdiction in Domestic relation matters now rests with the "Family Courts" pursuant to CAP-36-93, April 23, 1993, and CAU-46-89, August 16, 1989. Within this Chapter the necessary additions have been made for clarity (1994). See 7 N.N.C. § 252.

### § 401. Grounds for divorce

The Family Courts of the Navajo Nation are authorized to dissolve all marriages, whether consummated by Tribal custom, church, or state ceremony upon any of the following grounds:

A. That the party in whose behalf it is sought to have the divorce granted was under the legal age for marriage, unless after attaining the legal age such party for any time freely cohabited with the other as husband and wife.

B. That the former husband or wife of either party under a Tribal custom or other ceremony was living and the marriage with such former husband or wife was not properly dissolved.

C. Unlawful voluntary sexual intercourse of a married person with one of the opposite sex.

D. When either party has willfully abandoned the other, or caused the complaining party to leave against his or her wishes, for the term of six months preceding commencement of the action.

E. When one of the parties uses intoxicating drinks, or narcotics habitually to the mental anguish of the other.

F. When one party inflicts grievous bodily injury or grievous mental suffering upon the other.

G. Neglect on the part of the husband to support his family according to his means, station in life, and ability.

H. Inability to live together in agreement and harmony.

I. In favor of the husband when the wife was pregnant at the time of marriage by other than her husband, husband having been ignorant thereof, provided action is commenced within a reasonable time after the fact is known to the husband.

J. Voluntary separation of husband and wife for a period of one year or more.



## History

**Tribal Council Res.** 1922-1951 Res. p. 82, July 17, 1944.

**Revision note.** Slightly reworded for purposes of statutory form. Words "under authority contained in Section 161.28, Title 25, CFR" were omitted as unnecessary (1978).

## Cross References

Jurisdiction of Family Courts of the Navajo Nation in divorce cases, see 7 N.N.C. § 252.

## Annotations

### 1. Jurisdiction

"Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation." *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

### § 402. Residence

The complaining party shall have resided on the Navajo Nation or on any lands allotted, Tribally purchased, public domain, land leased by the Navajo Service, or otherwise set aside for administration by the Bureau of Indian Affairs for the benefit of the Navajo Nation, at least 90 days prior to the commencing of any action for the dissolution of any marriage before the Courts of the Navajo Nation will entertain the action.

## History

**Tribal Council Res.** 1922-1951 Res. p. 82, July 17, 1944.

**Revision note.** Slightly reworded for purposes of statutory form.

## Annotations

### 1. Residency requirement

"Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation." *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

### 2. Jurisdiction over counterclaim

"The Family Court incorrectly dismissed the counterclaim, as, assuming Respondent fulfilled the residency requirement, there was independent jurisdiction over the counterclaim. A counterclaim is a separate claim from the original petition, though plead in response to the petition. The Court must have jurisdiction over both the original petition and the counterclaim; there is no jurisdiction over the counterclaim merely because it is plead in response to the petition." *Begay v. Begay*, No. SC-CV-65-05, slip op. at 3 (Nav. Sup. Ct. May 11, 2006).

#### **§ 403. Filing fee**

A filing fee of ten dollars (\$10.00) must be paid to the Family Courts of the Navajo Nation before such Courts will entertain an action for the dissolution of any marriage.

#### **History**

**Tribal Council Res.** 1922-1951 Res. p. 82, July 17, 1944.

#### **§ 404. Settlement of property rights; custody and care of children**

Each divorce decree shall provide for a fair and just settlement of property rights between the parties, and also for the custody and proper care of the minor children.

#### **History**

CJ-3-40, June 4, 1940.

#### **Cross References**

Navajo Nation Child Support Enforcement Act, see 9 N.N.C. § 1701 *et seq.*

#### **Annotations**

##### **1. Construction with other law**

Since nothing is specifically stated in the Navajo Nation Code as to how community property is to be divided upon divorce, 7 N.N.C. § 204 of the Navajo Tribal Code is controlling in the matter. *Johnson v. Johnson* 3 Nav. R. 5 (1980).

##### **2. Particular cases**

Under Navajo tradition, a land use permit given from a father to a son cannot be characterized as his separate property, nor as community property since land use permits belong to the entire family and are used for the benefit of the family. The District Court therefore properly applied Navajo tradition and custom in awarding land use permits, grazing permits and all other property connected with a farm to wife in divorce proceedings; the award and distribution of the property rights between the parties was a fair and just settlement pursuant to the Navajo Tribal Code. *Johnson v. Johnson* 3 Nav. R. 5 (1980).

### **3. Purpose**

"Through the implementation of this statute, it is now established law that it is the moral duty and legal obligation of a parent to provide and care for the minor children and the court's duty is to ensure that the obligation is enforced." *Watson v. Watson*, No. SC-CV-40-07, slip op. at 4 (Nav. Sup. Ct. December 14, 2009).

"The purpose of equitable distribution statutes such as Section 404 is to award property to spouses such as to reflect their contributions of material and labor to the marriage and to put them on an equal footing, not to penalize or reward them for their acts during the marriage." *Begay v. Begay*, 6 Nav. R. 160, 164 (Nav. Sup. Ct. 1989).

"Section 404 does not mandate equal division of community property. It grants the trial court discretion to make unequal divisions of community property." *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

"In most instances, community property is to be divided equally. [.... ] Where property is divided pursuant to a divorce, however, the Tribal Code directs the trial court to 'provide for a fair and just settlement of the property rights between the parties.' " *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

"The Court agrees that an equal division of marital property is not mandated. This does not mean, however, that there is not be a balancing of all the circumstances of the parties. In fact, this balancing of circumstances is precisely why an equal division of property is not required in most jurisdictions. Under the flexibility thus allowed a court may, for example, offset one party's lower earning capacity by a larger share of the property. The desired end result is for the parties to start divorced life on some sort of equitable basis." *Livingston v. Livingston*, 5 Nav. R. 35, 36 (Nav. Ct. App. 1985).

### **4. Community property**

"The Begays' [Mutual Help Housing] 'lease purchase' agreement is community property, and its disposition is not governed by the agreement; therefore, it is subject to Navajo Nation laws controlling disposition of community property." *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

### **5. Child support**

"Back child support obligations may be satisfied as part of the process of making a 'fair and just settlement of property rights' pursuant to 9 N.T.C. § 404." *Alonzo v. Martine*, 6 Nav. R. 395, 398 (Nav. Sup. Ct. 1991).

### **6. Intervention by children**

"There is no question that Navajo common law grants a child ... a right to be heard, considering his maturity, in a case involving that child's custody." *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 8 (Nav. Sup. Ct. March 5, 2001).

"[I]n our courts, under proper circumstances a child may intervene in an action between his or her parents where that child's rights or interests are affected. Whether intervention is proper is within the sound discretion of the trial court and that determination should be made after examining the child's best interests and whether the child's interests are adequately represented by the existing parties." *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 7 (Nav. Sup. Ct. March 5, 2001).

#### **7. Guardian ad litem**

"Another option is to appoint a spokesperson for the Appellant. This is more in line with Navajo common law where an adult usually makes the child's wishes known." *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

"Just like many jurisdictions, the role and duties of our guardians ad litem are undefined. We want a guardian who will do a thorough review of the case, including witness interviews and a complete examination of all documentation on the child, and then give an independent, accurate and reliable report to the court as a commentator, but not an advocate. We are leery of situations where a court gives too much weight to a guardian's report, without the court making its own independent judgment of the child's best interests." *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

#### **§ 405. Certificate of divorce; issuance**

A certificate of divorce shall be issued by the Family Courts of the Navajo Nation when a divorce is granted.

#### **History**

CJ-3-40, June 4, 1940.

#### **Annotations**

##### **1. Valid divorce—court decree necessary**

"The discussion herein does not overrule this Court's long established precedent that a court decree is necessary for a divorce to be valid." *Hall v. Watson*, No. SC-CV-52-07, slip op. at 6 (Nav. Sup. Ct. Amending February 24, 2009 Opinion April 22, 2009).

##### **2. Interlocutory divorce decree**

"The record shows that at the time the Interlocutory Divorce Decree was issued, the only matter remaining between the parties was the distribution of their community property and debt. This Court holds that the divorce between Ms. Hall and Mr. Watson became effective on July 5, 2005 as the case was decided on the merits, the substantial rights of the party in regards to their marriage was determined and there were no further proceedings remaining in the Family Court on the question of the marriage. The Interlocutory Divorce Decree was a *final* order for the purpose of terminating the marriage between the parties; this order was affirmed by a second order in which the issue of the distribution of

property was dismissed so that the matter of the marital property and debt could proceed in probate." *Hall v. Watson*, No. SC-CV-52-07, slip op. at 5-6 (Nav. Sup. Ct. Amending February 24, 2009 Opinion April 22, 2009).

#### **§ 406. Record of divorces**

All divorces granted by the Family Courts of the Navajo Nation must be recorded in the agency office.

##### **History**

CJ-3-40, June 4, 1940.

#### **§ 407. Remarriage**

No person, married by Tribal custom, who claims to have been divorced shall be free to remarry until a certificate of divorce has been issued by the Courts of the Navajo Nation.

##### **History**

CJ-3-40, June 4, 1940.

##### **Annotations**

#### **1. Necessity of divorce**

"The discussion herein does not overrule this Court's long established precedent that a court decree is necessary for a divorce to be valid." *Hall v. Watson*, No. SC-CV-52-07, slip op. at 6 (Nav. Sup. Ct. Amending February 24, 2009 Opinion April 22, 2009).

"Section 407, appearing in a separate chapter specifically covering divorce, states that '[n]o person, married by Tribal custom, who claims to have been divorced shall be free to remarry until a certificate of divorce has been issued by the Courts of the Navajo Nation.' 9 N.N.C. § 407 (1995) (emphasis added)." *Begay v. Chief*, No. SC-CV-08-03, slip op. at 4 (Nav. Sup. Ct. May 18, 2005).

"The language of Section 407 is not ambiguous, as the clear meaning of the statute means that a person must receive a court decree of divorce from a traditional marriage before he or she may marry within the Navajo Nation." *Begay v. Chief*, No. SC-CV-08-03, slip op. at 5 (Nav. Sup. Ct. May 18, 2005).

"Absent any reference to other rules of statutory interpretation, we take our discussion in *Slowman* to be a plain language analysis. However, even assuming *Slowman* is not a plain language case, and therefore not binding, Section 407 is directly on point, and states clearly that parties who were married through a traditional ceremony must receive a court decree for any alleged divorce to be recognized. Nothing in Section 4(A) [Now 9 N.N.C. § 5(A)] contradicts this, the only difference being that the word 'court' does not appear before 'decree'. The absence of 'court', without more, does not make the word 'decree' unclear. When read together, the Council clearly intended that divorces must have a court decree to be valid." *Begay v. Chief*, No. SC-CV-08-

03, slip op. at 6 (Nav. Sup. Ct. May 18, 2005).

## **Chapter 7. Adoption**

### **History**

**Revision note.** Jurisdiction in domestic relation matters now rests with the "Family Courts" pursuant to CAP-36-93, April 23, 1993, and CAU-46-89, August 16, 1989. Within this Chapter the necessary additions have been made for clarity (1994). See 7 N.N.C. § 252.

### **§ 601. Who may be adopted**

Any minor who is a member of the Navajo Nation and is brought in person before any Navajo Nation Court may be adopted, irrespective of place of birth or place of residence.

### **History**

CN-63-60, November 18, 1960.

**Uniformity of interpretation.** CN-63-60, § 14, provided: "This resolution shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it."

CF-12-57, which established a procedure for the adoption of members of the Tribe, was repealed by CN-63-60, § 15.

**Tribal Council Res.** 1922-1951 Res. p. 85, July 19, 1944, which gave the Court of Indian Offenses jurisdiction of adoption proceedings, was repealed by CF-12-57, § 15.

CN-9-39, November 21, 1939, provided procedure under which persons who were not Navajos could be adopted.

### **Cross References**

Jurisdiction of Family Courts of the Navajo Nation in adoption cases, see 7 N.N.C. § 252.

Navajo Nation policy on adoption of children, see 9 N.N.C. § 615.

### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

### **§ 602. Who may adopt**

The following persons are eligible to adopt a child:

A. A husband and wife jointly, or either the husband or wife, if the other spouse is a parent of the child to be adopted.

B. An unmarried person who is at least 21 years of age.

C. A married person at least 21 years of age who is legally separated from his or her spouse.

D. In the case of a child whose parents are not married, the child's unmarried father.

#### **History**

CN-63-60, November 18, 1960.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

#### **§ 603. Consent to adoption—Parents**

A. The adoption of a child may be ordered when there have been filed written consents to the adoption executed by the parents if living, or the surviving parent if one is dead.

B. The consents required by Subsection (A) of this Section shall be signed in the presence of the judge or clerk of the court or acknowledged before a notary public.

C. The minority of the parents shall not be a bar to the right of consent nor shall it invalidate such consent.

D. The Navajo Nation Court shall have the authority to approve adoptions without a parent's consent where:

1. The parent is dead; or

2. The court finds after a hearing that the parent has abandoned the child for more than one year or is unfit to have custody.

#### **History**

CN-63-60, November 18, 1960.

#### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

#### **Annotations**

##### **1. Consent required**

"A valid consent to an adoption is a jurisdictional requirement for an adoption ... " *In the Matter of Adoption of J.L.B.*, 6 Nav. R. 314, 316 (Nav. Sup. Ct. 1990).

#### **§ 604. Child**

The consent of the child, if 12 years of age or over, shall be required for adoption. Such consent shall be in writing and shall be signed in the presence of the judge or clerk of court or acknowledged before a notary public.

##### **History**

CN-63-60, November 18, 1960.

##### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

#### **§ 605. Withdrawal**

A consent to adoption may not be withdrawn except by permission of the court given before entry of the final judgment of adoption.

##### **History**

CN-63-60, November 18, 1960.

##### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

#### **§ 606. Petition for adoption**

A. A petition for adoption shall be substantially in the form shown in 9 N.N.C. § 607 and shall be filed with the Court in duplicate.

B. One copy of the petition shall be retained by the Court. The other shall be sent to the Agency Branch of Welfare.

C. Any written consents required by these regulations must be attached to the petition.

D. Upon filing of a petition, the Court shall order a date for hearing not more than 90 days from the date of filing of the petition.

##### **History**

CN-63-60, November 18, 1960.

##### **Annotations**

#### **1. Signature**

The petitioners themselves must actually sign the petition for adoption, not the counsel for the petitioners. *In the Matter of the Adoption of S.C.M.*, 4 Nav. R. 167 (1983).



§ 607. Form

IN THE FAMILY COURT OF THE NAVAJO  
NATION HELD AT \_\_\_\_\_

PETITION FOR ADOPTION

In the Matter of the adoption of, \_\_\_\_\_

Census No. \_\_\_\_\_ a Minor.

To the Family Court of the Navajo Nation:

This petition for the adoption of the above-named minor respectfully shows:

<COL>(1)<COL>The names and addresses of the petitioners are:

<COL> <COL>(give full name, age, and address)

<COL>(2)<COL>Check the proper statement:

<COL> <COL>(a)<COL>The petitioners are husband and wife<COL>[ ]

<COL> <COL>(b)<COL>The petitioner is married to the natural father or mother of the child<COL>[ ]

<COL> <COL>(c)<COL>The petitioner is an unmarried person or a person legally separated from his or her spouse, and is over the age of 21 years<COL>[ ]

<COL> <COL>(d)<COL>The petitioner is the unmarried natural father of the child<COL>

<COL>(3)<COL>The above-named minor was born on \_\_\_\_\_

<COL> <COL>(date of birth, if known)

<COL> <COL>and is a member of the Navajo Nation. If the child is 12 years of age or over, the child's written consent to adoption is attached hereto.

<COL>(4)<COL>The mother and father of said child give their consent to the adoption of said child by the petitioners, a copy of said consent being attached hereto, or the following facts exist which excuse consent on the part of the parent(s) to the adoption:

<COL>(5)<COL>A full description and statement of value of all the property owned or possessed by said minor child is as follows:

WHEREFORE, the petitioner(s) pray that the court set a time for hearing this matter and thereafter adjudge that the said child may be adopted by the petitioner(s).

The undersigned hereby declare that all facts represented in the above petition are true.

Date:

#### **History**

CN-63-60, November 18, 1960.

**Revision note.** Slightly reworded for purposes of statutory form.

#### **§ 608. Transfer of case**

If the judge believes the convenience of the parties and the welfare of the child would be served, he/she may order any adoption case transferred to another Family Court of the Navajo Nation.

#### **History**

CN-63-60, November 18, 1960.

#### **§ 609. Investigation**

A. Upon filing of a petition for adoption the court shall request the Agency Branch of Welfare, with the technical assistance of the state and other government branches of welfare, to make an investigation. Such investigation shall include the history of the child; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption or custody and of which the court should have knowledge.

B. The report of the investigation shall be a part of the file in the case and shall contain a definite recommendation for or against the proposed adoption stating the reasons therefor.

#### **History**

CN-63-60, November 18, 1960.

#### **Annotations**

##### **1. Failure to comply with section**

In absence of the investigation, report and recommendation required by this Section, an adoption decree cannot be upheld. *In re Adoption of Tsosie*, 1 Nav. R. 112 (Nav. Ct. App. 1977).

##### **2. Investigation**

Petitioner may not have an adoption investigation waived. *In the Matter of the Adoption of S.C.M.* 4 Nav. R. 167 (1983).

#### **§ 610. Temporary order; final judgment**

A. Upon examination of the report required in 9 N.N.C. § 609 and after hearing, the court may issue a temporary order giving the care and custody of

the child to the petitioner(s) or any suitable person or persons, pending the further order of the court; provided, that if the child is a close blood relative of one of the petitioners, or is the stepchild of a petitioner, or has been living in the home of a petitioner for more than one year preceding the date of filing the petition for adoption, the court may waive the entry of a temporary order and immediately enter a final judgment of adoption. Where a temporary order is entered, the Agency Branch of Welfare may observe the child in his foster home and report to the court within six months on any circumstances or conditions which may have a bearing on his adoption or custody.

B. Upon application by the petitioner after six months from the date of the temporary order, or upon the court's own motion at any time, the court may set a time and place for additional hearing. Notice of the time and place of the hearing shall be served on the Agency Branch of Welfare. The Agency Branch of Welfare may file with the court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the temporary order. After such hearing, the court may enter a final judgment of adoption, if satisfied that the adoption is for the best interest of the child, or may make such other order as it sees fit.

#### **History**

CN-63-60, November 18, 1960.

#### **§ 611. Effect of final judgment**

A. After the final judgment of adoption is entered, the relations of parent and child and the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the child and the adoptive parents. The status of the child as a member of the Navajo Nation shall not be affected by any adoption, and such child shall not forfeit his rights to inherit from his natural parents by descent or distribution, or otherwise.

B. After the final decree of adoption is entered, the natural parents of the adoptive child, except a natural parent who is also an adoptive parent or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such child and have no rights over such child or to his property by descent or distribution or otherwise.

#### **History**

CN-63-60, November 18, 1960.

#### **Cross References**

Membership in Navajo Nation by adoption as not possible, see 1 N.N.C. § 702.

#### **§ 612. Registration of final judgment; amendment of records; inspection**

A. Upon entry of the final judgment of adoption the court shall forward a copy thereof to the Agency Census Office for its records.

B. The order of the court shall direct the Census Office at the Navajo Agency and all Agency Branch Offices located at the subagencies to so amend family listings, and other records, to properly reflect the final judgment of adoption entered by the Navajo Nation Court. These amended records which contain the names and addresses or other information concerning the adopted child and the adopting parents shall cease to be available for public inspection. Only those persons obtaining permission from the Assistant Superintendent (Community Services) of the Navajo Agency or his authorized representative shall be given access to such records. No such permission shall be given unless the best interests of the child will be served thereby. The intent of this Subsection is that any information concerning the whereabouts of the adopting parents and adopted child will not be available to the natural parents or parent or other unauthorized persons after final judgment of adoption is decreed by the Navajo Nation Court.

#### **History**

CN-63-60, November 18, 1960.

#### **Cross References**

Confidential nature of proceedings and record generally, see 9 N.N.C. § 613.

#### **§ 613. Confidential nature of proceedings and record**

Unless the court shall otherwise order, all hearings held in proceedings under this Chapter shall be confidential and shall be held in closed court without admittance of any person other than interested parties and witnesses. Further, all papers, records or files pertaining to proceedings under this Chapter, except the final judgment of adoption, kept by the court or by the Agency Branch of Welfare shall be confidential and withheld from inspection except upon order of the court for good cause shown.

#### **History**

CN-63-60, November 18, 1960.

#### **§ 614. Adoption of adults**

A. An adult person may be adopted by any other adult person with the consent of the person to be adopted or his guardian, and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of 9 N.N.C. §§ 601-610 shall not apply to the adoption of an adult person.

B. After a hearing and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the persons involved, a decree of adoption may be entered which shall have the legal consequences stated in 9 N.N.C. § 611.

#### **History**

CN-63-60, November 18, 1960.

## **§ 615. Policy on adoption of children**

A. The Navajo Nation Council favors the formal adoption of Navajo children in accordance with the provisions of this Chapter in an cases where the parents of such children are dead or where such children are being regularly and continuously neglected by their parents, or where the parents have abandoned such children. The Navajo Nation Council looks with disfavor upon informal arrangements for the custody of such children except for temporary periods pending their formal adoption.

B. In the cases referred to in Subsection A of this Section, the Navajo Nation neither favors nor disfavors adoption of Navajo children by persons who are not members of the Navajo Nation, but states as its policy that each case shall be considered individually on its own merits by the Family Court of the Navajo Nation.

C. The Navajo Nation looks with disfavor upon the adoption of Navajo children by nonmembers of the Nation in cases where the parents of the children are living, in good health, and have not abandoned or continuously neglected said children.

### **History**

CN-64-60, November 18, 1960.

### **United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

## **Chapter 9. Guardians**

### **§ 801. Petition for appointment**

Any person may petition to the Courts of the Navajo Nation for the appointment of a guardian of the person or estate of any minor or insane Navajo or other Navajo mentally incompetent to manage his property.

### **History**

**Tribal Council Res.** 1922-1951 Res. p. 87, December 19, 1945.

### **§ 802. Investigation of petition**

The petition for the appointment of a guardian shall be referred by the Court to a Navajo Service social worker for investigation, study and report back to the Court.

### **History**

**Tribal Council Res.** 1922-1951 Res. p. 87, December 19, 1945.

### **§ 803. Appointment**

If, after a hearing upon a petition for the appointment of a guardian, it appears to the Court that the person is incapable of taking care of himself and managing his property, the Court shall appoint a guardian of his person and estate, a copy of which shall be filed at the Agency.

#### **History**

**Tribal Council Res.** 1922-1951 Res. p. 87, December 19, 1945.

#### **§ 804. Responsibility**

The guardian appointed by the Court has the care and custody of the person of his ward, and the care and management of his estate until such guardian is legally discharged.

#### **History**

**Tribal Council Res.** 1922-1951 Res. p. 87, December 19, 1945.

#### **§ 805. Faithful execution of duties; bond**

The guardian must meet all requirements as may be described by the court for the faithful execution of his duties, including furnishing bond, if deemed necessary by the court.

#### **History**

**Tribal Council Res.** 1922-1951 Res. p. 87, December 19, 1945.

### **Chapter 11. Navajo Nation Children's Code**

#### **History**

CF-14-85, February 8, 1985.

**Revision note.** References throughout this Code to "Children's Court" changed to "Family Court" pursuant to CAU-46-89, August 16, 1989.

#### **Subchapter 1. General Provisions**

##### **§ 1001. Purpose**

The Children's Code shall be liberally construed and interpreted to effectuate the following legislative purposes:

A. To preserve and restore the unity of the family whenever possible to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code;

B. Consistent with the protection of the Navajo community, to prevent children from committing delinquent acts and to offer a program of supervision, care and rehabilitation;

C. To achieve the purposes of the Children's Code in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or in the interest of public safety;

D. To separate clearly in judicial and other processes affecting children under the Children's Code the dependent child, the child in need of supervision and the delinquent child, and to provide appropriate options for treatment and rehabilitation of these children;

E. To provide a judicial division separate from the District Courts of the Navajo Nation with procedures through which the provisions of the Children's Code may be executed and enforced, in which the parties are assured of a fair hearing, and their constitutional and other legal rights recognized and enforced; and

F. To provide a forum in which Navajo children charged to be delinquent or in need of supervision in other jurisdictions may be referred for adjudication and disposition, or for disposition alone.

### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **Annotations**

#### **1. Juvenile custody**

"We hold that the Navajo Children's Courts must carefully follow the procedural guidelines as set forth in the Navajo Children's Code. Specifically, that the detention of juveniles must be in a facility designated and certified by the Children's Court, that a detained juvenile has the right to a detention hearing as set forth in the Children's Code, and that the child and parent or guardian must have all their rights explained to them at all phases of the juvenile proceeding, especially the juvenile's right against self-incrimination. In addition, we hold that a juvenile in a delinquency proceeding has the right to representation by an attorney, that Navajo customary due process applies in juvenile proceedings to the same extent as it is applied in adult proceedings, and that customary Navajo practice demands a parent or guardian be notified of and be allowed to speak for the child in juvenile proceedings or to assist the attorney in preparing the child's case." *In the Matter of A.W.*, 6 Nav. R. 38, 43-44 (Nav. Sup. Ct. 1988).

"Juveniles who are taken into custody experience a gamut of emotions from fear to embarrassment to anger. They have not developed the maturity needed to deal with these emotions and all too often suicide is the result. We, as a Nation, must fulfill our duty to protect our children; therefore, this Court will carefully scrutinize any questions regarding the detention of a juvenile." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

"The protective custody of juveniles must be humane and must provide for 'the care, protection and wholesome mental and physical development' of those children who are detained." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup.

Ct. 1988).

## **2. Non Indian children**

"The term 'child' is defined as 'an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of eighteen (18) years.' 9 N.N.C. § 1001(F) (1995) (emphasis added). Under these provisions, the Children's Code does not prohibit jurisdiction over non-Indian children, but such jurisdiction is co-extensive with the Nation's general authority, presumably as established by the Treaty and general principles of federal Indian law discussed above. Therefore, we hold that under Navajo statutory law, family courts general have delinquency jurisdiction over non-Indian children." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

### **§ 1002. Definitions**

The laws under this Subchapter shall be referred to as the Navajo Nation Children's Code, unless the context otherwise requires:

A. "Abandoned" means the failure of the parent to provide reasonable support and maintain regular contact with the child, including the provision of adequate supervision. Failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

B. "Abuse" means the infliction of physical, emotional or mental injury on a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his or her health, morals, or emotional well-being is endangered.

C. "Adjudicatory Hearing" means a proceeding in the Family Court to determine whether a child has committed a specific delinquent act as set forth in a petition.

D. "Adult" means a person 18 years of age or older, or a person who is otherwise emancipated by order of a court of competent jurisdiction.

E. "Agency" means an organization licensed by the Division for adoption or for the provision of foster care.

F. "Child" means an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of 18 years.

G. "Child in Need of Supervision" means a child who:

1. Being subject to compulsory school attendance, is habitually absent from school; or

2. Habitually disobeys the reasonable and lawful demands of his or



her parents, guardian or custodian and is ungovernable and beyond control; or

3. Has committed an offense not classified as criminal or one applicable only to children; and

4. In any of the foregoing situations is in need of care or rehabilitation.

H. "Family Court" means the division of the District Court of the Navajo Nation exercising jurisdiction under this Code.

I. "Family Court Judge" means any duly appointed judge of the Family Court division of the Navajo Nation District Court exercising jurisdiction under this Code.

J. "Counsel" means a person who is a member of the Navajo Nation Bar Association.

K. "Court" when used without further qualification, means the Family Court division of the Navajo Nation District Court.

L. "Custodian" means a person other than a parent or legal guardian to whom legal custody of a child has been given by order of the Family Court, but does not include a person who has only physical custody.

M. "Delinquent Act" means an act committed by a child which would be designated as a crime pursuant to Title 17 of the Navajo Nation Code and the following offenses within Title 14 of the Navajo Nation Code:

1. Driving while under the influence of intoxicating liquors or drugs;

2. Failure to stop in the event of an accident causing death, personal injuries or damage to property, and

3. Reckless driving.

N. "Delinquent child" means a child who is adjudicated to have committed a delinquent act.

O. "Dependent Child" means a child:

1. Who has been abandoned by his or her parents, guardian or custodian; or

2. Who is without proper parental care and control, or whose subsistence, education, medical or other care or control necessary for his or her well-being is inadequate because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; or

3. Whose parent(s), guardian or custodian is unable to discharge his or her responsibilities to and for the child because of

incarceration, hospitalization or other physical or mental incapacity;  
or

4. Who has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act,<sup>1</sup> or other federal law;  
or

5. Who has been physically, emotionally, psychologically or sexually abused by his or her parent, guardian or custodian; or

6. Who has been sexually exploited by his or her parent(s), guardian or custodian; or

7. Whose parent(s), guardian or custodian has knowingly, intentionally or negligently:

a. Placed the child in a situation that may endanger his or her life or health; or

b. Tortured, cruelly confined or cruelly punished him or her.

P. "Detention" means the temporary placement of a child alleged to have committed a delinquent act who requires custody in physically restricting facilities for the protection of the child or the Navajo Nation pending court disposition.

Q. "Detention Facility" means a place where a child alleged to have committed a delinquent act may be detained under the Children's Code pending a court hearing.

R. "Division" means the Navajo Division of Social Services.

S. "Domicile" includes a child who physically resides within "Navajo Indian Country" in the custody of his or her parents or custodians. The domicile of a child is that of the custodial parent. The domicile of a child born out of wedlock is that of the natural mother unless otherwise established in the father. Domicile includes the intent to establish a permanent home or where the parents or custodians consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged act(s).

T. "Judge", when used without further qualification, means the judge of the Family Court.

U. "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. A person shall not be a guardian except pursuant to an order of a court.

V. "Law Enforcement Officer" means a peace officer, sheriff, deputy sheriff, municipal police officer, or constable.

W. "Legal Custody" refers to the legal status created by the order of a court or tribunal of competent jurisdiction that vests in a person the right to have physical custody of the child, the right to determine where and with whom

he or she shall live, the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities; an individual granted legal custody of a child shall exercise his or her rights and responsibilities as custodian personally unless otherwise authorized by the court or tribunal entering the order.

X. "Parent" includes a natural or adoptive parent but does not include any person whose parental rights have been terminated.

Y. "Protective Services" means a program of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life, and help preserve the family unit by focusing on families where unresolved problems have produced visible signs of dependency or abuse and the home situation may present actual and potential hazards to the physical or emotional well-being of children.

Z. "Protective Services Worker" means a person who has been selected by and trained pursuant to the requirements established by the Division and assists in carrying out the provisions of this Subchapter.

AA. "Protective Supervision" refers to the legal status created by court order under which the child is permitted to remain in his or her own home, or is placed with a relative or other suitable individual with supervision and assistance is provided by the court, a health and social services agency or some other agency designated by the court.

BB. "Shelter Care" means the care of a child placed in a foster home or institution maintained by individuals or organizations to receive and care for children pending court disposition or transfer to another jurisdiction.

### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **Annotations**

#### **1. Child in Need of Supervision**

"As defined by the Children's Code, children in need of supervision have not committed a criminal offense, but are in need [of] care or rehabilitation." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 3 (Nav. Sup. Ct. March 14, 2007).

#### **2. Dependent child-k'é**

"While Title 9, generally and 9 N.N.C. § 1002 specifically, enumerates factors to be considered for determining dependency, the Court holds that there are instances when certain traditional concepts are so core to basic values of Navajo tradition, culture and family values that broader consideration beyond

the statute is required. The Navajo concept of *k'é* is such a core value." *Baldwin v. Chinle Family Court, and concerning Carroll and the Navajo Nation*, No. SC-CV-37-08, slip op. at 4 (Nav. Sup. Ct. October 30, 2008).

"The Navajo concept of *k'é* requires that families be properly protected from nonexistent or faulty conclusions that do not meet the standard of clear and convincing evidence." *Baldwin v. Chinle Family Court, and concerning Carroll and the Navajo Nation*, No. SC-CV-37-08, slip op. at 6 (Nav. Sup. Ct. October 30, 2008).

### **3. Dependent child—disclosure of diagnosis**

"If the law is interpreted so that upon disclosure of certain circumstances such as a parent's past efforts to obtain mental health treatment shifts the burden of proof to the parent to prove their fitness, the likely result is to encourage non-disclosure. Further, when a parent's psychological diagnosis is disclosed in laymen's terms to a worker without the appropriate clinical training and experience in diagnosis there is a danger that the disclosure will be inadequate for the purpose of finding that the child is without parental care and control. The Navajo concept of *k'é* requires that families be properly protected from nonexistent or faulty conclusions that do not meet the standard of clear and convincing evidence." *Baldwin v. Chinle Family Court, and concerning Carroll and the Navajo Nation*, No. SC-CV-37-08, slip op. at 5-6 (Nav. Sup. Ct. October 30, 2008).

### **§ 1003. Family Courts**

The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all matters arising under the Navajo Nation Children's Code.

#### **History**

CAU-46-89, August 16, 1989.

**Revision note.** The sentences "References in this title to the Children's Court shall be deemed to mean Family Courts. References to Children's Courts or Children's Court judges which describe, define, or mandate procedure, responsibility, qualifications, or which impose standards or requirements shall be deemed to apply only to matters arising under the Children's Code but shall not be deemed to abolish nor diminish any requirements, standards, or mandates as to matters arising under the Children's Code" have been deleted. All such references have been changed pursuant to CAU-46-89, August 16, 1989.

#### **1. Non Indian children**

"In juvenile cases, the 'criminal' nature of the proceeding arises out of the possibility of detention, the functional equivalent of adult incarceration, as the child's liberty is taken away. As we prohibited detention for A.P. as beyond the authority of the Tuba City Family Court in our previous Order of Release, the current proceeding is 'civil' in nature. Under general principles of federal Indian law, as interpreted by this Court, we hold that the Navajo Nation has civil jurisdiction to adjudicate non-Indian children in a

delinquency proceeding for activity on tribal lands, as long as detention is not a possible disposition." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

"Though principles of federal Indian law do not prohibit the Nation's delinquency jurisdiction over non-Indian children, the Navajo Nation Council may still bar such jurisdiction. The Children's Code establishes family court exclusive jurisdiction over 'all proceedings ... in which a child is alleged to be ... a delinquent child'." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

"The term 'child' is defined as 'an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of eighteen (18) years.' 9 N.N.C. § 1001(F) (1995) (emphasis added). Under these provisions, the Children's Code does not prohibit jurisdiction over non-Indian children, but such jurisdiction is co-extensive with the Nation's general authority, presumably as established by the Treaty and general principles of federal Indian law discussed above. Therefore, we hold that under Navajo statutory law, family courts general have delinquency jurisdiction over non-Indian children." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

### **Subchapter 3. Establishment of Family Court and Probation Office**

#### **§ 1051. The Family Court**

A. There is established for each Judicial District of the Navajo Nation a division to be known as the Family Court.

B. The procedures in a Family Court shall be governed by the rules of procedure for the district court which are not in conflict with the Children's Code.

C. The Family Court is authorized to cooperate fully with any federal, state, Navajo Nation, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants in-aid to carry out the purposes of this Code.

D. The Family Court, in the exercise of its duties and in exercise of any duties to be performed by other offices under its supervision or control, shall utilize such social services as may be available through the Navajo Nation, federal, or state government.

E. The Family Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Nation that, absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Family Court.

#### **History**

CF-14-85, February 8, 1985.

**United States Code**

Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*

**§ 1052. Court personnel—Appointment, certification, qualifications, duties**

A. Family Court Judge.

1. A Family Court judge shall be appointed in each judicial district in the manner and with the same qualifications as provided for in appointment of judges of the district courts. A judge of the district court may be appointed by the Chief Justice of the Navajo Nation to serve as a Family Court judge as the need requires. A judge so appointed shall serve as the Family Court judge during good behavior. The Navajo Nation Council shall have the power to remove a judge for cause and may appoint additional judges if necessity requires.

2. No Family Court judge shall hear a case which he or she has previously participated in as an advocate or in which he or she has a personal interest. The Code of Judicial Conduct of the American Bar Association shall control where conflict of interest exists. No person shall serve as Family Court judge within six months from the time they have been responsible for juvenile legal matters while employed with the Navajo Nation government.

B. Presenting Officer.

1. The office of the Family Court presenting officer is established in each judicial district. The district prosecutor of the Navajo Nation is *ex-officio* presenting officer for the judicial district.

2. The Chief Prosecutor of the Navajo Nation, after consulting with and upon recommendation of the Family Court judges, shall certify to the Judiciary Committee annually the number of qualified presenting officers needed to carry out the purposes of this Code. The Chief Prosecutor of the Navajo Nation shall be the appointing authority for all presenting officers.

3. The presenting officer shall represent the people of the Navajo Nation in all proceedings under this Code.

4. The presenting officers' qualifications shall be the same as the qualifications of the district prosecutors of the Navajo Nation.

C. Probation Officer.

1. The Probation Office of the Family Court is hereby established. The number of probation officers shall be determined according to Subdivision (2).

2. The probation officers of the Family Court shall carry out the duties and responsibilities set forth in this title. The Chief Justice

of the Navajo Nation, after consultation with and upon recommendation of the Family Court judges, shall certify annually to the judiciary Committee of the Navajo Nation Council the number of qualified probation officers for the Family Court needed to carry out the objectives of this title.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **Cross References**

Family Courts, 7 N.N.C. § 252.

Judiciary Committee of the Navajo Nation Council, 2 N.N.C. § 571 *et seq.*

#### **§ 1053. Probation office; establishment; reporting**

A. The Chief Justice of the Navajo Nation may establish juvenile probation offices at each of the agencies comprising the Navajo Nation. The Chief Justice of the Navajo Nation shall be the appointing authority for all probation office personnel. If probation officers are established by the Chief Justice of the Navajo Nation, he or she shall also establish a classification and compensation plan for all positions in the service in accordance with the personnel rules of the Courts of the Navajo Nation.

B. The Probation Offices shall provide the Chief Justice of the Navajo Nation and the Judiciary Committee of the Navajo Nation Council such information as is requested about children coming into contact with the probation offices or the court under the provisions of the Children's Code.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1054. Powers and duties of probation officers**

A. Probation officers shall have the power and duty to carry out the objectives and provisions of the Children's Code, and shall:

1. Make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable.

2. Make predisposition studies and submit reports and recommendations to the Court.

3. Supervise and assist a child placed on probation or under his or her supervision by court order;

4. Perform any other functions designated by the Court.

B. A probation officer does not have the powers of a law enforcement officer. A probation officer may take into custody and place in detention a child who is under his or her supervision as a delinquent child when the probation officer has reasonable cause to believe that the child has violated the conditions of his or her probation or that the child may leave the jurisdiction of the court. A probation officer taking a child into custody under this Subsection is subject to and shall proceed in accordance with the provisions of the Children's Code relating to custody and detention procedures and criteria.

C. Probation officers shall not act as prosecutors or presenting officers in presenting juvenile matters to the Family Court.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1055. Jurisdiction of the Family Court**

A. The Family Court shall have exclusive original jurisdiction over all proceedings under the Family Court in which a child is alleged to be a child in need of supervision, dependent child, or a delinquent child.

B. The Family Court shall have exclusive original jurisdiction of the following proceedings:

1. For the termination of parental rights;
2. For the adoption of a child;
3. To determine custody of, or to appoint a custodian or guardian for a child;
4. For the commitment of a mentally retarded or mentally ill child;
5. To authorize the marriage of a minor who does not have a parent or guardian, or when a parent or guardian refuses to consent, when the law requires consent to the marriage by a parent or guardian.

C. Jurisdiction obtained by a Family Court over a child is retained until terminated by any of the following situations:

1. The child becomes an adult, except where a child becomes an adult during the pendency of proceedings in the Family Court.
2. The case is transferred by the court to the district court pursuant to § 1114 of this Code.
3. When the Family Court enters an order terminating jurisdiction.

D. Territorial jurisdiction. The Family Court may hear child custody



matters involving Navajo children wherever they may arise. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority. The Family Court shall have jurisdiction over non-Navajo child custody matters arising within the boundaries of Navajo Indian Country when the parties submit to the jurisdiction of the Court or when the best interests of the child require such an arrangement. The Family Court shall have exclusive jurisdiction over any Navajo child who resides or is domiciled within the borders of Navajo Indian Country, or who is a ward of the Family Court.

### **History**

CF-14-85, February 8, 1985.

Previously codified at 9 N.N.C. § 1053 by CJN-52-69, June 4, 1969.

### **Cross References**

Family Court, 7 N.N.C. § 252.

### **Annotations**

#### **1. Jurisdiction**

"Under the plain language of the Children's Code, Navajo Courts have jurisdiction to decide custody of Navajo children regardless of residency within the Nation." *Miles v. Chinle Family Court, and concerning Miles*, No. SC-CV-04-08, slip op. at 5 (Nav. Sup. Ct. February 21, 2008).

"It is then the child's status as a Navajo, and not her presence within the territory of the Navajo Nation that allows jurisdiction." *Miles v. Chinle Family Court, and concerning Miles*, No. SC-CV-04-08, slip op. at 5 (Nav. Sup. Ct. February 21, 2008).

"In a dependent child case under the Navajo Nation Children's Code, if any of the factors (residence, domicile, ward of the court) in 9 N.T.C. § 1055(4), is proven by a preponderance of the evidence, then the Children's Court has jurisdiction over the Navajo child, even where the alleged conduct giving rise to the petition occurred outside the exterior boundaries of the Navajo Indian Reservation." *In the Matter of: A.O.*, 5 Nav. R. 121, 123 (Nav. Sup. Ct. 1987).

#### **2. Non Indian children**

"Though principles of federal Indian law do not prohibit the Nation's delinquency jurisdiction over non-Indian children, the Navajo Nation Council may still bar such jurisdiction. The Children's Code establishes family court exclusive jurisdiction over 'all proceedings ... in which a child is alleged to be ... a delinquent child'." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

### **§ 1056. Shelter care and detention facilities—Standards—Reports**

A. The Office of the Chief Justice of the Navajo Nation, in conjunction

with the Division, shall develop a Navajo Nation-wide plan for the establishment of district or agency detention and shelter care facilities, or alternatives thereto, for children alleged to be delinquent and detained under the provisions of the Children's Code. The plan shall be completed within one year after the effective date of the Children's Code. The plan shall include provisions for transportation services. The plan shall take into consideration existing detention and shelter care facilities and shall be developed in a manner that makes the best use of these facilities. It shall also provide an accurate projection of costs, alternatives for implementation and a cost effectiveness analysis. The plan shall be reviewed and updated every three years.

B. The Navajo Division of Public Safety, in conjunction with the Division, shall seek funds from state, federal, Tribal and other available sources, to construct and operate detention facilities and shelter care and may contract for detention and shelter care facilities, and services to be provided to the Family Court by other persons.

C. The Division of Health shall promulgate rules concerning health and safety issues for all detention and shelter care facilities which shall include: standards for the sites, design, construction, equipment, care, program, personnel and clinical services. The Division of Health shall license and approve all detention and shelter care facilities within the Navajo Nation meeting the promulgated standards. The Division may establish by rule appropriate procedures for provisional licensure and the waiving of any standards for facilities in existence at the time of adoption of the standards, except it shall not allow waiver of standards pertaining to adequate health and safety protection of residents and staff of the facility. The Division of Health may request assistance from the Division of Social Services for review of care, personnel and clinical services components. No child shall be detained in a detention or shelter care facility unless it is licensed as approved by the Division. Licensure shall be renewed upon full review every two years.

D. The Division of Health shall inspect all detention and shelter care facilities within the Navajo Nation at least every six months and shall require those reports it deems necessary from detention and shelter care facilities. If, as a result of an inspection, a licensed detention or shelter care facility is determined as failing the required standards, its license shall be subject to revocation after a hearing by the Division of Health, but only if alternative detention or shelter care facilities are available within the Navajo Nation. If no other facilities are available, a schedule of compliance shall be drafted. Failure to comply with the schedule shall result in revocation of the facility's license.

E. Any person aggrieved by an administrative decision of the Division of Health rendered under the provisions of this Section may petition for the review of the administrative decision by filing a petition requesting judicial review in the Family Court for the district in which the detention or shelter care facility is located.

The District Court's review shall be of the written transcript of the administrative hearing and the decision of the Division. The District Court shall uphold the decision of the Division of Health unless it finds that

decision to be:

1. Illegal or in violation of the Indian Civil Rights Act<sup>1</sup> or the Navajo Nation Bill of Rights;
2. The result of arbitrary or capricious action by the Division of Health; or
3. Not supported by substantial evidence; in which case it shall reverse the decision of the Division of Health and remand the manner for appropriate action or further review by the Division of Health.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **Subchapter 5. Procedure in the Family Court**

#### **§ 1101. Commencement of proceedings by petition**

A. Proceedings in the Family Court shall be initiated by the filing of a petition signed by the presenting officer or other member of the Navajo Nation Bar Association.

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a law enforcement official upon information and belief, may cause a petition to be initiated by the presenting officer.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1102. Venue**

A. The venue for Children's Code proceedings shall be determined by the residence or domicile of the child, or the judicial district where the alleged delinquency, dependency or neglect is committed. Venue exists concurrently in the Window Rock District for Navajo children who reside outside Navajo Indian Country.

B. Where the residence of the child and the situs of the alleged delinquency, dependency, or neglect are in different judicial districts, initiating proceedings in one judicial district shall bar the institution of proceedings in the other judicial districts.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Revision note.** Slightly reworded.

### **§ 1103. Preliminary inquiry and referral**

A. Allegations that a child is a child offender or a child in need of supervision shall be referred to the presenting officer, who shall conduct a preliminary investigation to determine the best interest of the child and the Navajo Nation with regard to any action to be taken. Petitions alleging neglect or abuse may be referred to a probation officer who shall refer them to the appropriate agency for preliminary inquiry to determine the best interest of the child with regard to any action to be taken.

B. During the preliminary inquiry on the petition, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of affecting adjustments that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights under Subsections (A)-(E) of this Section and no person may be compelled to appear at any conferences, to produce any papers, or to visit any place. Voluntary agreements for the disposition of a child custody matter may be arranged with the agreement of the parties. A copy of such agreement shall be filed with the Family Court.

C. After completion of the preliminary inquiry on a petition, the presenting officer shall either authorize the filing of a petition or refuse to authorize the filing of a petition.

D. When a child is in detention or custody, and the filing of a petition is not authorized by the presenting officer, the petition shall be dismissed and the child shall be released immediately.

E. On motion by or on behalf of a child, a petition alleging delinquency or need of supervision shall be dismissed with prejudice if it was not filed within 30 days from the date the petition is referred to the presenting officer.

### **History**

CF-14-85, February 8, 1985.

### **Annotations**

#### **1. Construction and application**

"Thus, we hold the juvenile was illegally detained when a petition is filed 31 days after a referral where the Children's Code requires dismissal with prejudice if it is not filed within 30 days from the date of referral." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 4 (Nav. Sup. Ct. November 21, 2007).

"Under the circumstances of this case, the Court will vacate a conviction where the statute clearly mandates a dismissal with prejudice if the petition

alleging the delinquency is untimely filed. This Court will not send the matter back to the Family Court for dismissal. The burden will not be placed upon a child to petition the court for dismissal or incur additional legal costs where the statute mandates a specific remedy. Under the circumstances, the Court hereby vacates the findings of delinquency for disorderly conduct and battery pursuant to Section 1103(E)." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 4-5 (Nav. Sup. Ct. November 21, 2007).

#### **§ 1104. Petition—Form and content**

A petition initiating any proceeding under the Children's Code shall be captioned "In the Children's Court of the Navajo District Court \_\_\_\_\_ (judicial district)", and entitled, "In the Matter of \_\_\_\_\_ a child, census number: \_\_\_\_\_ DOB: \_\_\_\_\_" and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Family Court.

B. A statement that the child is in need of supervision, care or rehabilitation.

C. If the child is alleged to be a juvenile offender, a citation to the appropriate section of the Criminal Code or Motor Vehicle Code which the child is alleged to have violated.

D. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred.

E. The name, birth date, residence and address of the child.

F. The names and residence addresses of parents, guardians, custodians and spouse, if any, of the child; and if none of the parents, guardians, custodians or spouse, if any, reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the court.

G. The name of the officer presenting the petition and the date and time presented.

H. Whether the child is in custody, and, if so, the place of detention and the time he was taken into custody.

I. If any matters required to be set forth by this Section are not known, a statement that they are not known should be made.

#### **History**

CF-14-85, February 8, 1985.

**Revision note.** Slightly reworded.

#### **§ 1105. Filing and dismissal of petition**

A. The petition shall be filed with the clerk of the Family Court.

B. A petition alleging that a child is in need of supervision or is a child offender shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten days from the date of the petition is filed when a child is in custody.

2. Twenty days from the date of the petition is filed when a child is not in custody or is released.

3. Unless the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of the unavailable witnesses. A continuance not to exceed 10 days, if a child is in custody, or 20 days, if said child is not in custody, will be granted only upon a showing by the presenting officer that he has exercised due diligence in his attempts to secure the evidence and/or attendance of witnesses. If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

C. The petition shall not be dismissed for violation of this Section if the child is participating in a court ordered diversion.

#### **History**

CF-14-85, February 8, 1985.

#### **Annotations**

##### **1. Time of hearing**

"We hold that, in accordance with the Navajo Children's Code, a preliminary hearing must be held in a juvenile proceeding of delinquency within 10 days after a petition is filed if the child is in detention." *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

##### **§ 1106. Summons; service**

A. After a petition is filed, the court shall set a time for a hearing and direct the issuance of summons by the court clerk.

B. A summons shall be issued to a child alleged to be a delinquent child or a child in need of supervision if the child is 14 years of age or older and to the child's parents or guardian and to such other persons as the court considers proper or necessary parties.

C. The form of service shall conform to the requirements of the Rules of Civil Procedure of the Navajo Nation.

#### **History**

CF-14-85, February 8, 1985.

**§ 1107. Basic rights**

A. A child alleged to be a delinquent child or a child in need of supervision shall, from the time of being taken into custody, be accorded and advised of the privilege against self-incrimination and from the time of detention in a detention facility shall not be questioned except to determine identity and to determine the name of the child's parents or legal custodian.

B. In a proceeding on a petition alleging delinquency or in need of supervision:

1. An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.

2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.

3. An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.

C. A child in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the court. If an order of the court is given, the fingerprints or photographs, shall be used only as specified by the court. Any person who willfully violates the provisions of this Subsection is guilty of a misdemeanor.

D. In all proceedings on a petition alleging delinquency or need of supervision, and in those instances specified under other provisions of the Children's Code, the Court shall make a preliminary finding on the issue of whether the child's interests are represented by the parties to the proceeding. If the Court determines that the child's interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the interests of the child.

E. In proceedings on a petition alleging dependency or abuse, the parents, guardian and custodian of the child shall be informed of available legal services and that they have the right to be represented by counsel.

F. The Court, at any stage of a proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if his interests conflict with those of his parent, guardian or custodian. A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.

G. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed

guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

H. Criminal proceedings, actions and other proceedings in the District Court based upon an offense alleged in a petition under the Children's Code, or an offense based upon the conduct alleged in the petition, are barred if the Family Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A proceeding may be subsequently initiated in District Court if the Family Court does not dispose of all relevant issues.

I. In a proceeding on a petition, a party is entitled to the opportunity to introduce evidence and be heard, and to confront and cross-examine witnesses testifying against him, and to admit or deny the allegations in a petition. Provided, in cases transferred to Navajo Nation Courts pursuant to the federal Indian Child Welfare Act<sup>1</sup> where the Family Court petition would be subject to dismissal due to the unavailability of witnesses or the unwillingness of state personnel to testify in Navajo Nation Courts, the Family Court may accept as evidence reports and other public records generated beyond Navajo Indian Country where the best interests of the child require.

J. Where appointment of counsel for the child is made, the Court shall appoint counsel from the members of the Navajo Nation Bar Association and those appointed shall serve the child without compensation, unless compensation is authorized by the Court.

### **History**

CF-14-85, February 8, 1985.

**Revision note.** Slightly reworded.

### **Annotations**

#### **1. Duty to inform**

" ... [T]he person taking the child into custody for an alleged delinquent act must inform him or her or his or her Miranda rights. [... ] All during the detention procedure, the child shall not be questioned except to determine the child's identity and to determine the name of the child's parents or legal guardian." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

#### **2. Right to counsel**

"If the child or the child's parents or guardian cannot afford an attorney, the court will appoint one to represent the child." *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

"We further hold that in a proceeding alleging the delinquency of a child under the Navajo Children's Code, the child has the right to be represented by an attorney." *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

#### **3. Guardian ad litem**



"While the Navajo Nation Code anticipates the appointment of a GAL in Children's Code cases, see 9 N.N.C. §§ 1107(D), (F) (for child), 1303(D) (for incompetent parent) (2005), nothing explicitly authorizes a district court to appoint a GAL for an alleged victim in a criminal case." *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 7 (Nav. Sup. Ct. March 28, 2006).

"Just like many jurisdictions, the role and duties of our guardians ad litem are undefined. We want a guardian who will do a thorough review of the case, including witness interviews and a complete examination of all documentation on the child, and then give an independent, accurate and reliable report to the court as a commentator, but not an advocate. We are leery of situations where a court gives too much weight to a guardian's report, without the court making its own independent judgment of the child's best interests." *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

#### **§ 1108. Taking into temporary custody**

A. A child may be taken into temporary custody:

1. Pursuant to an order of the Court issued because a parent, guardian or custodian failed when requested to bring the child before the Court after having promised to do so at the time the child was released from custody.

2. By a law enforcement officer or protective services worker when he has reasonable grounds to believe that the child has run away from his parents, guardian or custodian.

3. By law enforcement officer or protective services worker if there exist reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.

4. Pursuant to the laws of arrest, without a warrant, when there exists probable cause to believe that the child committed a delinquent act.

B. Any law enforcement officer or protective services worker having a child in temporary custody for reasons other than the commission of a delinquent act may place the child in a shelter care facility.

#### **History**

CF-14-85, February 8, 1985.

#### **§ 1109. Release or delivery from temporary custody**

A. A person taking a child into temporary custody shall, with all reasonable speed:

1. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

2. In the case of an alleged delinquent or child in need of supervision, release the child to the child's parent, guardian or custodian upon a written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court; or

3. In the case of the alleged delinquent or child in need of supervision, deliver the child to the probation office or to a place of detention designated by the court.

4. In the case of an alleged neglected or abused child, deliver the child to the Division or to an appropriate shelter care facility; or for an alleged delinquent, child in need of supervision or neglected or abused child, to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.

B. When an alleged delinquent or child in need of supervision is delivered to the probation office or to a place of detention designated by the Court, a probation officer, prior to placing the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court. If detention appears inappropriate, the probation officer shall request the presenting officer to petition the Court for a review of its decision.

C. When an alleged neglected or abused child is delivered to the Division, a Division caseworker, prior to placing the child in custody, shall review the need for doing so and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court.

D. When a child is delivered to an appropriate shelter care facility, a Division caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the Court.

E. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than 72 hours, to the child's parent, guardian or custodian and to the Court together with a statement providing the reason for taking the child into custody.

F. In all cases when a child is taken into custody, he shall be released to his parent, guardian or custodian in accordance with the conditions and time limits set forth in the Rules of Procedure for the Family Court.

#### **History**

CF-14-85, February 8, 1985.

**Revision note.** Slightly reworded for purposes of statutory form; Subsection added for clarity.

### **Annotations**

#### **1. Release of juvenile**

"Once the child is delivered to the probation office or to a place of detention designated by the court, the second step is that the probation officer must review the need for detention before the child is actually placed in detention. [... ] If the probation officer views the detention as unnecessary under the criteria set forth in 9 N.T.C. § 1110 91985 Cumm. Supp., then the child shall be released from custody." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

"We hold that according to 9 N.T.C. § 1109(a)(2), the police should have first attempted to release the appellant to his parent. If the appellant's parent was not available, the police should have followed 9 N.T.C. § 1109(a)(3) and delivered the appellant 'to the probation office or to a place of detention designated by the court'." *In the Matter of A.W.*, 6 Nav. R. 38, 40 (Nav. Sup. Ct. 1988).

#### **2. Notice of detention**

"Third, the person taking the child into custody must give written notice to the child's parent, guardian or custodian, and to the court 'as soon as possible, and in no case later than seventy-two (72) hours,' after the child is taken into custody. [... ] This notice shall also contain a statement of the reasons for taking the child into custody." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

#### **§ 1110. Criteria for detention of children**

A. Unless ordered by the Court pursuant to the Children's Code, a child taken into custody shall not be placed in detention prior to the Court's disposition unless:

1. Probable cause exists to believe that if not detained, the child will commit injury to persons or property of others, or cause injury to himself or be subject to injury by others; or

2. Probable cause exists to believe that the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child; or

3. Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

B. This Subchapter shall govern the decision of all persons responsible for determining whether detention is appropriate prior to the Court's disposition.

### **History**

CF-14-85, February 8, 1985.

**§ 1111. Place of detention or shelter care**

A. A child alleged to be a delinquent child may be detained pending a court hearing in any of the following places:

1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or

2. A facility operated by a licensed child welfare services agency; or

3. A detention facility approved by the Family Court for children alleged to be delinquent children; or

4. In any other suitable place designated by the Family Court and certified under § 1056, and which meets the standards for detention facilities under the Children's Code.

B. A child alleged to be a child in need of supervision or a dependent child 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 delinquent, but shall be detained in the following shelter care facilities:

1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or

2. A facility operated by a licensed child welfare services agency; or

3. Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Family Court and certified by the appropriate authority.

C. The official in charge of a jail or other facility for the incarceration of adult offenders or persons charged with crimes and the arresting law enforcement officer shall inform the probation officers within four working hours and the Court within four working hours or 48 consecutive hours if on a weekend, whichever is the shorter time, when an individual, who is or appears to be under the age of 18 years, is received at the facility, and upon request shall deliver him to the court or the probation officer or transfer him to a facility designated by the Court.

**History**

CF-14-85, February 8, 1985.

**Revision note.** Previous reference to "§ 1102" in Subsection (A)(4) of this Section has been changed to "§ 1056".

**Annotations**

## **1. Child in Need of Supervision**

"The Navajo Nation Children's Code prohibits a family court from placing a child in need of supervision 'in a jail or other facility intended or used for the detention of children alleged to be delinquent'." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 2 (Nav. Sup. Ct. March 14, 2007).

"The Code limits the disposition of a child in need of supervision to, among other things, the transfer of legal custody 'to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children'." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 2-3 (Nav. Sup. Ct. March 14, 2007).

"The Court holds a family court cannot use contempt to accomplish the incarceration of a CHINS child when it could not have incarcerated that child in the original CHINS order. The Children's Code reflects the clear intent of the Navajo Nation Council that CHINS children are a distinct group from juvenile delinquents and require a different type of treatment. As defined by the Children's Code, children in need of supervision have not committed a criminal offense, but are in need [of] care or rehabilitation." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 3 (Nav. Sup. Ct. March 14, 2007).

"The use of contempt to incarcerate a CHINS child improperly treats that child as delinquent, violates the Council's clear prohibition on incarceration of such children, and amounts to cruel and unusual punishment under the Navajo Bill of Rights." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 4 (Nav. Sup. Ct. March 14, 2007).

### **§ 1112. Place of temporary custody**

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 delinquent children, but may be detained in the following community-based shelter care facilities:

A. A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence; or

B. A facility operated by a licensed child welfare services agency; or

C. 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; or

D. Any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined and which meets the standards for shelter care facilities established by the Division.

### **History**

CF-14-85, February 8, 1985.

**§ 1113. Detention hearing required for detained child, court determination and disposition**

A. Where a child who has been taken into custody is not released but is detained:

1. A petition shall be filed by the presenting officer with the Court within 48 hours excluding Saturdays, Sundays and legal holidays, and, if not filed within the stated time, the child shall be released.

2. A detention hearing shall be held within 24 hours, excluding Saturdays, Sundays and legal holidays of the filing of a petition to determine whether continued detention is required pursuant to criteria established by the Children's Code.

B. The judge may appoint one or more persons to serve as referees on a full or part-time basis for the purpose of holding detention hearings. The Chief Justice of the Navajo Nation shall approve all contracts with the referees and shall fix their hourly compensation pursuant to the Personnel Policies and Procedures of the Navajo Nation.

C. Written notice of the detention hearing stating the time, place and purposes of the hearing shall be given by the person designated by the Court to the child's parent(s), guardian or custodian, if they can be found, and to the child if the petition alleges that the child is delinquent or in need of supervision.

D. At the commencement of the detention hearing, the judge or referee shall advise the parties of their basic rights provided in the Children's Code, and shall appoint counsel, guardians and custodians, if appropriate.

E. If the judge or referee finds the child's detention is appropriate under the criteria established by the Children's Code, he shall order the detention in an appropriate facility in accordance with the Children's Code.

F. If the judge or referee finds that detention of the child is not appropriate under the criteria established by the Children's Code, he shall order the release of the child, but, in so doing, may order one or more of the following conditions:

1. The child be placed in the custody of a parent, guardian or custodian or relative, or under the supervision of an agency agreeing to supervise the child.

2. Place restrictions on the child's travel, association with other persons or place of abode during the time of release.

3. Impose any other condition deemed reasonably necessary and consistent with the Children's Code, including a condition requiring that the child return to custody if required.

G. An order releasing a child on any conditions specified in this Section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

H. At the detention hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or referee even though it would be otherwise inadmissible in a hearing on the petition.

I. If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or referee shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and an affidavit stating the relevant facts.

### **History**

CF-14-85, February 8, 1985.

### **Annotations**

#### **1. Rights of juvenile**

"Pursuant to Section 1113(A)(1), the filing of a petition within 48 hours or release the child was required. This requirement is not optional, but statutorily mandated by the Children's Code. Thus, the Court holds the juvenile was illegally detained when the child was taken into custody and not released, where the Children's Code required a petition to be filed within 48 hours, and mandated release if petition was not filed within that stated time." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 5 (Nav. Sup. Ct. November 21, 2007).

"Section 1113(A)(2) is meant to be applied hand-in-hand with Section 1113(A)(1). Thus, by failing to meet the timeline of Section 1113(A)(1), the Juvenile Presenting Officer also failed to meet Section 1113(A)(2). Thus, the Court holds a finding of delinquency should be vacated where an untimely filing of a petition results in the illegal detention of a juvenile." *In the Matter of L.R. v. Greyeyes*, No. SC-CV-39-07, slip op. at 6 (Nav. Sup. Ct. November 21, 2007).

"Fourth, the presenting officer must file a petition within 48 hours from the time the child is taken into custody. [... ] Fifth, the court shall hold a detention hearing within 24 hours of the filing of the petition to determine whether continued detention is required. [... ] The court must give written notification of the detention hearing to the child's parents, legal guardian or custodian. [... ] If the petition alleges that the child is a delinquent child or in need of supervision, the court must also give notice to the child himself. [... ] And last, the judge must advise all parties of their basic rights provided for in the Children's Code and shall appoint counsel, guardians and custodians if appropriate." *In the Matter of A.W.*, 6 Nav. R. 38, 41-42 (Nav. Sup. Ct. 1988).

#### **2. Hearing required**

" ... [I]t is not within the court's discretion to hold a detention hearing, but rather that '[a] detention hearing shall be held.... ' The court's failure to hold a detention hearing, along with the other violations, constitutes a clear denial of the appellant's basic right to proper adjudication as set forth in the Navajo Children's Code." *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

### **3. Right to counsel**

"We further hold that in a proceeding alleging the delinquency of a child under the Navajo Children's Code, the child has the right to be represented by an attorney." *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

### **4. Due process**

"We hold that due process in juvenile proceedings must be followed as in adult criminal and civil proceedings. However, in juvenile proceedings the Navajo courts must respect the customary role of the parents in defending their child's rights. Therefore, the Navajo Children's Courts must afford notice and an opportunity to present and defend their child's position to the child's parent or guardian. [... ] As such, the parent or guardian must be available to represent the child or to assist the child's counsel in a delinquency proceeding." *In the Matter of A.W.*, 6 Nav. R. 38, 43 (Nav. Sup. Ct. 1988).

### **5. Non Indian children**

"In juvenile cases, the 'criminal' nature of the proceeding arises out of the possibility of detention, the functional equivalent of adult incarceration, as the child's liberty is taken away. As we prohibited detention for A.P. as beyond the authority of the Tuba City Family Court in our previous Order of Release, the current proceeding is 'civil' in nature. Under general principles of federal Indian law, as interpreted by this Court, we hold that the Navajo Nation has civil jurisdiction to adjudicate non-Indian children in a delinquency proceeding for activity on tribal lands, as long as detention is not a possible disposition." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 7 (Nav. Sup. Ct. May 26, 2005).

### **§ 1114. Transfer to District Court-Hearing**

A. After a petition has been filed alleging a delinquent act, the court may, before a hearing on the merits, transfer the matter for prosecution in the District Court, if:

1. The child was 16 years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act would be a crime if committed by an adult; and

2. A hearing on whether the transfer should be made is held in conformity with the rules for a hearing on a petition alleging a delinquent act, except the hearing will be to the Court without a jury; and

3. Written notice of the time, place and purpose of the hearing is given to the child, parents, guardian or custodian at least three days



before the hearing; and

4. The Court at the hearing finds there are reasonable grounds to believe that:

a. The child committed the delinquent act alleged; and

b. The child is not amenable to treatment or rehabilitation as a child through available facilities; and

c. The child is not committable to an institution for the mentally retarded or mentally ill; and

d. The interests of the Navajo Nation require that the child be placed under legal restraint or detention.

B. Prior to the hearing, the Juvenile Representative shall prepare for the Court and make available copies to the child, his counsel, or his parents, guardian or custodian, a predispositional report relevant to the issues described in Subparagraphs (b), (c), and (d) of Paragraph (A) (4) of this Section and the court shall hear evidence on Subsection (A) and make specific findings in regards thereto.

C. A written transfer order containing specific findings and reasons for the order terminates the jurisdiction of the Family Court over the child with respect to the delinquent acts alleged in the petition. No child shall be prosecuted in the District Court for a criminal offense originally subject to the jurisdiction of the Family Court unless the case has been transferred as provided in this Subsection.

#### **History**

CF-14-85, February 8, 1985.

**Note.** Note that Subsection (B) refers to a "Juvenile Representative" although "Presenting Officer" is the term used at Section 1052(B) herein.

#### **§ 1115. Adjudicatory hearings; findings; dismissal; disposition**

A. Hearing on petitions shall be conducted by the Court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether or not the child committed the alleged delinquent act(s). If no jury is demanded, the hearing will be by the Court without a jury. All hearings on petitions other than those alleging delinquency will be without a jury. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. The Court shall advise persons before the court of their basic rights under the Children's Code and other laws at each separate appearance.

B. All hearings on petitions alleging delinquency of a child shall be

open to the general public except after a finding of exceptional circumstances the Court, in its discretion, deems it appropriate to conduct a closed delinquency hearing.

1. All dependency and child-in-need-of-supervision hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party. and approved by the Court may be present at a closed hearing.

2. Persons the Court finds to have a proper interest in the case or in the work of the Court, including members of the Bar, may be admitted by the Court to closed hearings on the condition that they respect the confidentiality of the proceeding. Accredited representatives of the news media may be allowed to attend closed hearings at the discretion of the Family Court judge subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent or guardian of that child, and subject to such regulations as the Court deems necessary for the maintenance of order, decorum and for the furtherance of the purposes of the Children's Code.

3. If the Court finds that it is in the best interest of the child, the child may be temporarily excluded from a neglect or abuse hearing and during the taking of evidence on the issues of need for treatment and rehabilitation in delinquency and need-of-supervision hearings. A child may be temporarily excluded by the Court during a hearing on dispositional issues under the same method.

C. Those persons or parties who intentionally divulge information in violation of Subsection (B) of this Section shall be guilty of an offense. Persons found guilty of violating the provisions of this Section shall be subject to imprisonment for a term not to exceed 90 days and be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00).

D. The Court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegations of dependency, delinquency or need of supervision shall make and record its findings on whether or not the child is a dependent child or whether or not the acts subscribed to the child were committed by the child. If the Court finds that the allegations on the petition have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings, unless the best interests of the child require otherwise.

E. If the Court finds, on the basis of valid admission to the allegations of the petition, or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence, that the child committed the acts by reasons of which he is alleged to be delinquent or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation and file its findings thereon. In the absence of evidence to the contrary, evidence, of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the Court finds that a child alleged to be delinquent or in need of supervision is not in

need of care or rehabilitation, it shall dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings, or make such other order as it deems proper.

F. If the Court finds on the basis of a valid admission of the allegations of the petition, or on the basis of clear and convincing evidence that the child is dependent or is in need of care or rehabilitation as a delinquent child or child in need of supervision, the Court may proceed immediately or at a continued hearing to dispose of the case.

G. In the dispositional hearing, the Family Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.

H. By motion of a party or by its own authority, the Court may continue the hearing on the petition for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The Court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuance under this Subsection, the Court shall make an appropriate order for detention or legal custody.

I. Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court no later than five days before the scheduled hearing date. An affidavit including reasons why a report has not been completed shall be filed with the Court no later than five days before the scheduled hearing date, if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been timely submitted.

#### **History**

CF-14-85, February 8, 1985.

**Revision note.** Slightly reworded.

#### **Annotations**

##### **1. Generally**

"The Navajo Nation Code prohibits court staff from distributing certain types of court information, requires certain proceedings to be closed to the public, and prohibits certain people from revealing information concerning specific types of cases." *Johnson et al. v. Tuba City District Court, and concerning Yellowman*, No. SC-CV-12-07, slip op. at 7 (Nav. Sup. Ct. November 7, 2007).

##### **§ 1116. Predisposition studies; reports and examination**

A. After a petition has been filed and the allegations of the petition have been established by admission or after a hearing, the Court shall direct that a predisposition study and report be made in writing by the Division caseworker or other appropriate officer designated by the Court concerning the

child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case.

B. Where there is indication that the child may be mentally ill or mentally retarded, the Court, on motion by the presenting officer or that of other counsel may order the child to be examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an out-patient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.

C. The Court, after hearing, may order examination by a physician, psychiatrist or psychologist, of a parent whose ability to care for or supervise a child is an issue before the Court. The parent or custodian may refuse to be examined, but such refusal may be considered by the judge or jury.

D. The Court may order that a child adjudicated as a delinquent child or a child in need of supervision be transferred to an appropriate facility for a period of not more than 30 days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

#### **History**

CF-14-85, February 8, 1985.

#### **Annotations**

##### **1. Due process**

"At oral argument, counsel for the Family Court conceded that due process was not followed in issuing the exclusion order without a hearing. That is enough to justify a permanent writ. The Children's Code and the Navajo Children's Code Rules of Procedure require that a family court hold a dispositional hearing." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 9 (Nav. Sup. Ct. May 26, 2005).

"We therefore hold that a non-Indian child must have a dispositional hearing before the court may exclude him or her. As no hearing was held, the family court violated A.P.'s due process rights, and we must bar it from excluding her from the Navajo Nation." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 10 (Nav. Sup. Ct. May 26, 2005).

##### **§ 1117. Dependency predisposition studies, reports and examinations**

A. Prior to holding a dispositional hearing, the Court shall direct that a predisposition study and report be made in writing to the Court by the Division.

B. The predisposition study required under Subsection (A) shall contain the following information:

1. A statement of the specific harm to the child that intervention

is designed to alleviate;

2. If removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents;

3. A treatment plan consisting of:

a. A description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, a specific plan setting out the steps to be taken by the parents and caseworker and a timetable for their completion, the reasons why such a program is likely to be-useful, the availability of any proposed services and the Division's overall plan for insuring that the services will be delivered;

b. If removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs which have been considered and rejected;

c. A description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent occurs or continues; and

d. A description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary.

C. A copy of the predisposition report shall be provided by the Division to counsel for all parties at least five days before the dispositional hearing.

#### **History**

CF-14-85, February 8, 1985.

**Revision note.** Slightly reworded.

#### **§ 1118. Social and legal records—Inspection**

A. Social, medical, psychiatric and psychological records of the Court concerning a child and produced or recorded by requirement or authority contained in the Children's Code, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:

1. The judge, Division caseworkers, probation officers and Court personnel;

2. Representatives of any agency providing supervision and having legal custody of the child;

3. Representatives of the Division;

4. Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.

B. All or any part of records or information secured from records listed in Subsection (A), when presented to the Court in a proceeding under the Children's Code, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.

C. Except as permitted by this Section, whoever discloses, makes use or knowingly permits the use of information concerning a child before the Court, directly or indirectly derived from the records listed in Subsection (A), or acquired in the course of official duties, shall be subject to 90 days in jail or a two hundred fifty dollars (\$250.00) fine, or both.

### **History**

CF-14-85, February 8, 1985.

### **§ 1119. Sealing of records**

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code or on the Court's own motion, the Court may vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, probation services and of any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the Court finds that:

1. Two years have lapsed since the final release of the individual from legal custody and supervision, or two years have lapsed since the entry of any other judgment not involving legal custody or supervision.

2. The individual has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a court, and no proceeding is pending seeking such a conviction or finding.

B. Reasonable notice of the motion shall be given to:

1. The Family Court presenting officer;

2. The authority granting the release, if the final release was from a parole or probation agency,

3. The law enforcement officer, department and central records depository having custody of the law enforcement files and records if such records are included in the motion;

4. Any other agency having custody of records or files subject to the sealing order.

C. Upon entry of the sealing order, the proceedings in the case shall be expunged and all index references shall be deleted; the Court, law enforcement officers and departments and agencies shall reply, and the individual may reply to an inquiry that records with respect to such person have been expunged. Copies of the sealing order shall be sent to each agency or official named herein.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the Court only:

1. Upon motion by the individual who is the subject of the records and only to those persons named in the motion;

2. In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment, or to persons engaged in fact-finding or research in work related to the child's welfare.

E. Any finding or allegation of delinquency or need of supervision subsequent to the sealing order may by Court order be used as a basis to set aside the sealing order.

F. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed by the Court at the end of the dispositional stage.

#### **History**

CF-14-85, February 8, 1985.

#### **§ 1120. Damages to or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution**

A. Any person may recover damages, not to exceed five thousand dollars (\$5,000), in a civil action in a court or tribunal of competent jurisdiction, from the parent, guardian or custodian of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action and that the parent, guardian or custodian failed to provide adequate supervision of the child.

B. Recovery of damages under this Section is limited to actual damages proved in the action, taxable Court costs, and, in the discretion of the Court, reasonable attorney's fees to be fixed by the Court or tribunal.

C. Nothing contained in this Section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Children's Code.

#### **History**

CF-14-85, February 8, 1985.

### **§ 1121. Motor Vehicle Code violations**

A. The District Court of the Navajo Nation shall have original exclusive jurisdiction of the following Motor Vehicle Code violations involving a child when the person alleged to have committed the violation is a child who has reached his fifteenth birth date:

1. Driving while under the influence of intoxicating liquor or drugs;
2. Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;
3. Reckless driving.

B. If a child is charged with any of the violations specified in Subsection (A) of this Section, the child may be transferred to the Family Court at the discretion of the District judge. Upon transfer, the child shall be proceeded against in the same manner as a child alleged to be a delinquent child.

C. Any Motor Vehicle Code violation by a child, including those specified in Subsection (A) of this Section, shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of the Children's Code.

D. No court may incarcerate a child who has been found guilty of any Motor Vehicle Code violation without first securing the approval of the Family Court.

### **History**

CF-14-85, February 8, 1985.

### **Cross References**

Navajo Nation Motor Vehicle Code, 14 N.N.C. § 100 *et seq.*

### **§ 1122. Court costs and expenses**

A. The following expenses shall be a charge upon the funds of the Court upon their certification by the Court:

1. The expenses of service of summons, notices, subpoenas and other like expenses incurred in any proceeding under the Children's Code;
2. Reasonable compensation of a guardian ad litem appointed by the Court.

B. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the Court finds that they are financially able to pay all or part of the costs and expenses in Subsection (A) of this Section, the court shall order them to pay the costs and



expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the Court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the Court, to the Court.

C. Whenever legal custody of a dependent child or a child in need of supervision is vested in someone other than the child's parents, the Court, after notice to the parents or other persons legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parents or other legally obligated persons to pay to the court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.

D. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment may be filed, and, if filed, shall have the effect of a civil judgment.

#### **History**

CF-14-85, February 8, 1985.

#### **§ 1123. Duty to report child abuse; penalty for failure to report**

A. Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement official, registered nurse, visiting nurse, school teacher or social worker acting in his or her official capacity, or any other person having reason to believe that serious injury or injuries have been inflicted upon the child as a result of abuse, neglect or starvation, shall report the matter immediately to:

1. The appropriate Navajo Nation, state or federal health and social service department in the agency where the child resides; or
2. The presenting officer of the judicial District where the child resides.

B. An oral report shall be made promptly by the recipient of the report under Paragraph (1) or (2) of Subsection (A) of this Section to the presenting officer by telephone or in person and a written report shall be submitted to the presenting officer as soon thereafter as possible. The written report shall contain the names and addresses of the child and his or her parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and other information that might be helpful in establishing the cause of injuries and the identity of the person or persons responsible for the injuries, and where the child has been referred or can be found.

C. Any person failing, neglecting or refusing to report a suspected case of child abuse, neglect or starvation shall be guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

#### **History**

CF-14-85, February 8, 1985.

**§ 1124. Admissibility of report in evidence; immunity of person reporting**

A. In any proceeding alleging child abuse or neglect under the Children's Code resulting from a report submitted under § 1123, or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege or rule against disclosure.

B. Any person reporting an instance of suspected child abuse, neglect or starvation, or participating in a judicial proceeding brought as a result of a report submitted under § 1123 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability that might otherwise be incurred or imposed by law, unless a finding is made that the person acted in bad faith or with malicious purpose.

**History**

CF-14-85, February 8, 1985.

**Subchapter 7. Disposition**

**§ 1151. Disposition of a dependent child**

A. In the disposition phase of every case under this Code, the Court shall give priority to placement of the child with the closest relative who is found qualified to receive and care for the child by the Court after investigation by the Court counselor or an agency designated by the Court.

B. If a child is found to be dependent, the Court may in its judgment make any of the following dispositions in the best interests of the child:

1. Permit the child to remain with his parents, guardian or custodian subject to conditions and limitations prescribed by the Court;
2. Place the child under protective supervision of the Division;
3. Transfer legal custody of the child to any of the following:
  - a. An agency responsible for the care of dependent children;
  - b. A child-placing agency able to assume responsibility for the education, care and maintenance of the child and which is licensed or otherwise authorized by law to receive a child for placement into foster care, including a child care institution or a family home; or
  - c. A relative or other individual who, after study by the Family Court counselor or agency designated by the Court, is found by the Court to be qualified to receive and care for the child; or

4. Make such other disposition as may be necessary to serve the best interests of the child.

C. Any parent, guardian or custodian of a child who is placed in the legal custody of the Division or other person shall have reasonable rights of visitation with the child as determined by the Court unless the Court finds that the best interests of the child preclude any such visitation.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1152. Disposition of adjudicated delinquent child or a child in need of supervision**

A. If a child is found to be delinquent, the Court may impose a fine not to exceed the fine which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for the disposition of a dependent;
2. Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;
3. Place the child on probation under such conditions and limitations as the Court may prescribe.

B. If a child is found to be in need of supervision, the Court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for the disposition of a dependent child;
2. Transfer legal custody to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children; or
3. Place the child on probation under those conditions and limitations the Court may prescribe.

C. Unless a child found to be dependent or in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children. No child found to be delinquent or in need of supervision shall be committed or transferred to a facility used for execution of sentences of persons convicted of crimes.

D. Whenever the Court vests legal custody in an agency, institution or department it shall transmit with the dispositional order copies of all

clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **Annotations**

#### **1. Juvenile detention**

"The Court holds that the Family Court cannot incarcerate a juvenile if Title 17 does not authorize incarceration of an adult committing the same offense. Though incarceration of a delinquent minor is mentioned as one option, the Court interprets Section 1152(A)(2) consistent with *Diné bi beenahaz'áanii*." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 4, (Nav. Sup. Ct. April 16, 2008).

"The Court therefore interprets Section 1152(A)(2) to only allow incarceration when allowed for adults. Incarceration of a minor when unauthorized for an adult is cruel and unusual punishment in violation of the Navajo Bill of Rights." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 4-5, (Nav. Sup. Ct. April 16, 2008).

"This Court concludes that [17 N.N.C.] Section 483(B)(5) provides no authority to incarcerate a delinquent child for disorderly conduct." *In the Matter of N.B. v. Greyeyes*, No. SC-CV-03-08, slip op. at 6, (Nav. Sup. Ct. April 16, 2008).

"As juvenile proceedings are not criminal but rather civil in nature, juvenile detention must not be viewed as punitive." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

#### **2. Child in Need of Supervision**

"The Navajo Nation Children's Code prohibits a family court from placing a child in need of supervision 'in a jail or other facility intended or used for%AAthe detention of children alleged to be delinquent'." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 2 (Nav. Sup. Ct. March 14, 2007).

"The Code limits the disposition of a child in need of supervision to, among other things, the transfer of legal custody 'to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children'." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 2-3 (Nav. Sup. Ct. March 14, 2007).

"The Court holds a family court cannot use contempt to accomplish the incarceration of a CHINS child when it could not have incarcerated that child in the original CHINS order. The Children's Code reflects the clear intent of the Navajo Nation Council that CHINS children are a distinct group from juvenile delinquents and require a different type of treatment. As defined by

the Children's Code, children in need of supervision have not committed a criminal offense, but are in need [of] care or rehabilitation." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 3 (Nav. Sup. Ct. March 14, 2007).

"The use of contempt to incarcerate a CHINS child improperly treats that child as delinquent, violates the Council's clear prohibition on incarceration of such children, and amounts to cruel and unusual punishment under the Navajo Bill of Rights." *In the Matter of M.G. v. Greyeyes*, No. SC-CV-09-07, slip op. at 4 (Nav. Sup. Ct. March 14, 2007).

#### **§ 1153. Disposition of a mentally ill or mentally retarded child**

If, at any stage of a proceeding under the Children's Code, the evidence indicates that the child is mentally retarded or mentally ill, the Court shall transfer legal custody of the child for a period not exceeding 30 days to an appropriate agency for further study evaluation and a report on the child's condition. The Court may thereafter issue an appropriate decree.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1154. Continuance under supervision without judgment—Consent decree—Disposition**

A. At any time after the filing of a delinquency or in need-of-supervision petition, and before the entry of a judgment, the Court may, on motion of the presenting officer or counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The Court order continuing the child under supervision pursuant to this Section shall be known as a "consent decree".

B. If the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the presenting officer after consultation with probation services, the Court shall consider the objections and the reasons therefore, and may in its discretion enter the consent decree.

C. A consent decree shall remain in force for a period not to exceed six months unless the decree is discharged sooner by probation services. Prior to the expiration of the six months period, and upon the application of probation services or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his counsel and he shall have 30 days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.

D. If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree,

the presenting officer may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same, manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the Court may:

1. Extend the period of the consent decree; or
2. Make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency or need of supervision judgment shall not be in jeopardy again in any court for the same offenses alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this Subsection precludes a civil suit against the child and his parents for damages arising from his conduct.

F. A judge who, pursuant to this Section, elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency or need of supervision petition if:

1. A consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or
2. A consent decree is granted but the delinquency or in-need-of-supervision petition is subsequently reinstated.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Revision note.** Slightly reworded.

#### **§ 1155. Interlocutory disposition order in cases where service is made by publication; effect**

A. If the service of a summons upon any party is made by publication the Court may conduct a provisional hearing upon the allegations of the petition, make findings and enter an interlocutory order of disposition if:

1. The petition alleges that the child is dependent, in need of supervision or delinquent; and
2. The summons served upon parties other than those served by publication, in addition to other requirements:
  - a. States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;

b. Requires the party served to appear and, if appropriate, to answer the allegations of the petition at both the provisional and final hearing; and

c. States that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

3. The child is personally before the Court at the provisional hearing on petitions alleging delinquency and in need of supervision, but the Court may waive the presence of the child in dependency cases.

B. All relevant provisions of the Children's Code shall apply to preliminary hearings, but the Court's findings and order of disposition shall have only an interlocutory effect pending the final hearing on the petition.

C. The interlocutory order shall have the following effect on the rights and duties of the party served by publication:

1. If the party served by publication fails to appear at the final hearing on the petition, the findings and interlocutory orders shall become final without further evidence, shall be entered as a judgment and shall have the same effect as if made at the final hearing; or

2. If the party served by publication appears at the final hearing, the interlocutory findings and orders shall be vacated and disregarded, and the hearing shall proceed upon the allegations of the petition as otherwise provided by the Children's Code without regard to this Section.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1156. Limitations on dispositional judgments; modification, termination or extension of court orders**

A. A judgment vesting legal custody of a child in an agency shall remain in force for an undetermined period not exceeding two years from the date entered, except that no child shall be ordered for more than one year to an institution for the housing of delinquent children without further order of the Court. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the custody and rehabilitation of delinquent children divests the Court of jurisdiction at the time of transfer of custody and:

1. The agency to which legal custody is transferred has the exclusive power to parole or release the child;

2. The supervision of a child after release under Paragraph (1) of this Subsection may be conducted by the agency in conjunction with the

Probation Office of the Navajo Nation, or any other suitable agency or under any contractual arrangements deemed appropriate;

3. A child or his guardian may petition the Family Court for review of agency decision denying parole or termination.

B. A judgment vesting legal custody of a child in an individual shall remain in force for two years from the date entered and automatically terminate at the end of the two years unless terminated or extended by order of the Court.

C. A judgment of probation or protective supervision shall remain in force for an undetermined period not exceeding two years from the date entered.

D. A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the two-year period. A release and the reasons therefor shall be reported promptly to the Court in writing by the releasing authority.

E. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:

1. A child, whose legal custody has been transferred to a person, and who requests the Court for a modification or termination of the judgment alleging that the transfer of legal custody is no longer necessary and that the person has denied application for release of the child or has failed to act upon the application within a reasonable time; or

2. A person vested with legal custody, or responsibility for protective supervision, who requests the Court for an extension of the judgment on the grounds that the requested action is necessary to safeguard the welfare of the child or the public interest.

F. At any time prior to the expiration of a judgment transferring legal custody, the court may extend the judgment for an additional period of one year if it finds that the extension is necessary to safeguard the welfare of the child or the interest of the Navajo Nation.

G. Prior to the expiration of a judgment of probation or protective supervision, the Court may extend the judgment for an additional period of one year if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

H. When a child reaches 18 years of age all judgments affecting the child then in force automatically terminate.

#### **History**

CF-14-85, February 8, 1985.



CJN-52-69, June 4, 1969.

**§ 1157. Judgment; noncriminal nature; nonadmissibility**

The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Navajo Nation program or obtaining Navajo Nation employment. The disposition of a child and any evidence given in a hearing in court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching majority.

**History**

CF-14-86, February 8, 1985.

CJN-52-69, June 4, 1969.

**Annotations**

**1. Construction and application**

"As juvenile proceedings are not criminal but rather civil in nature, juvenile detention must not be viewed as punitive." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

**2. Non Indians**

"We believe delinquency jurisdiction over non-Indians, as long as detention is not allowed, is civil in nature, and therefore within the jurisdiction of our courts. Our Children's Code, like those of states, classifies juvenile proceedings as civil." *In the Matter of A.P., a Minor*, No. SC-CV-02-05, slip op. at 6 (Nav. Sup. Ct. May 26, 2005).

**§ 1158. Appeals**

A. Any party may appeal from a final judgment of the Family Court to the Supreme Court of the Navajo Nation in the manner provided by the rules of the Court. The appeal shall be heard by the Supreme Court based on the files, records and transcript of the Family Court proceeding. The name of the child shall not appear in the record on appeal. The case number from the Family Court shall be used on all documents filed with and issued by the Supreme Court.

B. The appeal to the Supreme Court shall not stay the judgment appealed from, but the Supreme Court may order a stay upon an application consistent with the provisions of the Children's Code, if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practical time.

C. The Supreme Court shall affirm the Family Court's judgment or it shall

modify the Court's judgment and remand the child to the jurisdiction of the Family Court for disposition consistent with the Supreme Court's decision.

D. A child who has filed a notice of appeal shall be furnished an electronically recorded transcript of the proceedings, or as much of it as is requested without cost, upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is not able to pay for the cost thereof.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1159. Procedural matters under the Children's Code**

A. The Court may allow, on its own motion or the motion of the presenting officer or counsel for the child, amendment of a petition or motion to add additional issues, findings or remedies raised during the proceeding.

B. Upon application of a party or on its own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects.

C. The Court may cite a person for contempt of court for disobeying the Court's order or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders.

D. In any proceeding under the Children's Code, either on motion of a party or on the Court's own motion, the Court may make an order restraining the conduct of any party over whom the Court has obtained jurisdiction.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1160. Purchase of care from private agency by public agency**

When the legal custody of a child is vested in the Division under the provisions of the Children's Code the Division may transfer physical custody of the child to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the Division covering the care and treatment the child is receiving. Frequency of reports will be determined by the Division. The Division may see the child with reasonable notice to the private agency.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**§ 1161. Probation revocation; disposition**

A child on probation incident to an adjudication as a delinquent child or a child in need of supervision who violates a term of the probation may be proceeded against in a probation revocation proceeding. Revocation of probation shall be part of the initial proceeding and is begun by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to Revoke Probation shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt. The hearing shall be before the Court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a finding of probation violation is made, the Court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

**History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Subchapter 9. Protective Services**

**§ 1251. Protective services worker; power and duties**

A. Protective services workers shall be employed by the Division.

B. The Division may cooperate with such state and community agencies as are necessary to achieve the purposes of this Chapter. The Division may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Navajo Nation Council or its designate.

C. A protective services worker shall:

1. Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a 24 hour basis.

2. Receive from any source, oral or written information regarding a child who may be in need of protective services.

3. Upon receipt of any report or information pursuant to Paragraph (1) or (2) of this Subsection immediately:

a. Notify the appropriate law enforcement agency;

b. Make 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.

4. Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officers shall cooperate with the Division to remove a child from the custody of his parents, guardian, or custodian when necessary.

5. 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. He shall determine whether any of such children is a child in need of protective services.

6. Offer to the family of any child found to be a child in need of protective services appropriate services, which services may include, but shall not be restricted to, protective services.

7. Within 30 days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the presenting officer and to a central registry maintained by the Division.

8. No child shall remain in temporary custody for a period exceeding 72 hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1252. Limitations of authority; duty to inform**

A. 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 dependency petition in the Family Court.

B. If the family declines the offered services, the worker may initiate a dependency petition in Family Court alleging a child in need of protective services if he believes it to be in the child's best interest.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1253. Central registry**

A. The Division shall maintain a central registry of reports,

investigations and evaluations made under the Children's Code. The registry shall contain the information furnished by Navajo Nation personnel throughout the Navajo Nation, including protective services workers, probation officers, Division caseworkers and Indian Child Welfare program employees.

B. Data shall be kept in the central registry until the child concerned reaches the age of 18 years.

C. Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Division to the Family Court, social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Navajo Nation. 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.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1254. Immunity of participants; nonprivileged communications**

Any person making a complaint, providing information or otherwise participating in the child protective services program shall be immune from civil or criminal liability for such action, unless such person acted with malice or unless such person has been charged with or is suspected of abusing, abandoning or neglecting the child in question.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **Subchapter 11. Termination of Parent-Child Relationship**

#### **§ 1301. Petition; who may file; grounds**

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, foster parent, the Division, or a privately licensed child welfare agency, may file a petition for the termination of the parent-child relationship alleging grounds contained in Subsection (B). Any person may provide information showing that the parent-child relationship should be terminated to the Presenting Officer, and the Presenting Officer may initiate a petition based on such information.

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any of the following grounds; the Court may also consider the best interests of the child:

1. That the parent has abandoned the child or that the parent has

made no effort to maintain a parental relationship with the child.

2. That the parent has seriously neglected or willfully abused the child.

3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.

4. That the parent is deprived of his or her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.

5. That the parents have voluntarily relinquished their rights to a child or have consented to adoption.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Revision note.** Slightly reworded.

#### **§ 1302. Contents of petition**

A. A petition for the termination of the parent-child relationship filed pursuant to this Chapter shall include, to the best information or belief of the petitioner:

1. The name and address of the petitioner;
2. The name, sex, date and place of birth, census number and residence of the child;
3. The basis for the Court's jurisdiction;
4. The relationship of the petitioner to the child or the fact that no relationship exists;
5. The names, addresses, and dates of birth, and census numbers of the parents, if known;
6. The names and addresses of the persons having legal custody or guardianship of the person or acting in loco parentis to the child, or the organization or authorized agency having legal custody or providing care for the child;
7. The grounds on which termination of the parent-child relationship is sought; and

8. The names and addresses of persons, or authorized agencies or officers thereof to whom or to which legal custody or guardianship of the person of the child might be transferred.

B. A copy of any relinquishment or consent, if any, previously executed by the parent shall be attached to the petition. Where placement outside Navajo Indian Country is contemplated, a consent or relinquishment shall conform with the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **§ 1303. Notice; waiver; guardian ad litem**

A. After a petition for termination of parental rights has been filed, the clerk of the Family Court shall set a time and place for hearing. Notice thereof shall be given to the parents of the child, the person having physical custody of the child, the person having legal custody of the child, any individual standing in loco parentis to the child and the guardian ad litem, if any, as provided in the rules for service of process in civil actions.

B. The hearing shall take place no sooner than 10 days after the completion of service of notice.

C. Notice and appearance may be waived by a parent before the Court or in writing and attested to by two or more credible witnesses who are 18 or more years of age subscribing their names thereto in the presence of the person executing the waiver. The waiver shall contain language explaining the meaning and consequences of the waiver and the effect of termination of parental rights. The parent who has executed such a waiver shall not be required to appear, unless the child may be placed outside Navajo Indian Country, in which case the requirements of the Indian Child Welfare Act, 25 U.S.C. § 1913, must be complied with.

D. When termination of the parent-child relationship is sought under § 1301(B)(3), the Court shall appoint a guardian ad litem for the alleged incompetent parent. The Court may otherwise appoint a guardian ad litem as deemed necessary for any party.

E. The presenting officer, upon the request of the Court, the Division, or on his own motion, may intervene in any proceeding under this Subchapter to represent the interest of the child.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

#### **Annotations**

## **1. Guardian ad litem**

"While the Navajo Nation Code anticipates the appointment of a GAL in Children's Code cases, see 9 N.N.C. §§ 1107(D), (F) (for child), 1303(D) (for incompetent parent) (2005), nothing explicitly authorizes a district court to appoint a GAL for an alleged victim in a criminal case." *Seaton v. Greyeyes*, No. SC-CV-04-06, slip op. at 7 (Nav. Sup. Ct. March 28, 2006).

### **§ 1304. Social study prior to disposition; contents**

A. Upon the filing of a petition, the Court shall order the Division, an agency or other person selected by the Court to conduct a complete social study. A written report shall be submitted to the Court prior to hearing, except that when an agency is the petitioner, either in its own right or on behalf of a parent, a report in writing of the social study made by such agency shall accompany the petition. The Court may order any additional studies it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. The report submitted shall include a specific recommendation on the termination of the parent-child relationship and the reasons therefor.

B. The Court may waive the requirement of the social study when the Court finds that it is in the best interest of the child.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

### **§ 1305. Hearing**

Cases filed under this Subchapter shall be heard by the Court in a closed hearing. Only such persons whose presence the judge finds to have a direct interest in the case or in the work of the Court shall be admitted provided that such persons shall not disclose any information obtained at the hearing. The Court may require the presence of any parties and witness it deems necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to § 1303, or has relinquished his rights to the child shall not be required to appear at the hearing unless placement outside Navajo Indian Country is contemplated.

#### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Revision note.** Previous reference to "§ 1304" has been changed to "§ 1303".

### **§ 1306. Court order; form; contents**



A. Every order of the Court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

B. If the Court finds grounds for the termination of the parent-child relationship it shall terminate such relationship and take one of the following courses of action:

1. Appoint an individual as guardian of the child's person;
2. Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency; or
3. Place the child for adoption or order that an adoptive placement for the child be found.

C. The Court shall also make an order fixing responsibility for the child's support. The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.

D. Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, provided that where the Court finds that the best interests of the child require substitution or supplementation of parental care and supervision, the Court shall make such orders as are necessary.

#### **History**

CF-14-85, February 8, 1985.

#### **§ 1307. Effect of court order**

An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall be terminated by a final order of adoption.

#### **History**

CF-14-85, February 8, 1985.

### **Subchapter 13. Indian Child Welfare Act Provisions**

#### **Code of Federal Regulations**

Tribal resumption of jurisdiction over child custody proceedings, see 25 CFR § 13.1 *et seq.*

## **§ 1401. Application of the Indian Child Welfare Act in Family Court**

The Family Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, where they do not conflict with the provisions of this Chapter. The procedures for state courts in the Indian Child Welfare Act shall not apply in the Family Court unless specifically provided for in this Chapter.

### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**Revision note.** Previous references to "Children's Court" in this Subchapter have been changed to "Family Court" pursuant to CAU-46-89, August 16, 1989.

## **§ 1402. Full faith and credit; conflict of laws**

A. State child custody orders involving Navajo children may be recognized by the Family Court only after a full independent review of such state proceeding has determined:

1. The state court had jurisdiction over the Navajo child;
2. The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, were properly followed;
3. Due process was provided to all interested persons participating in the state proceeding; and
4. The state court proceeding does not violate the public policies, customs, or common law of the Navajo Nation.

B. Tribal child custody orders involving Navajo children shall be recognized by the Family Court after the Court has determined:

1. That the Tribal court exercised proper subject matter and personal jurisdiction over the Navajo parties; and
2. Due process was accorded to all interested parties participating in the Tribal court proceeding.

C. Because of the vital interest of the Navajo Nation in its children and those children who may become members of the Navajo Nation, the statutes, regulations, public policies, customs and common law of the Navajo Nation shall control in any proceeding involving a Navajo child.

### **History**

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

**§ 1403. [Reserved]**

**§ 1404. Voluntary placement**

The Family Court shall have exclusive jurisdiction over voluntary placements, both temporary and permanent, of Navajo children who are domiciled or reside within Navajo Indian Country. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be approved by and filed with the Family Court. The Family Court may require that the voluntary placement provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913, be followed where the child is to be placed outside of Navajo Indian Country and the best interests of the child require.

**History**

CF-14-85, February 8, 1985.

**§ 1405. Family Court wardship**

Any Navajo child who is domiciled or resides within Navajo Indian Country and is voluntarily placed outside of Navajo Indian Country shall be made a ward of the Family Court. A copy of any consent executed by the parents of such Navajo child and the location of the placement shall be filed with the Family Court. A report on the location of the child shall be filed annually with the Family Court. Wardship attaches to the child when he or she physically leaves Navajo Indian Country. Any placement of a Navajo child in violation of this Section may be invalidated upon petition to the Family Court and the Court shall make such orders at that time as will protect the Court's wardship over the child's best interests.

**History**

CF-14-85, February 8, 1985.

Chapter 13. Domestic Abuse Protection Act

**History**

CJY-53-93, July 23, 1993.

**Note.** Sample forms and instructions for this Act are available at each District Court as well as those agencies specified at § 1657(c).

**Subchapter 1. General Provisions**

**§ 1601. Short title**

This Act may be cited as the "Domestic Abuse Protection Act".

**History**

CJY-53-93, July 23, 1993.

## **§ 1602. Policy**

It is the policy of the Navajo Nation to demonstrate respect for members of the Navajo family and clan. This respect has long been a tradition of the People, and is reflected throughout Navajo history and culture. Abuse against persons in a domestic setting has a lasting and detrimental effect on: (1) the individuals who directly experience the abuse; (2) the entire family and clan, as members indirectly experience the abuse; and (3) the Navajo Nation, as the victims and abusers carry the adverse effects of domestic abuse out of the family and into society itself. It is in the Nation's best interest to protect family and clan members from abuse. Accordingly, the Navajo Nation will not tolerate domestic abuse perpetrated against any person.

### **History**

CJY-53-93, July 23, 1993.

## **§ 1603. Findings**

The legislature of the Navajo Nation finds that:

A. Many persons are beaten, raped, harassed, or otherwise subjected to abuse within the family and clan setting;

B. Some persons are killed as a result of abuse within the family and clan setting;

C. Children suffer lasting emotional damage as direct targets of domestic abuse, and by witnessing the infliction of domestic abuse on other family and clan members;

D. The increase in the population of elderly Navajo citizens, the lack of services available for these citizens, and the changing family structure indicates that laws are necessary to insure the protection of elders within the family and clan setting, and in their caretaking settings;

E. All persons have the right to live free from violence, abuse, or harassment;

F. Domestic abuse in all its forms poses a major health and law enforcement problem to the Nation;

G. Domestic abuse can be prevented, reduced, and deterred through the intervention of law;

H. The legal system's efforts to prevent abuse in the family and clan setting will result in a reduction of violent behavior outside of the family and clan setting;

I. Abuse among family and clan members is not a "family matter," which justifies inaction by law enforcement personnel, prosecutors, or courts, but an illegal encounter which requires full application of protective laws and remedies;

J. An increased awareness of domestic abuse, and a need for its prevention, gives rise to the legislature's intent to provide maximum protection to victims of abuse in the family and clan setting; and

K. The integrity of the family, clan and of Navajo culture and society will be maintained by legislative efforts to remedy domestic abuse.

### **History**

CJY-53-93, July 23, 1993.

### **§ 1604. Purpose**

A. The purpose of this Act is to protect all persons: men, women, children, elders, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Navajo Nation, from all forms of domestic abuse as defined by this Act and by Navajo Nation law. The Act shall be liberally construed and interpreted in order to achieve its purposes.

B. The Act embodies the intent of the legislature to promote the following goals:

1. To recognize the illegal nature of domestic abuse;
2. To provide victims of domestic abuse with the maximum protection from abuse that can be made available under the law;
3. To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family or clan setting, or others with whom the abuser has continuing contact;
4. To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;
5. To facilitate the reporting of domestic abuse;
6. To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and
7. To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the individual, the family, culture, and society.

C. Nothing in this Act shall be construed to alter or diminish the existing authority of the courts of the Navajo Nation to provide remedies to address domestic abuse and prevent tortious conduct, including remedies provided by American common law, the law of equity, and Navajo common law.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

## **1. Purpose**

"The purpose of the act is to protect persons from all forms of domestic abuse." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

## **2. Construction and application**

"The act limits the authority of the family courts to addressing violent and abusive conduct." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

## **3. Family court**

"These sections do not give the court authority to divest another party of a homesite lease or a home attached to land granted to him or her by a previous court order." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4-5 (Nav. Sup. Ct. January 7, 2004).

"The court can grant exclusive possession of a place of residence as well as give temporary possession of personal property to a victim, each for a specified and limited period." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

"Therefore, a family court cannot in a DAPA proceeding decide land dispute issues, including homesite leases and ownership of structures attached to the land." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

## **4. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a temporary custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

## **§ 1605. Definitions**

These definitions shall be liberally construed so as to protect all persons who are subjected to domestic abuse. As used in this Act:

### **A. Domestic abuse**

1. "Domestic abuse" means the infliction of any of the following acts upon a victim as defined in § 1605(B):

a. "Assault"—an attempt to cause bodily harm to another through the use of force, or the creation in another of a reasonable fear

of imminent bodily harm;

b. "Battery"—application of force to the person of another resulting in bodily harm or an offensive touching;

c. "Threatening"—words or conduct which place another in fear of bodily harm or property damage;

d. "Coercion"—compelling an unwilling person, through force or threat of force, to:

(1) Engage in conduct which the person has a right to abstain from; or

(2) Abstain from conduct which the person has a right to engage in;

e. "Confinement"—compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

f. "Damage to property"—damaging the property of another;

g. "Emotional abuse"—using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;

h. "Harassment"—conduct which causes emotional alarm and distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity. Examples of harassing conduct include, but are not limited to the following:

(1) Unwelcome visiting or following of a person;

(2) Unwelcome sexual propositioning, reference to body functions or attributes, or other comments of a sexual nature;

(3) Unwelcome communications, made by phone or by other methods, containing intimidating, taunting, insulting, berating, humiliating, offensive, threatening, or violent language; or

(4) Unwelcome lingering around the home, school, or work place of a person.

i. "Sexual abuse"—any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person's consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or from a minor under any circumstance; and

j. "Other conduct"—any other conduct that constitutes an offense or a tort under the law of the Navajo Nation.

2. Domestic abuse does not mean a victim's act of self-defense made in reasonable response to an abuser's act of domestic abuse.

B. "Victim" means any of the following persons who have been directly affected by domestic abuse as defined in § 1605(A):

1. Any member or former member of the abuser's household or immediate residence areas;

2. Any person involved in, or formerly involved in, an intimate relationship with the abuser;

3. Any person who interacts with the abuser in an employment, academic, recreational, religious, social or other setting;

4. Any offspring of the abuser;

5. Any relative or clan member of the abuser;

6. Any elderly person; or

7. Any vulnerable person. Examples of vulnerability which give rise to the protection of this Act include, but are not limited to, emotional and physical disabilities and impairments.

C. "Abuser" means any person who engages in conduct defined as domestic abuse under § 1605(A) against any of the persons defined as victims under § 1605(B).

D. "Protection order" means a court order that restrains the abuser from doing certain acts upon threat of penalty or sanction. Such an order may contain requirements to adjust the relationship of the parties and prevent further abuse. The term includes any emergency, temporary or domestic abuse protection orders issued by the Court.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Domestic abuse**

"The term 'domestic abuse' covers many kinds of misconduct, including harassment and damage to property." *Morris v. Williams*, 7 Nav. R. 426, 427 (Nav. Sup. Ct. 1999).

#### **2. Scope of court's authority**

"The clear thrust of the Act is to protect people from harm. It is not designed to be used to argue land dispute matters. While disputes over land may trigger conduct arising to the level of domestic abuse, the Navajo Nation courts are only empowered to deal with the conduct. They cannot decide land titles or boundaries under the Act." *Morris v. Williams*, 7 Nav. R. 426, 427-428 (Nav. Sup. Ct. 1999).



### 3. Child custody

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

## Subchapter 3. Protection Orders

### United States Code

Grants to tribal governments to combat violent crimes against women, see 42 U.S.C. § 3796gg-10.

#### § 1651. Jurisdiction

##### A. Courts.

1. The Navajo Nation Family Courts shall have jurisdiction over all proceedings under this Chapter, except those proceedings initiated under § 1663(A).

2. A protection order may be sought as an independent civil action, or joined with any other civil action over which the Family Courts have jurisdiction.

3. Any person within the territorial jurisdiction of the Navajo Nation may seek remedies for protection within such jurisdiction, regardless of where the abuse occurred. The Court may provide remedies to protect victims within the Navajo Nation and to prevent future conduct.

4. Acts of domestic abuse which violate an existing Navajo Nation court order but which occur beyond the territorial jurisdiction of the Navajo Nation remain subject to the jurisdiction of the Court.

5. Provisions of this Act which call for criminal penalties apply only to those persons over which the Navajo Nation has criminal jurisdiction.

B. Venue. A petition for a protection order may be filed in any district in which:

1. The petitioner resides;
2. The respondent resides;
3. The alleged abuse occurred; or

4. The victim is temporarily located.

C. Non-exclusive relief.

1. The remedies and procedures provided in this Act are in addition to, and not in lieu of, any other available civil or criminal remedies. A petitioner shall not be barred from relief under this Act because of other pending proceedings or existing judgments.

2. Relief shall be available under this Act without regard to whether the petitioner has initiated divorce proceedings or sought other legal remedies.

3. As to domestic relations proceedings, if custody or support have already been adjudicated, the terms of a previous court order may be incorporated into a protection order. Custody or visitation arrangements specified in an existing order may be modified in a protection order upon a showing of changed circumstances and for the purpose of preventing further domestic abuse.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Scope of court's authority**

"The best interests of a child are paramount in custody decisions and a determination of paternity. We decide today that a Navajo court lacks jurisdiction to grant a putative father custody of minors in a temporary protection order without a legal determination establishing paternity and a parent-child relationship. In this regard, not even a putative father has standing to request custody. A paternity determination is a legal precondition in granting custody to a putative parent." *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 6 (Nav. Sup. Ct. March 11, 2003).

#### **2. Paternity required**

"In *Davis*, we stated that (1) a putative father has no standing to request custody or visitation until a legal determination of paternity is made, (2) in the best interests of the child, a further inquiry must be made to ensure a wholesome child-parent relationship exists and (3) the legal determination of paternity can be made in a DAPA proceeding, even at the *ex parte* stage ... The family court erred when it granted custody and visitation without first making the jurisdictional determination concerning Crank's paternity." *Sombrero v. Keahnie-Sanford*, No. SC-CV-41-02 slip op. at 4 (Nav. Sup. Ct. September 15, 2003).

#### **3. Jurisdiction**

"The family court however lacks jurisdiction to hear a criminal case, meaning the prosecutor is required to file the criminal complaint in the district

court." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6 (Nav. Sup. Ct. May 24, 2004).

#### **4. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

#### **§ 1652. Peacemaker Court**

The Supreme Court of the Navajo Nation may allocate authority to the Navajo Peacemaker Court to provide for remedies to address domestic abuse, as defined in 9 N.N.C. § 1605(A). The following conditions shall apply to any grant of authority made to the Navajo Peacemaker Court under the Act:

A. The victim shall be given the option of having her or his petition heard by a qualified peacemaker or by the Family Court. If the victim consents to go before a peacemaker, any such consent shall be in writing, read to the victim in her or his primary language, and signed by the victim.

B. The written consent shall also advise the victim that, if at anytime during the proceeding the victim expresses the desire to have the petition heard by a Navajo Nation Family Court, the proceeding shall be removed to the Family Court.

C. Only peacemakers who have received specialized training in their primary language on the causes, symptoms and dynamics of domestic abuse shall be qualified to hear domestic abuse cases.

#### **History**

CJY-53-93, July 23, 1993.

#### **§ 1653. Who may file a petition**

A person may seek a protection order:

A. For herself or himself;

B. On behalf of a minor child;

C. On behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;

D. On behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; or

E. As a next friend of a victim.

#### **History**

CJY-53-93, July 23, 1993.

#### **§ 1654. Standard of proof, defenses**

A. The civil standard of proof shall apply to proceedings under this Act, except for proceedings under § 1663(A) and § 1663(B)(3). A court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

B. A petitioner shall not be denied relief under this Act because:

1. The petitioner used reasonable force in self defense against the respondent;
2. The petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
3. The petitioner has not filed for a divorce; or
4. The petitioner or the respondent is a minor.

C. The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Act:

1. Intoxication;
2. Spousal immunity; or
3. Provocation.

#### **History**

CJY-53-93, July 23, 1993.

#### **Annotations**

##### **1. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

**§ 1655. Temporary protection orders, ex parte**

A. Petition, motion and order.

1. Upon the filing of a Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order the court shall immediately grant or deny the petitioner's Motion for Temporary Protection Order without a hearing or notice to the respondent. The court shall grant the motion if it determines that an emergency exists.

a. A petitioner shall demonstrate an emergency by showing that:

(1) The respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or

(2) The petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection order.

b. Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.

c. The Temporary Protection Order may include any relief permitted by § 1660(B) of this Act and any other relief necessary to prevent further domestic abuse.

d. The Temporary Protection Order shall direct the respondent to appear at a hearing to show cause why the court should not issue a Domestic Abuse Protection Order.

e. Upon issuing the Temporary Protection Order, the Court shall immediately provide for notice to the respondent and notify law enforcement of the order under § 1661 of this Act.

2. If the Court finds that an emergency does not exist, the Court shall deny the petitioner's Motion for a Temporary Protection Order and schedule a hearing on the Petition for Domestic Abuse Protection Order.

a. The Court shall schedule the hearing within 15 days of the petition's filing.

b. The Court shall provide for notice to the Respondent according to § 1661(A) (1) of this Act.

3. The Court shall give a Motion for Temporary Protection Order priority over all other docketed matters and shall issue an order granting or denying the motion on the day it is filed.

B. Hearing, Domestic Abuse Protection Order.

1. The Court shall schedule a full hearing within 15 days after

granting or denying a Temporary Protection Order.

a. The respondent may move the Court to dissolve or modify any Temporary Protection Order within those 15 days.

b. The respondent must give at least five days notice of the motion to the petitioner. The Court shall give priority to such motions.

2. If the petitioner fails to appear at the hearing, the Court may continue the hearing for up to 15 days, or dismiss the petition without prejudice. Any Temporary Protection Order shall remain in effect during the continuance.

3. If the respondent fails to appear after receiving notice, the hearing shall go forward.

4. If, after a hearing, the Court finds by a preponderance of the evidence that the alleged domestic abuse occurred, the Court shall issue a Domestic Abuse Protection Order. The order may include the relief granted in any Temporary Protection Order and any additional relief that the Court deems necessary.

5. No Domestic Abuse Protection Order shall be issued without notice to the respondent and a hearing.

#### **History**

CJY-53-93, July 23, 1993.

#### **§ 1656. Telephonic or facsimile applications and orders**

An official of the Office of the Prosecutor, of a Navajo Nation chapter, or an officer of the Navajo Nation Police may apply for an Emergency Protection Order by telephone or facsimile ("fax").

A. The official or officer shall fill out an Application for Emergency Protection Order, specifying his or her reasonable grounds to believe that a victim is in immediate and present danger of domestic abuse.

B. The official or officer shall then contact a judge of the Navajo Nation courts by telephone or fax.

C. Any Navajo Nation Family Court judge may receive and act upon such applications.

D. A judge may issue an Emergency Protection Order by telephone or fax upon finding that:

1. A reasonable person would believe that an immediate and present danger of domestic abuse exists; and

2. An Emergency Protection Order is necessary to prevent the occurrence or recurrence of domestic abuse.

E. The Emergency Protection Order may include any relief permitted by § 1660(B) of this Act and any other relief necessary to prevent further domestic abuse.

F. The official or officer shall record the order on an Emergency Protection Order form and, by his or her signature, certify that the writing is a verbatim transcription of the judge's order. The certification of any such official or officer shall be prima facie evidence of the validity of the order.

G. The official or officer shall then give a copy of the order to the protected party, and serve a copy of the order on the restrained person.

H. The originals of the Application and Emergency Protection Order shall be filed with the Court no later than 9 a.m. the next court day.

I. The Emergency Protection Order shall expire no later than the close of judicial business the next court day after its issuance, unless the issuing judge indicates otherwise.

### **History**

CJY-53-93, July 23, 1993.

### **§ 1657. Pro se petitioners**

A. A victim of domestic abuse may petition the Court for protection without the assistance of legal counsel.

B. The petition and any accompanying documents may be handwritten or typed.

C. The following agencies shall keep and make available standard forms approved by the Navajo Nation courts for use in domestic abuse proceedings:

1. Navajo Nation Family and District Courts;
2. Navajo Nation Offices of the Prosecutor; and
3. Navajo Nation Police Departments.

D. The above-named agencies shall:

1. Provide information concerning:
  - a. The availability of protection orders;
  - b. Procedures for obtaining protection orders;
  - c. How to proceed without legal representation; and
  - d. The right of the petitioner to have her or his place of residence remain secret;
2. Prohibit non-legal staff from rendering advice or services that

call for the professional judgment of a lawyer or advocate;

3. Provide timely, free assistance to victims of domestic abuse in filing for protective relief,

4. Train their employees to aid victims of domestic abuse in filling out the necessary forms;

5. Keep the addresses of victims confidential; and

6. Keep a record of each case in which they assist a victim in filing for a protection order. The record shall include the following information:

a. A copy of the papers filed with the Court;

b. Names, genders, and relationship of the parties;

c. A description of the domestic abuse, any weapons involved and any resulting injuries;

d. Dates of the domestic abuse and dates of filing for protective relief, and

e. The source(s) of all information obtained.

E. The above-named agencies shall make the standard forms available to other community organizations which may interact with victims such as shelters, chapters, schools, hospitals, and offices of the Navajo Housing Authority.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

#### **§ 1658. Confidentiality**

A petitioner seeking protection shall not be required to reveal her or his address or place of residence except to the judge, in chambers, for the purpose of determining jurisdiction and venue.



### **History**

CJY-53-93, July 23, 1993.

### **§ 1659. Evidence, hearsay exception**

A court shall admit into evidence as an exception to the hearsay rule learned treatises or other reliable materials which describe and explain the "battered women's syndrome" or otherwise examine the impact of violence upon victims.

### **History**

CJY-53-93, July 23, 1993.

### **§ 1660. Available relief**

A. In any proceeding in which a petition for a protection order is filed, once the petitioner has met the burden of proof, the Court shall grant any relief necessary to prevent further abuse. Available relief includes but is not limited to the following:

1. No further abuse. The Court may order the respondent to refrain from further threatening, harassing, or harming the victim or committing any act of domestic abuse;

2. Exclusive possession. The Court may grant exclusive possession of the residence or household to the victim regardless of whether the residence is owned jointly, or owned solely by the abuser. The Court may order the respondent to vacate the residence;

3. Stay away. The Court may order the respondent:

a. To stay away from the victim and others who may be endangered;

b. Not to enter or linger outside of petitioner's or any family or clan member's residence, place of work, or school; or

c. To leave and remain away from any reasonably-defined geographic area;

4. No contact. The Court may order the respondent not to initiate contact with the petitioner in person, in writing, by phone, or through others unless otherwise specified by the Court;

5. Rent and mortgage payments. The Court may order the respondent to pay rent or make mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the victim or other members of the household;

6. Alternative housing. The Court may order the respondent to pay for shelter or temporary housing for the victim if the victim cannot remain in her or his home due to the danger of recurrence of domestic

abuse;

7. Child custody.

a. The Court may award either party immediate, temporary custody of any minor children of the parties until further order of the Court, or the Court may enter a permanent custody order;

b. In determining custody, the Court shall presume that an abusive parent is unfit to have custody of the minor children. The respondent may rebut the presumption by showing that he or she is not abusive of the children and his or her abuse of others does not adversely affect the children.

8. Visitation. The Court may grant the non-custodial parent visitation with any minor children of the parties.

a. If disclosing the victim's address for purposes of visitation may endanger the victim, the Court may order alternative arrangements. Example: The petitioner drops the children off and the respondent picks them up at a pre-arranged neutral place such as a relative's home;

b. If there is evidence that the abuser may endanger the children, the Court may order supervised visitation in a public location or may deny visitation entirely,

9. Payment of support. The Court may order the non-custodial parent to pay child support if that parent is found to have a duty to pay such support;

10. Monetary compensation. The Court may order the respondent to compensate the petitioner for the losses suffered as a direct result of the respondent's acts of domestic abuse, including, but not limited to, medical expenses, loss of earnings or other income, cost of repair or replacement of real or personal property, moving or other travel expenses, and attorney's fees;

11. Possession of personal property. The Court may order the respondent to give temporary possession of personal property to the petitioner or victim including automobiles, checkbooks, keys, documents, and other personal property;

12. Nondisposition of property. The Court may order either party or both parties not to transfer, encumber, or otherwise dispose of specified property mutually owned or leased by the parties;

13. Counseling. The Court may order either or both parties to attend any counseling which the Court finds will address the problems underlying the parties' domestic abuse;

14. Substance abuse counseling. If the Court finds that substance abuse was a factor in the domestic abuse, the Court may order either or both parties to attend counseling or enter a rehabilitation program for

substance abuse;

15. Payment of costs of counseling. The Court may order the respondent to pay for the costs of any counseling ordered under §§ 1660(A) (13) and (14);

16. Law enforcement supervision of return to residence. The Court may order the police to accompany the victim to a residence to collect her or his personal belongings, to take physical custody of the children, and/or to take physical possession of the residence;

17. Court costs and fees. The Court may order the respondent to pay to the Court the costs of the proceeding, including filing fees, fees for service of process, and photocopy costs.

18. Security or bond. To assure compliance with any court order, the Court may require the respondent to post a bond, deposit money with the Court, or pledge property as security. Upon determining that the respondent has violated the order, the Court may require payment or transfer of the bond, money, or property to the petitioner or to the Navajo Nation.

19. Other relief. The Court may grant such other relief as it deems necessary.

B. Ex parte relief. Any Emergency Protection Order or Temporary Protection Order granted without a hearing may include the following relief described above: (1) No further abuse; (2) Exclusive possession; (3) Stay away; (4) No contact; (7) Immediate temporary custody; (11) Possession of personal property; (12) Nondisposition of property; (16) Law enforcement supervision of return to residence; (19) Other relief.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Defendant's rights**

"Davis, the mother, must be given the opportunity to defend herself against the allegations of violent acts, which presumably placed her children in danger. Should Holloway, the putative father, satisfy his burden of proof that the mother did indeed commit acts of violence, 9 N.N.C. § 1660 (A) of the DAPA authorizes the granting of child custody once the mother fails to rebut the presumption." *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 5-6 (Nav. Sup. Ct. March 11, 2003).

#### **2. Burden of proof**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for

a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

"First, for this Section to operate, the mother must be found abusive in a hearing and the father has the burden to prove his case. Secondly, once found abusive, the inference that the mother is unfit can be rebutted by the mother to show that she is not abusive of the children and that her abuse of others does not adversely affect them." *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 5 (Nav. Sup. Ct. March 11, 2003).

### **3. Due process rights**

"The finding by the court that Davis, the mother, is unfit without a hearing or without proof to the satisfaction of the court by the putative father that she committed acts of abuse, violates her due process rights. For these reasons, we conclude that the Crownpoint Family Court violated the mother's due process rights by misapplying Section 1660 (A) (7) (b) of the *Domestic Abuse Protection Act*." *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 6 (Nav. Sup. Ct. March 11, 2003).

### **4. Court's authority**

"A court can prohibit by a DAPA order the transfers, encumbrances or dispositions of specified property mutually owned or leased by the parties." *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

### **5. Fees**

"While Section 1665 appears in isolation to give the family court the discretion to assess the fee on any respondent, the actual practice, as described above, is that the respondent is always required by the fee. This practice is contrary to DAPA. DAPA forbids the assessment against a prevailing respondent. Section 1665 must be read together with other sections of DAPA, in particular Section 1660, which sets out the possible relief a court may award a petitioner in a protection order. Section 1660 states that in any protection order proceeding, 'once the petitioner has met the burden of proof,' the Court must grant any relief necessary to prevent further abuse." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 3 (Nav. Sup. Ct. July 18, 2005).

"Taken together, the plain language of Sections 1660 and 1665 anticipate the assessment of fees, including the commissioner fee. Only when the need for a protection order has been proven, and not automatically whenever a commissioner holds a hearing. To interpret these provisions otherwise would punish an innocent respondent. It is patently unfair to impose a fee on a person who did not bring the action and was found not to have committed abuse. This Court therefore holds that the assessment of a fee in this case was contrary to the provisions of DAPA." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 4 (Nav. Sup. Ct. July 18, 2005).

### **6. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

#### **§ 1661. Service of process**

A. Upon entering a protection order under this Act, the Court shall immediately:

1. Provide for notice to the respondent.

a. The court clerk shall hand-deliver any protection order, petition, motion, summons, notice of hearing, or other documents filed with the Court, to the proper person(s) for service upon the respondent.

b. Any officer of the Navajo Police, court official, member of the Office of the Prosecutor or court-appointed process server may serve process within the Navajo Nation in a proceeding under this Act.

c. Service outside of the Navajo Nation shall be completed according to Rule 4(e)(2) of the Navajo Rules of Civil Procedure.

d. If personal service cannot be made, the Court may serve the respondent by certified mail, return receipt requested. The return receipt, when received by the Court, shall constitute prima facie evidence that the respondent received notice of the proceedings.

2. Notify law enforcement. The court clerk shall provide a copy of the protection order to the police department(s) with jurisdiction over the residence of the petitioner, and over any other addresses listed in the order.

B. The Navajo Nation Police Department shall:

1. Upon receipt of documents pursuant to § 1661(A)(1), personally serve the documents upon the respondent immediately. Service of protection orders shall take priority over all routine police business.

2. Upon receipt of a protection order pursuant to § 1661(A)(2), file the order in a protection order registry. Each Navajo Nation Police Department shall maintain a registry of all protection orders. The orders shall be indexed by the names of both the petitioner and the respondent.

#### **History**

CJY-53-93, July 23, 1993.

## **§ 1662. Duration of protection orders**

A. A protection order shall be effective upon the respondent as soon as he or she has knowledge of the order. Verbal communication of the existence of a protection order shall constitute sufficient notice.

B. A Temporary Protection Order shall remain in effect until the Court holds a hearing and issues a Domestic Abuse Protection Order, or until the Court dismisses the petition.

C. A Domestic Abuse Protection Order shall remain in effect for five years, unless otherwise specified by the judge.

D. Renewal, extension or modification of protective orders.

1. The petitioner may petition the Court to renew or extend a protection order at any time before its expiration. In an emergency, the Court may issue an extension or renewal *ex parte* pursuant to the provisions for *ex parte* relief set forth in § 1655 of this Act.

2. The Court may modify a protection order upon showing by either party of unanticipated problems or changed circumstances.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Child custody**

"Protection orders are granted when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur, with the purpose of preventing the occurrence or recurrence of abuse. 9 N.N.C. § 1654(A) (2005). This low burden of proof is insufficient for a permanent determination of child custody. Protection orders are intended to prevent abuse—not to determine permanent custody. In a DAPO the trial court may make only a *temporary* custody assignment based on a preponderance of the evidence." *Smith v. Kasper*, No. SC-CV-30-07, slip op. at 4-5 (Nav. Sup. Ct. December 2, 2009).

## **§ 1663. Violation of protection orders**

A. Criminal violations.

1. If, after receiving notice of a protection order, the respondent disobeys the order, he or she commits the offense of interfering with judicial proceedings. The Court may refer such violations to the Office of the Prosecutor for prosecution.

2. A police officer with knowledge of the violation shall immediately arrest the respondent if there exists probable cause to believe that he or she has violated a protection order. The respondent

shall be arrested whether or not such violation occurred in the presence of the officer. The violation shall then be referred to the Office of the Prosecutor for prosecution.

3. The respondent shall then be criminally prosecuted.

B. Contempt of court, forfeiture of bond, money, or property.

1. Any person who has reason to believe that the respondent has violated a protection order or has refused to carry out a judgment, order, or condition imposed by the Court may move the Court for an Order to Show Cause, pro se.

2. The Court shall hold a hearing within 15 days to determine whether the respondent violated the protection order or refused to carry out any judgment, order, or condition.

3. If the Court finds, beyond a reasonable doubt, that the respondent violated the protection order, the Court shall hold the respondent in criminal contempt of court. The Court may punish the respondent with imprisonment of up to 180 days, a fine of up to two hundred fifty dollars (\$250.00), or both. Further, the Court may require forfeiture of any bond posted, money deposited, or property pledged as security to assure compliance with the order under § 1660(A)(18).

4. If the Court finds, by a preponderance of the evidence, that an individual has refused to carry out a judgment, order, or condition imposed by the Court, the Court may hold that person in civil contempt of court. To compel the person to carry out the judgment, order, or condition, the Court may incarcerate that individual for up to 180 days, or impose such other penalties as the Court deems necessary to compel compliance.

C. Hearings on alleged violations of protection orders shall be expedited.

### **History**

CJY-53-93, July 23, 1993.

### **Annotations**

#### **1. Construction and application**

"The law requires a finding that a person violated a term of a protection order before jail becomes an option. The courts are prohibited from imposing a jail sentence on a person simply on the basis of the person's admission to an allegation in a domestic abuse protection petition." *In re: Petition of Austin, Sr. For Habeas Corpus*, 7 Nav. R. 346, 348 (Nav. Sup. Ct. 1998).

#### **2. Procedure**

"After a hearing, held 15 days after the order to show cause is issued, the family court can hold the respondent in criminal contempt upon a finding beyond

a reasonable doubt that he or she violated the order." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

"There is an alternative procedure, whereby any 'person' who believes the respondent has violated a protection order can move the family court for an order to show cause." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6-7 (Nav. Sup. Ct. May 24, 2004).

"If a respondent in a Domestic Abuse Protection Act (DAPA) case violates a protection order, the family court or the police department may refer the incident to the prosecutor for criminal prosecution." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6 (Nav. Sup. Ct. May 24, 2004).

### **3. Penalties**

"DAPA authorizes the family court to incarcerate the respondent for up to one hundred and eighty days and/or fine him or her two hundred fifty dollars (\$250.00)." *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

### **4. Expired orders**

"As a general rule, there can be no enforcement of an order which has expired. Furthermore, to maintain the focus of the DAPO on actual protection against immediate harm, this Court also holds that a Family Court may not issue a bench warrant, a temporary commitment order, or conduct an OSC hearing on ancillary matters of an expired DAPO." *Johnny v. Greyeyes*, No. SC-CV-52-08, slip op. at 6-7 (Nav. Sup. Ct. February 27, 2009).

### **§ 1664. Vacation of protection orders**

A. A party who wishes to have a protection order vacated must move the Court for an order.

B. A protection order shall be vacated only by court order.

C. In determining whether or not to vacate a protection order, the Court shall consider the following factors:

1. Whether either or both of the parties have attended counseling and for how long;

2. Whether the respondent has attended substance abuse counseling and for how long;

3. Whether the circumstances have changes so as to remove the danger to the petitioner from the respondent; and

4. Any other factors the Court deems relevant.

D. The court clerk shall provide a copy of any subsequent order to all police departments to whom a copy of the original protection order was delivered under § 1661(A) (2).



E. All Navajo enforcement agencies shall enforce any protection order that has neither expired nor been vacated, regardless of the current status of the parties' relationship.

#### **History**

CJY-53-93, July 23, 1993.

#### **§ 1665. Fees; filing, service, copies**

The Court shall not charge the petitioner any fee for filing, copies, forms, service of process, or any other services associated with petitioning for a protection order. The Court may order the respondent to pay costs and fees.

#### **History**

CJY-53-93, July 23, 1993.

#### **Annotations**

##### **1. Court authority**

"While Section 1665 appears in isolation to give the family court the discretion to assess the fee on any respondent, the actual practice, as described above, is that the respondent is always required by the fee. This practice is contrary to DAPA. DAPA forbids the assessment against a prevailing respondent. Section 1665 must be read together with other sections of DAPA, in particular Section 1660, which sets out the possible relief a court may award a petitioner in a protection order. Section 1660 states that in any protection order proceeding, 'once the petitioner has met the burden of proof,' the Court must grant any relief necessary to prevent further abuse." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 3 (Nav. Sup. Ct. July 18, 2005).

"Taken together, the plain language of Sections 1660 and 1665 anticipate the assessment of fees, including the commissioner fee. Only when the need for a protection order has been proven, and not automatically whenever a commissioner holds a hearing. To interpret these provisions otherwise would punish an innocent respondent. It is patently unfair to impose a fee on a person who did not bring the action and was found not to have committed abuse. This Court therefore holds that the assessment of a fee in this case was contrary to the provisions of DAPA." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 4 (Nav. Sup. Ct. July 18, 2005).

##### **2. Court rules**

"Consistent with the principle of *íishjání ádoonií*[, in which our laws and rules should be clear, this Court, pursuant to 7 N.N.C. § 601 (as amended by the Navajo Nation Council Resolution No. CO-72-03 (October 24, 2003)) will amend the domestic violence rules to address this issue." *Yazzie v. Thompson*, No. SC-CV-69-04, slip op. at 4 (Nav. Sup. Ct. July 18, 2005).

#### **§ 1666. Comity**

A. Any protection order issued pursuant to this Act shall be effective throughout the Navajo Nation.

B. Upon determining that a foreign court had jurisdiction to enter a protection order, a Navajo Nation court may issue an order recognizing that protection order and according it comity. Once recognized, a protection order shall be enforced as if it were an order of a court of the Navajo Nation.

#### **History**

CJY-53-93, July 23, 1993.

#### **§ 1667. Mutual protection orders**

Mutual protection orders shall not be granted unless the respondent files a petition for protection and makes a separate showing of domestic abuse pursuant to this Act.

#### **History**

CJY-53-93, July 23, 1993.

### **Chapter 17. Child Support Enforcement Act**

#### **§ 1701. Short Title**

This Act shall be known as the Navajo Nation Child Support Enforcement Act.

#### **History**

CD-111-94, December 14, 1994.

#### **United States Code**

Title IV(D) of the Social Security Act, Child Support and Establishment of Paternity, 42 U.S.C. § 651, et seq., 42 U.S.C. § 654.

#### **Annotations**

##### **1. Construction of federal law**

"Title IV-D of Social Security Act, dealing with child support enforcement, conferred private cause of action under § 1983 upon recipients of Aid to Families with Dependent Children (AFDC) to challenge state's refusal to assist them in obtaining child support enforcement from absent parents living on Indian reservations. *Howe v. Ellenbecker*, C.A.8 (S.D.) 1993, 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49." Civil Rights <KEY> 1330(6)

"Any interpretation of Title IV-D of Social Security Act, dealing with child support enforcement, that results in exclusion of large percentage of Indian children and their parents from its benefits is unreasonable and contrary to

language and purposes of the Act. *Howe v. Ellenbecker*, D.S.D.1991, 774 F.Supp. 1224, affirmed 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49." Social Security And Public Welfare <KEY> 194

#### **§ 1702. Statement of Policy**

A. It is the public policy of the Navajo Nation to implement the values of Navajo common law regarding parentage and children. Children are the most valuable gift of creation. They must be loved and receive care. There is a parental duty to establish a child's parentage for identity in family and clan relations. Parents and relations have a duty to nourish and support children. Where there is disharmony in the family, parents will subordinate their interests in favor of their children.

B. Children shall be maintained, as completely as possible, from the resources of their parents. This Act establishes an administrative process for the establishment of parentage; the establishment, modification and enforcement of child support obligations; and adds remedies to those already existing for child support enforcement. This Act shall be liberally construed to effectuate the policy stated herein; and these remedies shall be in addition to, and not in lieu of, those in existing law.

C. The state agencies within the States of Arizona, New Mexico, and Utah which are charged with the statewide provision of services to individuals under Title IV(D) of the Social Security Act<sup>1</sup> may utilize the administrative and judicial review processes provided for in this Act, to the extent that they negotiate agreements with the Navajo Nation for the performance of administrative functions by the Navajo Nation. Absent such agreements, the Navajo Nation shall have no obligation to provide services under this Act to state Title IV(D) agencies. In no manner is this Act intended, nor is it to be deemed, to relieve the States of Arizona, New Mexico and Utah from providing equal protection of the laws of their respective states and the United States to their citizens.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1703. Definitions**

For purposes of this Act:

A. "Absent Parent" means a parent of (a) child(ren) either during the course of marriage or outside of marriage who is not providing the custodial parent with child support for the benefit of the child(ren), or who is bound by an administrative or court order to pay a child support obligation.

B. "Administrative Order" unless otherwise indicated means an order issued by the Office of Hearings and Appeals establishing and/or modifying parentage of and/or liability for public debt and/or child support for any child(ren).

C. "Child" means any person under the age of 18 who is not emancipated according to the laws of the Navajo Nation who is alleged to be the natural or

adopted offspring of an absent or custodial parent.

D. "Child Support" means the financial obligation an absent parent has towards his or her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the absent parent, or by parentage of any child(ren). The financial obligation of an absent parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the Office of Hearings and Appeals, or the courts.

E. "Court" shall mean any family court of the Navajo Nation or a court of another state or territory having jurisdiction to determine an absent parent's liability for child support.

F. "Court Order" means any order, judgment, or decree of a court establishing or modifying parentage for (a) child(ren) and/or liability for public debt and/or child support for any child(ren).

G. "Custodial Parent" means the parent who holds legal custody of the child(ren) pursuant to a court order, or who exercises physical custody of the child(ren) on the basis of agreement between the parents or the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.

H. "Division" unless otherwise indicated means the Navajo Nation Division of Human Resources, or its successor.

I. "Garnishment" means the process whereby an order is directed to an employer, bank or agent, holding monies or property of an absent parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

J. "Gross Income" is income from any source, including but not limited to, salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest, trust income, annuities, capital gains, unemployment compensation, worker's compensation, disability insurance benefits, tips, gifts, prizes, and alimony. It includes in-kind and non-cash income, calculated at reasonable market value.

K. "Income Tax Refund Interception" is a remedy whereby any income tax refund of an absent parent shall be intercepted directly from the United States, state, Navajo Nation, or other Indian Nation for the payment of public and/or support debt.

L. "Parent" means the natural or adoptive mother or father of a child.

M. "Parentage" means the condition of being the natural or adoptive mother or father of any child(ren) and includes both the paternity and maternity of any child(ren).

N. "Public Assignment of Child Support Rights" means the assignment of child support rights by the custodial parent to the Navajo Nation, or any state or federal agency. Such assignment may be in connection with the payment of benefits under the federal Aid to Families with Dependent Children (AFDC) to or

for the benefit of any child(ren) by the Navajo Nation, or any state or federal agency, as a consequence of the failure of an absent parent to provide child support to any child(ren).

O. "State Lottery and Indian Gaming Winnings" means any and all monies and/or goods and/or services which are awarded to an individual as a consequence of a state and/or Indian Nation gaming operation.

P. "Child Support Rights" means the rights of a custodial parent to receive child support from an absent parent as determined under the law of the Navajo Nation or comparable laws of any other jurisdiction or territory.

Q. "Wage Assignment" means a voluntary written assignment of earned wages which is submitted by an employee to an employer, authorizing the employer to pay the earned wages of the employee to or for the benefit of a child.

R. "Wage Execution" is a remedy which can be included in an administrative or court order directing an employer to make payments to or for the benefit of a child from the earned wages of any employee.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1704. Public Assignment of Child Support Rights, Establishment and Amount of Obligation**

A. Assignment. A public assignment of child support rights constitutes an obligation owed by the absent parent to the Navajo Nation, or any state or federal agency. The assignment may be connected to the payment of AFDC benefits to, or for the benefit of, the child(ren).

1. A custodial parent who receives AFDC benefits in his or her own behalf or for the benefit of a child shall assign all accrued child support rights for the AFDC beneficiary child(ren), to the Navajo Nation, or other federal or state agency which made AFDC payments to the custodial parent.

2. A custodial parent who does not receive AFDC benefits may apply for services from the Division under this Act upon their voluntary assignment of all accrued child support rights to the Navajo Nation. Provided, that the Division may charge non-AFDC recipient custodial parents fees for services provided under this Act, in accord with the fee schedule established pursuant to § 1711 of this Act.

3. The assignment of child support rights includes the right to prosecute any action to establish parentage, and to establish, modify, and/or enforce the amount of child support obligation, pursuant to this Act or any other provision of applicable Navajo Nation law. All such actions shall be brought in the name of the Navajo Nation, or such other federal or state agency which made AFDC payments to the custodial parents.

4. The custodial parent shall have the right to refuse to assign

support rights to the Navajo Nation, or other federal or state agency, for good cause, based upon the best interests of the child(ren).

B. Obligation. The absent parent's child support obligation shall be established through the administrative process provided in this Act, or by a voluntary agreement which meets the requirements of § 1716 of this Act.

1. The obligation shall commence at the time of the entry of the administrative order which establishes the amount of the child support payable by the absent parent, or on the date on which the absent parent signs the voluntary agreement.

2. If there is an administrative order, the amount of the child support obligation shall be the amount set in the administrative order.

3. Until there is an administrative order entered, the amount of the child support obligation shall be presumed to be the amount determined in writing by the Division as part of the administrative process established under this Act, in accordance with the Navajo Nation Child Support Guidelines.

#### **History**

CD-111-94, December 14, 1994.

#### **Annotations**

##### **1. Construction and application**

"Section 4(A) (III) does not provide OHA with authority to modify child support beyond that in Section 8(F). The Act does not grant OHA authority to review or modify court-ordered child support." *Bedoni v. Navajo Nation Office of Hearing and Appeals, and Calvin Biakeddy*, No. SC-CV-13-02, slip op. at 2 (Nav. Sup. Ct. September 4, 2003).

##### **2. Interest**

"In *Yazzie v. Yazzie*, 7 Nav. R. 203 (1996), we required a family court to award 10% interest calculated on a month-to-month basis for child support arrearages. Our rationale for awarding interest was 'not to penalize or punish,' but to reach 'an equitable amount to be paid.' *Id.* at 206. The 10% compounded formula [is to] be used as an incentive for the parent paying child support to pay on time." *Watson v. Watson*, No. SC-CV-45-03, slip op. at 3 (Nav. Sup. Ct. March 2, 2005).

#### **§ 1705. Notice of Public Assignment of Child Support Rights**

When the Navajo Nation or any other state and/or federal agency has received an assignment of child support rights, the Division may issue a Notice of Public Assignment of Child Support Rights. Service shall be by certified mail, restricted delivery. Provided, that where an attempt to serve by certified mail is unsuccessful, personal service shall be made by any person designated by the Division who has reached the age of 18 years, and who is neither identified as a child nor a custodial parent under the Notice of

Assignment of Child Support Rights. The notice shall include:

A. A statement providing the name(s) of the child(ren) for whom parentage is alleged and for whom child support is being sought, and the name of the custodial parent;

B. A statement of the child support obligation accrued, and a demand for immediate payment, for those cases wherein a court or administrative order has established the child support obligation; or

C. A statement of the child support obligation which the Division has determined to be appropriate, in accord with the Navajo Nation Child Support Guidelines, for those cases in which no court or administrative order has established the child support obligation;

D. A statement that if the alleged absent parent disagrees with the claim of their parentage of the child(ren), the amount of the child support obligation or the periodic payment required thereon, the alleged absent parent must file a written answer and request for hearing, within 30 days of service, with the Division, which shall immediately transmit the written answer and request for hearing to the Office of Hearings and Appeals;

E. A statement that if no timely written answer is received, the Office of Hearings and Appeals shall enter an order in accord with the Notice of Public Assignment of Child Support Rights;

F. A statement that as soon as an administrative order is entered, the absent parent's property, without further notice or hearing, will be subject to collection action, including but not limited to wage execution, garnishment, income tax refund interception, state and Indian gaming winnings interception, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of Navajo Indian Country and personal property wheresoever located;

G. A statement that the absent parent is responsible for notifying the Division of any change of address or employment;

H. A statement of all fees associated with the administrative child support enforcement process which may be charged against the absent parent;

I. A statement indicating that the entry of default against the absent parent will result in the entry of a self-executing judgment for wage execution in the amount of the public debt;

J. Such other information as the Division deems appropriate.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1706. Navajo Nation Child Support Guidelines**

The Navajo Nation Supreme Court shall, following public hearings conducted by the Division and in accord with the requirements of 7 N.N.C. §

601, establish a scale of minimum child support contributions. This scale shall be used to determine the amount an absent parent shall pay for support of his or her child(ren) pursuant to this Act.

A. The Navajo Nation Child Support Guidelines must, at a minimum:

1. Take into consideration all gross income of the parents;
2. Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child(ren) for housing, clothing, food, education, health care, recreation, and goods and services required by physical and/or mental disability;
3. Provide for the child(ren)'s health care needs, through health insurance coverage which supplements those health care goods and services provided by the Federal Government, where appropriate;
4. The circumstances which may support a written finding on the record of a judicial or administrative proceeding for the award of child support, in reducing support contributions on the basis of hardship to the absent parent or other children while considering the best interest of the child(ren) who are the subject of the judicial or administrative proceeding; and
5. Provide for review and revision, where appropriate, of the child support guidelines at least once every four years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases in the costs associated with the care and support of children within the Navajo Nation.

B. The Supreme Court of the Navajo Nation shall accept and compile pertinent and reliable information from any available source in order to establish a scale of minimum support contributions. Copies of the scale shall be made available to the Division, the Office of Hearings and Appeals, courts, prosecutors, and persons admitted to the practice of law in the Navajo Nation, and shall be considered public records of the Navajo Nation.

### **History**

CD-111-94, December 14, 1994.

### **Annotations**

#### **1. Arrearages; interest rate**

"While the [Child Support Enforcement Act] provides for current or prospective support, it does not address how arrearages are to be handled." *Watson v. Watson*, No. SC-CV-40-07, slip op. at 5 (Nav. Sup. Ct. December 14, 2009).

"This Court hereby holds that setting a default interest rate for arrearages is a role reserved to the legislature; it is lawmaking. The Navajo judiciary cannot, in effect, legislate such a default rate by mandating a single, specific rate for all cases." *Watson v. Watson*, No. SC-CV-40-07, slip op. at 6



(Nav. Sup. Ct. December 14, 2009).

"The Court thereby holds that the *Yazzie* Court and the *Watson I* Court both exceeded its authority by mandating a 10% compound interest rate. We therefore reverse *Watson I* in the imposition of a 10% compound interest rate and affirm the trial court's denial of interest on both arrearages." *Watson v. Watson*, No. SC-CV-40-07, slip op. at 6-7 (Nav. Sup. Ct. December 14, 2009).

#### **§ 1707. Adjustments to Gross Income**

A. When calculating the gross income of a parent for purposes of this Act, the following adjustments to gross income shall be made as deductions from gross income:

1. Amounts of court-ordered alimony and child support actually paid; and
2. Amounts necessary for minimal costs of food, shelter, clothing, and transportation in maintenance of the parent; and
3. Amounts paid in mandatory taxes and social security deductions.

B. The provisions of § 1707, Subsection (A) notwithstanding, the best interests of the child(ren) shall take precedence. Child support amounts shall be sufficient to provide for the basic needs of the child(ren). In cases wherein adjustments to gross income of a parent under § 1707, Subsection (A)(ii), would result in insufficient child support to any of the children of the absent parent, the needs of the child(ren) shall take precedence over the needs of the absent parent.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1708. Administrative Hearings**

A. Scheduling of Hearing. Upon receipt of a written answer from the alleged absent parent pursuant to § 1705 of this Act, the Office of Hearings and Appeals shall schedule a hearing before a hearing officer. The administrative hearing shall be held within the judicial district in which the custodial parent resides, unless another venue is agreed upon by the parties. Telephonic administrative hearings are permitted as well as the telephonic administration of oaths. The administrative hearing shall be scheduled within 30 days of the receipt of the written answer, unless continued for cause by the hearing officer.

B. Issues for Determination in Administrative Hearing

1. Parentage. Unless the alleged absent parent has stipulated to his or her parentage of the child(ren), the hearing officer shall determine whether the alleged absent parent is the parent of the child(ren). The hearing officer shall make a specific finding of fact regarding whether the alleged absent parent is the parent of the child(ren). The standard for proof of parentage shall be by clear and

convincing evidence.

2. Amount of Child Support Obligation. The hearing officer shall establish the amount of the child support obligation of the absent parent by using the Navajo Nation Child Support Guidelines provided in § 1706. The hearing officer shall make a specific finding of fact regarding the amount of the child support obligation. The standard of proof for establishment of the amount of the child support obligation shall be by preponderance of the evidence.

C. Procedures. The hearing shall be conducted according to procedures established by the Office of Hearings and Appeals. These procedures shall provide due process to the parties and shall, at a minimum, authorize:

1. The inspection of property, examination and production of pertinent records, books, information, or evidence;

2. The subpoena of any person for testimony under oath concerning all matters related to the establishment of parentage and child support;

3. The admission of pertinent testimony and evidence upon which the issues of parentage and child support shall be determined; and

4. The making of a permanent record of the proceedings, through electronic recording or other method.

D. Default. If the alleged absent parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order of parentage, and child support obligation pursuant to the notice. Within 20 days of the administrative hearing, the hearing officer shall enter an order stating the establishment of parentage, and the child support obligation of the absent parent.

E. Miscellaneous Content of Order

1. Each order for child support or maintenance payments shall include an order that the absent parent and custodial parent notify the Office of Hearings and Appeals of any change of employer or change of address within 10 days of such change.

2. In the event the order contains a determination of child support obligation, the order shall be in favor of the child through its custodial parent or guardian when the Navajo Nation, or other federal or state agency, is not making AFDC payments in behalf of the child.

3. In the event the order contains a determination of child support payments, the order shall provide for garnishment, wage execution, state and Indian gaming winnings and income tax refund interception as means for execution on any unpaid child support obligation.

F. Modification of Order. The child support obligation of an absent parent may, after entry of an administrative order, be modified prospectively upon entry of an order by the Office of Hearings and Appeals. Either parent may petition the hearing officer for an order based on a showing of a change of

circumstances requiring the other parent to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning parent on the other parent in the same manner as the notice under § 1705 of this Act. A hearing shall be set not more than 30 days from the date of service.

### **History**

CD-111-94, December 14, 1994.

### **Annotations**

#### **1. Retroactive modifications**

"Even if the OHA had the authority to change a court-ordered child support payment, it may not retroactively change a child support order. The Act grants OHA authority to change its administrative orders prospectively. Section 8(F). It is notably silent on retroactive changes, thereby excluding them from OHA's powers. OHA should not have more power to change court orders than it has to change its own administrative orders." *Bedoni v. Navajo Nation Office of Hearing and Appeals, and Calvin Biakeddy*, No. SC-CV-13-02, slip op. at 2 (Nav. Sup. Ct. September 4, 2003).

#### **§ 1709. Judicial Review**

##### **A. Appeal.**

1. The Navajo Nation Supreme Court shall hear appeals on the record from administrative decisions made by the Office of Hearings and Appeals pursuant to this Act.

2. Any party may secure judicial review of an administrative order made pursuant to this Act by filing an appeal with the Navajo Nation Supreme Court within 20 days after the administrative decision is filed in the Office of Hearings and Appeals.

**B. Appeal on Record.** The appeal to the Navajo Nation Supreme Court shall be an appeal on the record established before the Office of Hearings and Appeals and shall be strictly limited to the issues of the parentage of the child(ren), the amount of public debt and child support liability of the absent parent.

**C. Standard of Review.** The Navajo Nation Supreme Court shall not reconsider questions of fact which have been determined by the Office of Hearings and Appeals. The Navajo Supreme Court may reverse or modify the decision of the Office of Hearings and Appeals if the administrative findings, conclusions or decisions are, as a matter of law:

1. Clearly erroneous in view of the reliable, probative, and substantial evidence in the record, when viewed in its entirety; or

2. Arbitrary and capricious or characterized by abuse of discretion.

## History

CD-111-94, December 14, 1994.

## Annotations

### 1. Construction and application

"Unlike the audit sanction provision, the Court has explicit authority to review the decisions of OHA under the Navajo Nation Child Support Enforcement Act." *Budget and Finance Committee v. Office of Hearings and Appeals*, No. SC-CV-63-05, slip op. at 6 (Nav. Sup. Ct. January 4, 2006).

### § 1710. Docketing of Order

A true copy of any administrative order made pursuant to § 1705 or § 1708 of this Act may be filed with the clerk of any Court in the Navajo Nation. The clerk shall docket the order in the judgment docket. Upon docketing, the order shall have all the force and effect of a docketed order of the Family court, including but not limited to the ability to enforce such an order pursuant to the Navajo Rules of Civil Procedure and the laws of the Navajo Nation.

## History

CD-111-94, December 14, 1994.

### § 1711. Powers of the Division

A. Except where otherwise indicated, the Division shall have the power to promulgate rules and regulations necessary to carry out the provisions of this Act.

B. The Division shall have the authority to conduct a child support enforcement program under this Act, including the authority to investigate claims of parentage and child support obligation, to locate absent parents, and to establish and modify child support obligations through the administrative process contained in this Act.

C. Except where otherwise indicated, the Division shall have the power to certify to official acts.

D. The Division shall have the power to require alleged absent parents to undergo blood testing and/or DNA testing, in accordance with rules and regulations promulgated by the Division, for the purpose of obtaining evidence relevant to the parentage of child(ren). Navajo traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing. The Division may require the alleged absent parent to reimburse the Division for the costs of such blood testing and/or DNA testing.

E. The Division shall be exempt from any filing fees required of individuals in the courts of the Navajo Nation.

F. The Division shall have the authority to report the names and social

security numbers of absent parents and the amounts of unpaid public and/or support debt to credit reporting bureaus, and professional licensing agencies.

G. The Division shall have the power to set or reset the schedule of fees required on the establishment and enforcement of public debt and child support, including application fees, filing and other fees associated with the administrative process.

H. The Division shall have the power to utilize funds which it collects pursuant to this Act through a revolving cost account for the operation of child support enforcement services, subject to appropriation of such funds by the Navajo Nation Council. Provided, that state and federal funds shall not be supplanted by fees collected by the Division.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1712. Wage Execution and Garnishment**

A. The Office of Hearings and Appeals may order wage execution in any order issued pursuant to § 1705 or § 1708 of this Act. Wage execution shall be utilized in all cases wherein an employer of an absent parent can be identified.

B. The Office of Hearings and Appeals may require garnishment of earnings to enforce a child support order pursuant to this Act in cases wherein wage execution may not be an available remedy, due to the lack of an identified employer, or for other reasons.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1713. Wage assignments**

An absent parent may execute a wage assignment as will be sufficient to meet the child support obligation calculated by reference to the order of the Office of Hearings and Appeals, or a voluntary agreement entered into pursuant to § 1716 of this Act.

No employer shall refuse to honor a wage assignment executed pursuant to this Act. An assignment made pursuant to this Section shall be binding upon the employer one week after service upon the employer of a true copy of the assignment. Payment of monies pursuant to a wage assignment shall serve as payment of all such wages assigned under any contract of employment. No employer may discharge or prejudice any employee because his wages have been subjected to an assignment for child support.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1714. Exemption from limitation—Statute of limitations not applicable**

No support lien, wage assignment, or garnishment shall be deemed invalid or nonactionable due to the expiration of the statute of limitations on any action for failure to provide child support or maintenance for any child(ren). No statute of limitations shall be effective to prevent the establishment, modification and/or enforcement of parentage and/or child support for any child from birth until the child reaches the age of 18.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1715. Government records**

A. The Division may request and shall receive information from the records of all divisions, departments, boards, bureaus or other agencies of the Navajo Nation, and the same are authorized to provide such information as is necessary for this purpose.

B. The Division may make such information available only to those officials of the Navajo Nation which are authorized to locate parents who have failed to provide child support for their child(ren) to establish, modify, or enforce court orders for child support, or to establish parentage. This information may be given to them only upon their assurance that it will be used in connection with their official duties under the child support enforcement program.

C. Disclosure of information under this Subsection shall comply with § 402(a)(9) of the Social Security Act. In all support proceedings before the Office of Hearings and Appeals, there shall be compulsory disclosure by both parties of their respective financial status.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1716. Enforceable voluntary agreement**

A. Content of Agreement. A custodial parent may enter into an agreement with the alleged absent parent.

1. At a minimum, the agreement shall establish the parentage of the child(ren) and the amount of child support which shall be paid by the absent parent to the custodial parent. In no circumstance will an agreement be approved or enforced which provides for a level of child support which is less than that provided for by the Navajo Nation Child Support Guidelines established pursuant to § 1706 of this Act.

2. By the terms of the agreement, the absent parent must submit personally to the jurisdiction of the Office of Hearings and Appeals for enforcement and modification of the agreement, and consent to entry of an administrative order in accordance with the terms of the agreement. The agreement may be obtained by the parties through their own actions, or utilizing the services of the Navajo Nation Peacemaker.

## B. Submission and Filing of Agreement

1. In the event that no request for hearing has been filed with the Office of Hearings and Appeals under § 1705 of this Act, and no action has been filed before a court, the voluntary agreement shall be submitted to the Division for approval and filed with the Division, which shall maintain the voluntary agreement in its records for possible modification and/or enforcement under the provisions of this Act.

2. In the event that an administrative hearing has been requested from the Office of Hearings and Appeals, the voluntary agreement shall be submitted to the Office of Hearings and Appeals for its approval and enforcement under the provisions of this Act.

## C. Timing of Agreement

1. Such agreement may be entered into at any time prior to the issuance of a final administrative order establishing or modifying parentage, or child support obligation, either before or after service of process, or at any time while said order is still in effect. No agreement shall be entered into before the birth of the child unless the Office of Hearings and Appeals finds that there are special circumstances making it advisable to do so.

2. The voluntary agreement shall be submitted to the Division or the Office of Hearings and Appeals for approval and enforcement. After said agreement is approved by the Division or the Office of Hearings and Appeals, it shall be filed but judgment shall not be rendered unless there is a default of the child support payments agreed upon, when, upon motion of the Division judgment shall be rendered and entered forthwith.

## **History**

CD-111-94, December 14, 1994.

## **§ 1717. Writs of Assistance, Specific Performance, and Bonds**

A. Upon application by the Division, The Navajo Nation Family court may issue a writ of assistance to enforce any court or administrative order issued pursuant to this Act. Administrative and court orders recognized through comity have res judicata authority.

B. The Navajo Nation Family court may specifically enforce any agreement made pursuant to this Act and approved by the Division, Office of Hearings and Appeals, or the Navajo Peacemaker.

C. The Navajo Nation Family court may require a party to submit a commercial, personal surety, or other bond to satisfy the terms of an order issued pursuant to this Act, and enforce such bond in proceedings against the principal and sureties.

D. The Navajo Nation Family court, upon a showing that an absent parent has failed to obey an administrative or court order to pay a support or public

debt, will issue an order to show cause against the absent parent.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1718. Foreign Orders and Comity**

A. Court and administrative orders, judgments or decrees of other Indian nations, states or federal agencies, which relate to child support enforcement are enforced in the Navajo Nation under the doctrine of comity. Authentic foreign orders will be enforced as an order of the Navajo Nation where the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order, personal service of process was made on such person, the administrative or court proceedings offered substantial justice to such person, and the order does not violate Navajo Nation public policy. For purposes of this Act, the Office of Hearings and Appeals shall have the authority to consider court and administrative orders, judgments or decrees of a foreign jurisdiction for comity recognition.

B. A foreign order is authenticated by reasonable proof that the document tendered to the Office of Hearings and Appeals is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.

C. Unless defects in jurisdiction or public policy are apparent on the face of the foreign order, the burden is upon the person against whom it is to be enforced to contest the validity of the order. Upon a failure to respond to notice and the opportunity to contest the order, the Office of Hearings and Appeals may enforce it as a Navajo Nation order.

D. Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Office of Hearings and Appeals may adopt some or all of its provisions as an original order of the Office of Hearings and Appeals.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1719. Request for Peacemaker Assistance**

The Division may request the assistance of the Navajo Peacemaker in resolving parentage and child support issues, if agreed to by both the custodial parent and alleged absent parent.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1720. Coordination of Peacemaker Courts**

Peacemakers must coordinate their activities with the Division.



Agreements reached through the peacemaking process must meet the requirements of § 1716 of this Act.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1721. Temporary Support Orders**

In any action under the Domestic Violence Protection Act, any action affecting dissolution of marriage, or in any other action provided for under Navajo Nation law, wherein the Navajo Nation Family Court has made a temporary order concerning the care, custody, and suitable support or maintenance of the child(ren), the Division shall have the authority to enforce such order as set forth by the Navajo Nation Family Court.

#### **History**

CD-111-94, December 14, 1994.

#### **§ 1722. Amendments**

This Act may be amended from time to time by the Navajo Nation Council upon recommendation of the Division of Human Resources, and the Human Services, Health and Social Services, and Judiciary Committees of the Navajo Nation Council.

#### **History**

CD-111-94, December 14, 1994.

### **Chapter 18. Elder Protection Act**

#### **§ 1801. Short title**

This Act will be known and cited as the "Diné Elder Protection Act."

#### **History**

CO-70-96, October 25, 1996, Approving the Diné Elder Protection Act.

#### **§ 1802. Statement of Policy**

It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for Diné elders. Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition; vested in Diné elders is the hope of the Navajo Nation to retain its tribal history, culture, language and tradition. Navajo elders provide stability by being role models for their children and grandchildren to whom they demonstrate long-standing commitment to family, marriage, employment, profession and other social institutions. Based upon these premises, it is in the Nation's best interest and welfare to protect its elders from abuse, neglect, mistreatment, exploitation, and other

mistreatment.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1803. Purpose**

The purpose of the Diné Elder Protection Act is to protect elders within the jurisdiction of the Navajo Nation from abuse and neglect. The Act will be liberally interpreted in order to achieve this purpose. This Act is not intended to abrogate any existing civil or criminal laws of the Navajo Nation.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1804. Definitions**

These definitions will be liberally construed so as to protect all elders. As used in this Act:

A. Abuse includes:

1. Assault, an attempt to cause bodily harm to another person through the use of force, or the creation in another of a reasonable fear of imminent bodily harm.
2. Battery, application of force to the person of another resulting in bodily harm or an offensive touching.
3. Threatening, words or conduct which place another in fear of physical or other harm on any person or on property.
4. Coercion, compelling and unwilling person, through force or threat of force to engage in or abstain from conduct which the person has a right to abstain from or engage in.
5. Unreasonable confinement, intimidation or cruelty, acts which result in physical harm or pain or mental anguish of an elder by any person, particularly anyone such as a spouse, a child, other family members, caregiver(s) or other persons recognized by Navajo statutory or common law as having a special relationship with the elder.
6. Sexual abuse, any physical contact with an elder for emotional or physical gratification of the person making the contact and to which the elder does not give informed consent or for which the consent is obtained by intimidation or fraud.
7. Emotional abuse, infliction of threats, humiliation, or intimidation.
8. Intimidation, willfully placing another in fear of harm by coercion, extortion or duress.

9. Exploitation, the use of funds, property (including grazing permits, livestock and homesites) or other resources of an elder for personal gain without the informed or true consent of the elder, or the gaining of funds, property (including grazing permits, livestock and homesites) or other resources of an elder by threat, humiliation, intimidation, or other coercion. Exploitation is also failure to use the funds, property, or other resources of any elder for the elder's benefit or according to the elder's wish.

10. Abandonment, desertion of an elder by the elder's family or caregiver(s), which includes refusing or neglecting to provide for an elder when there is a duty to do so.

11. Breach of a fiduciary duty, breach by a family member or caregiver of his or her fiduciary duties toward an elder.

B. Caregiver includes:

1. A person who is required by Navajo statutory or common law to provide services or resources to an elder; or

2. A person who has undertaken to provide care or resources to an elder; or

3. An institution or agency or employees or agents of an institution or agency which provides or is required by Navajo statutory or common law, or state or federal law or tribal-state agreement to provide services or resources to an elder.

C. Elder for the purposes of this Act, is a person subject to the jurisdiction of the Navajo Nation and who is at least 55 years of age or older.

D. Emergency is a situation in which an elder is immediately at risk of death or injury.

E. Family is the immediate circle of relatives, including spouse, biological/clan/adopted children, grandchildren, in-laws, siblings, aunts, uncles, nieces, nephews, first, second and third cousins, biological, clan and adopted parents.

F. Good faith means an honest belief or purpose and the lack of intent to defraud.

G. Incapacity means the current functional inability of a person to sufficiently understand, make and communicate informed decisions as a result of mental illness, mental deficiency, physical illness, or disability, or chronic use of drugs or liquor, as determined by the Navajo Nation Family Courts. Incapacity may vary in degree and duration.

H. Least restrictive alternative is an approach which allows an elder the most independence and freedom from intrusion, consistent with the elder's needs, by requiring that the least drastic method of intervention is used to protect the elder from harm.

I. Neglect occurs when any person fails to provide basic needs, supervision, services, or resources necessary to maintain the minimum physical and mental health of an elder as required by Navajo law. Neglect also includes:

1. Preventing or interfering with delivery of necessary services and resources to an elder.

2. Failing to report abuse, neglect, or exploitation of an elder when there is reasonable suspicion.

3. Failing to provide services or resources essential to the elder's practice of customs, traditions, or religion.

4. Leaving of child(ren) for indefinite periods of time by parents/legal guardians in the care of elders who may resort to using their limited resources in meeting needs of the child(ren).

J. Retaliation consists of threatening, harming, or otherwise interfering with an individual reporting elder abuse, including threats or injury to a person's family, property, and employment status of the reporter or the reporter's family in any way.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1805. Elder Protection Services**

A. Consistent with available resources, the Navajo Area Agency on Aging will have a duty to provide necessary protection services to an elder who has been or is being abused, neglected or exploited. Any protection services provided shall be the least restrictive alternative available and necessary to meet the needs of the elder, the elder's family and caregiver(s). When possible, the affected elder and the elder's family and caregiver(s) shall be consulted in determining what services shall be provided.

B. Consistent with § 1815, the Navajo Division of Health or any other interested person or party may file a petition seeking an Elder Protection Order when good cause exists to believe that an elder is abused, neglected, exploited or incapacitated and is therefore suffering harm.

C. The elder, the elder's family or caregiver(s), if financially able to do so, will pay for some or all of the cost of services or resources provided to the elder pursuant to this Act.

D. Before providing any services, the Navajo Division of Health will inform the elder to the protections services which will be provided and possible alternatives to these services, if any.

#### **History**

CO-70-96, October 25, 1996.

### **§ 1806. Regulations**

The Navajo Division of Health may adopt and issue regulations establishing criteria and procedures which comply with the policy and requirements of this Act for:

- A. Receiving reports of suspected elder abuse or neglect.
- B. Investigating all reports or suspected abuse or neglect.
- C. Initiating petitions for failure to report, for making bad faith reports or elder abuse and neglect, for interference or retaliation for an elder abuse or neglect investigation, and for confidentiality violations.
- D. Seeking and securing elder protection warrants.
- E. Determining whether an incident is an emergency and necessitating immediate removal or the elder from the home where abuse is reported.
- F. Making referral for criminal investigation.
- G. Establishing and providing elder protective services.
- H. Initiating procedures for determining incapacity of the elder.
- I. Implementing and ensuring confidentiality requirements.

#### **History**

CO-70-96, October 25, 1996.

### **§ 1807. Duty to Report Abuse or Neglect of an Elder**

Suspected abuse or neglect of an elder will be reported to the Navajo Division of Health by any person who has good reason to suspect that an elder has been or is being abused or neglected.

#### **History**

CO-70-96, October 25, 1996.

### **§ 1808. Immunity of Reporting**

A person who in good faith makes a report pursuant to § 1807 of this Act is immune from civil or criminal liability.

#### **History**

CO-70-96, October 25, 1996.

### **§ 1809. Bad Faith Report; Civil Penalty; Damages; Criminal Liability**

Any person who knowingly makes a false report of a suspected elder abuse

is subject to a civil penalty of up to seven hundred fifty dollars (\$750.00). The Navajo Nation Family Court will assess the penalty after petition, notice, an opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Further, the false reporter will be subject to any civil suit brought by or on behalf of the person(s) named as the suspected abusers in the false report for damages suffered as a result of the false report. The person is also subject to any criminal penalties as set forth in the Navajo Nation Code or as allowed by this Act.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1810. Receiving Reports; Report Content; Retention of Report**

A. The Division of Health will receive all reports of elder abuse or neglect.

B. The report may be oral or in writing and to the extent possible it will contain:

1. The elder's name, address and location of home, telephone number, census (if applicable) and social security number.
2. Name, address, location, telephone number of person(s) or agency which is suspected to abusing or neglecting elder.
3. The nature and degree of incapacity of the elder, if any.
4. The name, address, location, telephone number of witnesses.
5. The name, address, location, telephone number of the elder's caregiver(s).
6. A description of the acts which are alleged to be abuse or neglect.
7. Any other information that the reporter believes might be helpful in establishing the cause of the abuse or neglect.
8. If possible, the reporter will sign the report. However, a report may be made anonymously.

C. All reports will remain on file for a period of seven years, even if it is determined that there is insufficient evidence to pursue any legal action. In the event that the Navajo Division of Health determines that the report was made in bad faith, the report will so indicate.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1811. Investigations**

A. Within the limits of available resource, the Navajo Division of Health will investigate the report within 72 hours, including weekends and holidays, and prepare a written report of the investigation which will include the information as set forth in Paragraph (B) of § 1810, as well as the results of interviews, observations, assessments and other fact-finding information. If possible, the investigator will conduct personal interviews with the elder, elder's family and caregiver(s), persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circumstances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse or neglect will be ascertained. The investigator will personally assess the elder's living conditions, with assistance of the Office of Environmental Health and the Navajo Department of Law Enforcement, as necessary.

B. An elder, the elder's family and caregiver(s) will be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they will be informed as soon as possible, but not later than 48 hours after an investigation begins.

C. An elder may refuse to accept elder protection services, even if there is good cause to believe that the elder has been or is being abused, provided that he/she is able to care for him/herself and has the capacity to understand the nature of the services offered.

D. The elder's family or caregiver(s) may refuse for themselves, but not for the elder, elder protection services offered pursuant to this Act, unless the elder cannot take care for him/herself or lacks the capacity to understand the nature of the services offered.

E. An elder, the elder's family or caregiver(s) may refuse to allow an investigator into their home and the investigator will so inform the elder, the elder's family and caregiver(s) of this right.

F. The investigator will inform the elder's family and caregiver(s) or their rights as allowed by the Navajo Nation Bill of Rights, whenever it appears that the investigation may lead to criminal charges being filed under Navajo Nation law.

G. The elder, elder's family and caregiver(s) will be served personally with a petition filed pursuant to this Act.

H. The elder, elder's family and caregiver(s) have the right to personally attend any hearing pertaining the determination of the elder's capacity.

I. The elder, elder's family and caregiver(s) have the right to be represented by counsel at all hearings.

J. The elder, elder's family and caregiver(s) have the right to seek independent medical, psychological, or other evaluations at their own expense.

#### **History**

CO-70-96, October 25, 1996.

**§ 1812. Elder Protection Investigation Warrant**

A. The investigator may petition the Navajo Nation Family Court for an Elder Protection Investigation Warrant.

B. The Navajo Nation Family Court may issue an Elder Protection Investigation Warrant upon a showing of probable cause by the investigator that elder abuse or neglect has occurred and that the family, caregiver(s) of the elder, or the elder has refused the investigator access. The Elder Protection Investigation Warrant is enforceable through contempt proceedings as provided under the Navajo Rules of Civil Procedure.

C. The warrant allows the investigator to assess the elder's living conditions and interview the elder without the family's, the caregiver's or the elder's consent. The purpose of the interview is to determine whether or not reasonable grounds exist to believe that the elder is incapacitated or has been subjected to abuse or neglect.

**History**

CO-70-96, October 25, 1996.

**§ 1813. Referral for Criminal Investigation**

A report of suspected elder abuse or neglect will be referred to appropriate law enforcement officers if the investigation indicates that the criminal laws of the Navajo Nation or applicable federal criminal laws have been violated.

**History**

CO-70-96, October 25, 1996.

**§ 1814. Emergency Procedures and Protection Order**

If, after investigation, the investigator has reasonable cause to believe that an emergency exists, the investigator will act immediately to protect the elder, including transporting the elder for medical treatment, placement in a group home or emergency shelter. Within 72 hours of such action, the Navajo Division of Health will petition the Navajo Nation Family Court for an Elder Protection Order as provided for in § 1815 of this Act.

**History**

CO-70-96, October 25, 1996.

**§ 1815. Elder Protection Order**

A. The Navajo Division of Health or any other person or party may petition the Navajo Nation Family Court for an Elder Protection Order. This petition will contain allegations that elder abuse, neglect or exploitation has occurred or that the elder is incapacitated and cannot appropriately care for



him or herself.

B. The Navajo Nation Family Court may issue an Elder Protection Order after affording notice to all affected parties and holding a hearing which demonstrates by clear and convincing evidence that the elder is incapacitated and that elder abuse, neglect or exploitation has occurred.

C. If the Navajo Nation Family Court determines that an elder is abused, neglected, exploited or incapacitated and cannot care for him or herself, the Family Court may issue an Elder Protection Order which provides appropriate protective services for the elder. Such protective services, subject to available resources, may include, but are not limited to, the following:

1. Removing the elder from the abusive or neglectful situation for not longer than 14 days.

2. Removing the person or persons who have abused or neglected an elder from the elder's home.

3. Restraining the person or persons who have abused or neglected an elder from continuing such acts.

4. Requiring an elder's family or caregiver(s) or any other person(s) with a fiduciary duty to the elder to account for the elder's funds and property.

5. Requiring any person who has abused or neglected an elder to pay restitution to the elder for any damages which occurred as a result of that person's wrongdoing.

6. Appointing, pursuant to 9 N.N.C. § 801, *et seq.*, a representative or guardian for the elder or the elder's estate, in the event that the Family Court determines that the elder is incapable of taking care of him or herself or managing his or her property.

7. Naming a representative payee.

8. Ordering the Navajo Division of Health to prepare a plan to deliver elder protection services which provides the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

D. An Elder Protection Order will be issued for a period not to exceed six months, unless the Family Court determines that the elder is incapacitated and as a result is incapable of taking care of him or herself, in which case the Elder Protection Order may be indefinite.

E. An Elder Protection Order may be extended as many times as necessary to protect the elder, but only after notice and opportunity for hearing is given and a determination is made based on clear and convincing evidence that such an order is necessary for the protection of the elder. Each extension will be for a period not to exceed 30 days.

F. Whenever the Family Court determines that an Elder Protection Order

should be issued, it may refer the case to the Peacemaker Division, unless it makes a determination that a referral to the Peacemaker Division is infeasible, inappropriate or futile. Such referral may be part of an Elder Protection Order. Upon referral, the Peacemaker Division will attempt to resolve conflicts between the elder and the elder's family and/or caregiver(s) using traditional methods and in accordance with Peacemaker Division rules.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1816. Confidentiality of Reporter, Records, Hearing**

A. The name of the person who makes a report of abuse or neglect as required by § 1807 of this Act is confidential and may not be released to any person unless the reporter consents to the release or such release is ordered by the Navajo Nation Family Court. The Navajo Nation Family Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the Navajo Nation Court finds that disclosure is needed to protect the elder. The reporter's name will be released only to the extent that the Family Court determines necessary to protect the elder.

B. Any record of an investigation of elder abuse or of a Navajo Nation Court hearing regarding elder abuse will be kept confidential. Such records shall be available to the elder, the elder's family or caregiver, and others who require these records in order to provide services to the elder.

C. A hearing held pursuant to this Act will be closed and confidential. Only person essential to the matter before the court may attend the hearing. No person who attends or testifies at such a hearing will reveal information about the hearing unless ordered to do so by the Navajo Nation Family Court.

#### **History**

CO-70-96, October 25, 1996.

#### **§ 1817. Severability**

Should any provision of this Act or its applicability be found to be invalid by the Courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision will be given full force and effect. To this extent, the provisions of this Act are severable.

#### **History**

CO-70-96, October 25, 1996.

### **Title 10**

#### **Education**