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**Domestic Relations & Families**

(Amended as of 11/1/16)

**CHICKASAW NATION CODE**

**TITLE 6**

**"6. DOMESTIC RELATIONS AND FAMILIES"**

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**(RESERVED)**

**CHAPTER 8**  
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**(RESERVED)**



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**CHAPTER 1  
MARRIAGE**

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**SECTION 6-101.1                      TITLE.**

This Act shall be known as the "Domestic Relations Act of 2002" ("Act"). (PR19-018, 5/17/02)

**SECTION 6-101.2                      JURISDICTION.**

Territorial jurisdiction, subject matter jurisdiction and personal jurisdiction shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

**SECTION 6-101.3                      AREAS OF JURISDICTION.**

A.      General Jurisdiction

1.      The Court shall have jurisdiction over all issues within this title wherein a Chickasaw Indian is the defendant regardless of the domicile of such person.

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2. The Court shall have jurisdiction over all issues within this title wherein the defendant is an Indian and has resided within the governmental boundaries described with the Constitution of the Chickasaw Nation for ninety (90) days preceding the filing of this action.

3. The Court shall have jurisdiction over all issues within this title wherein non-Indian defendants consent in writing to the jurisdiction of the Court.

### B. Continuing Jurisdiction

1. Once the Court has determined that jurisdiction exists in regard to issues addressed by this title, the Court may retain jurisdiction over all issues so long as outstanding issues remain between the parties.

2. Consents, once given, may not be withdrawn. A person requesting affirmative relief in writing is deemed to have consented to the jurisdiction of the Court whether plaintiff or defendant.

3. Residency is only an issue for jurisdiction at the initiation of a case. Once jurisdiction attaches, jurisdiction remains.

4. A Chickasaw Indian may not avoid jurisdiction after the same attaches by subsequent actions of renouncing tribal affiliation.

### C. Court Exercise of Jurisdiction

At any time a Judge of this Court determines that the exercise of jurisdiction under this title is not in the best interest of the Chickasaw Nation, the Judge may decline to exercise jurisdiction if one or more of the following findings is specifically made:

a. The orders sought by the plaintiff or defendant will be impossible for the Court to enforce.

b. Another jurisdiction is available and provides a more convenient forum for the parties.

c. Another jurisdiction is attempting to exercise authority over the issues addressed and comity should be extended to allow such court to act.

d. The Court is without financial means to adequately address the case.

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D. Jurisdiction Vesting

Jurisdiction is determined to have vested at time of filing an action provided that:

- a. Written consents required by a defendant relate back to date of filing if given after filing. Nothing prevents consent being given in advance of filing.
- b. Service of process must be accomplished within six (6) months of filing and must meet due process standards of the United States federal government or the case is deemed dismissed for lack of service.

**SECTION 6-101.4                      APPLICABLE LAW.**

Applicable law shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

**SECTION 6-101.5                      ACTIONS THAT MAY BE BROUGHT; REMEDIES.**

A. Actions that may be brought under this Act are actions for divorce, legal separation, annulment or parentage. Appropriate remedies regarding divorce, annulment, separate maintenance and the division of community property and debt shall be available at the Court's discretion as provided in this Act.

B. After parties have established jurisdiction for any purpose, the Court shall have jurisdiction to settle all claims made between the parties under the equity clean up rule.

**SECTION 6-101.6                      DEFINITION OF MARRIAGE, COMMON LAW MARRIAGE.**

A. "Marriage" means a personal relation arising out of a civil contract between members of the opposite sex to which the consent of parties legally competent of contracting and of entering into it is necessary, and the Marriage relation shall be entered into, maintained or abrogated as provided by law.

B. "Common Law Marriage" means a personal relationship arising out of tribal customs and traditions or from common law of a tribe, state or nation wherein the parties entered Marriage.

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**SECTION 6-101.7**                      **CONSANGUINITY.**

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by Marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited. Provided, that any Marriage of first cousins performed in a state authorizing such Marriages, which is otherwise legal, is hereby recognized as valid and binding in the Chickasaw Nation as of the date of such Marriage.

**SECTION 6-101.8**                      **PERSONS HAVING CAPACITY TO MARRY.**

Any unmarried person of the age of eighteen (18) years or upwards and not otherwise disqualified is capable of contracting and consenting to Marriage with a person of the opposite sex but no person under the age of eighteen (18) years shall enter into the Marriage relation except upon the consent and authority expressly given by the parent or guardian of such underage applicant. Provided, however, every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the Marriage relation. Provided, that this section shall not be construed to prevent the Court from recognizing the Marriage of persons under the ages herein mentioned, in settlement of suits for seduction or paternity; and the Court may also recognize the Marriage of persons under the ages herein mentioned when the unmarried female is pregnant, or has given birth to a child of the parties, whether or not any suits for seduction or paternity have been brought; provided that the Court shall recognize the Marriage of any male under the age of sixteen (16) or any female under the age of sixteen (16) when the unmarried female is pregnant unless at least one parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence of such Marriage. No Marriage may be recognized when such Marriage would be incestuous under this Act.

**SECTION 6-101.9**                      **MARRIAGE BETWEEN PERSONS OF SAME GENDER  
NOT RECOGNIZED.**

A.        A Marriage between persons of the same gender performed in any jurisdiction shall not be recognized as valid and binding in the Chickasaw Nation as of the date of the Marriage.

B.        No Marriage will be recognized between persons of the same sex; however, nothing in this title prohibits members of the same sex from entering written contracts one with the other.

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**SECTION 6-101.10**                    **GROUND FOR DIVORCE.**

The Court may grant a divorce on the grounds of irreconcilable differences between the parties.

**SECTION 6-101.11**                    **PETITION; SUMMONS.**

The petition must be verified as true.

**SECTION 6-101.12**                    **NOTICE OF PENDENCY CONTINGENT UPON SERVICE.**

Notice of the pendency of an action shall have no effect unless service of process is made upon defendant(s).

**SECTION 6-101.13**                    **SPECIAL NOTICE FOR ACTIONS PENDING IN OTHER COURTS.**

No action pending in either state or federal court, or the court of any other Indian nation, shall constitute notice within the jurisdiction of the Chickasaw Nation until a notice of pendency of the action, together with a certified copy of the entire case is filed of record in the office of the Court Clerk.

**SECTION 6-101.14**                    **PLEADINGS.**

A. Pleadings shall be summary and not specific in nature. The Court shall allow amendments and supplementation of pleadings, provided the same allows for notice and discovery prior to trial. If a trial date is set, and less than ten (10) days remains to trial, leave must be obtained from the Court prior to filing.

B. Every pleading shall contain a caption setting forth the name of the Court, the title of the action, the file number, and a designation of the type of pleading.

C. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings, or motions, or briefs. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

D. Statements in a pleading, or motion, or brief may be adopted by reference in a different part of the same pleading or in another pleading or in any motion or brief. A copy of

any written instrument which is an exhibit to a pleading, or a motion, or a brief is a part thereof for all purposes.

**SECTION 6-101.15**                      **SIGNING OF PLEADINGS.**

A.        Every pleading of a party represented by a member of the Chickasaw Bar Association shall be signed by such member in his individual name, whose address and telephone number shall be stated. A party who is not represented by a member of the Chickasaw Bar Association shall sign his pleading and his address and telephone number. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

B.        The signature of a member of the Chickasaw Bar Association constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Section it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this Section a member of the Chickasaw Bar Association may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

C.        Failure of a *pro se* party or member of the Chickasaw Bar Association to provide current and updated addresses shall not be grounds for any request to vacate for lack of notice. Such persons have an affirmative duty to file notice of address changes with the Court.

**SECTION 6-101.16**                      **DEFENSE AND OBJECTIONS; WHEN AND HOW PRESENTED; BY PLEADINGS OR MOTIONS; MOTION FOR JUDGMENT ON THE PLEADINGS.**

A.        **When Presented.**

1.        A defendant shall serve his answer within twenty (20) days after the service of summons and petition upon him or a different time is prescribed in the order of the Court or under a statute of the Chickasaw Nation.

2.        A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs. The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by



order of the Court: 1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; 2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the services of the more definite statement.

3. Within the time in which an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or otherwise defend.

4. No action or requirement to appear against any governmental entity is authorized by this title.

**B. How Presented.**

1. Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- a. lack of jurisdiction over the subject matter;
- b. lack of jurisdiction over the person;
- c. improper venue or *forum non conveniens*;
- d. insufficiency of process;
- e. insufficiency of service of process;
- f. failure to state a claim upon which relief can be granted;
- g. failure to join a party;
- h. another action pending between the same parties for the same claim;
- I. lack of capacity of a party to be sued; and
- j. lack of capacity of a party to sue.

2. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one

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or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or in fact to that claim for relief. If, on a motion asserting the defense numbered f. above to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

**SECTION 6-101.17**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.18**                      **LOST PLEADINGS.**

If a pleading is lost or withheld by any person, the Court may allow a copy thereof to be substituted. (PR19-018, 5/17/02)

**SECTION 6-101.19**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.20**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.21**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.22**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.23**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.24**                      **RESERVED.**

(PR19-018, 5/17/02)

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**SECTION 6-101.25**                    **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.26**                    **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.27**                    **SUMMONS, TIME LIMIT FOR SERVICE.**

A.     If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the petition and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Court's own initiative with notice to the plaintiff or upon motion.

B.     If service of process is not made upon a defendant within one hundred eighty (180) days after the filing of the petition, the action shall be deemed to have been dismissed without prejudice as to that defendant.

**SECTION 6-101.28**                    **SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.**

A.     Except as otherwise provided in this Act, every order required by its terms to be served, every pleading subsequent to the original petition unless the Court otherwise orders, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except the pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons.

B.     Whenever service is required or permitted to be made upon a party represented by a member of the Chickasaw Bar Association the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or mailing it to him at his last known address or, if no address is known, by leaving it with the Court Clerk who shall mail a copy thereof to the party's last address of record. Service by mail is complete upon mailing. Delivery of a copy within this Section means:

1.     handing it to the attorney or to the party;

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2. leaving it at his office with his clerk or other person in charge thereof;
3. if there is no one in charge, leaving it in a conspicuous place therein; ~~or~~
4. if the office is closed or the person to be served has no office, leaving it at his dwelling, house, or usual place of abode with some person fifteen (15) years of age or older then residing therein; or
5. by confirmed facsimile transmission.

C. All papers after the petition required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter. Discovery materials need not be filed except by order of the Court, for use in the proceeding, or to enforce or resist such discovery.

D. The filing of pleadings and other papers with the Court as required by this Act shall be made by filing them with the Court Clerk except that the Judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the Court Clerk.

**SECTION 6-101.29                      COMPUTATION AND ENLARGEMENT OF TIME.**

A. In computing any period of time prescribed or allowed by this Act, by order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be include, unless it is a Saturday, a Sunday, or a Legal Holiday, or any other day when the Court Clerk does not remain open for public business until 4:00 p.m. in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a Legal Holiday or any other day when the office of the Court Clerk does remain open for public business until 4:00 p.m. When the period of time prescribed or allowed is less than or equal to seven (7) days, intermediate Saturdays, Sundays, and legal holidays or any other day when the office of the Court Clerk or the Court does not remain open for public business until 4:00 p.m. shall be excluded in the computation. As used in this Section and in the provisions relating to the Court, "Legal Holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Piomingo Day (Federally recognized holiday known as Columbus Day), Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or by the Governor of the Chickasaw Nation.

B. When by this Act or by a notice given thereunder or by order of the Court an act is required or allowed to be done at or within a specified time, the Court for cause shown any at any time in its discretion may:

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1. with or without motion or notice, order the period enlarged if request thereof is made before the expiration of the period originally prescribed or as extended by a previous order; or

2. upon motion made after the expiration of the specified time period permit the act to be done where the failure to act was the result of excusable neglect.

C. A written motion, a motion other than one (1) which may be heard *ex parte*, and a notice of the hearing thereof shall be served not later than five (5) days before the time specified for the hearing, unless a different period is fixed by this Act or by order of the Court. Such an order may for cause shown be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in this Act, opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

D. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

**SECTION 6-101.30**                      **LEGAL NEWSPAPERS.**

All newspapers regularly published within the Chickasaw Nation at least once each week for a period of two (2) years prior to the date of publication of a notice shall be legal newspapers qualifying for the publication of any notice required to be published by this Act.

**SECTION 6-101.31**                      **ANSWER MAY ALLEGE CAUSE; NEW MATTERS  
VERIFIED BY AFFIDAVIT.**

The defendant, in his or her answer, may allege a cause for a divorce against the plaintiff, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were plaintiff. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the defendant.

**SECTION 6-101.32**                      **PETITION FOR DIVORCE TO ALLEGE CAUSES  
FOLLOWING LANGUAGE OF STATUTE WITHOUT  
STATEMENT OF FACTS; BILL OF PARTICULARS.**

In all actions for divorce or for legal separation, the petition or cross petition shall allege the causes relied upon as nearly as possible in the language of the statute and without detailed statement of facts. If the opposing party desires a statement of the facts relied upon, the same

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shall be furnished to him by the petitioner or cross petitioner in a bill of particulars. A copy of this bill of particulars shall be furnished to the Court and shall constitute the allegations of fact on behalf of the party filing such bill, upon which such action is to be tried. The statements therein shall be regarded as being denied by the adverse party, except as they may be admitted. The bill of particulars shall not be filed with the Court Clerk nor become a part of the records of the Court, but if the action be appealed, and the question sought to be reviewed relates to the facts set forth in the bill of particulars, it shall be embodied in the original record or case made for the Chickasaw Supreme Court.

**SECTION 6-101.33**                      **DIVORCE, SEPARATE MAINTENANCE AND  
ANNULMENT CASES; DELAYED FINAL ORDERS;  
WAIVERS; EXCEPTIONS.**

A. No divorce, separate maintenance or annulment case shall be heard on its merits until the petition shall have been on file for at least ten (10) days if there are no minor children of the parties or at least ninety (90) days if there are minor children of the parties, except in the case of an emergency duly shown by application setting forth good cause, in the opinion of the Court, for an earlier hearing or upon a joint application by both parties after both parties have voluntarily participated in marital or family counseling and the Court finds reconciliation is unlikely.

B. All entries of appearance and waivers must be in writing, must be duly signed and witnessed or acknowledged at least one (1) day after the filing of the petition, and must be filed in the action. When an entry of appearance and waiver is filed as provided herein, the Court shall not grant greater relief than is requested in the petition unless the defendant consents in a writing filed in the action.

C. After a petition has been filed in an action for divorce where there are minor children involved, the Court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 6-101.44 of this Title 6, to be enforced during the pendency of the action, as may be right and proper.”  
(PR21-002, 11/21/03)

**SECTION 6-101.34**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.35**                      **PROCEEDING FOR DISPOSITION OF ACTIONS WITH  
MINOR CHILDREN.**

A. In any proceeding of children where custody of minor children is contested by any

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party, the Court may appoint an attorney at law as Guardian *Ad Litem* on the Court's motion or upon application of any party to appear for and represent the minor children. Expenses, costs, and attorney's fees for the Guardian *Ad Litem* may be allocated among the parties as determined by the Court.

B. When property, separate maintenance, or custody is at issue, the Court may refer the issue or issues to mediation.

**SECTION 6-101.36**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.37**                      **BEST INTEREST OF CHILD CONSIDERED IN  
AWARDING CUSTODY OR APPOINTING GUARDIAN;  
JOINT CUSTODY; PLAN; MEDIATION.**

A. In awarding the custody of a minor unmarried child or in appointing a General Guardian for said child, the Court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child with due consideration of tribal custom.

B. The Court, pursuant to the provisions of Subsection A of this Section, may grant the care, custody, and control of a child to either parent, to the parents jointly or to an extended family member who intervenes. For the purposes of this Section, the terms joint custody and joint care, custody, and control mean the sharing by parents and/or extended family that is a party in the case in all or some of the aspects of physical and legal care, custody, and control of their children.

C. If either or both parents or extended family party have requested joint custody, said movant shall file with the Court their plans for the exercise of joint care, custody, and control of their child. The movant may submit a plan jointly or parties may submit separate plans. Any plan shall include but is not limited to provisions detailing the physical living arrangements for the child, child support obligations, medical and dental care for the child, school placement, and visitation rights.

D. The parties having joint custody of the child may modify the terms of the plan for joint care, custody, and control. The written modification to the plan shall be presented to the Court by the parties, and if the Court determines the modifications are in the best interests of the child, the Court shall approve the modifications and direct the same to be filed.

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E. The Court also may modify the terms of the plan for joint care, custody, and control upon the request of any party. The Court shall not modify the plan unless the modifications are in the best interests of the child.

F. The Court may terminate a joint custody decree upon the request of a party or whenever the Court determines said decree is not in the best interests of the child.

G. Upon termination of a joint custody decree, the Court shall proceed and issue a modified decree for the care, custody, and control of the child as if no such joint custody decree had been made.

H. In the event of a dispute between the parties having joint custody of a child as to the interpretation of a provision of said plan, the Court may appoint an mediator to resolve said dispute.

I. If a party refuses to consent to mediation, the Court may terminate the joint custody decree.

**SECTION 6-101.38**

**CUSTODY OF CHILD DURING SEPARATION WITHOUT DIVORCE.**

If the parents of a minor unmarried child are separated without being divorced, the Judge of the Court, upon application of any party with legal interest including but not limited to the Chickasaw Nation, may issue any civil process necessary to inquire into the custody of said minor unmarried child. The Court may award the custody and support of said child in accordance with the best interests of the child, for such time and pursuant to such regulations as the case may require.

**SECTION 6-101.39**

**DETERMINATION OF PATERNITY, CUSTODY AND CHILD SUPPORT.**

Except as otherwise provided in this Act, in any action concerning the custody of a minor unmarried child and the determination of child support, the Court may determine if the parties to the action are the parents or extended family of the children. If the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, may award child support and visitation to the parent to whom it awards custody, and may make any other appropriate orders, including payment of costs and attorney's fees.

**SECTION 6-101.40**

**RESERVED.**

(PR19-018, 5/17/02)



**SECTION 6-101.41**                    **PRESUMPTION THAT MAN IS THE NATURAL FATHER.**

Except as otherwise provided in this Act, a man is presumed to be the natural father of a child for all intents and purposes if:

1.        he and the child's natural mother are or have been married to each other and the child is born during the Marriage; or
2.        statistical probability of paternity is established at ninety-eight percent (98%) or more by scientifically reliable genetic tests, including but not limited to blood tests.

**SECTION 6-101.42**                    **PERSONS ENTITLED TO DISPUTE PRESUMPTION;  
TIME LIMIT.**

A.        The presumption of paternity created in this Act may be disputed only by the husband or wife, the putative father or their descendants.

B.        If a child is born during the course of the Marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least two (2) years, the presumption cannot be disputed by anyone except the father on the basis of fraud.

**SECTION 6-101.43**                    **ESTABLISHMENT OF PATERNITY BY CHILD.**

An action to establish paternity shall be available to a child at any time.

**SECTION 6-101.44**                    **ORDERS CONCERNING PROPERTY, CHILDREN,  
SUPPORT AND EXPENSES.**

A.        After a petition has been filed in an action for divorce or separate maintenance either party may request the Court to issue:

1.        a temporary order:
  - a.        regarding child custody, support or visitation;
  - b.        regarding spousal maintenance;
  - c.        regarding payment of debt;

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- d. regarding possession of property;
- e. regarding attorney fees;
- f. restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring such person to notify the other party reasonably in advance of any proposed extraordinary expenditures made after the order is issued;
- g. enjoining a party from molesting or disturbing the peace of the other party or of any child;
- h. excluding a party from the family home or from the home of the other party;
- I. enjoining a party from removing a child from the jurisdiction of the Court; and
- j. providing other injunctive relief proper in the circumstances.

I. All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in this Act.

ii. The Court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party. After notice and hearing, the Court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. a temporary restraining order:

If the Court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the Court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set for hearing within ten (10) days.

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B. Any temporary orders may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The Court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order which is filed any time prior to the time the temporary order terminates.

C. Upon granting a decree of divorce or separate maintenance, the Court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

D. The Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to Writs of *Habeas Corpus*, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys.

**SECTION 6-101.45**                      **POLICY FOR EQUAL ACCESS TO THE MINOR CHILDREN BY PARENTS.**

It is the policy of the Chickasaw Nation to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their Marriage. To effectuate this policy, if requested by a parent, the Court shall provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the Court finds that such shared parenting would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody and the reason for such determination shall be documented in the court record.

**SECTION 6-101.46**                      **INDIRECT CONTEMPT FOR DISOBEYING PROPERTY DIVISION ORDERS.**

Any order pertaining to the division of property pursuant to a divorce or separate maintenance action, if willfully disobeyed, may be enforced as an indirect contempt of court.

**SECTION 6-101.47**                      **ORDER TO PROVIDE MINIMUM VISITATION FOR NONCUSTODIAL PARENT; VIOLATION OF ORDER.**

A. Any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent shall provide a specified minimum amount of visitation between the noncustodial parent and the child unless the Court determines otherwise.

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B. Except for good cause shown and when in the best interests of the child, the order shall encourage additional visitations of the noncustodial parent and the child and in addition encourage liberal telephone communications between the noncustodial parent and the child.

C. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

D. When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

E. Violation of an order providing for the payment of child support or providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent may be prosecuted as indirect civil contempt or as otherwise deemed appropriate by the Court.

F. Unless good cause is shown for the noncompliance, the prevailing party may be entitled to recover court costs and attorney fees expended in enforcing the order and any other reasonable costs and expenses incurred in connection with the denied child support or denied visitation as authorized by the Court.

**SECTION 6-101.48**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.49**                      **ENFORCEMENT OF VISITATION RIGHTS OF  
NONCUSTODIAL PARENT.**

A. When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent, in addition to the remedy provided in Section 6-101.47, the noncustodial parent may file with the Court Clerk a motion for enforcement of visitation rights. Upon filing of the motion, the Court shall immediately:

1. issue an order for mediation; or
2. set a hearing on the motion.

B. Within five (5) days of termination of mediation ordered by the Court, the mediator shall submit the record of termination and a summary of the parties' agreement, if any, to the Court. Upon receipt of the record of termination, the Court shall enter an order in accordance with the parties' agreement, if any, or set the matter for hearing.

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C. Notice of a hearing required by this Section shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the Court.

D. If the Court finds that visitation rights of the noncustodial parent have been unreasonably denied or otherwise interfered with by the custodial parent, the Court shall enter an appropriate order providing for, but not limited to, one or more of the following:

1. a specific visitation schedule;
2. compensating visitation time for the visitation denied or otherwise interfered with, which time shall be of the same type (e.g. holiday, weekday, weekend, summer) as the visitation denied or otherwise interfered with, and shall be at the convenience of the noncustodial parent;
3. posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights;
4. assessment of reasonable attorney fees, mediation costs, and court costs to enforce visitation rights against the custodial parent;
5. attendance of one or both parents at counseling or educational sessions which focus on the impact of visitation disputes on children;
6. supervised visitation; or
7. any other remedy the Court considers appropriate, which may include an order which modifies a prior order granting child custody.

E. If the Court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the noncustodial parent, the Court may assess reasonable attorney fees, mediation costs, and court costs against the noncustodial parent.

F. Final disposition of a motion filed pursuant to this section shall take place no later than forty-five (45) days after filing of the motion.

G. The Court may develop the form required by Subsection A of this Section to be used for a motion to enforce visitation rights.

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**SECTION 6-101.50**

**CHILD SUPPORT ENFORCEMENT DEPARTMENT  
RECOGNIZED; DUTIES.**

The Legislature hereby recognizes the existing Child Support Enforcement Department ("CSE") of the Division of Youth and Family Services. The Legislature further recognizes that CSE may enter into contracts within and without the Chickasaw Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years, the Court may order that child support be computed and/or collected by CSE.

1. When the Court orders that child support shall be computed and/or collected by CSE, the parties shall be ordered to provide proof of income to CSE within five (5) days of the court order. If a party does not comply with such order, then all income alleged by the opposing party shall be accepted as true.

2. When so ordered, CSE shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. CSE shall provide such determinations to the parties and to the Court for placement in the case file. The determinations of CSE shall be accepted as a child support order upon receipt by the Court.

3. If a party takes issue with a determination of CSE, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

**SECTION 6-101.51**

**CARE, CUSTODY AND SUPPORT OF MINOR CHILDREN.**

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor children of the Marriage. If there are minor children of the Marriage, the Court:

1. shall make provision for guardianship, custody, medical care, support and education of the children;

2. shall provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent, unless not in the best interests of the children; and

3. may modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of

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the obligor and obligee, or if the obligee has assigned child support rights to CSE or other entity, by agreement of the CSE or other entity. Unless the parties agree to the contrary, a completed child support computation form shall be required to be filed with the child support order.

B. The social security numbers of both parents and the child shall be included on a child support order summary form which shall be filed with all child support orders.

C. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a General Guardian for the child, the Court shall be guided by what appears to be in the best interests of the child.

D. When it is in the best interests of a minor unmarried child, the Court shall:

1. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their Marriage; and

2. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

E. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

F. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the Court:

1. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent; and

2. shall not prefer a parent as a custodian of the child because of the gender of that parent.

G. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a General Guardian for the child.

H. In making an order for custody, the Court may specify that:

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1. unless there is a prior written agreement to change the permanent residence of the child, either parent shall notify the other parent if the parent plans to change the permanent residence of the child, and

2. the noncustodial parent is to notify the custodial parent if the noncustodial parent plans to change permanent residence.

I. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

J. For any action brought pursuant to the provisions of this section which the Court determines to be contrary to the best interests of the child, the prevailing party may be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

K. Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school.

L. In any case in which provision is made for the custody or support of a minor child or enforcement of such order, the Court may inquire whether public assistance money or medical support has been provided by the Department of Human Services of the State of Oklahoma or any department of the Chickasaw Nation for the benefit of each child. If public assistance money or medical support has been provided for the benefit of the child, the Department of Human Services or appropriate department of the Chickasaw Nation shall be a necessary party for the just adjudication and establishment of the debt due and owing the State of Oklahoma or Chickasaw Nation for the just adjudication and establishment of paternity, current child support, and medical insurance coverage for the minor children in accordance with federal regulations.

M. In any case in which a child support order or custody order or both is entered, enforced or modified, the Court may make a determination of the arrearages of child support.

**SECTION 6-101.52**

**RESERVED.**

(PR19-018, 5/17/02)



**SECTION 6-101.53**

**EVIDENCE OF DOMESTIC ABUSE CONSIDERED-  
REBUTTABLE PRESUMPTION.**

In every case involving the custody of, guardianship of or visitation with a child, the Court shall consider evidence of ongoing domestic abuse which is properly brought before it. If the occurrence of ongoing domestic abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the child to have custody, guardianship or unsupervised visitation granted to the abusive person. (PR19-018, 5/17/02)

**SECTION 6-101.54**

**PREFERENCE OF CHILD CONSIDERED IN CUSTODY  
OR VISITATION ACTIONS.**

A. In any action for divorce, legal separation, or annulment in which the Court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the Court so finds, the child may express such preference or give other testimony. The Court may consider the expression of preference or other testimony of the child in determining custody or limits of or period of visitation. Provided, however, the Court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation.

B. If the child expresses a preference or gives testimony, such preference or testimony may be taken by the Court in chambers, with or without the parents or other parties present, at the Court's discretion. If attorneys are not allowed to be present, the Court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers.

**SECTION 6-101.55**

**INTEREST ON DELINQUENT CHILD SUPPORT AND  
JUDGMENTS FOR SUPPORT.**

Court-ordered past due child support payments and judgments for support shall draw interest at the rate of two percent (2%) per year. Past due child support payments accruing after the establishment of the current support order, and judgments for support shall draw interest from the date they become delinquent. (PR33-006, 9/16/16)

**SECTION 6-101.56**

**RESTORATION OF MAIDEN OR FORMER NAME;  
ALIMONY; PROPERTY DIVISION.**

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires. The Court shall enter its decree confirming in each spouse the property owned by him

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or her before Marriage and the undisposed-of property acquired after Marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the Court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the Court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their Marriage, whether the title thereto be in either or both of said parties, the Court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one (1) of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The Court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the Marriage where custody resides with that spouse.

**SECTION 6-101.57**                      **SEPARATE PROPERTY.**

Except as mentioned in the preceding Section, neither husband nor wife has any interest in the separate property of the other.

**SECTION 6-101.58**                      **DIVORCE DISSOLVES MARRIAGE CONTRACT AND BARS PROPERTY CLAIMS; EXCEPTION FOR ACTUAL FRAUD.**

A divorce granted at the instance of one (1) party shall operate as a dissolution of the Marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

**SECTION 6-101.59**                      **UNLAWFUL TO MARRY WITHIN 6 MONTHS FROM DATE OF DIVORCE DECREE; PENALTY FOR REMARRIAGE AND COHABITATION; APPEAL.**

A. It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of decree of divorce granted in the Chickasaw Nation, or to cohabit with such other person during said period if the Marriage took place in any state; and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal.

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B. An appeal from a final judgment shall be made in the manner as prescribed for by the Supreme Court of the Chickasaw Nation.

**SECTION 6-101.60**                    **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.61**                    **REMARRIAGE AS GROUND FOR ANNULMENT.**

A Marriage wherein one of the parties had not been divorced for six (6) months shall hereafter in the Chickasaw Nation be ground for annulment of Marriage by either party.

**SECTION 6-101.62**                    **TIME WHEN JUDGMENT IS FINAL IN DIVORCE;  
APPEAL.**

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of a judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until six (6) months after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

**SECTION 6-101.63**                    **ACTION TO VOID MARRIAGE DUE TO INCAPACITY.**

When either of the parties to a Marriage shall be incapable, from want of age or understanding, of contracting such Marriage, the same may be declared void by the Court, in an action brought by the incapable party or by the parent or guardian of such party. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

**SECTION 6-101.64**                    **ALIMONY WITHOUT DIVORCE.**

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the Court. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

**SECTION 6-101.65**                      **EVIDENCE IN DIVORCE OR ALIMONY ACTIONS.**

Upon the trial of an action for a divorce, or for alimony the Court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation, and reputation of the Marriage of the parties, may be received as evidence of the Marriage. But no divorce shall be granted without proof.

**SECTION 6-101.66**                      **RESIDENCY IN DIVORCE ACTION.**

A married person who meets the residence requirements prescribed by law for bringing a divorce action in the Chickasaw Nation may seek a divorce in the Chickasaw Nation, though the other spouse resides elsewhere.

**SECTION 6-101.67**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.68**                      **DISSOLUTION OF DIVORCE DECREE.**

When a decree of divorce has been issued by the Court, the Court is hereby authorized to dissolve said decree within six (6) months of entry thereof, in or out of the term wherein the decree was granted, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught.

**SECTION 6-101.69**                      **ALIMONY PAYMENTS; TERMINATION;  
MODIFICATION.**

A. In any divorce decree which provides for periodic alimony payments, the Court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The Court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the Court. An order for the payment of money pursuant to a divorce decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

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B. The Court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The Court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the Court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

C. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the Court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this Subsection C, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a Marriage according to law, or not necessarily meeting all the standards of a Common Law Marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The Court shall have jurisdiction over the modification application.

D. Except as otherwise provided in Subsection C of this Section, the provisions of any divorce decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Modification by the Court of any divorce decree pertaining to the payment of alimony as support, pursuant to the provisions of this subsection, may extend to the terms of the payments and to the total amount awarded; provided however, such modification shall only have prospective application.

E. Pursuant to the federal Uniformed Services Former Spouse's Protection Act (PL 97-252), the provisions of Subsection D of this Section shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981.

F. The provisions of Subsections C and D of this Section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or

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order for alimony as support, or of a divorce decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

**SECTION 6-101.70**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.71**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.72**                      **PAST DUE SUPPORT PAYMENTS AS JUDGMENT;  
ARREARAGE PAYMENT SCHEDULE.**

A.        Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the Court or administrative order of the Chickasaw Nation or state Department of Human Services is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1.        have the full force and effect of any other judgment of the Chickasaw Nation, including the ability to be enforced by any method available under the laws of the Chickasaw Nation and the State of Oklahoma to enforce and collect money judgments; and

2.        be entitled to full faith and credit as a judgment in the Chickasaw Nation and any state.

3.        An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B.        An arrearage payment schedule set by the Court or administrative order of the Chickasaw Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

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**SECTION 6-101.73**                    **COSTS IN CHILD SUPPORT ENFORCEMENT CASES.**

Costs incurred in a child support enforcement case in which a party is represented by CSE shall be recorded by the Court Clerk. The reasonable costs may be assessed by the Court against the nonprevailing party at the conclusion of the proceedings.

**SECTION 6-101.74**                    **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.75**                    **CONTRACTS ALTERING LEGAL RELATIONS NOT ALLOWED; EXCEPTIONS.**

A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

**SECTION 6-101.76**                    **MUTUAL CONSENT AS CONSIDERATION.**

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last Section.

**SECTION 6-101.77**                    **HUSBAND AND WIFE; JOINT TENANTS, TENANTS IN COMMON OR COMMUNITY PROPERTY; SEPARATE PROPERTY INVENTORY AND FILING.**

A husband and wife may hold property as joint tenants, tenants in common, or as community property.

**SECTION 6-101.78**                    **LIABILITY FOR ACTS AND DEBTS OF THE OTHER SPOUSE; CURTESY AND DOWER NOT ALLOWED AT DEATH.**

- A.     Neither husband nor wife, as such, is answerable for the acts of the other.
  
- B.     The separate property of the husband is liable for the debts of the husband contracted before or after Marriage, but is not liable for the debts of the wife contracted before the Marriage.

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C. The separate property of the wife is liable for the debts of the wife contracted before or after Marriage, but is not liable for the debts of the husband contracted before the Marriage.

D. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

**SECTION 6-101.79**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.80**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.81**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.82**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.83**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.84**                      **RESERVED.**

(PR19-018, 5/17/02)

**SECTION 6-101.85**                      **EX PARTE ORDERS; WRITS OF HABEAS CORPUS.**

A. The courts of the Chickasaw Nation in domestic relations cases are not authorized to issue *ex parte* orders, except in cases of emergency with findings of fact set forth within the order.

B. Writs of *Habeas Corpus* may be issued by any Judge of any court of the Chickasaw Nation in divorce actions, whether such Judge is presiding over said divorce action or not, provided that said Judge receives a written Application for Writ of *Habeas Corpus* and the



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writ provides a time and date certain for the matter to be heard in any court of the Chickasaw Nation.

**SECTION 6-101.86**                      **JURISDICTION ASSERTED IN MORE THAN ONE VENUE.**

In a divorce action, if jurisdiction is asserted in more than one venue, then the Judge presiding over the action shall contact the judge of the other venue to settle the jurisdiction controversy.

**SECTION 6-101.87**                      **RECIPROCITY.**

A.        A copy of any tribal judgment under this Title shall be authenticated for the purpose of filing with a district Court Clerk of any federal, state or tribal courts in the following manner:

1.        by certification of a true and correct copy of the record on file in the office of the Clerk of the District Court or Supreme Court; and
2.        by authentication of the certified copy by a Judge of the District Court.

B.        The Court shall extend full faith and credit to the records and judicial proceeding of any court of any state, United States or any federally recognized Indian nation, tribe, land or political subdivision thereof, including Courts of Indian Offenses, in accordance with Title 5, Chapter 2, Article B, Section 5-202.21 of the Chickasaw Nation Code.

**SECTION 6-101.88**                      **REGISTRATION OF FOREIGN DETERMINATION OF CHILD CUSTODY.**

A.        A child custody determination issued by any court of any State, United States or any federally recognized Indian nation, tribe, land or political subdivision thereof, including Courts of Indian Offenses, may be registered in the Court, with or without a simultaneous request for enforcement, by sending to the Court:

1.        a petition, application or letter requesting registration;
2.        two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

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3. the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required above, the registering court shall:

1. cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

2. serve notice upon the person(s) named as required above and provide them with an opportunity to contest the registration in accordance with this section.

C. The notice required above must state that:

1. a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by the Court;

2. a hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

3. failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

D. A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the Court shall confirm the registered order unless the person contesting registration establishes that:

1. the issuing court did not have jurisdiction;

2. the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so; or

3. the person contesting registration was entitled to notice, but sufficient notice was not given, in the proceedings before the court that issued the order for which registration is sought.

E. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

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F. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

**SECTION 6-101.89                      ENFORCEMENT.**

Enforcement of a determination of the Court under this Act may be made by registering said determination in any court of competent jurisdiction.

**SECTION 6-101.90                      CHILD SUPPORT.**

A. In all cases involving minor children, child support shall be determined or redetermined or as the case may be upon hearing on application of either parent for any affirmative relief.

1. A person under the age of twenty (20) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school.

2. A person under the age of eighteen (18) shall be considered a minor child.

B. The Court shall determine child support by referring the parties to the Chickasaw Nation Child Support Enforcement Department (CSE) to act as referee to determine child support pursuant to guidelines established by Title 6 Section 6-102 *et seq.*

C. Should either the payor or payee of child support take issue with the ruling of child support CSE, said party may appeal the child support order within ten (10) days of the CSE's filing of the determination with the Court. Hearing on such appeal shall be a de novo review; however, either party may request the CSE appear before the Court to explain the determination made on the basis that CSE maintains expertise in child support determination.

D. Absent specific direction of the Court, all child support shall be due on the first day of each month.

E. The CSE may institute child support collection cases in the name of the Chickasaw Nation on behalf of any payee for whom CSE is collecting support, provided nothing herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.

F. Any attorney retained to collect child support for a payee shall notice the CSE of being so retained. Said attorney shall report all child support legal action and collection to CSE

within ten (10) days of such action or collection.

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**ARTICLE B  
CHILD SUPPORT GUIDELINES**

Section 6-102.1	Purpose.
Section 6-102.2	Child Support Orders to Include Provision for Income Assignment; Voluntary Income Assignment.
Section 6-102.3	Child Support Orders to Include Provision for Health Insurance and Day Care Expenses.
Section 6-102.4	Security or Bond for Payment of Child Support.
Section 6-102.5	Modification, Suspension or Termination of Income Assignment Order.
Section 6-102.6	Child Support Guidelines.
Section 6-102.7	Dependent Minor Child.
Section 6-102.8	Reserved.
Section 6-102.9	Reserved.
Section 6-102.10	Child Support Guideline Schedule.
Section 6-102.11	Reserved.
Section 6-102.12	Child Support Computation Form.
Section 6-102.13	Children Not Otherwise Considered.

**SECTION 6-102.1**                      **PURPOSE.**

The purpose of this Article B is to provide child support guidelines for the Chickasaw Nation. The child support guidelines as provided herein shall be used by the courts of the Chickasaw Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one (1) or more parties. (PR19-019, 6/27/02)

**SECTION 6-102.2**                      **CHILD SUPPORT ORDERS TO INCLUDE PROVISION  
FOR INCOME ASSIGNMENT; VOLUNTARY INCOME  
ASSIGNMENT.**

A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the Court order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. one (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or
2. a written agreement is reached between the parties which provides for an alternative arrangement.

B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.

**SECTION 6-102.3**                      **CHILD SUPPORT ORDERS TO INCLUDE PROVISION FOR HEALTH INSURANCE AND DAY CARE EXPENSES.**

In all cases where child support is ordered, such order shall include provisions for providing or sharing the expenses of health insurance and other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

**SECTION 6-102.4**                      **SECURITY OR BOND FOR PAYMENT OF CHILD SUPPORT.**

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

**SECTION 6-102.5**                      **MODIFICATION, SUSPENSION OR TERMINATION OF INCOME ASSIGNMENT ORDER.**

A person obligated to pay support or the person entitled to the support may petition the Court to:

1. modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or
2. modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or
3. suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

**SECTION 6-102.6**                      **CHILD SUPPORT GUIDELINES.**

A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded.

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B. The Court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved. If the Court deviates from the amount of child support indicated by the child support guidelines, the Court shall make specific findings of fact supporting such action.

C. The Court shall not take into account any stepchildren of such parent in making a determination of child support, but in making such determination, the Court may take into account the reasonable support obligations of either parent as to only natural, legal, or legally adopted minor children for whom the parent is actually providing support. (PR33-006, 9/16/16)

D. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee. The Court may establish a temporary child support obligation against both parents when the minor children are made wards of the Court and/or are placed in foster care or in the home of a guardian or Indian tribe.

E. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined Gross Income of both parents. The Child Support Guideline Schedule provided in this Article B shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date.

2. Definitions:

a. "Gross Income," subject to Paragraph 4 of this Subsection, includes Earned and Passive Income from any source, except as excluded in this Section.

b. "Earned Income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from:

- I. salaries;
- ii. wages;
- iii. commissions;
- iv. bonuses; and

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v. severance pay.

c. "Passive Income" is defined as all other income and includes, but is not limited to, income from:

I. dividends;

ii. pensions;

iii. rent;

iv. interest income;

v. trust income;

vi. annuities;

vii. social security benefits;

viii. workers' compensation benefits;

ix. unemployment insurance benefits;

x. disability insurance benefits;

xi. gifts;

xii. prizes; and

xiii. royalties.

3. Specifically excluded from Gross Income are:

a. actual child support received for children not before the Court, and

b. benefits received from means-tested public assistance programs including, but not limited to:

I. Temporary Assistance for Needy Families (TANF);

ii. Supplemental Security Income (SSI);



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- iii. Food Stamps; and
  - iv. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled.
4. Income and expenses:
- a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "Gross Income" is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.
  - b. Specifically excluded from ordinary and necessary expenses for purposes of this Paragraph 4 are amounts determined by the Court to be inappropriate for determining Gross Income for purposes of calculating child support.
  - c. The Court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of Gross Income available to the parent to satisfy a child support obligation.
  - d. The Court shall deduct from self-employment Gross Income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent Gross Income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.
  - e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals.
5. Obligation of parents:
- a. For purposes of computing Gross Income of the parents, the Court shall include for each parent, whichever is most equitable, either:
    - I. all earned and passive monthly income;

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ii. all Passive Income, and Earned Income equivalent to a forty (40) hour work week plus such overtime and supplemental income as the Court deems equitable;

iii. the average of the gross monthly income for the time actually employed during the previous three (3) years; or

iv. the minimum wage paid for a forty (40) hour work week.

b. If equitable, the Court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly Gross Income.

6. The amount calculated under section 6-102.6(C), and the amount of any preexisting court order for current child support for children not before the Court or for support alimony arising in a prior case shall be deducted from Gross Income to the extent payment is actually made under the order. (PR33-006, 9/16/16)

7. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from Gross Income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the Court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service.

8. The results of Paragraphs 2, 3, 4, 5, 6 and 7 of this Subsection shall be denominated "Adjusted Gross Income."

9. In cases in which one parent has sole custody, the Adjusted monthly Gross Income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

10. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined Adjusted Gross Income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

11. Obligation of parents adjusted:

a. In cases where Shared Parenting Time has been ordered by the Court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared Parenting Time" means that each parent has physical custody of the child or children overnight for more than one hundred twenty (120) nights each year.

b. An adjustment for Shared Parenting Time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1 ½). The result shall be designated the "Adjusted Combined Child Support Obligation."

c. To determine each parent's adjusted child support obligation, the Adjusted Combined Child Support Obligation shall be divided between the parents in proportion to their respective Adjusted Gross Incomes.

I. The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred and sixty-five (365).

ii. Each parent's share of the Adjusted Combined Child Support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent. For each parent, this amount is then subtracted from the respective share of the Adjusted Combined Child Support Obligation.

iii. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars (\$0).

d. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case, shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in Shared Parenting Time.

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e. In no event shall the provisions of this Paragraph 11 be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent.

12. Insurance premiums:

a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their Adjusted Gross Income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the Court, only that portion of the premium attributed to the child before the Court shall be allocated and added to the base child support obligation.

b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.

c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;

13. In cases of split custody, where each parent is awarded custody of at least one (1) of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two (2) amounts to the parent with the smaller child support obligation.

14. Child care expenses:

a. The Court shall determine the "Actual" child care expenses reasonably necessary to enable either or both parents to:

- (1) be employed;
- (2) seek employment; or
- (3) attend school or training to enhance employment income.

b. The Actual child care costs incurred for the purposes authorized by this Paragraph 14 shall be allocated and paid monthly in the same proportion as

base child support.

c. The Court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the Court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this Paragraph 14.

d. If the Court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

15. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' Adjusted Gross Income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense.

16. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their Adjusted Gross Income.

17. Material change in circumstances:

a. Child support orders may be modified upon a material change in circumstances.

b. Three (3) years after the issuance of any child support order the Chickasaw Nation Child Support Enforcement Department of Youth and Family Services ("CSE") may file an action for modification of child support based upon application of either party. Either party may file an action for modification of child support at any time after entry of decree upon showing a material change of circumstances.

c. Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.

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d. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the Court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

e. A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

f. All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.

g. The amount of a child support order shall not be construed to be an amount per child unless specified by the Court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order.

18. Exchange of parental information:

a. At any time after the issuance of child support order, either parent may request the other parent to provide the information necessary for an informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

b. Requested information may include verification of income, proof and cost of children's medical insurance, and current and projected child care costs. If Shared Parenting Time has been awarded by the Court, documentation of past and prospective overnight visits shall be exchanged.

c. Exchange of requested information may occur once a year or less often, by regular mail.

19. The social security numbers of both parents and the children who are the subject of the order shall be furnished by the parties to CSE.  
(PR19-019, 6/27/02; PR19-023, 7/19/02)

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**SECTION 6-102.7**

**DEPENDENT MINOR CHILD.**

Any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a dependent child is regularly and continuously attending high school, said child shall be entitled to support by the parents through the age of twenty (20) years or until the child graduates or leaves high school, whichever occurs first. No hearing shall be required to extend such support through the age of twenty (20) if the child is regularly and continuously attending high school. (PR19-024, 8/19/02)

**SECTION 6-102.8**

**RESERVED.**

(PR19-019, 6/27/02)

**SECTION 6-102.9**

**RESERVED.**

(PR19-019, 6/27/02)

**SECTION 6-102.10**

**CHILD SUPPORT GUIDELINE SCHEDULE.**

A. Child Support shall be computed in accordance with the following Child Support Guideline Schedule:

If Combined Monthly Income Total Support Amount is equal to or above	One Child	Two Children	Three Children	Four Children	Five Children	Six Children or More
50	50	50	50	50	50	50
650	50	50	50	88	118	141
700	50	50	101	122	154	176
750	61	107	132	156	198	207
800	94	141	165	190	239	242
850	127	174	199	224	274	276
900	159	207	232	258	308	311
950	192	240	265	291	342	345
1,000	206	272	298	325	375	379
1,050	215	305	332	359	409	414
1,100	224	326	365	392	443	448

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1,150	232	338	397	425	476	481
1,200	241	351	415	458	497	515
1,250	249	363	430	475	515	551
1,300	257	375	443	490	531	568
1,350	265	386	457	504	547	585
1,400	273	397	470	519	562	602
1,450	280	408	483	533	578	618
1,500	288	419	496	548	594	635
1,550	296	430	509	562	609	652
1,600	304	442	522	576	625	669
1,650	312	453	535	591	640	685
1,700	319	464	548	605	656	702
1,750	327	475	561	620	672	719
1,800	335	486	574	634	687	735
1,850	343	497	587	648	703	752
1,900	351	509	600	663	718	769
1,950	358	520	613	677	734	785
2,000	366	531	626	691	750	802
2,050	374	542	639	706	765	819
2,100	382	554	652	720	781	835
2,150	390	565	665	735	796	852
2,200	398	576	678	749	812	869
2,250	406	587	691	763	828	886
2,300	414	599	704	778	843	902
2,350	422	610	717	792	859	919
2,400	430	621	730	807	874	936
2,450	437	632	743	821	890	952
2,500	445	643	755	835	905	968
2,550	451	653	768	848	919	984
2,600	458	663	780	862	934	1,000
2,650	465	673	792	875	949	1,015
2,700	472	683	804	888	963	1,030
2,750	477	691	814	900	975	1,043
2,800	483	700	824	911	987	1,056
2,850	489	708	834	922	999	1,069
2,900	494	716	844	933	1,011	1,082



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2,950	500	725	854	944	1,023	1,095
3,000	505	733	864	955	1,035	1,107
3,050	511	741	874	966	1,047	1,120
3,100	517	749	884	977	1,059	1,133
3,150	521	756	892	986	1,069	1,143
3,200	525	761	897	992	1,075	1,150
3,250	528	766	903	998	1,081	1,157
3,300	532	771	908	1,003	1,088	1,164
3,350	535	776	913	1,009	1,094	1,170
3,400	539	780	919	1,015	1,100	1,177
3,450	543	785	924	1,021	1,107	1,184
3,500	546	790	929	1,027	1,113	1,191
3,550	550	795	935	1,033	1,119	1,198
3,600	553	800	940	1,039	1,126	1,205
3,650	557	805	945	1,045	1,132	1,211
3,700	560	809	951	1,050	1,139	1,218
3,750	564	814	956	1,056	1,145	1,225
3,800	567	819	961	1,062	1,151	1,232
3,850	571	824	966	1,068	1,158	1,239
3,900	574	828	972	1,074	1,164	1,245
3,950	577	832	977	1,079	1,170	1,252
4,000	580	837	982	1,085	1,176	1,258
4,050	583	841	987	1,090	1,182	1,265
4,100	586	845	992	1,096	1,188	1,271
4,150	589	850	997	1,102	1,194	1,278
4,200	592	854	1,002	1,107	1,200	1,284
4,250	595	859	1,007	1,113	1,206	1,291
4,300	598	863	1,012	1,119	1,213	1,297
4,350	601	867	1,017	1,124	1,219	1,304
4,400	604	872	1,023	1,130	1,225	1,311
4,450	607	876	1,028	1,136	1,231	1,317
4,500	610	880	1,033	1,141	1,237	1,324
4,550	613	885	1,038	1,147	1,243	1,330
4,600	617	890	1,044	1,154	1,250	1,338
4,650	622	897	1,052	1,162	1,260	1,348
4,700	626	903	1,059	1,171	1,269	1,358

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**Domestic Relations & Families**

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4,750	631	910	1,067	1,179	1,278	1,368
4,800	636	916	1,075	1,188	1,287	1,377
4,850	640	923	1,082	1,196	1,296	1,387
4,900	645	930	1,090	1,205	1,306	1,397
4,950	650	936	1,098	1,213	1,315	1,407
5,000	654	943	1,105	1,222	1,324	1,417
5,050	659	950	1,113	1,230	1,333	1,427
5,100	664	956	1,121	1,239	1,343	1,437
5,150	668	963	1,129	1,247	1,352	1,446
5,200	673	969	1,136	1,256	1,361	1,456
5,250	678	976	1,144	1,264	1,370	1,466
5,300	682	982	1,151	1,272	1,379	1,475
5,350	686	987	1,157	1,279	1,386	1,483
5,400	689	992	1,163	1,285	1,393	1,490
5,450	692	997	1,168	1,291	1,400	1,498
5,500	696	1,002	1,174	1,297	1,406	1,505
5,550	699	1,007	1,180	1,304	1,413	1,512
5,600	703	1,012	1,185	1,310	1,420	1,519
5,650	706	1,017	1,191	1,316	1,427	1,527
5,700	709	1,022	1,197	1,322	1,433	1,534
5,750	713	1,027	1,203	1,329	1,441	1,542
5,800	717	1,032	1,209	1,336	1,448	1,550
5,850	721	1,038	1,216	1,343	1,456	1,558
5,900	724	1,043	1,222	1,350	1,464	1,566
5,950	728	1,049	1,228	1,357	1,471	1,574
6,000	732	1,054	1,234	1,364	1,479	1,582
6,050	736	1,060	1,241	1,371	1,487	1,591
6,100	741	1,067	1,249	1,380	1,496	1,601
6,150	746	1,074	1,257	1,389	1,506	1,612
6,200	751	1,081	1,266	1,398	1,516	1,622
6,250	756	1,088	1,274	1,407	1,526	1,633
6,300	761	1,095	1,282	1,417	1,536	1,643
6,350	765	1,102	1,290	1,426	1,545	1,653
6,400	770	1,109	1,298	1,435	1,555	1,664
6,450	775	1,116	1,306	1,444	1,565	1,674
6,500	780	1,123	1,315	1,453	1,575	1,685

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**Domestic Relations & Families**

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6,550	785	1,130	1,323	1,462	1,584	1,695
6,600	790	1,137	1,331	1,471	1,594	1,706
6,650	795	1,144	1,339	1,480	1,604	1,716
6,700	800	1,151	1,347	1,489	1,614	1,727
6,750	805	1,158	1,355	1,498	1,623	1,737
6,800	810	1,165	1,364	1,507	1,633	1,748
6,850	815	1,172	1,372	1,516	1,643	1,758
6,900	819	1,179	1,380	1,525	1,653	1,768
6,950	824	1,186	1,388	1,534	1,663	1,779
7,000	829	1,193	1,396	1,543	1,672	1,789
7,050	834	1,200	1,404	1,552	1,682	1,800
7,100	838	1,206	1,411	1,560	1,691	1,809
7,150	842	1,211	1,418	1,567	1,698	1,817
7,200	846	1,217	1,424	1,574	1,706	1,825
7,250	850	1,222	1,430	1,581	1,713	1,833
7,300	853	1,228	1,437	1,588	1,721	1,842
7,350	857	1,233	1,443	1,595	1,729	1,850
7,400	861	1,238	1,450	1,602	1,736	1,858
7,450	864	1,244	1,456	1,609	1,744	1,866
7,500	868	1,249	1,462	1,616	1,751	1,874
7,550	872	1,254	1,469	1,623	1,759	1,882
7,600	875	1,260	1,475	1,630	1,767	1,890
7,650	879	1,265	1,481	1,637	1,774	1,899
7,700	883	1,270	1,488	1,644	1,782	1,907
7,750	887	1,276	1,494	1,651	1,790	1,915
7,800	890	1,281	1,500	1,658	1,797	1,923
7,850	894	1,287	1,507	1,665	1,805	1,931
7,900	898	1,292	1,513	1,672	1,812	1,939
7,950	901	1,297	1,519	1,679	1,820	1,947
8,000	905	1,303	1,526	1,686	1,828	1,955
8,050	909	1,308	1,532	1,693	1,835	1,964
8,100	912	1,313	1,538	1,700	1,843	1,972
8,150	916	1,319	1,545	1,707	1,850	1,980
8,200	920	1,324	1,551	1,714	1,858	1,988
8,250	924	1,330	1,557	1,721	1,866	1,996
8,300	927	1,335	1,564	1,728	1,873	2,004

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**Domestic Relations & Families**

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8,350	931	1,340	1,570	1,735	1,881	2,012
8,400	935	1,346	1,577	1,742	1,888	2,021
8,450	938	1,351	1,583	1,749	1,896	2,029
8,500	943	1,357	1,590	1,757	1,905	2,038
8,550	949	1,363	1,597	1,765	1,913	2,047
8,600	954	1,369	1,605	1,773	1,922	2,057
8,650	959	1,375	1,612	1,781	1,931	2,066
8,700	964	1,381	1,619	1,789	1,939	2,075
8,750	969	1,387	1,626	1,797	1,948	2,084
8,800	974	1,393	1,633	1,805	1,957	2,093
8,850	979	1,399	1,641	1,813	1,965	2,103
8,900	984	1,405	1,648	1,821	1,974	2,112
8,950	989	1,411	1,655	1,829	1,982	2,121
9,000	995	1,417	1,662	1,837	1,991	2,130
9,050	1,000	1,423	1,669	1,845	2,000	2,140
9,100	1,005	1,429	1,677	1,853	2,008	2,149
9,150	1,010	1,435	1,684	1,861	2,017	2,158
9,200	1,015	1,441	1,691	1,869	2,026	2,167
9,250	1,020	1,447	1,698	1,877	2,034	2,177
9,300	1,025	1,453	1,706	1,885	2,043	2,186
9,350	1,030	1,459	1,713	1,893	2,052	2,195
9,400	1,035	1,465	1,720	1,901	2,060	2,204
9,450	1,040	1,471	1,727	1,909	2,069	2,214
9,500	1,046	1,477	1,734	1,917	2,077	2,223
9,550	1,051	1,483	1,742	1,924	2,086	2,232
9,600	1,056	1,489	1,749	1,932	2,095	2,241
9,650	1,061	1,495	1,756	1,940	2,103	2,251
9,700	1,066	1,501	1,763	1,948	2,112	2,260
9,750	1,071	1,507	1,770	1,956	2,121	2,269
9,800	1,076	1,513	1,778	1,964	2,129	2,278
9,850	1,081	1,519	1,785	1,972	2,138	2,288
9,900	1,086	1,525	1,792	1,980	2,147	2,297
9,950	1,091	1,531	1,799	1,988	2,155	2,306
10,000	1,097	1,537	1,807	1,996	2,164	2,315
10,050	1,102	1,543	1,814	2,004	2,173	2,325
10,100	1,107	1,549	1,821	2,012	2,181	2,334

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**Domestic Relations & Families**

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10,150	1,112	1,555	1,828	2,020	2,190	2,343
10,200	1,117	1,561	1,835	2,028	2,198	2,352
10,250	1,122	1,567	1,843	2,036	2,207	2,362
10,300	1,127	1,574	1,850	2,044	2,216	2,371
10,350	1,132	1,580	1,857	2,052	2,224	2,380
10,400	1,137	1,586	1,864	2,060	2,233	2,389
10,450	1,142	1,592	1,871	2,068	2,242	2,399
10,500	1,148	1,598	1,879	2,076	2,250	2,408
10,550	1,153	1,604	1,886	2,084	2,259	2,417
10,600	1,158	1,610	1,893	2,092	2,268	2,426
10,650	1,163	1,616	1,900	2,100	2,276	2,436
10,700	1,168	1,622	1,907	2,108	2,285	2,445
10,750	1,173	1,628	1,915	2,116	2,293	2,454
10,800	1,178	1,634	1,922	2,124	2,302	2,463
10,850	1,183	1,640	1,929	2,132	2,311	2,473
10,900	1,188	1,646	1,936	2,140	2,319	2,482
10,950	1,193	1,652	1,944	2,148	2,328	2,491
11,000	1,199	1,658	1,951	2,156	2,337	2,500
11,050	1,204	1,664	1,958	2,164	2,345	2,509
11,100	1,209	1,670	1,965	2,172	2,354	2,519
11,150	1,214	1,676	1,972	2,180	2,363	2,528
11,200	1,219	1,682	1,980	2,188	2,371	2,537
11,250	1,221	1,686	1,984	2,193	2,377	2,543
11,300	1,223	1,689	1,898	2,197	2,382	2,549
11,350	1,225	1,693	1,993	2,202	2,387	2,554
11,400	1,227	1,697	1,997	2,207	2,392	2,560
11,450	1,229	1,700	2,001	2,212	2,397	2,565
11,500	1,231	1,704	2,006	2,216	2,403	2,571
11,550	1,233	1,708	2,010	2,221	2,408	2,576
11,600	1,235	1,711	2,014	2,226	2,413	2,582
11,650	1,237	1,715	2,019	2,231	2,418	2,587
11,700	1,239	1,719	2,023	2,235	2,423	2,593
11,750	1,241	1,723	2,027	2,240	2,428	2,598
11,800	1,243	1,726	2,031	2,245	2,433	2,604
11,850	1,245	1,730	2,036	2,249	2,438	2,609
11,900	1,247	1,734	2,040	2,254	2,444	2,615

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**Domestic Relations & Families**

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11,950	1,249	1,737	2,044	2,259	2,449	2,620
12,000	1,251	1,741	2,049	2,264	2,454	2,626
12,050	1,253	1,745	2,053	2,268	2,459	2,631
12,100	1,255	1,748	2,057	2,273	2,464	2,637
12,150	1,257	1,752	2,061	2,278	2,469	2,642
12,200	1,259	1,756	2,066	2,283	2,474	2,648
12,250	1,261	1,759	2,070	2,287	2,479	2,653
12,300	1,263	1,763	2,074	2,292	2,485	2,659
12,350	1,265	1,767	2,079	2,297	2,490	2,664
12,400	1,267	1,770	2,083	2,302	2,495	2,669
12,450	1,270	1,774	2,087	2,306	2,500	2,675
12,500	1,272	1,778	2,091	2,311	2,505	2,680
12,550	1,274	1,781	2,096	2,316	2,510	2,686
12,600	1,276	1,785	2,100	2,320	2,515	2,691
12,650	1,278	1,789	2,104	2,325	2,520	2,697
12,700	1,280	1,792	2,109	2,330	2,526	2,702
12,750	1,282	1,796	2,113	2,335	2,531	2,708
12,800	1,284	1,800	2,117	2,339	2,536	2,713
12,850	1,286	1,803	2,121	2,344	2,541	2,719
12,900	1,288	1,807	2,126	2,349	2,546	2,724
12,950	1,290	1,811	2,130	2,354	2,551	2,730
13,000	1,292	1,814	2,134	2,358	2,556	2,735
13,050	1,294	1,818	2,138	2,363	2,562	2,741
13,100	1,296	1,822	2,143	2,368	2,567	2,746
13,150	1,298	1,825	2,147	2,372	2,572	2,752
13,200	1,300	1,829	2,151	2,377	2,577	2,757
13,250	1,302	1,833	2,156	2,382	2,582	2,763
13,300	1,304	1,836	2,160	2,387	2,587	2,768
13,350	1,306	1,840	2,164	2,391	2,592	2,774
13,400	1,308	1,844	2,168	2,396	2,597	2,779
13,450	1,310	1,847	2,173	2,401	2,603	2,785
13,500	1,312	1,851	2,177	2,406	2,608	2,790
13,550	1,314	1,855	2,181	2,410	2,613	2,796
13,600	1,316	1,858	2,186	2,415	2,618	2,801
13,650	1,318	1,862	2,190	2,420	2,623	2,807
13,700	1,320	1,866	2,194	2,425	2,628	2,812

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**Domestic Relations & Families**

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13,750	1,322	1,869	2,198	2,429	2,633	2,818
13,800	1,324	1,873	2,203	2,434	2,638	2,823
13,850	1,326	1,877	2,207	2,439	2,644	2,829
13,900	1,328	1,880	2,211	2,443	2,649	2,834
13,950	1,330	1,884	2,216	2,448	2,654	2,840
14,000	1,332	1,888	2,220	2,453	2,659	2,845
14,050	1,334	1,891	2,224	2,458	2,664	2,851
14,100	1,336	1,895	2,228	2,462	2,669	2,856
14,150	1,338	1,899	2,233	2,467	2,674	2,862
14,200	1,340	1,902	2,237	2,472	2,679	2,867
14,250	1,342	1,906	2,240	2,477	2,685	2,873
14,300	1,344	1,910	2,246	2,481	2,690	2,878
14,350	1,346	1,913	2,250	2,486	2,695	2,884
14,400	1,348	1,917	2,254	2,491	2,700	2,889
14,450	1,350	1,921	2,258	2,496	2,705	2,894
14,500	1,352	1,924	2,263	2,500	2,710	2,900
14,550	1,354	1,928	2,267	2,505	2,715	2,905
14,600	1,356	1,932	2,271	2,510	2,721	2,911
14,650	1,358	1,935	2,276	2,514	2,726	2,916
14,700	1,360	1,939	2,280	2,519	2,731	2,922
14,750	1,362	1,943	2,284	2,524	2,736	2,927
14,800	1,364	1,946	2,288	2,529	2,741	2,933
14,850	1,366	1,950	2,293	2,533	2,746	2,938
14,900	1,368	1,954	2,297	2,538	2,751	2,944
14,950	1,370	1,957	2,301	2,543	2,756	2,949
15,000	1,372	1,961	2,305	2,548	2,762	2,955

B. If combined gross monthly income exceeds fifteen thousand dollars (\$15,000), the child support shall be that amount computed for a monthly income of fifteen thousand dollars (\$15,000) and an additional amount determined by the Court.

C. If there are more than six (6) children, the child support shall be that amount computed for six (6) children and an additional amount determined by the Court.

**SECTION 6-102.11**

**RESERVED.**

(PR19-019, 6/27/02)

**SECTION 6-102.12**

**CHILD SUPPORT COMPUTATION FORM.**

A. A child support computation form shall be signed by a Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. Any forms specified in this Title shall be promulgated by the Supreme Court.  
(PR19-019, 6/27/02)

**SECTION 6-102.13**

**CHILDREN NOT OTHERWISE CONSIDERED.**

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the lawful parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

B. The Court may consider any and all support provided to such child in determining the Child Support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.



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**Domestic Relations & Families**

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**ARTICLE C  
MARRIAGE CEREMONIES**

Section 6-103.1	Title.
Section 6-103.2	Definition of Marriage.
Section 6-103.3	Consanguinity.
Section 6-103.4	Persons Having Capacity to Marry.
Section 6-103.5	Marriage Between Persons of Same Gender Not Recognized.
Section 6-103.6	Marriage License Requirement.
Section 6-103.7	Issuance and Validity of Marriage License.
Section 6-103.8	Contents of License; Time of Return.
Section 6-103.9	Performance or Solemnization of Marriages; Witnesses.
Section 6-103.10	Endorsement and Return of Marriage License.
Section 6-103.11	Record of Application, License and Certificate; Book.
Section 6-103.12	Additional Evidence to Determine Legal Capacity Before Issuance of Marriage License.
Section 6-103.13	Penalty for Solemnizing Unlawful Marriage.
Section 6-103.14	Unlawfully Issuing Marriage License, Concealing Record or Performing Marriage Ceremony; Penalty.
Section 6-103.15	Unlawful Solicitation Of Performance of Marriage Ceremony.
Section 6-103.16	Punishment for Violation of Act.
Section 6-103.17	Unlawful Sale of Papers Relating to Marriage Licenses; Penalty.
Section 6-103.18	Injunction Restraining Violation of Act.

**SECTION 6-103.1**                      **TITLE**

This Act shall be known as the "Marriage Ceremony Act of 2005" ("Act").

**SECTION 6-103.2**                      **DEFINITION OF MARRIAGE.**

Marriage is a personal relation between a man and a woman arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage relation shall only be entered into, maintained or abrogated as provided by law.

**SECTION 6-103.3**                      **CONSANGUINITY.**

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are

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## Domestic Relations & Families

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expressly prohibited. Provided, that any marriage of first cousins performed in another jurisdiction authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in the Chickasaw Nation as of the date of such marriage.

### **SECTION 6-103.4                      PERSONS HAVING CAPACITY TO MARRY.**

A.     **Native American; Residence.** At least one (1) of the parties applying for a marriage license must be Native American residing within the territorial jurisdiction of the Chickasaw Nation for at least six (6) months immediately preceding.

B.     **Age Limit.** Any unmarried person who is at least eighteen (18) years of age and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex.

C.     **Exceptions to Age Limit.**

1.     Except as otherwise provided by this Subsection B, no person under the age of eighteen (18) years shall enter into the marriage relation, nor shall any license issue therefor, except:

    a.     upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license;

    b.     upon the written consent of the parent or guardian of such underage applicant executed and acknowledged in person before a Judge of the District Court or the Clerk of the District Court;

    c.     if the parent or guardian resides outside of the Chickasaw Nation, upon the written consent of the parent or guardian executed before a judge or clerk of a court of record. The executed foreign consent shall be duly authenticated in the same manner as proof of documents from foreign jurisdictions;

    d.     if the certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to the Clerk of the District Court, upon the written consent of the parent or guardian, acknowledged in the same manner as the accompanying medical certificate;

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**Domestic Relations & Families**

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e. if the parent or guardian is on active duty with the Armed Forces of the United States, upon the written permission of the parent or guardian, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths. Such permission shall be presented to the Clerk of the District Court, accompanied by a certificate executed by a commissioned officer in command of the applicant, to the effect that the parent or guardian is on active duty in the Armed Forces of the United States; or

f. upon affidavit of three (3) reputable persons stating that both parents of the minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for the minor. The Judge of the District Court may in his discretion consent to the marriage in the same manner as in all cases in which consent may be given by a parent or guardian.

2. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation except when authorized by the Court:

a. in settlement of a suit for seduction or paternity; or

b. if the unmarried female is pregnant, or has given birth to an illegitimate child and at least one (1) parent of each minor, or the guardian or custodian of such child, is present before the Court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license. If they are not present the parent, guardian, or custodian may be given notice of the hearing at the discretion of the Court.

3. A parent or a guardian of any child under the age of eighteen (18) years who is in the custody of the Indian Child Welfare Department, Oklahoma Department of Human Services or the Oklahoma Department of Juvenile Justice shall not be eligible to consent to the marriage of such minor child as required by the provisions of this Subsection B.

4. Any certificate or written permission required by this Subsection B shall be retained by the Clerk of the District Court.

D. No marriage may be authorized when such marriage would be incestuous under this Act.

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**SECTION 6-103.5**

**MARRIAGE BETWEEN PERSONS OF SAME GENDER  
NOT RECOGNIZED.**

A marriage between persons of the same gender performed in another jurisdiction shall not be recognized as valid and binding in the Chickasaw Nation as of the date of the marriage.

**SECTION 6-103.6**

**MARRIAGE LICENSE REQUIREMENT.**

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Chickasaw Nation without a license being first issued by the Clerk of the District Court authorizing the marriage between the persons named in such license.

**SECTION 6-103.7**

**ISSUANCE AND VALIDITY OF MARRIAGE LICENSE.**

A. Persons desiring to be married under Chickasaw law shall submit an application in writing signed and sworn to in person before the Clerk of the District Court by both of the parties setting forth:

1. each party's place of residence;
2. each party's full name and age as the same appear upon a certified copy of birth certificate, a current motor vehicle operator's, chauffeur's or commercial license, a current voter's registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age; and
3. that the parties are not disqualified from or incapable of entering into the marriage relation.

B. Upon application pursuant to this Section and the payment of fees as provided in Section 5-103.18 of the Chickasaw Nation Code, if the Clerk of the District Court is satisfied of the truth and sufficiency of such application and that there is no legal impediment to such marriage, the Clerk shall issue the license authorizing the marriage.

C. In the event that one (1) or both of the parties are under legal age and a parent or guardian of the underage party or other authorized person has not signed the waiver as provided for in this Act, the application shall have been on file in the Court Clerk's office for a period of not less than seventy-two (72) hours prior to issuance of the marriage license.

D. The marriage license shall be valid in any district and county within the

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Chickasaw Nation.

E. The provisions hereof are mandatory and not directory except under the circumstances set out in the provisions of Section 103.4.

**SECTION 6-103.8**                      **CONTENTS OF LICENSE; TIME OF RETURN.**

The license herein provided for shall contain the date of its issuance, name of the Court, the full names of the persons to be married thereunder, their ages, places of residence, and social security numbers, if any, and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony thereunder.

**SECTION 6-103.9**                      **PERFORMANCE OR SOLEMNIZATION OF MARRIAGES;  
WITNESSES.**

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a Judge or Justice of any court of the Chickasaw Nation, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.

**B. Filing of Credentials by Persons Performing Marriage Ceremonies.**

1. A Judge or Justice shall place his or her order of appointment or election on file with the office of the Clerk of the District Court. Eligibility under this Act shall be in effect only for the time period of such appointment or election.

2. A preacher, minister, priest, rabbi, or ecclesiastical dignitary shall have filed, in the office of the Court Clerk, a copy of the credentials or authority from his or her church or synagogue authorizing him or her to solemnize marriages.

3. The filing by Judges, Justices, preachers, ministers, priests, rabbis or ecclesiastical dignitaries shall be effective in and for all districts and counties of the Chickasaw Nation and no fee shall be charged for such filing.

C. No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he or she has good reason to believe the persons presenting themselves before him or her for

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marriage are the identical persons named in the license, and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

D. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church, or assembly.

### **SECTION 6-103.10                      ENDORSEMENT AND RETURN OF MARRIAGE LICENSE.**

The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his name; official or clerical designation; the court of which he is Judge or Justice or the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary, provided, that the authority to perform or solemnize marriages shall be coextensive with the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary; the town or city and county where the same is located; and signed by him with his official or clerical designation. The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and post office addresses. The license with such certificate thereon shall be transmitted without delay to the Clerk of the District Court. Provided that all marriages solemnized among the society called Friends, or Quakers, the spiritual assembly of the Baha'is, or the Church of Jesus Christ of Latter Day Saints, in the form heretofore practiced and in use in their meetings shall be good and valid. One person chosen by such society, church or assembly shall be responsible for completing the certification of marriage pursuant to this Act in the same manner as a minister or other person authorized to perform marriages. Such person shall be chosen by the society, church or assembly for this purpose.

### **SECTION 6-103.11                      RECORD OF APPLICATION, LICENSE AND CERTIFICATE; BOOK.**

The Clerk of the District Court shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, computer file, microfilm, microfiche, or in a book kept by the Clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the

issuing officer's certificate on the back thereof showing the book and page where the same has

been recorded.

**SECTION 6-103.12**                    **ADDITIONAL EVIDENCE TO DETERMINE LEGAL CAPACITY BEFORE ISSUANCE OF MARRIAGE LICENSE.**

If the Clerk of the District Court shall be in doubt of the legal capacity of the parties for whose marriage a license is sought, to enter into the marriage relation, the Clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, he shall not issue a license therefor.

**SECTION 6-103.13**                    **PENALTY FOR SOLEMNIZING UNLAWFUL MARRIAGE.**

Any minister of the Gospel, or other person authorized to solemnize the rites of matrimony within the Chickasaw Nation, who shall knowingly solemnize the rites of matrimony between persons prohibited by this Act from intermarrying shall be deemed guilty of a violation of this Act and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars (\$500) and imprisonment up to one (1) year.

**SECTION 6-103.14**                    **UNLAWFULLY ISSUING MARRIAGE LICENSE, CONCEALING RECORD OR PERFORMING MARRIAGE CEREMONY; PENALTY.**

Any Clerk of the District Court knowingly issuing any marriage license, or concealing any record thereof, contrary to the provisions of this Act, or any person knowingly performing or solemnizing the marriage ceremony contrary to any of the provisions of this Act, shall be deemed guilty of a violation of this Act and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment not less than thirty (30) days nor more than one (1) year or by both such fine and imprisonment.

**SECTION 6-103.15**                    **UNLAWFUL SOLICITATION OF PERFORMANCE OF MARRIAGE CEREMONY.**

It shall be unlawful for any person to solicit directly or indirectly within any the courthouse or its premises or grounds for himself or for and on behalf of any minister of the Gospel or other person, the performance of a marriage ceremony.

**SECTION 6-103.16**                    **PUNISHMENT FOR VIOLATION OF ACT.**

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Any person violating this Act in ways other than those stated above shall be punished by a fine not to exceed twenty five dollars (\$25) for the first conviction, and for any second or subsequent conviction by a fine of not less than twenty five dollars (\$25) nor more than one hundred dollars (\$100).

**SECTION 6-103.17**

**UNLAWFUL SALE OF PAPERS RELATING TO  
MARRIAGE LICENSES; PENALTY.**

It shall be unlawful for the Court Clerk to sell, offer for sale, or permit the sale of any paper or instrument relating, directly or indirectly, to marriage licenses issued from the office of said Court Clerk except the license herein. Provided, any person violating the provisions of this Section shall be guilty of a violation of this Act and upon conviction shall be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or by imprisonment for not less than five (5) days nor more than ten (10) days, or by both such fine and imprisonment.

**SECTION 6-103.18**

**INJUNCTION RESTRAINING VIOLATION OF ACT.**

In addition to the penalties provided in this Act for violations of this Act, a cause of action shall exist in favor of any Chickasaw citizen, or in favor of the Chickasaw Nation, to apply to the District Court for an injunction restraining the violation of this Act.



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**CHAPTER 2  
DEPRIVED CHILDREN**

**ARTICLE A  
GENERAL PROVISIONS  
(PR30-007, 5/17/13)**

Section 6-201.1	Purpose.
Section 6-201.2	Indian Child Welfare.
Section 6-201.3	Title IV-E Federal Funding for Child Welfare Services.
Section 6-201.4	Definitions.
Section 6-201.5	Jurisdiction for Deprived Child Proceedings Originating in the Chickasaw Nation District Court.
Section 6-201.6	Written Consent to Jurisdiction.
Section 6-201.7	Child Welfare Transfers from Another Court.
Section 6-201.8	Child Welfare Transfers to Tribal or State Court.
Section 6-201.9	Placement Preferences.
Section 6-201.10	Extended Family Defined.
Section 6-201.11	Notice of Legal Rights.
Section 6-201.12	Prosecutor Duties.
Section 6-201.13	Procedure.
Section 6-201.14	Reasonable Efforts.
Section 6-201.15	Hearings.
Section 6-201.16	Court Reports.
Section 6-201.17	Confidential Records.
Section 6-201.18	Inspection of Court Records.
Section 6-201.19	Search Warrants for the Protection of Children.
Section 6-201.20	Issuance and Return of Search Warrant.
Section 6-201.21	Expiration of Search Warrant.
Section 6-201.22	Appeals.
Section 6-201.23	Voluntary Foster Care Authorized.
Section 6-201.24	Multi-Disciplinary Team.
Section 6-201.25	Members of the Multi-Disciplinary Team.
Section 6-201.26	Duties of the Multi-Disciplinary Team.

**SECTION 6-201.1                      PURPOSE.**

- A.     The purposes of these provisions are to:
1.     secure for each Child subject to this Deprived Children’s Code such care and guidance, preferably in his own home, as will serve his welfare and the interests of

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the Chickasaw Nation and society in general;

2. preserve and strengthen the ties between the Child, the Chickasaw family, and the Chickasaw Nation whenever possible;

3. preserve and strengthen family ties whenever possible, and to strengthen and improve the home and its environment when necessary;

4. remove a Child from the custody of his Parent(s), Guardian(s), or Traditional Custodian(s) only when his welfare and safety or the protection of the public would otherwise be endangered; and

5. secure for any Child removed from the custody of his Parent(s), Guardian(s), or Traditional Custodian(s) the necessary care, guidance and discipline to assist him in becoming a responsible and productive citizen of the Chickasaw Nation, if applicable, and society in general.

B. In order to carry out these purposes, these provisions shall be liberally construed.

### **SECTION 6-201.2**

### **INDIAN CHILD WELFARE.**

The Executive Department of the Nation shall establish necessary programs for the protection of children subject to this Deprived Children's Code.

### **SECTION 6-201.3**

### **TITLE IV-E FEDERAL FUNDING FOR CHILD WELFARE SERVICES.**

A. The Department, as designated by the Chickasaw Nation Executive Department, shall act as the tribal agency of the Chickasaw Nation in the administration or supervision of any federal funds granted to the Chickasaw Nation to aid in the furtherance of any services and activities for child welfare. Such federal funds include, but are not limited to the administration of foster care maintenance payments and adoption assistance in accordance with Title IV-E Program funding under the Social Security Act. The Department is also the tribal agency that administers or supervises the administration of the tribal child welfare services plan under subpart 1 of Title IV-B of the Social Security Act.

B. The Nation's Title IV-E Program plan for foster care and adoption assistance is authorized and in effect in the service areas as defined within the Nation's Standard Operating Procedures. The Department shall administer all other areas of the Nation's jurisdiction in accordance with the foster care agreement executed between the Nation and the State of Oklahoma.

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C. For each fiscal year, the Nation’s Title IV-E Program shall establish the following as the maximum number of children who, at any given time during the fiscal year, will have been in foster care for over twenty-four (24) months, and which is based on a percentage of all children in foster care receiving assistance under the state Title IV-E program:

Fiscal Year	Percentage Goal
FY 2013	40
FY 2014	35
FY 2015	33

**SECTION 6-201.4**                      **DEFINITIONS.**

A. Unless the context otherwise requires, as used in this Deprived Children’s Code, the term

1. “Abandonment” or “Abandoned” means:
  - a. the Parent has voluntarily left the Child alone or in the care of another who is not the Parent of the Child and has failed to return within a reasonable amount of time, taking into consideration such factors as the age of the child and the surrounding circumstances;
  - b. the Parent has failed, for a period of six (6) consecutive months, to maintain a significant parental relationship with a Child through visitation or communication in which incidental or token visits or communication are not considered significant; or
  - c. the Parent has failed to respond to notice of Deprived Child proceedings after receiving proper service.
2. “Acknowledged Father” means a man who has established a father-child relationship by signing an acknowledgment of paternity with intent to establish the man’s paternity.
3. "Adjudication Hearing" means a hearing to determine whether the allegations of a petition filed pursuant to this Chapter, alleging a Child to be Deprived, are supported by the evidence.
4. “Alleged Father” means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.

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5. "Aunt" means a person who, by blood or marriage, is:
  - a. a female sibling of the biological Parent;
  - b. a female Child of a Grandparent; or
  - c. any other female person who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of aunt with the person in question.
  
6. "Brother" means:
  - a. any male sibling; or
  - b. any other male person who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of sibling with the person in question.
  
7. "Brother-in-law" means the husband of a Sister by blood or marriage.
  
8. "Child" or "Indian Child" (plural, "Children" or "Indian Children") means an unmarried person who is under age eighteen (18) and is either a) a citizen of an Indian tribe or b) is eligible for citizenship in an Indian tribe and is the biological Child of a citizen of an Indian tribe. For purposes of this Deprived Children's Code, Child will be interpreted to mean Indian Child.
  
9. "Child Abuse" means Harm or Threatened Harm or failure to protect from Harm or Threatened Harm to the health, safety, or welfare of any Child by any person. "Child Abuse" shall include but not be limited to non-accidental physical or mental injury, Sexual Abuse, or Sexual Exploitation.
  
10. "Child Care Institution," for purposes of this Deprived Children's Code, means a private, residential child care institution, or public residential child care institution which accommodates no more than 25 children, and is licensed by the State and/or Tribe.
  
11. "Child Neglect" means Abandonment, or the failure or omission of a person responsible for the health, safety or welfare of a Child, to provide any of the following:
  - a. adequate food, clothing, shelter, medical care, or supervision; or

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b. special care made necessary by the physical or mental condition of the Child.

12. "Child Placement Agency" means an agency designed for the care or placement of Children licensed or approved pursuant to Chickasaw law or, if outside the Chickasaw Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.

13. "Court" or "Children's Court" means the Chickasaw Nation District Court.

14. "Cousin" means the Child of an Aunt or Uncle.

15. "Custody" means the care and control of a child.

16. "Department" means the Chickasaw Nation department assigned the responsibility of protecting Children under this Deprived Children's Code.

17. "Deprived Child" means a Child:

a. whose Parent(s), Guardian(s), or Traditional Custodian(s) has subjected him to Child Abuse, or whose Parent(s), Guardian(s), or Traditional Custodian(s) has enabled or allowed another to subject the Child to Child Abuse without taking lawful means to stop such Child Abuse or prevent it from recurring;

b. who lacks proper parental care through the actions or omissions of the Parent(s), Guardian(s), or Traditional Custodian(s);

c. whose environment is injurious to the Child's welfare;

d. whose Parent(s), Guardian(s), or Traditional Custodian(s) fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for the Child's health, guidance, or well-being, whether because of the fault of the Parent(s), Guardian(s), or Traditional Custodian(s), or because the Parent(s), Guardian(s), or Traditional Custodian(s) does not have the ability or resources to provide for the Child;

e. who is homeless due to, or without the fault of, his Parent(s), Guardian(s), or Traditional Custodian(s);

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- f. who has been Abandoned by his Parent(s), Guardian(s), or Traditional Custodian(s);
- g. who is in need of special care and treatment because of the Child's physical or mental condition, and the Child's Parent(s), Guardian(s), or Traditional Custodian(s) is unable or willfully fails to provide such special care and treatment;
- h. whose Parent(s), Guardian(s), or Traditional Custodian(s) for good cause desires to be relieved of custody;
- I. who has been born to a Parent whose parental rights to another child have been involuntarily terminated by the Court and the conditions which led to the making of the finding, which resulted in the termination of the parental rights of the Parent to the other child, have not been corrected;
- j. whose Parent(s), Guardian(s), or Traditional Custodian(s) has subjected another child to abuse or neglect or has allowed another child to be subjected to abuse or neglect and is currently a respondent in a deprived proceeding; or
- k. whose Parent(s), Guardian(s), or Traditional Custodian(s) has failed to protect the Child from exposure to any of the following:
  - I. the use, possession, sale, or manufacture of illegal drugs;
  - ii. illegal activities; or
  - iii. sexual acts or materials that are not age-appropriate.

18. "Deprived Children's Code" means Chickasaw Nation Code Title 6, Chapter 2.

19. "Disposition Hearing" means a hearing in which the Court must determine what treatment or services should be ordered for the family and/or the Child, and the placement of the Child during such period.

20. "Emergency Custody" means custody of a child taken pursuant to Article C of this Chapter with a court order prior to adjudication of the child.

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21. “Executive Department” means the executive branch of the Chickasaw Nation government as headed by the Governor and defined in the Chickasaw Nation Constitution, as amended.

22. “Foster Care” or “Foster Care Services” means continuous twenty-four-hour care and supportive services provided for a Deprived Child in foster placement, including but not limited to, the care, supervision, guidance and rearing of a Deprived Child by the Tribal Resource Parent who has been approved or licensed by the Department.

23. "Foster Home" means the private residence of a Tribal Resource Parent who provides Foster Care for a Child.

24. "Grandparent" means:

a. a biological parent or grandparent of the biological parent of the person in question; or

b. any other person who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of an Indian tribe or state, would hold the relationship of grandparent with the person in question.

25. "Group Care Facilities" means a residential facility licensed by the Department of Family Advocacy to provide full-time care and community-based services for more than five (5) but fewer than thirteen (13) children.

26. “Guardian” means an individual who has been appointed by a court with the duty to care for another’s person or property;

27. “Guardian *Ad Litem*” means a licensed attorney appointed by the Court pursuant to Section 6-204.11, “Appointment of Guardian *Ad Litem*,” of this Deprived Children’s Code.

28. “Harm or Threatened Harm” means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including but not limited to Sexual Abuse, Sexual Exploitation, and Child Neglect.

29. “Heinous and Shocking Abuse” means any aggravated physical abuse that results in serious bodily, mental, or emotional injury. Serious bodily injury means, but is not limited to, injury that involves:

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- a. substantial risk of death;
- b. extreme physical pain;
- c. protracted disfigurement;
- d. loss or impairment of a function of a body member, organ, or mental faculty;
- e. an injury to an internal or external organ of the body;
- f. bone fracture(s);
- g. sexual abuse or sexual exploitation;
- h. chronic abuse including, but not limited to, physical, emotional, or sexual abuse, or sexual exploitation which is repeated or continuing;
- I. torture including, but not limited to, inflicting, participating in, or assisting in inflicting intense physical or emotional pain upon a child repeatedly over a period of time for the purpose of coercing or terrorizing a child, or for the purpose of satisfying the cruel or prurient desires of the perpetrator or another person; or
- j. any other similar aggravated circumstance.

30. "Heinous and Shocking Neglect" means

- a. chronic neglect that includes, but is not limited to, a persistent pattern of family functioning in which the caregiver has not met or sustained the basic needs of a child that results in harm to the child;
- b. neglect that has resulted in a medical diagnosis of the child as a failure to thrive;
- c. an act or failure to act by a Parent(s), Guardian(s), or Traditional Custodian(s) that results in the death or near death of a child or sibling, serious physical or emotional harm, sexual abuse, sexual exploitation, or presents an imminent risk of serious harm to a child, or
- d. any other similar aggravating circumstance.



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31. “Indian Country” means the land within the Chickasaw Nation boundaries described in the Chickasaw Nation Constitution, as amended, and as defined in 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Chickasaw Nation.

32. “Individualized Service Plan” means a written document also known as a “Treatment Plan” stating the services and actions needed to be completed by the Parent(s), Guardian(s), or Traditional Custodian(s) before a Deprived Child can be returned home.

33. “Law Enforcement Agency” means the Chickasaw Nation Lighthorse Police Department, a federal law enforcement agency, or a tribal or state law enforcement agency with which the Nation has entered into cross-deputation agreements, including, but not limited to, a police department in incorporated municipalities or the office of the county sheriff, or law enforcement officers of the State of Oklahoma.

34. “Law Enforcement Officer” or “Officer” means an officer of a Law Enforcement Agency.

35. "Nephew" means the male Child of a Brother, Sister, Brother-in-law, or Sister-in-law, whether by blood, marriage, or adoption.

36. "Niece" means the female Child of a Brother, Sister, Brother-in-law, or Sister-in-law, whether by blood, marriage, or adoption.

37. "Parent" means either a natural Parent; a Parent by adoption; or a Parent otherwise established by law.

38. “Permanency Plan” means a written document that includes the specific steps needed to pursue the identified permanency goal for the child.

39. “Permanency Planning Review Hearing” means a court hearing that examines the progress or lack of progress by the Parent(s), Guardian(s), or Traditional Custodian(s) on their court-ordered Individualized Service Plans. The Court may also use this time to make modifications to an Individualized Service Plan.

40. “Presumed Father” means a man who, by operation of law is recognized as the father of a Child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed to be the father of a Child if:

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- a. he and the mother of the Child are married to each other and the Child is born during the marriage;
- b. he and the mother of the Child were married to each other and the Child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;
- c. before the birth of the Child, he and the mother of the Child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the Child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
- d. for the first two (2) years of the Child's life, he resided in the same household with the Child and openly held out the Child as his own; or
- e. after the birth of the Child, he and the mother of the Child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the Child, and:
  - (1) the assertion is in a record with the State of Oklahoma Department of Health, Division of Vital Records or the State of Oklahoma Department of Human Services;
  - (2) he agreed to be and is named as the Child's father on the Child's birth certificate; or
  - (3) he promised in a record to support the Child as his own.

41. "Prosecutor" means the attorney designated by the Executive Department to carry out the functions defined under this Deprived Children's Code.

42. "Protective Custody" means custody of a child taken pursuant to Article C of this Chapter without a court order.

43. "Receiving Agency" means the Department or the agency responsible within a specific jurisdiction for receiving reports of known or suspected instances of child abuse, including, but not limited to, physical or mental injury, sexual abuse, or

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exploitation, or negligent treatment or maltreatment of a Child that indicate the Child's health or welfare is threatened.

44. "Sexual Abuse" includes but is not limited to rape, incest, or lewd or indecent acts or proposals, made to a child by any person.

45. "Sexual Exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by any person, or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic, as defined by law, photographing, filming, or depicting of a child in those acts by any person.

46. "Sister" means:

a. any female sibling; or

b. any other female person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of sibling with the person in question.

47. "Sister-in-law" means the wife of a Brother by blood or marriage.

48. "Social Security Act" means the Social Security Act, 42 U.S.C. Section 301 *et. seq.*, as amended.

49. "Stepparent" means a person married to a biological Parent, but who is not a biological Parent of the Child.

50. "Termination of Parental Rights" means the end of a legally-recognized parent-child relationship, which may be voluntary or involuntary.

51. "Title IV-E Program" means a program administered by the Department in compliance with Title IV-E of the Social Security Act, 42 U.S.C. Section 670 (1980), as amended.

52. "Traditional Custodian" means those relatives and friends of the Child other than the Parent(s), who, based on the traditions, customs, and common law of the Chickasaw Nation or of the family, have accepted the rights, duties, and responsibilities of assisting the Parent(s) in rearing the Child and providing for its support.

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53. "Transfer Proceeding" means any proceeding in the Court to grant, accept, or decline transfer of any Children's case from or to the courts of any Indian tribe or state authorized by tribal, federal, or state law.

54. "Tribal Resource Parent" means an individual licensed or approved to provide Foster Care Services to a Child pursuant to the standards established by the Department.

55. "Uncle" means a person who, by blood or marriage, is:

a. a male sibling of the biological Parent;

b. a male Child of a Grandparent; or

c. Any other male person who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian tribe or state, would hold the relationship of uncle with the person in question.

**SECTION 6-201.5**

**JURISDICTION FOR DEPRIVED CHILD PROCEEDINGS  
ORIGINATING IN THE CHICKASAW NATION DISTRICT  
COURT.**

A. For purposes of this Deprived Children's Code, the "territorial boundaries of the Chickasaw Nation" shall include the land described in the Chickasaw Constitution and Chickasaw Code Title 5 Section 5-201.3.

B. The Court shall have exclusive jurisdiction over any Chickasaw Indian Child who is residing or domiciled in Indian Country within the territorial boundaries of the Chickasaw Nation.

C. The Court shall have exclusive jurisdiction over any Indian Child, regardless of tribal affiliation, who is found in Indian Country within the territorial boundaries of the Chickasaw Nation.

D. The Court shall have concurrent jurisdiction over any Chickasaw Indian Child who is residing or domiciled within the territorial boundaries of the Chickasaw Nation.

E. The Court shall have concurrent jurisdiction over any Indian Child who is residing or domiciled within the territorial boundaries of the Chickasaw Nation.

**SECTION 6-201.6**

**WRITTEN CONSENT TO JURISDICTION.**

The Court shall have jurisdiction over all issues within this Deprived Children's Code wherein a Parent, Guardian, or Traditional Custodian who is not an American Indian or Alaska Native as defined by 25 U.S.C. Section 450B(e) has consented in writing to the jurisdiction of the Court.

**SECTION 6-201.7**

**CHILD WELFARE TRANSFERS FROM ANOTHER COURT.**

A. Any state court may transfer to the Court herein any proceeding for the Foster Care placement of, or Termination of Parental Rights to, any Indian Child who is a citizen of, or eligible for citizenship in the Chickasaw Nation, if the Court finds that the transfer would not be detrimental to the best interests of the Child. These provisions shall also apply to transfers from other tribal courts where an Indian Child is a citizen of or eligible for citizenship in the Chickasaw Nation.

B. In determining whether to transfer to the Chickasaw Nation's jurisdiction, the Court may consider:

1. whether the Child or the Child's family will be in need of special services for physical or mental disease or defect which the Nation and its resources are unable to adequately provide;
2. whether the Child has been adjudicated a Deprived Child. The Court should decline to accept the transfer until after the Adjudication Hearing is complete;
3. whether the Deprived Children are Chickasaw;
4. any other matters which may adversely affect the Chickasaw Nation's ability to provide treatment or necessary services to the Child's family; and
5. the length of time the proceeding has been ongoing prior to requesting transfer.

C. A court transferring a case to the Chickasaw Nation's jurisdiction under Subsection A of this Section shall transmit all documents and legal and social records, or certified copies thereof, to the Court, which shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a court case number as in other cases.

**SECTION 6-201.8**

**CHILD WELFARE TRANSFERS TO TRIBAL OR STATE COURT.**

A. The Court is authorized to transfer any Deprived Child's case arising within the Chickasaw Nation's jurisdiction, said Child not being a citizen or eligible for citizenship in the Chickasaw Nation, to the Court of the Child's Indian tribe, or if the Child is a non-Indian, to the courts of the state where the Child is a resident or domiciled, upon the petition of the Prosecutor, either Parent, a Guardian, a Traditional Custodian, the Child's tribe, or an appropriate official of the Child's state.

B. In making such transfers the Court must consider:

1. the best interests of the Child;
2. any special needs or mental or physical disease or defects of the Child and family and the ability of the receiving jurisdiction to meet those needs;
3. if transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction;
4. emotional, cultural, and social ties of the Child and its family; and
5. the likelihood that the same Child and family would return to the Chickasaw Nation jurisdiction within a reasonable time and come before the Court again.

C. Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, and a copy of the court file concerning the Deprived Child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested. The Court may retain physical Custody of the Child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the Child until completion of physical transfer to the receiving jurisdiction.

**SECTION 6-201.9**

**PLACEMENT PREFERENCES.**

A. For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. Section 1901 et. seq., in making a placement of or awarding legal Custody of a Child, whether for foster care or adoption, the Court shall place the Child in the following descending order of preference:

1. the natural Parents, adoptive Parents, or Stepparents as the case may be;

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2. any person over eighteen (18) years of age who is the Child's Grandparent, Aunt or Uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, and their spouse;
3. a Traditional Custodian and their spouse, if applicable;
4. a Foster Home licensed by the Department;
5. a Foster Home licensed by any other licensing authority within the state or an Indian Foster Home licensed by some other tribe;
6. an institution for Children licensed or approved by the Department with a program suitable to meet the Child's needs;

B. Where appropriate the Court may consider the preference of the Parents and the proximity of the prospective Foster Home to the Child's home in applying these preferences.

C. For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

D. The Court may place the Child with the Department or a Child Placement Agency approved by the Department for further placement in lieu of a direct placement pursuant to Subsection A of this Section. When the Court does so, the agency shall place said Child in accordance with the preferences described above and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

E. State courts shall follow the placement preference rules outlined herein.

F. By adopting the placement preferences authorized by the Indian Child Welfare Act and set forth herein, any delay or denial of placement of a Child for adoption or Foster Care by the Department does not constitute a violation of Section 671(a)(18) of the Social Security Act.

### **SECTION 6-201.10**

### **EXTENDED FAMILY DEFINED.**

For purposes of state court proceedings pursuant to the Indian Child Welfare Act, 25 U.S.C. Section 1901 et. seq., a Child's extended family is defined to mean the Child's Grandparent, great-grandparent, Aunt or Uncle, great-aunt or great-uncle, Brother or Sister, Brother-in-law or Sister-in-law, Niece or Nephew, first or second Cousin, or Stepparent over

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eighteen (18) years of age and their spouse as those terms of relation are defined in Article A of this Deprived Children's Code.

**SECTION 6-201.11**                      **NOTICE OF LEGAL RIGHTS.**

A.        At his first appearance before the Court, the Child's Parent(s), Guardian(s), or Traditional Custodian(s) shall be fully advised by the Court of their legal rights, including:

1.        the right to a jury trial upon demand where available;
2.        the right to be represented by an attorney, at their own expense, at every stage of the proceeding;
3.        the right to see, hear, and cross-examine all witnesses against them; and
4.        the right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them.

B.        If the Parent(s), Guardian(s), or Traditional Custodian(s) requests an attorney and is found to be without sufficient financial means, counsel shall be appointed by the Court in proceedings wherein the Chickasaw Nation is a party and Termination of the Parent-child legal relationship is stated as a possible remedy.

C.        The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the Child or other parties.

D.        If the Child and/or his Parent(s), Guardian(s), or Traditional Custodian(s) were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

**SECTION 6-201.12**                      **PROSECUTOR DUTIES.**

The Prosecutor shall represent the Chickasaw Nation in the interest of the Child in all Deprived Child proceedings subject to this Deprived Children's Code.

**SECTION 6-201.13**                      **PROCEDURE.**

Unless otherwise provided:



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A. The rules of procedure herein set forth shall apply in all proceedings under this Deprived Children's Code. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure shall apply.

B. The Court shall have the authority by written court rule not inconsistent with this Deprived Children's Code or the general rules of civil procedure to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Deprived Children's Code.

**SECTION 6-201.14**                      **REASONABLE EFFORTS.**

A. The Department shall make reasonable efforts to do the following:

1. maintain the family unit and prevent the unnecessary removal of a Child from his or her home, as long as the Child's safety is assured;

2. effect the safe reunification of the Child and family if temporary out-of-home placement is necessary to ensure the immediate safety of the Child; and

3. make and finalize alternate Permanency Plans in a timely manner when reunification is not appropriate or possible.

B. In determining reasonable efforts to be made with respect to a Child and in making such reasonable efforts, the Child's health and safety is the Nation's paramount concern.

C. If continuation of reasonable efforts is determined to be inconsistent with the Permanency Plan for the Child, reasonable efforts must be made to place the Child in a timely manner in accordance with the Permanency Plan including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize the permanent placement of the Child.

**SECTION 6-201.15**                      **HEARINGS.**

A. Hearings shall be held before the Court without a jury, except as provided in this Deprived Children's Code, and may be conducted in an informal manner. The general public shall be excluded. The Court shall admit only such persons who have an interest in the case or the work of the Court.

B. A verbatim record shall be taken of all proceedings which might result in the deprivation of Custody. A verbatim record shall be made in all other hearings, including any hearing conducted by a referee, unless waived by the parties in the proceeding and so ordered by

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the Judge or referee.

C. The name, picture, place of residence, or identity of any Child, Parent, Guardian, Traditional Custodian, or person appearing as a witness in Deprived Child proceedings under this Deprived Children’s Code shall not be published in any newspaper or in any other publication nor given any other publicity unless, for good cause, it is specifically permitted by order of the Court or by the Chickasaw Code.

**SECTION 6-201.16                      COURT REPORTS.**

A. Unless waived by the Court, the Department shall submit a written court report to the Court after the Child has been adjudicated a Deprived Child and prior to each scheduled disposition hearing and permanency planning review hearing thereafter.

B. The Court, if so requested by the Child, his Parent, Guardian, or Traditional Custodian, or other interested party, shall require that the person who wrote the report or prepared the material, if available, to appear as a witness and be subject to both direct and cross-examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the Child, his Parent, Guardian, or Traditional Custodian, or other party in the proceedings so requires.

C. The Court shall inform the Child, his Parent, Guardian, or Traditional Custodian, or other interested party of the right of cross-examination concerning any written report or other material as specified in Subsection B of this Section.

**SECTION 6-201.17                      CONFIDENTIAL RECORDS.**

A. Except as provided by this Section and except as otherwise specifically provided by tribal and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Deprived Child Court records;
2. Delinquency Court records;
3. Department records;
4. Prosecutor records;
5. Law Enforcement Agency records; and

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6. probation records.

B. The limitation of Subsection A of this Section shall not apply to statistical information and other abstract information obtained pursuant to the provisions of the Chickasaw Nation Children's Code.

C. Except as otherwise specifically provided by tribal and federal laws pertaining to educational records, medical records, drug or alcohol treatment records, Law Enforcement Agency records, or social service records, the records listed in Subsection A of this Section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the Court. A subpoena or subpoena duces tecum purporting to compel testimony or disclosure of such information or record shall be invalid.

D. When confidential records may be relevant in a criminal, civil, or administrative proceeding, an order of the Court authorizing the inspection, release, disclosure, correction, or expungement of confidential records shall be entered by the Court only after a judicial review of the records and a determination of necessity pursuant to the following procedure:

1. A motion shall be filed with the Court describing with specificity the confidential records being sought and setting forth in detail the compelling reason why the inspection, release, disclosure, correction, or expungement of confidential records should be ordered by the Court. A motion that does not contain the required specificity or detail may be subject to dismissal by the Court;

2. Upon the filing of the motion, the Court shall set a date for a hearing and shall require notice of not less than twenty (20) days to the agency or person holding the records and to any other interested party. The Court may also enter an ex parte order compelling the person or Department holding the records to either produce the records to the Court on or before the date set for hearing or file an objection to the producing of such records to the Court. The Court may shorten the time allowed for notice due to exigent circumstances;

3. At the hearing, should the Court find that a compelling reason does not exist for the confidential records to be judicially reviewed, the matter shall be dismissed; otherwise, the Court shall order that the records be produced for a judicial review. The hearing may be closed at the discretion of the Court; and

4. The judicial review of the records shall include a determination, with due regard for the confidentiality of the records and the privacy of persons identified in the records, as to whether an order should be entered authorizing the inspection, release,

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disclosure, correction, or expungement of the records based upon the need for the protection of a legitimate public or private interest.

E. The Court may, for good cause shown, prohibit the release of such confidential records or testimony or authorize a release of the confidential information or testimony upon such conditions as the Court deems necessary and appropriate, subject to the provisions of this Section.

F. Nothing in this Section shall be construed as:

1. authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accordance with federal statutes and regulations governing the receipt or use of such funds;

2. authorizing the disclosure of papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the provisions of the Chickasaw Nation Adoption Code;

3. abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

4. limiting or otherwise affecting access of Parent(s), Guardian(s), Traditional Custodian(s), their attorneys and other parties to a Deprived Child proceeding to records filed with or submitted to the Court, except that if a request requires a large amount of copies or personnel time, the Court may allow reasonable fees to be charged;

5. prohibiting the Department from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect or to any person providing services to a child who is or is alleged to be a victim of child abuse;

6. authorizing the disclosure of information which identifies any person who has reported an allegation of known or suspected child abuse or neglect unless such disclosure is specifically ordered by the Court;

7. prohibiting the disclosure of confidential information to any educational institution, facility, or educator to the extent necessary to enable the educator to better provide educational services and activities for a child and provide for the safety of students; or

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8. prohibiting the Department from obtaining, without a court order, nondirectory education records pertaining to a child in the legal custody of the Department.

**SECTION 6-201.18**                      **INSPECTION OF COURT RECORDS.**

A. Records of Court proceedings shall be open to inspection by the Parent(s), Guardian(s), Traditional Custodian(s), attorneys and other parties in proceedings before the Court, and to any agency to which legal Custody of the Child has been transferred, except records of Court proceedings in formal adoptions and formal relinquishment shall be confidential and open to inspection only by Court order.

B. With consent of the Court, records of Court proceedings may be inspected by the Child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies, except in formal relinquishment and formal adoption proceedings.

C. Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of the Court.

**SECTION 6-201.19**                      **SEARCH WARRANTS FOR THE PROTECTION OF CHILDREN.**

A. A search warrant may be issued by the Court to search any place for the recovery of any Child within the territorial jurisdiction of the Court believed to be a Deprived Child.

B. Such warrant shall be issued only on the conditions that the application for the warrant shall:

1. be in writing and supported by affidavit sworn to or affirmed by the Court;
2. name or describe with particularity the Child being sought;
3. state that the Child is believed to be a Deprived Child and the reasons upon which such belief is based;
4. state the address or legal description of the place to be searched; and
5. state the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.

**SECTION 6-201.20**

**ISSUANCE AND RETURN OF SEARCH WARRANT.**

A. If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the Child sought and the place to be searched for the Child.

B. The search warrant shall be directed to any Law Enforcement Officer authorized by law to execute it wherein the place to be searched is located.

C. The warrant shall state the grounds for probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and shall be issued in a form substantially similar to other search warrants.

D. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

E. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the Child is to be sought, or if no one is home, a copy shall be left in plain sight within the place searched.

F. If the Child is found, the Child shall be taken into custody pursuant to Article C of this Chapter.

G. The warrant shall be returned to the issuing court immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the Child was delivered by him and his fees. A copy shall be delivered to the Prosecutor. If the Child was not found, such information should be subscribed on the warrant.

**SECTION 6-201.21**

**EXPIRATION OF SEARCH WARRANT.**

A search warrant for the protection of a Child shall be null and void if not served within ten (10) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

**SECTION 6-201.22**

**APPEALS.**

An appeal may be taken from any order, decree, or judgment of the Court in the same manner as other civil appeals in accordance with Title 5 of the Chickasaw Nation Code. Initials shall appear on the record on appeal in place of the name of the Child and respondents. Appeals shall be advanced on the calendar of the appellate court and shall be decided at the earliest

practical time.

**SECTION 6-201.23**                      **VOLUNTARY FOSTER CARE AUTHORIZED.**

A.        In order to provide better treatment for a family's problems and to better protect Children, the Department is authorized to accept a Child for Foster Care when the Parent(s), Guardian(s), or Traditional Custodian(s) has consented to such Foster Care in writing before a Judge of the Court whose issuance of a certificate that the terms and conditions and consequences of such consent were fully explained in detail and fully understood in English, or that it was interpreted into a language which was understood.

B.        A consent to Foster Care placement or a revocation of a voluntary placement agreement may be withdrawn by the Parent, Guardian, or Traditional Custodian giving same at any time and the Child shall be returned to the authorized person requesting the Child's release within forty-eight (48) hours.

C.        The Department is authorized to establish criteria for which a Child may be eligible for Foster Care maintenance payments when a specified written voluntary placement agreement has been agreed upon by the parties regarding the Child(ren).

**SECTION 6-201.24**                      **MULTI-DISCIPLINARY TEAM.**

It is the intent of this Act to encourage the Department to create and maintain one or more multi-disciplinary teams. The multi-disciplinary team is based on the principle that Child Abuse and neglect cases involve complex issues and require the expertise of many professionals, in collaboration, to protect Children. The purpose of the multi-disciplinary team is to assist the Department and Law Enforcement Agency in their investigations of Child Abuse and Neglect cases with the provision of diagnostic services, case consultation, and assessment services.

**SECTION 6-201.25**                      **MEMBERS OF THE MULTI-DISCIPLINARY TEAM.**

A.        Members of the multi-disciplinary team should include, but are not limited to, the following:

1.        mental health professionals;
2.        medical personnel with experience in Child Abuse and neglect;
3.        Department social workers;
4.        Lighthorse Police Department; and

5. the Prosecutor.

**SECTION 6-201.26**

**DUTIES OF THE MULTI-DISCIPLINARY TEAM.**

The multi-disciplinary team shall:

1. identify gaps in services or all untapped resources within the community to improve the delivery of services to the Child victim and family.
2. keep all records, reports and meeting discussions confidential. Prior to participating on the team, each member shall be required to execute a confidentiality agreement. No member shall divulge cases or other information discussed or shared with other members to anyone outside the multi-disciplinary team. In addition, each member shall be required to abide by the confidentiality laws and policies established by their employer.
3. develop a protocol for investigating Child Abuse and neglect cases and for interviewing Child victims to ensure coordination and cooperation between all agencies involved and to minimize the stress created for the allegedly Abused or neglected Child.



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**ARTICLE B  
CHILD ABUSE REPORTING  
(PR30-007, 5/17/13)**

Section 6-202.1	Persons Required to Report Child Abuse or Child Neglect.
Section 6-202.2	Evidence of Abuse.
Section 6-202.3	Immunity from Liability.
Section 6-202.4	Reporting Procedures.
Section 6-202.5	Central Registry.
Section 6-202.6	Confidentiality of Child Abuse Reporting.

**SECTION 6-202.1**                      **PERSONS REQUIRED TO REPORT CHILD ABUSE OR CHILD NEGLECT.**

A. Every person having reason to believe that a child under the age of eighteen (18) years is a victim of Child Abuse or Child Neglect shall report the matter promptly to the Receiving Agency. However, those individuals reporting who wish to remain anonymous shall remain anonymous.

B. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this Section.

C. The reporting obligations under this Section are individual, and no superior shall interfere with the reporting obligations of any employee or other person or in any manner discriminate or retaliate against the employee or other person who in good faith reports suspected Child Abuse or Child Neglect, or who provides testimony in any proceeding involving Child Abuse or Child Neglect. Any such superior who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees.

D. Every physician, surgeon, or other health care professional making a report of Child Abuse or Child Neglect as required by this Subsection, or examining a child to determine the likelihood of Child Abuse or Child Neglect and every hospital or related institution in which the child was examined or treated shall provide, upon request and subject to applicable law, copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to Law Enforcement Officers conducting a criminal investigation into the case and to employees of the Department conducting an investigation of alleged Child Abuse or Child Neglect in the case.

E. Any person who knowingly and willfully fails to promptly report suspected Child Abuse or Child Neglect or who interferes with the prompt reporting of suspected Child Abuse or

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Child Neglect shall be reported to the appropriate Law Enforcement Agency for criminal investigation and/or prosecution.

F. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this Section or a report that the person knows lacks factual foundation shall be reported to the appropriate Law Enforcement Agency for criminal investigation and/or prosecution.

2. If a Court determines that an accusation of Child Abuse or Child Neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, such accusation(s) shall be subject to prosecution as a "False Accusation of Child Abuse or Child Neglect" offense. If convicted, the Court may impose a fine, not to exceed five thousand dollars (\$5,000), one (1) year in jail or both. The punishment provided by this paragraph is in addition to any other remedy provided by law.

G. Nothing contained in this Section shall be construed to exempt or prohibit any person from reporting any suspected Child Abuse or Child Neglect pursuant to Subsection A of this Section.

**SECTION 6-202.2                      EVIDENCE OF ABUSE.**

A. Any person licensed to practice medicine, registered nurse, or licensed practical nurse, hospital personnel, or other individual engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or Law Enforcement Officer who has before him a Child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the Child. If medically indicated, such person may take or cause to be taken X-rays of the Child.

B. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to the Receiving Agency.

**SECTION 6-202.3                      IMMUNITY FROM LIABILITY.**

A. Any person, individual, or agency participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Act, the taking of color photographs or X-rays, or the placing in temporary Custody of a Child pursuant to this Act or otherwise performing his duties or acting pursuant to this Act shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person individual or agency reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a Child in

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protective custody shall be presumed.

B. Any officer of the Court, prosecutor, and any judge thereof shall be immune from liability for good faith prosecution or for requesting or issuing an order that requires a convicted person to attend a psychiatric treatment program, attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation, or attend, complete, and/or be evaluated before and after attendance in a treatment program by a licensed psychiatrist.

### **SECTION 6-202.4                      REPORTING PROCEDURES.**

A. Reports of known or suspected Child Abuse or Child Neglect made pursuant to this Act shall be made immediately to a Receiving Agency.

B. The Receiving Agency shall prepare and forward a copy of a written referral to the Central Registry on forms supplied by the Department.

C. Such written referral, when possible, shall include the following information:

1. the name, address, age, sex and tribal affiliation of the child;
2. the name and address of the Child's Parent(s), Guardian(s), or Traditional Custodian(s);
3. the nature and extent of the child's injuries, including any evidence of previous known or suspected Abuse or Neglect to the child or the child's siblings;
4. the names and addresses of the persons responsible for the suspected Abuse or Neglect, if known;
5. the family composition;
6. the source of the report and the name, address, and occupation of the person making the report;
7. any action taken by the reporting source; and
8. any other information that the person making the report believes may be helpful in furthering the purposes of this Section.

D. Upon receipt of any report of known or suspected Child Abuse or Child Neglect, the Receiving Agency shall make a thorough investigation immediately. The immediate concern

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of such investigation shall be the protection of the child.

E. Investigations shall be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. The Receiving Agency may conduct the investigation independently or in conjunction with another appropriate agency or may arrange for the initial investigation to be conducted by another agency with personnel having appropriate training and skill.

F. The Department shall provide for persons to be continuously available to respond to such reports. Tribal, state and federal agencies may cooperate to fulfill the requirements of this Subsection. As used in this Subsection, "continuously available" means the assignment of a person to be near an operable telephone not necessarily located in the premises ordinarily used for business by the Department or to have such arrangements made through agreements with local law enforcement agencies.

G. Upon receipt of a report of Child Abuse or Child Neglect, if the Department reasonably believes Child Abuse or Child Neglect has occurred, it shall immediately offer social services to the Child who is the subject of the report and his family. If, before the investigation is completed, the opinion of the investigators is that immediate action is necessary for the protection of the Child or other Children under the same care, the Lighthorse Police Department and the Prosecutor shall be notified. If immediate removal is necessary to protect the Child or other Children under the same care from further Abuse, the Child or Children may be placed in protective Custody in accordance with Chickasaw Nation law.

H. The Receiving Agency, upon receipt of a report and upon completion of any investigation it may undertake, shall immediately forward a summary of the investigatory data plus all relevant documents to the Prosecutor and to the Department or Lighthorse Police Department, as applicable.

### **SECTION 6-202.5**

### **CENTRAL REGISTRY.**

- A. The Central Registry shall contain, but shall not be limited to:
1. all information in any written report or referral received under this Act;
  2. a record of the final disposition of the report, including services offered and services accepted;
  3. the plan for rehabilitative treatment;

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4. the name and identifying data, date, and circumstance of any person requesting or receiving information from the Central Registry; and
5. any other information which might be helpful in furthering the purposes of this Act.

B. Data and information maintained and related to individual cases shall be confidential and shall be made available only as authorized by applicable law.

C. No person shall allow the data and information maintained to be released except as authorized by Section 6-201.17, "Confidential Records," of this Deprived Children's Code.

**SECTION 6-202.6                      CONFIDENTIALITY OF CHILD ABUSE REPORTING.**

A. Except as provided in Subsection E of this Section, reports of Child Abuse or Child Neglect and the name and address of any Child, family or informant or any other identifying information contained in such reports, shall be confidential and shall not be public information.

B. Disclosure of the name and address of the Child and family and other identifying information involved in such reports shall be permitted only when authorized by the Court for good cause. Such disclosure shall not be prohibited when there is a death of a suspected victim of Child Abuse or Child Neglect and the death becomes a matter of public record, the subject of an arrest by a Law Enforcement Agency or the subject of the filing of a formal charge in any tribal, local, state or federal court.

C. Any person who violates any provision of this Section shall be subject to a civil penalty of not more than Five Thousand Dollars (\$5,000).

D. Only the following persons or agencies shall be given access to Child Abuse or Child Neglect records and reports:

1. the Law Enforcement Agency or Department investigating a report of known or suspected Child Abuse or Child Neglect or treating a Child or family which is the subject of the report;
2. an agency having the legal responsibility or authorization to care for, treat, or supervise a Child who is the subject of a report or record or a Parent, Guardian, Traditional Custodian, or other person who is responsible for the Child's health or welfare;

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3. any person named in the report or record who was alleged as a Child to be Abused or Neglected or, if the Child named in the report or record is a Child or is otherwise incompetent at the time of the request, his Guardian *Ad Litem*;

4. a Parent, Guardian, Traditional Custodian, or other person responsible for the health or welfare of a Child named in a report, with protection for the identity of reporters and other appropriate persons;

5. a Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to *in camera* inspection as is necessary for the resolution of an issue then pending before it;

6. the Central Registry;

7. all members of a multi-disciplinary team who have executed confidentiality agreements;

8. the Prosecutor and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary; and

9. such other persons as a Court may determine, for good cause.

E. A person given access to the names or other information identifying the subject of a report shall not divulge or make public any identifying information unless he is a prosecutor or a Law Enforcement Officer and the purpose is to initiate court action or unless he is the subject of a report.

**ARTICLE C**  
**PROTECTIVE AND EMERGENCY CUSTODY**  
(PR30-007, 5/17/13)

Section 6-203.1	Protective Custody.
Section 6-203.2	Emergency Custody.
Section 6-203.3	Show Cause Hearing.
Section 6-203.4	Placement of the Child.
Section 6-203.5	Duration of Emergency Custody Order.
Section 6-203.6	Paramount Concern.

**SECTION 6-203.1**                      **PROTECTIVE CUSTODY.**

A.     A Child may be taken into protective custody by a Law Enforcement Officer or a licensed practitioner of medicine prior to the filing of a petition and without a Court order, so long as said person has reasonable suspicion that:

1.     the Child is in need of immediate protection due to an imminent safety threat, or
2.     the circumstances or surroundings of the Child are such that continuation in the Child's home or in the care or custody of the Parent, Guardian, or Traditional Custodian would present an imminent safety threat to the Child.

B.     The Law Enforcement Agency shall contact the Department, who shall conduct a safety assessment at the scene where protective custody is assumed to determine whether the Child faces an imminent safety threat and if so, whether the Child can be protected through placement with relatives or others without the Department assuming emergency custody.

C.     No Child taken into protective custody shall be considered to be in the emergency custody of the Department until the Department has completed a safety assessment and has concluded that the Child faces an imminent safety threat and the Court has issued an order for emergency custody.

D.     If the Department's safety assessment regarding a Child taken into protective custody indicates that the Child does not face an imminent safety threat, the Department shall restore the Child to the custody and control of the Parent(s), Guardian(s), or Traditional Custodian(s) of the Child.

E.     If the Department's safety assessment regarding a Child taken into protective custody indicates that the child does face an imminent safety threat, the Department shall

immediately contact the Prosecutor and request emergency custody of the Child.

F. Such persons who in good faith carry out duties pursuant to this Section shall be immune from civil or criminal liability that may result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed. This provision shall not apply to damage or injury caused by the willful, wanton or gross negligence or misconduct of a person.

**SECTION 6-203.2                      EMERGENCY CUSTODY.**

A. A Child may be taken into emergency custody prior to the filing of a petition, by an emergency temporary custody order issued by the Court upon an application from the Prosecutor supported by a sworn affidavit, stating facts sufficient to demonstrate to the Court that the Child's continuation in the home of the Parent(s), Guardian(s), or Traditional Custodian(s) is contrary to the Child's welfare and there is reasonable suspicion that:

1. the Child is in need of immediate protection due to an imminent safety threat, or
2. the circumstances or surroundings of the Child are such that continuation in the Child's home or in the care or custody of the Parent(s), Guardian(s), or Traditional Custodian(s) would present an imminent safety threat to the Child.

B. The Court shall not enter an emergency temporary custody order pursuant to Subsection A removing a Child from the home unless the Court makes the following determinations:

1. That an imminent safety threat exists and continuation in the home of the Child is contrary to the welfare of the Child; and either
2. Reasonable efforts have been made to prevent the removal of the Child from the Child's home; or
3. An absence of efforts to prevent the removal of the Child from the home of the Child is reasonable because the removal is due to an emergency and is for the purpose of providing for the safety and welfare of the Child.

C. Any Law Enforcement Officer or employee of the Department is authorized to transport a Child when acting pursuant to this Section. Such persons and any other person acting under the direction of the Court, who in good faith transports any Child or carries out duties pursuant to this Section, shall be immune from civil or criminal liability that may result by reason



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of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed. This provision shall not apply to damage or injury caused by the willful, wanton or gross negligence or misconduct of a person.

**SECTION 6-203.3                      SHOW CAUSE HEARING.**

Within seven (7) days of the Child being taken into emergency custody, the Court shall conduct a Show Cause Hearing. At the hearing, the Court shall:

1. Determine whether evidence or facts exist that are sufficient to demonstrate to the Court there is reason to believe the Child is in need of protection due to abuse or neglect, or is in surroundings that are such as to endanger the health, safety or welfare of the Child.
  
2. Advise the Parent(s), Guardian(s), or Traditional Custodian(s) of the following:
  - a. The right to jury trial in an Adjudication Hearing when termination of parental rights is stated as a possible disposition in the petition in cases involving an alleged Deprived Child;
  
  - b. The right to be represented by an attorney at every stage of the proceeding, including the right to Court-appointed counsel upon a finding of indigency, in proceedings wherein termination of the parent-child legal relationship is stated as a possible remedy in the petition;
  
  - c. The right to see, hear and cross-examine all witnesses against them; and
  
  - d. The right to call witnesses on their own behalf and to have Court process compel the attendance of said witnesses.
  
3. Determine custody of the Child by ordering one of the following:
  - a. release the Child to the Child's Parent(s), Guardian(s), or Traditional Custodian(s) from whom the Child was removed under any conditions the Court finds reasonably necessary to protect the health, safety, or welfare of the Child; or
  
  - b. placement of the Child in the custody of a responsible adult or licensed Child Placement Agency under any conditions the Court finds reasonably

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necessary to protect the health, safety, or welfare of the Child; or

- c. continue emergency custody of the Child by the Department.
- 4. Enter any appropriate order to protect the Child's health, safety, or welfare.

**SECTION 6-203.4                      PLACEMENT OF THE CHILD.**

If a Child has been removed from the custodial Parent of the Child and the Court, in the best interests of the Child, is unable to release the Child to the custodial Parent, the Court shall give priority for placement of the Child with the noncustodial Parent of the Child unless such placement would not be in the Child's best interests.

**SECTION 6-203.5                      DURATION OF EMERGENCY TEMPORARY CUSTODY ORDER.**

A. A petition for a Deprived Child proceeding shall be filed and a summons issued within seven (7) days from the date the Child is taken into custody unless, upon request of the Prosecutor, the Court determines there are compelling reasons to grant additional time for the filing of the petition.

B. If the petition is not filed as required by this Subsection, the emergency temporary custody order shall expire.

**SECTION 6-203.6                      PARAMOUNT CONCERN.**

A. In all proceedings or actions pursuant to this Subsection, the Child's health, safety and welfare shall be the paramount concern.

B. Nothing contained in this Deprived Children's Code shall prevent a Court from immediately assuming custody of a Child and ordering whatever action may be necessary, including medical or behavioral health treatment, to protect the Child's health, safety, and welfare.

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**ARTICLE D  
ADJUDICATION  
(PR30-007, 5/17/13)**

Section 6-204.1	Prosecutor Intake.
Section 6-204.2	Petition Contents.
Section 6-204.3	Petition Form.
Section 6-204.4	Paternity.
Section 6-204.5	Summons.
Section 6-204.6	When Summons Unnecessary.
Section 6-204.7	Additional Parties to Be Summoned.
Section 6-204.8	Service of Summons.
Section 6-204.9	Failure to Appear.
Section 6-204.10	Appointment of Counsel.
Section 6-204.11	Appointment of Guardian <i>Ad Litem</i> .
Section 6-204.12	Duties of the Guardian <i>Ad Litem</i> .
Section 6-204.13	Compensation of the Guardian <i>Ad Litem</i> .
Section 6-204.14	Adjudication Hearing.
Section 6-204.15	Alternative Method of Testimony for a Child under the Age of Thirteen Years.
Section 6-204.16	Hearsay Statements of a Child under the Age of Thirteen Years.
Section 6-204.17	Sustaining Petition.
Section 6-204.18	Appeal.
Section 6-204.19	Continuing Jurisdiction.
Section 6-204.20	Dismissal of Petition.
Section 6-204.21	Diversion by Consent Decree.

**SECTION 6-204.1                    PROSECUTOR INTAKE.**

A.    Upon receiving a request to file a petition and the accompanying reports and files from the Department, the Prosecutor shall determine if there is sufficient evidence to establish the jurisdiction of the Court over the Child alleged to be Deprived.

B.    If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the Court over the Child, the Prosecutor shall file a petition alleging the Child to be Deprived.

**SECTION 6-204.2                    PETITION CONTENTS.**

A.    The petition shall be verified.

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- B. The petition shall set forth plainly:
1. the facts which bring the Child within the Court's jurisdiction;
  2. the name, age, residence and tribal affiliation of the Child;
  3. the names, residences and tribal affiliations of the Child's Parent(s);
  4. the names, residences and tribal affiliations of the Child's Guardian(s) or Traditional Custodian(s), if applicable;
  5. the facts which bring the Child within the purview of this Deprived Children's Code; and
  6. the relief requested including, but not limited to, or where applicable:
    - a. that legal custody of the Child be vested with the Court and said Child be made a ward of the Court, under the supervision of the Department with authority to place;
    - b. that the Court, after a hearing, issue findings of fact and issue an Order of Adjudication, for the reason that the Child is a Deprived Child as defined under the Deprived Children's Code;
    - c. that an Individualized Service Plan and disposition hearings or alternatives be authorized and ordered by the Court and that the respondent Parent(s), Guardian(s), or Traditional Custodian(s) be ordered to undertake and complete the provisions of the individualized service plan and disposition orders;
    - d. that the Court find that termination of the parent-child legal relationship between the Child and the respondent Parent(s) is a possible remedy; and
    - e. that the Court issue any further orders which may be deemed necessary or appropriate during the pendency of the proceedings.

B. All petitions filed alleging that a Child is Deprived may include the following statement: "Termination of the parent-child legal relationship between the child and the respondent parent(s) is a possible remedy." Unless such statement is contained in the petition, no Termination of Parental Rights can be obtained unless, upon the occurrence of new facts after the

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filing of the petition, an amended petition is filed based upon the new facts and containing the above required statement.

C. A copy of the petition alleging a Child to be Deprived shall be attached to and delivered with the summons.

**SECTION 6-204.3                      PETITION FORM.**

The Prosecutor shall sign and file all petitions alleging a Child to be Deprived. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

**IN THE DISTRICT COURT OF THE CHICKASAW NATION**

the Chickasaw Nation	)	
In the Interest of:	)	
	)	
_____, DOB: __/__/____,	)	Case No. JFJ-____ - ____
Alleged Deprived Child	)	
	)	
And Concerning:	)	
_____, Respondent Mother; and	)	
_____, Respondent Father.	)	

**PETITION**

COMES NOW . . . .

**SECTION 6-204.4                      PATERNITY.**

A. When paternity of an alleged Deprived Child has not been established, the Court shall establish paternity in accordance with the laws of the Chickasaw Nation. The mother and the Alleged Father of the Child named in a Deprived Child petition shall be given notice that paternity may be established in the Deprived Child action.

B. The order establishing paternity shall be filed as a separate document and shall not be confidential. The order may be captioned with a different case style in order to establish and enforce a child support order in an action other than the Deprived Child proceeding.

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**SECTION 6-204.5**

**SUMMONS.**

Upon filing of a petition the Court Clerk shall issue a summons to the respondents as in other civil cases. The summons shall be in substantially the following form:

**IN THE DISTRICT COURT OF THE CHICKASAW NATION**

the Chickasaw Nation )  
In the Interest of: )  
 )  
\_\_\_\_\_, DOB: \_\_/\_\_/\_\_\_\_, ) Case No. JFJ-\_\_\_\_-\_\_\_\_  
Alleged Deprived Child )  
 )  
And Concerning: )  
\_\_\_\_\_, Respondent Mother; and )  
\_\_\_\_\_, Respondent Father. )

**SUMMONS**

the Chickasaw Nation to: \_\_\_\_\_, Respondent

YOU ARE HEREBY NOTIFIED that a petition has been filed in the Court alleging that the above named minor child is a Deprived Child and that, as the parent of said Child, you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the courtroom of the Chickasaw Nation District Court, 821 N. Mississippi, Ada, Oklahoma, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_M. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

You may seek the advice of an attorney on any matter relating to this action at your own expense, or upon application to the Court, you may be eligible for a court-appointed attorney.

FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE CHILD AS A DEPRIVED CHILD AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THIS CHILD.

[SEAL]

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CLERK OF THE CHICKASAW NATION DISTRICT COURT

(Return as in other civil cases.)

**SECTION 6-204.6                      WHEN SUMMONS UNNECESSARY.**

A summons need not issue or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk, or who has promised to appear at the hearing in writing upon the release of a Child from Emergency Custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

**SECTION 6-204.7                      ADDITIONAL PARTIES TO BE SUMMONED.**

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

**SECTION 6-204.8                      SERVICE OF SUMMONS.**

A. Summons shall best be served personally, but shall always be served pursuant to the Chickasaw Nation Code.

B. If the Parent(s), Guardian(s), or Traditional Custodian(s) required to be summoned cannot be found within the jurisdiction of the Chickasaw Nation, the fact of the Child's presence within the Chickasaw jurisdiction shall confer jurisdiction on the Court as to any absent Parent(s), Guardian(s), or Traditional Custodian(s) if due notice has been given in the following manner:

1. When the residence of the person to be served outside the Chickasaw jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

2. When the person to be served has no residence within the Chickasaw jurisdiction and his place of residence is not known or when he cannot be found within the Chickasaw jurisdiction after due diligence, service may be accomplished by publication in accordance with Title 5 of the Chickasaw Nation Code.

**SECTION 6-204.9**

**FAILURE TO APPEAR.**

Failure to respond to the summons or to appear at the Adjudication Hearing for which the person received notice constitutes consent to the Child as a Deprived Child and may ultimately result in loss of custody of the Child or the termination of parental rights to the Child.

**SECTION 6-204.10**

**APPOINTMENT OF COUNSEL.**

If a petition has been filed alleging a Child is Deprived, and the Parent(s), Guardian(s), or Traditional Custodian(s) of the Child requests an attorney and is found to be indigent, counsel may be appointed by the Court.

**SECTION 6-204.11**

**APPOINTMENT OF GUARDIAN *AD LITEM*.**

A. In all proceedings brought for the protection of a Child alleged to be Deprived, a Guardian *Ad Litem* shall be appointed for said Child. Said Guardian shall have the power to represent the best interests of the Child in the legal proceedings.

B. The Guardian *Ad Litem* shall be a licensed attorney and a member in good standing with the Chickasaw Bar Association, who is not a party, relative of a party, or representative of a party to the proceedings.

C. The Guardian *Ad Litem* shall be given access to the court files and Department files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the Child's Parent(s), Guardian(s), or Traditional Custodian(s), made pursuant to the laws relating to child abuse and neglect including reports generated by service providers.

D. A Deprived Child is a party to all Deprived Child proceedings; therefore, the Guardian *Ad Litem* is able to participate as fully as the Parent(s), Guardian(s), Traditional Custodian(s), and Prosecutor in all aspects of the proceedings including, but not limited to, voir dire, cross examination, the subpoena of witnesses, and opening and closing statements.

**SECTION 6-204.12**

**DUTIES OF THE GUARDIAN *AD LITEM*.**

A. A Guardian *Ad Litem* appointed under this Act shall perform the following:

1. conduct an investigation to the extent that the Guardian *Ad Litem* considers necessary to determine the best interests of the Child;



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2. obtain and review copies of the Child's relevant medical, psychological, school records or other records the Guardian *Ad Litem* deems pertinent;
3. perform any task directed by the Court;
4. within a reasonable time after such appointment, interview the following persons:
  - a. the Child in a developmentally appropriate manner, if the Child is four (4) years of age or older;
  - b. each person who has significant knowledge of the Child's history and condition, including any Tribal Resource Parent of the Child; and
  - c. the parties to the Deprived Child proceeding.
5. receive, from the Court, notice of each hearing and a copy of each pleading or other paper filed with the Court in the case in which the Guardian *Ad Litem* is appointed;
6. attend and participate in all legal proceedings in the case and be compelled by the Court to give testimony as necessary, for the proper disposition of the Deprived Child proceeding;
7. submit a report regarding the Guardian *Ad Litem*'s recommendations relating to the best interests of the Child and the basis for the Guardian *Ad Litem*'s recommendations;

B. The Guardian *ad litem* shall be entitled to:

1. seek clarification from the Court if the role of the Guardian *Ad Litem* is ambiguous;
2. consent or refuse to consent to an interview of the Child by another attorney;
3. call or question witnesses in any hearing or at trial; and
4. perform additional services, interviews, tasks and/or duties as necessary for effective advocacy of the best interests of the Child.

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C. The Guardian *Ad Litem* shall not be compelled by discovery procedures.

D. In either a nonjury or jury trial, a party may call the Guardian *Ad Litem* as a witness for the purpose of cross-examination regarding the Guardian *Ad Litem*'s report without the Guardian *Ad Litem* being listed as a witness by a party. If the Guardian *Ad Litem* is not called as a witness, the Court shall permit the Guardian *Ad Litem* to testify in the narrative.

**SECTION 6-204.13                      COMPENSATION OF THE GUARDIAN AD LITEM.**

A. If the Child's Parent(s), Guardian(s), or Traditional Custodian(s) are indigent, the Guardian *Ad Litem* shall represent the Child at no cost to the Parents and fees shall be paid by the Chickasaw Nation.

B. If the Child's Parent(s), Guardian(s), or Traditional Custodian(s) are not indigent, the Court may order that the Guardian *Ad Litem* fees be paid in whole or in part by the Child's family based on the family's income and circumstances.

**SECTION 6-204.14                      ADJUDICATION HEARING.**

A. The Court shall hold the Adjudication Hearing following the filing of a petition alleging that a Child is Deprived.

B. The Adjudication Hearing shall be held no later than thirty (30) days following the Show Cause Hearing. If no Show Cause Hearing is held, then the Adjudication Hearing shall be held after fourteen (14) days' notice to the Parent(s), Guardian(s), or Traditional Custodian(s).

C. At the Adjudication Hearing, which shall be conducted as provided in the rules of evidence, the Court shall consider whether the allegations of the petition are supported by evidence by a preponderance of the evidence.

D. At the Adjudication Hearing, the Court shall make a judicial determination whether reasonable efforts were made or not required to prevent the Child's removal from the home.

E. A hearing shall be had before a Judge to determine whether the Nation has met its burden of proving by a preponderance of the evidence that the factual allegations in the petition are true and correct. (PR31-003, 2/21/14)

F. When it appears that the evidence presented at the hearing discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

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G. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

H. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its motion if it finds it to be in the best interests of the Child or any other party to the proceeding.

**SECTION 6-204.15**

**ALTERNATIVE METHOD OF TESTIMONY FOR A CHILD  
UNDER THE AGE OF THIRTEEN YEARS.**

A. This Section shall apply only to an Adjudication Hearing or Termination of Parental Rights trial and shall apply only to the testimony of a Child under the age of thirteen (13) years.

B. Upon a motion submitted at least ten (10) days prior to the hearing or trial by any party or on its own initiative, the Court may order that either:

1. the testimony of the Child be taken on the day of the hearing or trial in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the finder of fact in the proceeding, or

2. the testimony of the Child be video recorded prior to the hearing or trial to be viewed by the finder of fact the day of the hearing or trial in the proceeding.

C. In either instance, the Child giving testimony shall be under oath, only the attorneys and the Guardian *Ad Litem* shall question the Child, and only the following persons may be present:

1. the Judge;

2. the attorneys for the parties;

3. the Guardian *Ad Litem*;

4. persons necessary to operate the equipment, who shall be confined to an adjacent room or behind a screen or one-way mirror that permits them to see and hear the Child during the testimony, but does not permit the child to see or hear them; and

5. any person whose presence, in the opinion of the Court, would contribute to the welfare and well-being of the Child.

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D. The Court shall ensure that:

1. the Child cannot see or hear the defendant, if a closed-circuit television is utilized, but shall permit the defendant to observe and hear the testimony of the Child.

2. both the closed-circuit television testimony and the prerecorded testimony are recorded visually and aurally and are recorded on film or videotape or by other electronic means, and are preserved as a part of the record in the case and made available for use in any retrial of the case.

3. the recording equipment is capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered; and

4. every voice on the recording is identified.

E. Prior to issuing an order allowing an alternative method of testimony of a Child under the age of thirteen (13), the Court shall, after hearing evidence on the matter, make a determination as to whether or not testimony by the Child in the courtroom would result in the Child suffering serious emotional distress such that the Child could not reasonably communicate. An affirmative determination is a prerequisite to such an order and must be supported by case-specific findings by the Court to the effect that:

1. Use of an alternative method of testimony is necessary, in the particular case, to protect the welfare of the particular Child witness;

2. The particular Child witness would be traumatized by the presence of the particular Parent; and

3. The emotional distress which would be suffered by the Child witness in the presence of the Parent would be more than de minimus, which is more than mere nervousness or excitement or some reluctance to testify.

F. At the conclusion of any hearing or trial in which testimony of a Child is recorded the Court shall order such recording to be sealed, and such recording shall remain sealed subject to the further lawful order of the Court.

**SECTION 6-204.16**

**HEARSAY STATEMENTS OF A CHILD UNDER THE AGE OF THIRTEEN (13) YEARS.**

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A. A statement made by a Child who has not attained thirteen (13) years of age which describes any act of physical abuse against the Child or any act of sexual contact performed with or on the Child by another, is admissible in proceedings under this Act if:

1. the Court finds, in an *in camera* hearing, that the time, content and totality of circumstances surrounding the making of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the Court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a Child of similar age, and whether a lack of motive to fabricate exists; and

2. the Child either:

a. testifies or is available to testify at the proceedings in open court or through an alternative method determined by the Court; or

b. is unavailable to testify as defined in Title 5 Section 1308.4, “Hearsay Exceptions: Declarant Unavailable” et seq. of the Chickasaw Nation Code as a witness. When the Child is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this Section unless the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

**SECTION 6-204.17**                      **SUSTAINING PETITION.**

A. When the Court finds that the allegations of the petition are supported by a preponderance of the evidence, the Court shall sustain the petition and make an order of adjudication setting forth that the Child is Deprived, and making the Child a ward of the Court. Evidence that Child Abuse or non-accidental injury has occurred shall constitute prima facie evidence that such Child is Deprived, and such evidence shall be sufficient to support an adjudication under this Section.

B. Upon sustaining a petition the Court shall make such dispositional orders as may be necessary to protect the Child prior to the Disposition Hearing.

**SECTION 6-204.18**                      **APPEAL.**

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A. Any party to the Deprived Child proceeding may appeal an order of adjudication pursuant to the rules of procedure stated in Title 5 of the Chickasaw Nation Code.

B. The pendency of an appeal thus taken shall not suspend the order of the Court regarding a Child, nor shall it remove the Child from the Custody of that Court unless the Chickasaw Supreme Court shall so order.

C. The pendency of an appeal from an order of adjudication shall not prevent the Court from holding a disposition hearing unless the appellate court shall so order.

**SECTION 6-204.19                      CONTINUING JURISDICTION.**

Except as otherwise provided in this Deprived Children's Code, the jurisdiction of the Court over any Child adjudicated a Deprived Child shall continue until the Deprived Child becomes eighteen (18) years of age or unless otherwise ordered by the Court.

**SECTION 6-204.20                      DISMISSAL OF PETITION.**

When the Court finds that the allegations of the petition are not supported by a preponderance of the evidence, the Court shall order the petition dismissed and shall order the Child returned to the Parent(s), Guardian(s), or Traditional Custodian(s) from which he was removed. Any previous orders issued in the same cause of action are vacated.

**SECTION 6-204.21                      DIVERSION BY CONSENT DECREE.**

A. After the filing of a petition, but prior to an order sustaining the petition, any Deprived case may be diverted from the adjudication process upon agreement of the Prosecutor, the Department, the respondents and the Court by obtaining a Consent Decree if:

1. the Court has informed the Child and his Parent(s), Guardian(s), or Traditional Custodian(s) of and believes that they understand their rights to:
  - a. deny the allegations of the petition and require the Chickasaw Nation to prove each allegation by admissible evidence;
  - b. confront and cross-examine the witnesses against them and to call witnesses on their own behalf;
  - c. a trial by a jury of six persons at the adjudication stage, where a jury trial is available; and

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d. be represented by counsel at their own expense at each stage of the proceedings, or to have counsel appointed for them if they cannot afford private counsel.

2. written consent to the decree is obtained from the Parent(s), Guardian(s), or Traditional Custodian(s) and the Child is of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication; and

3. the Department has prepared an Individualized Service Plan for the family to be incorporated into the Consent Decree which specifically states:

a. the specific treatment programs the Parent(s), Guardian(s), Traditional Custodian(s), or Child agree to successfully complete and their duration;

b. the specific treatment or other social services to be offered by the Chickasaw Nation and accepted by the family;

c. the specific acts which the Parent(s), Guardian(s), Traditional Custodian(s), or Child agree to do or to refrain from doing; and

d. the person or agency to be vested with Custody of the Child if the Child cannot remain in its own home, the specific provisions of Subsection (A)(3)(a)-(c) above which must be completed or accomplished for a specific duration before the Child is returned to its own home, and the period of supervision of the Child in its own home.

B. After all parties have consented, the Court shall review the Individualized Service Plan and if the Court agrees that the plan is satisfactory, shall order all parties by the Consent Decree to abide by the provisions of the Individualized Service Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided that if the family fails to comply with the Individualized Service Plan, the Court, on motion of the Prosecutor, shall proceed with the Adjudication Hearing.

C. A Consent Decree shall remain in effect for not exceeding one (1) year, provided that upon notice of hearing the Court may extend the force of the decree for an additional term of one (1) year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if the Parent(s), Guardian(s), or Traditional Custodian(s) complies with the Consent Decree.

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**ARTICLE E  
DISPOSITION  
(PR30-007, 5/17/13)**

Section 6-205.1	Disposition Hearing.
Section 6-205.2	Disposition Hearing Purpose.
Section 6-205.3	Disposition Hearing Procedures.
Section 6-205.4	Medical Examination.
Section 6-205.5	Modifications.
Section 6-205.6	Orders for Child Support.
Section 6-205.7	Additional Orders.
Section 6-205.8	Individualized Service Plan.
Section 6-205.9	Traditional Custodians' and Grandparents' Rights Following Disposition.

**SECTION 6-205.1                      DISPOSITION HEARING.**

Within forty-five (45) days after making an order of adjudication finding the Child to be Deprived and a ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the Child and the Chickasaw Nation at a hearing scheduled for that purpose.

**SECTION 6-205.2                      DISPOSITION HEARING PURPOSE.**

The purpose of the Disposition Hearing is for the Court to determine the treatment and services which should be ordered for the Parent(s), Guardian(s), or Traditional Custodian(s) to attempt to correct the problems which led to the adjudication, and to provide for the health, welfare, and safety of the Child during the treatment period.

**SECTION 6-205.3                      DISPOSITION HEARING PROCEDURES.**

The Disposition Hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

**SECTION 6-205.4                      MEDICAL EXAMINATION.**

To aid the Court in making the proper disposition concerning the Child, the Court may have the Child examined by a medical or mental health provider. Following such examination of the Child, the Court may place the Child in a hospital or other suitable facility based on the results of such examination.



**SECTION 6-205.5**

**MODIFICATIONS.**

Any order concerning child support, visitation, or the legal custody of the Child entered in any other administrative or Court proceeding shall be subject to modification by the Court during the pendency of the Deprived Child action.

**SECTION 6-205.6**

**ORDERS FOR CHILD SUPPORT.**

- A. Whenever a Child has been adjudicated as Deprived, the Court shall address the issue of child support.
- B. If the Court has established paternity in a Deprived Child action, the Court may refer the issue of prior support to the Chickasaw Nation's child support program.
- C. If there is an existing order for child support, the existing order shall remain in effect unless the Court finds the existing order is not in the best interests of the Child or children involved.
- D. The Chickasaw Nation's child support program shall enforce all child support orders entered by the Court.
- E. The Court shall use the child support guidelines as provided for in Title 6 of the Chickasaw Code in determining the amount each Parent is to pay for care and maintenance of a Child, unless the Court determines it necessary to deviate from the child support guidelines in order for the Parent to meet the obligations of a court-ordered Individualized Service Plan or for other reasons as the Court deems appropriate. If the Court deviates from the amount of child support indicated by the child support guidelines, the Court shall make specific findings of fact supporting such action.
- F. The child support order shall contain an immediate income assignment provision.
- G. The child support order shall be filed as a separate document and shall not be confidential. The order may be captioned with a different case style in order to enforce the child support order in an action other than the Deprived Child proceeding.
- H. If the judge presiding over the Deprived Child action modified a preexisting child support order, the child support order entered in the Deprived Child action shall be filed in the existing case for enforcement.
- I. After a Deprived Child action is dismissed, the most recent child support order entered in such action shall remain in full force and effect, unless the judge presiding over the

Deprived Child action orders otherwise.

**SECTION 6-205.7                      ADDITIONAL ORDERS.**

A.     Upon request by any of the parties, or on its own motion, the Court may order a Parent, Guardian, or Traditional Custodian to submit to drug and/or alcohol testing as designated by the Court.

B.     As part of the Deprived Child action, the Court may make additional orders setting forth reasonable conditions of behavior to be observed for a specified period by the Parent(s), Guardian(s), Traditional Custodian(s), or any other person who is a party to the proceeding.

C.     The additional orders may require any such person:

1.     to stay away from a Child or his residence;
2.     to abstain from offensive conduct against a Child, his Parent(s), Guardian(s), Traditional Custodian(s), or any other person to whom legal Custody or Placement of a Child has been given;
3.     to cooperate in good faith with an agency:
  - a.     which has been given legal Custody of a Child; or
  - b.     to which the Child has been referred by the Court;
4.     to give proper attention to the care of the home; or
5.     to refrain from acts of commission or omission that tend to make a home an improper place for a Child.

D.     When such an additional order is made applicable to a Parent(s), Guardian(s), or Traditional Custodian(s), it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such Parent(s), Guardian(s), or Traditional Custodian(s).

E.     After notice and opportunity for hearing is given to a person subject to an additional order, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the Child and the Nation will be served thereby.

**SECTION 6-205.8**

**INDIVIDUALIZED SERVICE PLAN.**

A. Unless immediate termination of parental rights is being sought, the Department shall prepare and maintain a written Individualized Service Plan for each Parent, Guardian, or Traditional Custodian of every Child that has been adjudicated to be a Deprived Child. The Individualized Service Plan shall set forth a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

B. The Individualized Service Plan shall be furnished to the Court and all parties or their counsel at least five (5) business days prior to the Disposition Hearing.

C. The Individualized Service Plan shall be based upon a comprehensive assessment and evaluation of the Child and family. The health and safety of the Child shall be the paramount concern in the development of the plan.

D. If any part of the Individualized Service Plan is disputed or not approved by the Court, an evidentiary hearing may be held and, at its conclusion, the Court shall determine the content of the Individualized Service Plan in accordance with the evidence presented and the best interests of the Child.

E. When approved by the Court, each Individualized Service Plan shall be incorporated and made a part of the dispositional order of the Court.

F. The Individualized Service Plan shall be signed by:

1. the Parent(s), Guardian(s), or Traditional Custodian(s) of the Child;
2. the attorney(s) for the Parent(s), Guardian(s), or Traditional Custodian(s) of the Child;
3. the Child's Guardian *Ad Litem*;
4. the Prosecutor; and
5. the Department.

G. The Individualized Service Plan may be modified based on changing circumstances consistent with the correction of the conditions that led to the adjudication of the Child or other conditions inconsistent with the health, safety or welfare of the Child.

H. The Individualized Service Plan shall contain at a minimum:

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1. the Deprived Child's needs;
2. the specific steps the Parent(s), Guardian(s), or Traditional Custodian(s) must take to address the identified needs of the Deprived Child;
3. the desired result to be achieved by the Parent(s), Guardian(s), or Traditional Custodian(s) taking the specified steps to address the identified needs of the Deprived Child;
4. the date the Parent(s), Guardian(s), or Traditional Custodian(s) is expected to have achieved the desired result by completing the specified steps to address the identified needs of the Deprived Child; and
5. the name of the Department social worker assigned to the case.

**SECTION 6-205.9**

**TRADITIONAL CUSTODIANS' AND GRANDPARENTS'  
RIGHTS FOLLOWING DISPOSITION.**

A. No dispositional order including termination of parental rights and adoption shall divest the Child's Traditional Custodians or Grandparents of their right to reasonable visitation with the Child and their duty to provide instruction and training to the Child regarding Chickasaw Nation customs and traditions or their duty to provide the necessities of life for the Child should the Parents be unable to do so, unless those rights and duties have been extinguished in a proceeding in which the individual was a party, provided that adoptive Traditional Custodians shall also succeed to these rights and duties.

B. The rights and duties of the Traditional Custodians and Grandparents may be enforced by Court order whenever it appears in the Child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

**ARTICLE F**  
**PERMANENCY PLANNING, REASONABLE EFFORTS AND REVIEWS**  
(PR30-007, 5/17/13)

Section 6-206.1	Permanency Planning Review Hearings.
Section 6-206.2	Concurrent Permanency Planning.
Section 6-206.3	Reasonable Efforts Not Required in Certain Cases.
Section 6-206.4	Reports.
Section 6-206.5	Evidence for Permanency Planning Reviews.
Section 6-206.6	Permanency Planning Review Orders.

**SECTION 6-206.1**                      **PERMANENCY PLANNING REVIEW HEARINGS.**

A. Every case regarding a Child adjudicated as Deprived shall be periodically reviewed by the Court at a Permanency Planning Review Hearing.

B. The initial Permanency Planning Review Hearing shall be heard no later than ninety (90) days following the Disposition Hearing, but no later than twelve (12) months from the date the Child entered Foster Care.

C. At the initial Permanency Planning Review Hearing, the Court shall determine the appropriate permanency goal for the Child and order completion of all steps necessary to finalize the Permanency Plan.

D. For any Child who continues to be in an out-of-home placement, subsequent Permanency Planning Review Hearings shall be held at least every six (6) months from the date of the previous Permanency Planning Review Hearing until the Deprived Child action has been dismissed.

E. When the Court determines that reasonable efforts to return the Child home are not required, a Permanency Planning Review Hearing shall be held within thirty (30) days of such determination, unless the requirements of the Permanency Planning Review Hearing are fulfilled at the hearing in which the Court determines that reasonable efforts to reunify the Child and Parent(s), Guardian(s), or Traditional Custodian(s) are not required.

F. The Court shall make a judicial determination of reasonable efforts to finalize the Child's Permanency Plan that is in effect within twelve (12) months of the date the Child is considered to have entered Foster Care, and at least once every twelve (12) months thereafter while the Child is in Foster Care.

**SECTION 6-206.2**

**CONCURRENT PERMANENCY PLANNING.**

A. Reasonable efforts to finalize an alternate placement may be made concurrently with reasonable efforts to reunify the Child and family.

B. Reasonable efforts to place a Child for adoption or with a Guardian, including identifying appropriate placements, may be made concurrently with reasonable efforts to reunify the Child and family.

**SECTION 6-206.3**

**REASONABLE EFFORTS NOT REQUIRED IN CERTAIN CASES.**

A. Certain circumstances exist for which reasonable efforts are not required to prevent a Child's removal from his home or to reunify the Child with his family.

B. Reasonable efforts to prevent a Child's removal from his home or reunify the Child and family are not required if the Court makes a judicial determination that such efforts are not required for any of the following reasons:

1. A court of competent jurisdiction has determined that the Parent(s), Guardian(s), or Traditional Custodian(s) has subjected the Child to Abandonment, Heinous and Shocking Abuse or Heinous and Shocking Neglect.

2. A court of competent jurisdiction has determined that the Parent(s), Guardian(s), or Traditional Custodian(s) has been convicted of:

a. murder, as defined under 18 U.S.C. Section 1111(a), of another child in the care of the Parent(s), Guardian(s), or Traditional Custodian(s);

b. voluntary manslaughter, as defined under 18 U.S.C. Section 1112(a), of another child of the Parent;

c. aiding or abetting, attempting, conspiring or soliciting to commit such a murder or such a voluntary manslaughter; or

d. felony assault that results in serious bodily injury to the Child or another child in the care of the Parent(s), Guardian(s), or Traditional Custodian(s).

3. The parental rights of the Parent(s) with respect to the Child's sibling(s) have been terminated involuntarily.

**SECTION 6-206.4**

**REPORTS.**

A. The Department shall cause to be prepared for each Permanency Planning Review Hearing, a written report concerning the status of the Child and the efforts and progress demonstrated by the Child's Parent(s), Guardian(s), or Traditional Custodian(s) to complete an Individualized Service Plan and shall provide a copy of the report to the Court and the parties not less than five (5) judicial days prior to the Permanency Planning Review Hearing.

B. The Deprived Child's Guardian *Ad Litem* may submit a report to the Court for presentation at the Permanency Planning Review Hearing to assist the Court in reviewing the placement or status of the Child.

**SECTION 6-206.5**

**EVIDENCE FOR PERMANENCY PLANNING REVIEWS.**

The Court may consider testimony of any person who has relevant information about the status of the Child or the status of the Individualized Service Plan. All parties shall have the opportunity to present evidence and to cross-examine witnesses. The rules of evidence shall not apply to Permanency Planning Review Hearings and all evidence helpful in determining the proper permanency goal shall be considered including, but not limited to, oral and written reports, which may be admitted and may be relied upon to the extent of their probative value, even though not competent for the purposes of the Adjudication Hearing.

**SECTION 6-206.6**

**PERMANENCY PLANNING REVIEW ORDERS.**

A. At each Permanency Planning Review Hearing, the Court shall determine the following:

1. whether the Department has provided care that is consistent with the health, safety, and educational needs of the Child while in an out-of-home placement;
2. the safety of the child, the continuing need for and appropriateness of the placement;
3. the extent of compliance with the Individualized Service Plan;
4. the extent of progress made toward alleviating or mitigating the causes necessitating the placement; and
5. project a likely date by which the Child may be returned and safely maintained at home or placed for adoption or guardianship.

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B. At each Permanency Planning Review Hearing, the Court shall include the following in its orders:

1. whether the current Permanency Plan for the Child remains the appropriate plan to meet the health, safety, welfare, and best interests of the Child;
2. the Permanency Plan for the Child that includes whether and, if applicable, when the Child will be
  - a. returned to the Parent(s), Guardian(s), or Traditional Custodian(s);
  - b. placed for adoption and the Nation will file a motion to terminate parental rights;
  - c. referred to legal guardianship; or
  - d. placed in another planned permanent living arrangement if the Nation has documented a compelling reason for determining that it would not be in the best interest of the Child to return home, be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a Guardian.
3. whether other placement options were considered in accordance with the Nation's placement preferences in Section 6-201.9, "Placement Preferences" in the case of a Child who will not be returned to the Parent(s), Guardian(s), or Traditional Custodian(s).
4. whether the placement of the Child, whether inside or outside the Nation's jurisdiction, continues to be appropriate and in the best interest of the Child;
5. whether the services set forth in the Individualized Service Plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances or as the Court determines to be in the best interests of the Child and necessary for the correction of the conditions that led to the finding of a Deprived Child;
6. whether the terms of visitation need to be modified, including the visitation with siblings if separated;
7. whether the time frame should be followed to achieve reunification or other Permanency Plan for the Child;



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8. where appropriate, when the child is sixteen (16) years of age or older, whether services are being provided that will assist the Child in making the transition from foster care to independent living. The Court shall inquire or cause inquiry to be made of the Child regarding any proposed independent living plan; and

9. whether the nature and extent of services being provided the Child and the Parent(s), Guardian(s), or Traditional Custodian(s) of the Child are adequate and order that additional services be provided or studies, assessments, or evaluations be conducted, if necessary, to ensure the safety of the Child and to protect the Child from further physical, mental, or emotional harm or to correct the condition that led to the adjudication as a Deprived Child.

**ARTICLE G**  
**TERMINATION OF PARENTAL RIGHTS**  
(PR30-007, 5/17/13)

Section 6-207.1	Petition for Termination of Parental Rights.
Section 6-207.2	Summons.
Section 6-207.3	Appointment of Counsel.
Section 6-207.4	Jury Trial.
Section 6-207.5	Criteria for Termination.
Section 6-207.6	Expert Testimony.
Section 6-207.7	Effect of Termination of Parental Rights.
Section 6-207.8	Appeals from Termination of Parental Rights.
Section 6-207.9	Review Following Termination of Parental Rights.
Section 6-207.10	Traditional Custodians and Grandparents' Rights Following Termination.
Section 6-207.11	Failure of Parental Rights to Be Terminated at Trial.

**SECTION 6-207.1**                      **PETITION FOR TERMINATION OF PARENTAL RIGHTS.**

A.     A petition for Termination of Parental Rights may be filed by the Prosecutor in a Deprived Child action.

B.     The Nation shall file a petition for the Termination of Parental Rights of a Parent(s):

1.     whose Deprived Child has been in foster care under the responsibility of the Nation for fifteen (15) of the most recent twenty-two (22) months. Said petition must be filed by the end of the Child's fifteenth (15th) month in Foster Care. "Foster care" includes, but is not limited to, time spent in trial reunification with either Parent. For purposes of this Paragraph, a Child shall be considered to have entered foster care on the earlier of:

a.     the adjudication date; or

b.     the date that is sixty (60) days after the date on which the Child is removed from the home.

2.     whose Child has been determined by a court of competent jurisdiction to be an Abandoned infant and said petition to terminate parental rights shall be made within sixty (60) days of the judicial determination that the Child is an Abandoned infant; or

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3. who has been convicted of one of the felonies listed in Section 6-206.3(B)(2) “Reasonable Efforts Not Required in Certain Cases,” and such petition to terminate shall be made within sixty (60) days of a judicial determination that reasonable efforts to reunify the Child and Parent(s) are not required.

C. The Prosecutor is not required to file a petition for Termination of Parental Rights in certain circumstances, which includes, but is not limited to, the following:

1. at the option of the Department or by order of the Court, the Child is being properly cared for by a relative;

2. the Department has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the best interests of the Child; or

3. the Department has failed to provide services to the family of the Child consistent with the time period stated in the Individualized Service Plan, that the Department deems necessary for the safe return of the Child to the Child’s home, if reasonable efforts are required to be made with respect to the Child.

**SECTION 6-207.2**

**SUMMONS.**

A. Upon the filing of a petition to terminate parental rights, the Court Clerk shall issue a summons to the Parent who is the subject of the termination proceeding.

B. The summons and a copy of the petition to terminate parental rights shall be served upon the Parent pursuant to the Chickasaw Nation Code, not less than fifteen (15) days prior to the hearing.

C. The summons shall contain the following or substantially similar language: “FAILURE TO PERSONALLY APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD OR THESE CHILDREN. IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE ATTACHED PETITION.”

D. The failure of a Parent who has been served with a summons and a copy of the petition to terminate parental rights, to personally appear at the hearing, shall constitute consent to the termination of parental rights by the Parent given notice. When a Parent who appears voluntarily or pursuant to notice is directed by the Court to personally appear for a subsequent hearing on a specified date, time and location, the failure of that Parent to personally appear, or to

instruct his or her attorney to proceed in absentia at the trial, shall constitute consent by that Parent to termination of his parental rights.

**SECTION 6-207.3**                    **APPOINTMENT OF COUNSEL.**

After a petition for Termination of Parental Rights is filed, the Parent shall be advised of the right to counsel, at his own expense, or if the Parent cannot afford an attorney, free legal counsel shall be appointed.

**SECTION 6-207.4**                    **JURY TRIAL.**

All hearings or trials shall be made to the Court, except when a jury is demanded in accordance with such provisions of Chickasaw law as are applicable to Deprived Child proceedings.

**SECTION 6-207.5**                    **CRITERIA FOR TERMINATION.**

A.     The Court shall not terminate the rights of a Parent to a Child unless:

1.     The Child has been adjudicated to be a Deprived Child either prior to or concurrently with a proceeding to terminate parental rights; and
2.     Termination of parental rights is in the best interests of the Child.

B.     The Court may terminate the rights of a Parent(s) to a Child based upon any of the following legal grounds which must be proved by clear and convincing evidence:

1.     Upon the duly acknowledged written consent of a Parent, who voluntarily agrees to relinquish his parental rights to the Child.
  - a.     The voluntary relinquishment of parental rights shall be signed under oath and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the parent or that the consent was translated into a language that the parent understood.
  - b.     A voluntary relinquishment of parental rights is effective when it is signed and may not be revoked except when it is signed and may not be revoked except upon clear and convincing evidence that the consent was executed by reason of fraud or duress.

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2. A finding that the Parent has Abandoned the Child.
  3. A finding that the Parent of a Child:
    - a. has voluntarily placed physical custody of the Child with the Department, the Oklahoma Department of Human Services or with a Child Placement Agency for out-of-home placement;
    - b. has not complied with the placement agreement; and
    - c. has not demonstrated during such period a firm intention to resume physical custody of the Child or to make permanent legal arrangements for the care of the Child.
  4. A finding that the Parent has failed to show that the condition(s) which led to the adjudication of a Child as Deprived has been corrected although the Parent has been given not less than three (3) month's time to correct the condition.
  5. A finding that the parental rights of a Parent to the Child's sibling(s) have been previously terminated involuntarily, and the Parent's behavior and/or condition which led to the previous termination has not been corrected.
  6. A finding that a Parent who does not have custody of the Child has for a period of six (6) out of the twelve (12) months immediately preceding the filing of a petition for Termination of Parental Rights, willfully failed, refused or neglected to contribute to the support of such Child:
    - a. as specified by an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support; or
    - b. according to such parent's financial ability to contribute to such Child's support if no provision for child support is provided in an order.
- Incidental or token support shall not be construed or considered in establishing whether a Parent has maintained or contributed to the support of the Child.
7. A finding that the Parent has been convicted in a court of competent jurisdiction in any state or tribal court of any of the following acts:
    - a. child abuse or neglect;

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- b. enabling child abuse or neglect;
  - c. child sexual abuse;
  - d. enabling child sexual abuse;
  - e. knowingly permitting or consenting to the use of a child in child pornography;
  - f. rape;
  - g. causing the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child;
  - h. murder of any child;
  - I. aiding or abetting, attempting, conspiring or soliciting to commit murder of any child;
  - j. voluntary manslaughter of any child;
  - k. aiding or abetting, attempting, conspiring or soliciting to commit voluntary manslaughter of any child;
  - l. felony assault that has resulted in serious bodily injury to the Child or another child of the Parent(s); or
  - m. murder or voluntary manslaughter of the Child's Parent or aiding or abetting, attempting, conspiring, or soliciting to commit murder of the Child's Parent.
8. A finding that the Parent has abused or neglected the Child or a sibling of the Child or failed to protect the Child or a sibling of the Child from abuse or neglect that is heinous or shocking.
9. A finding that the Parent has previously abused or neglected the Child or a sibling of the Child or failed to protect the Child or a sibling of the Child from abuse or neglect and the Child or a sibling of the Child has been subjected to subsequent abuse.
10. A finding that the Child was conceived as a result of rape perpetrated by the Parent whose rights are sought to be terminated.

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11. A finding that the Parent whose rights are sought to be terminated has been incarcerated, and the continuation of parental rights would result in harm to the Child based on consideration of the following factors, among others:

- a. the duration of incarceration and its detrimental effect on the Parent/Child relationship;
- b. any previous convictions resulting in incarceration;
- c. history of criminal behavior, including crimes against Children;
- d. the age of the Child;
- e. any evidence of abuse or neglect or failure to protect from abuse or neglect of the Child or siblings of the Child by the Parent;
- f. the current relationship between the Parent and the Child; and
- g. the manner in which the Parent has exercised parental rights and duties in the past.

Provided, that the incarceration of a Parent shall not in and of itself be sufficient to deprive a Parent of parental rights.

12. A finding that all of the following exist:

- a. the Parent whose rights are sought to be terminated has been diagnosed with a mental illness or mental deficiency which renders the Parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; and
- b. the continuation of parental rights would result in harm or threatened harm to the Child; and
- c. the mental illness or mental deficiency of the Parent is such that such mental illness or mental deficiency of the Parent will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve.

Provided, a finding that a Parent has been diagnosed with a mental illness or mental deficiency shall not in and of itself deprive the Parent of his or her parental rights.

C. An order terminating parental rights is a final appealable order.

D. The provisions of this Section shall not apply to adoption proceedings and actions to terminate parental rights which do not involve a petition for deprived status of the Child. Such proceedings and actions shall be governed by the Adoption Code.

**SECTION 6-207.6**                      **EXPERT TESTIMONY.**

A. Subject to the availability of funds, an indigent Parent subject to a Termination of Parental Rights proceeding has the right to have appointed at least one expert witness of his own choosing whose reasonable fees and expenses, subject to the Court's prior review and approval, shall be paid from Court funds.

B. All ordered evaluations shall be made available to counsel at least fifteen (15) days prior to the hearing.

**SECTION 6-207.7**                      **EFFECT OF TERMINATION OF PARENTAL RIGHTS.**

A. The Termination of Parental Rights terminates the parent-child relationship, including:

1. the Parent's right to the custody of the Child;
2. the Parent's right to visit the Child;
3. the Parent's right to control the Child's training and education;
4. the necessity for the Parent to consent to the adoption of the Child;
5. the Parent's right to the earnings of the Child; and
6. the Parent's right to inherit from or through the Child.

Provided, that nothing herein shall in any way affect the right of the Child to inherit from the Parent.

B. No order or decree entered pursuant to this Article shall disentitle a Child to any benefit due him from any third person, including but not limited to, any Indian tribe, any agency, any state, or the United States.



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C. Except for adoptions as provided in the Adoption Code, Termination of Parental Rights shall not terminate the duty of either Parent to support the Child. Any order terminating parental rights shall indicate that the duty of the parent to support his or her Child will not be terminated unless the Child is subsequently adopted.

D. After the termination of a Parent-Child legal relationship, the former Parent is not entitled to any notice of proceedings for the adoption of the Child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings.

**SECTION 6-207.8**                      **APPEALS FROM TERMINATION OF PARENTAL RIGHTS.**

A. Appeals of an order terminating parental rights shall be given priority on the calendar of the appellate court over all other matters unless otherwise provided by law.

B. Whenever an appeal is made concerning a Termination of Parental Rights, an indigent Parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceeding for the appeal to be paid from Court funds.

**SECTION 6-207.9**                      **REVIEW FOLLOWING TERMINATION OF PARENTAL RIGHTS.**

A. The Court, at the conclusion of a hearing in which it ordered the termination of a Parent-Child legal relationship, shall order that a review hearing be held not later than ninety (90) days following the date of the termination. At such hearing, the agency or individual vested with Custody of the Child shall report to the Court what disposition of the Child, if any, has occurred and the Guardian *Ad Litem* shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the Child.

B. If no adoption has taken place within a reasonable time and the Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the Child.

**SECTION 6-207.10**                      **TRADITIONAL CUSTODIANS' AND GRANDPARENTS' RIGHTS FOLLOWING TERMINATION.**

A. No dispositional order or decree including Termination of Parental Rights and adoption shall divest the Child's Traditional Custodian(s) or Grandparent(s) of their right to reasonable visitation with the Child and their duty to provide instruction and training to the Child regarding Chickasaw Nation customs and traditions or their duty to provide the necessities of life for the Child should the Parent(s) be unable to do so, unless those rights and duties have been

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extinguished in a proceeding in which the individual was a party, provided that adoptive Traditional Custodian(s) shall also succeed to these rights and duties.

B. The rights and duties of the Traditional Custodian(s) and Grandparent(s) may be enforced by Court order whenever it appears in the Child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

**SECTION 6-207.11**

**FAILURE OF PARENTAL RIGHTS TO BE TERMINATED  
AT TRIAL.**

When parental rights are not terminated as a result of a trial, the Court shall set the matter for a Permanency Planning Review Hearing within thirty (30) days after such trial.

The failure of parental rights to be terminated at trial shall not deprive the Court of its continuing jurisdiction over the Child, nor shall it require reunification of the Child with the Parent if the Child has been adjudicated a Deprived Child.

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**ARTICLE H  
FOSTER CARE  
(PR30-007, 5/17/13)**

Section 6-208.1	Responsibility.
Section 6-208.2	Confidentiality.
Section 6-208.3	Income of Tribal Resource Parents.
Section 6-208.4	Responsibilities of Tribal Resource Parents.
Section 6-208.5	Notice Given to Tribal Resource Parents.
Section 6-208.6	Standards for Foster Homes, Child Care Institutions, and Adoptive Homes.

**SECTION 6-208.1                      RESPONSIBILITY.**

It shall be the responsibility of the Department to recruit, screen, license, and train Tribal Resource Parents to provide foster care for Deprived Children. The Department shall establish standards to license or approve a Tribal Resource Parent, to include a criminal records check before the Tribal Resource Parent can be approved for placement of a Child.

**SECTION 6-208.2                      CONFIDENTIALITY.**

Each Tribal Resource Parent shall treat all information regarding the Child and the Child's Parents as confidential.

**SECTION 6-208.3                      INCOME OF TRIBAL RESOURCE PARENTS.**

A. Each Tribal Resource Parent must be able to manage his personal and household financial needs without relying on a Foster Care maintenance payment.

B. Each Tribal Resource Parent must have sufficient income to meet the needs of an additional Child placed in his home until receipt of any Foster Care maintenance payment for that Child.

**SECTION 6-208.4                      RESPONSIBILITIES OF TRIBAL RESOURCE PARENTS.**

A. For each Child placed in a Foster Home, the Tribal Resource Parent shall be responsible for providing:

1. adequate food, clothing and shelter;
2. medical care as authorized;

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3. appropriate education;
4. age-appropriate discipline as authorized by the Department; and
5. other services as provided or designated by the Department to meet the needs of the Child.

B. While placed in a Foster Home, the Tribal Resource Parent shall ensure that the Child is not returned to the care or supervision of any person from whom the Child was removed or to any person the Court has previously ordered not to have contact with the Child without specific authorization from the Court.

**SECTION 6-208.5**                      **NOTICE GIVEN TO TRIBAL RESOURCE PARENTS.**

A. The Department shall provide timely notice to the Tribal Resource Parent(s) of a Child and any pre-adoptive Parent(s), Guardian(s), or Traditional Custodian(s) providing care for the Child and inform such person of their right to be heard in any proceeding with respect to the Child during the time such Child is in the care of such Tribal Resource Parent, pre-adoptive parent or relative placement.

B. Such rights as provided in Subsection A above, however, do not entitle the Tribal Resource Parent(s) or pre-adoptive Parent(s), Guardian(s), or Traditional Custodian(s) to become a party to the proceeding.

**SECTION 6-208.6**                      **STANDARDS FOR FOSTER HOMES, CHILD CARE INSTITUTIONS, AND ADOPTIVE HOMES.**

A. The Department is the designated agency responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, as applicable and appropriate.

B. Within a reasonable time period and in accordance with the Department's standard operating procedures, the Department will review the amount of the Foster Care maintenance and adoption assistance and licensing or approval standards required for Foster Homes and Child Care Institutions.

C. The Department is authorized to establish an internal system for granting an opportunity for a fair hearing to any person whose claim for benefits under the Department's Title IV-E Program is denied or not acted upon with reasonable promptness.

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D. The Department shall establish safety requirements and standards for foster care and adoptive home providers before such provider may be finally approved for placement, including, but not limited to the following:

1. criminal records checks, including fingerprint-based checks of national crime information databases; and

2. child abuse and registry checks that the Nation maintains and any other jurisdiction in which a prospective foster or adoptive parent or other adult living in the home has resided in the preceding five (5) years.

**CHAPTER 3  
DELINQUENT CHILDREN**

**ARTICLE A  
GENERAL PROVISIONS  
(PR30-007, 5/17/13)**

Section 6-301.1	Purpose.
Section 6-301.2	Establishment.
Section 6-301.3	Definitions.
Section 6-301.4	Jurisdiction.
Section 6-301.5	Procedure.
Section 6-301.6	Parental Responsibilities.
Section 6-301.7	Parental Non-Compliance.
Section 6-301.8	Jury Trials.
Section 6-301.9	Hearings.

**SECTION 6-301.1                      PURPOSE.**

A.     The purposes of this Delinquent Children’s Code are to:

1.     protect the public interest against persons who, due to their age, cannot be prosecuted or punished in the same manner as Adults.
2.     secure for each person subject to this Delinquent Children’s Code the care, guidance, and discipline necessary for him to become a responsible and productive member of the Chickasaw Nation and society in general.
3.     rehabilitate deficiencies in the Child and the Child’s environment that led to the delinquent behavior to help prevent further delinquent acts in the future.

B.     These provisions are hereby extended to all persons who, at the effective date thereof, may be on probation, or eligible to be placed on probation under existing laws, with the same force and effect as if these provisions had been in operation at the time such persons were placed on Delinquent Child probation or became eligible to be placed thereon as the case may be.

**SECTION 6-301.2                      ESTABLISHMENT.**

The Chickasaw Nation hereby shall establish procedures, rules, and regulations to be used in Delinquent Child proceedings. The Department shall have authority to establish such procedures, rules, and regulations.

**SECTION 6-301.3**

**DEFINITIONS.**

- A. As used in this Delinquent Children’s Code, the term:
1. “Adjudication Hearing” means a hearing to determine whether the allegations of a petition alleging a Child to be Delinquent filed pursuant to this Delinquent Children’s Code are supported by the evidence.
  2. “Adult” means a person eighteen (18) years of age or over.
  3. “Bench Warrant” means an arrest warrant issued by the Court to compel compliance with previous Court orders or to compel appearance before the Court.
  4. “Child” or “Indian Child” or “Indian Children” means an unmarried person who is either (1) a citizen of an Indian Tribe or (2) is eligible for citizenship in an Indian Tribe and is the biological Child of a citizen of an Indian Tribe; and is either:
    - a. under the age of eighteen (18) years; or
    - b. eighteen (18) years or older and is alleged to have committed a delinquent act before he became eighteen (18) years of age.
  5. “Commitment” means the court-ordered confinement of a Child to a facility for medical, mental health, or rehabilitative treatment.
  6. “Commitment Order” means a court order which confines a Child to a facility for medical, mental health, or rehabilitative treatment.
  7. “Community Service” means services ordered by the Court that are uncompensated and performed by a Probationer for non-profit organizations to benefit the Chickasaw Nation, its entities, or the community.
  8. “Confidential” means closed from public access and not to be disclosed, except where specifically provided by this Delinquent Children’s Code.
  9. “Court” means the courts of the Chickasaw Nation.
  10. “Custody” means the care and control of a Child by a Parent, Guardian, or Custodian.

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11. “Custodial Interrogation” means the questioning of a Child while the Child is in Police Custody when the interrogating officer reasonably believes the questioning is likely to elicit an incriminating response.

12. “Custodian” means those relatives and friends of the Child other than the Parents, who, based on the traditions, customs, and common law of the respective Indian Tribe or of the family, have accepted the rights, duties, and responsibilities of assisting the Parents in rearing the Child and providing for its support.

13. “Delinquent Child” or “Delinquent Children” means an Indian Child who has been adjudicated as a Delinquent Child by the Court and has either:

- a. violated any Chickasaw law or any lawful order of the Court made pursuant to this Delinquent Children’s Code; or
- b. habitually violated any traffic, hunting, or fishing statutes or ordinances.

14. “Delinquent Children’s Code” means Chickasaw Nation Code Title 6, Chapter 3.

15. “Department” means the Chickasaw Nation department assigned the responsibility of prosecuting Children under the Delinquent Children’s Code.

16. “Detention” means the placement of a Child in a secured and restrictive facility for a time frame determined by the Court or as otherwise allowed under this Delinquent Children’s Code.

17. “Detention Order” or “Detainment Order” means an order remanding a Child to Detention.

18. “Disposition Hearing” means a hearing held after an Adjudication Hearing in which the Court must determine what treatment and services should be ordered for the family and the Delinquent Child, and whether placement of the Delinquent Child should be made.

19. “Expungement” means the process of removal of a Delinquent Child’s Court proceeding from the Court’s records.

20. “Guardian” means a person who has the legal authority and duty to care for the Child.



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21. “Indian Country” means the land within the Chickasaw Nation boundaries described in the Chickasaw Nation Constitution, as amended, and as defined in 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Chickasaw Nation.
22. “Indian Tribe” means a federally recognized Indian tribe as defined by 25 U.S.C. Section 450(b) *et seq.*
23. “Initial Appearance Hearing” means the bringing of an alleged Delinquent Child before the Court, informing him of the charge(s) against him, advising him of his legal rights, and determining placement of the Child.
24. “Juvenile Probation Officer,” means an officer employed by the Nation to monitor and supervise Delinquent Children subject to the laws of the Chickasaw Nation.
25. “Law Enforcement Agency” means the Chickasaw Nation Lighthorse Police Department, a federal law enforcement agency, or a tribal or state law enforcement agency with which the Nation has entered into cross-deputation agreements, including, but not limited to, a police department in incorporated municipalities or the office of the county sheriff, or law enforcement officers of the State of Oklahoma.
26. “Law Enforcement Officer” or “Officer” means an officer of a Law Enforcement Agency.
27. “Parent” means either a natural parent; a parent by adoption; or a parent otherwise established by law.
28. “Pickup Order” means an order from the Court authorizing taking a Child into Police Custody.
29. “Police Custody” means a Child is being deprived of freedom of action in any significant way by a Law Enforcement Officer, officer of the Court, or employee of the Department.
30. “Probation” means an optional component of a treatment plan in which a Delinquent Child is required to comply with specific Court-ordered conditions of supervision.
31. “Probationer” means a Delinquent Child subject to the conditions of Probation imposed by the Court.

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32. “Prosecutor” means the attorney designated by the Executive Department to carry out the functions defined under the Delinquent Children’s Code.

33. “Shelter” means a youth shelter or group home for the temporary care of a Child in a non-restrictive environment.

34. “Ward” means a Child under the charge or protection of the Court.

**SECTION 6-301.4                      JURISDICTION.**

A. The Chickasaw Nation shall have subject matter jurisdiction over all crimes committed by an Indian Child in Indian Country of the Chickasaw Nation.

B. The Chickasaw Nation shall have personal and territorial jurisdiction over all crimes committed by an Indian Child in Indian Country within the territorial boundaries of the Chickasaw Nation.

C. The Chickasaw Nation shall have such jurisdiction over a Child’s Parents as is provided for in the laws of the Chickasaw Nation.

**SECTION 6-301.5                      PROCEDURE.**

A. The rules of procedure herein set forth shall apply in all proceedings under this Delinquent Children’s Code. To the extent that any procedure is not specifically set forth herein, the general rules of civil procedure and evidence in Title 5 of the Chickasaw Nation Code shall apply.

B. The Court shall have the authority by written court rule not inconsistent with this Delinquent Children’s Code or Title 5 of the Chickasaw Nation Code to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases under this Delinquent Children’s Code.

**SECTION 6-301.6                      PARENTAL RESPONSIBILITIES.**

A. The Parent(s), Guardian(s) or Custodian(s) of a Child who has been charged with an offense under the Chickasaw Nation Code shall have the following parental responsibilities:

1. to attend all Court hearings involving the Child, or to show cause to the Court why they should be excused from any hearing they are unable to attend;

2. to bring the Child before the Court when so ordered; and

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3. to monitor the Child's compliance with all orders entered or conditions imposed by the Court, and to make all reasonable efforts to ensure that the Child complies with such orders or conditions.

B. The Child's Parent(s) shall be excused from parental responsibilities if the Child is under the care and control of a Guardian or Custodian as the result of a Court order.

C. The Child's Parent(s), Guardian(s) or Custodian(s) shall be excused from parental responsibilities if it appears to the Court that there may be a conflict of interest between the Child and the Child's Parent(s), Guardian(s) or Custodian(s).

D. A showing that a Parent(s), Guardian(s) or Custodian(s) has voluntarily turned physical custody of the Child over to another person without a Court order does not excuse the Parent(s), Guardian(s) or Custodian(s) from parental responsibilities.

### **SECTION 6-301.7    PARENTAL NON-COMPLIANCE.**

Any Parent, Guardian or Custodian who does not comply with Section 6-301.6, "Parental Responsibilities," may be ordered to appear before the Court to show cause why they should not be held in contempt.

### **SECTION 6-301.8                    JURY TRIALS.**

A. A Child or the Nation may demand a trial by jury prior to the Adjudication Hearing under Section 6-307.10, "Adjudication Hearing," or the Court on its own motion may order a trial by jury where special circumstances warrant.

B. If a jury trial is not demanded prior to the Adjudication Hearing, it shall be deemed to be waived.

### **SECTION 6-301.9                    HEARINGS.**

A. Hearings shall be held before the Court without a jury, except as provided in this Delinquent Children's Code, and must be conducted formally. The Court shall admit only such persons who have a direct interest in the case. Hearings may be continued from time to time as ordered by the Court.

B. A verbatim record shall be made in all hearings.

C. Cases involving Delinquent Children shall be a closed hearing and heard separately from Adult criminal cases.

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D. The Child shall be present at the hearing or the image of the Child may be broadcast to the Court by any electronic means that provides for a two-way communication of image and sound between the Child and the Court.

E. Upon a motion by any party or on its own motion, and for good cause shown, the Court may continue a hearing for a reasonable period.

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**ARTICLE B**  
**CONFIDENTIAL RECORDS**  
(PR30-007, 5/17/13)

Section 6-302.1	Confidential Court Records.
Section 6-302.2	Identity Confidential.
Section 6-302.3	Publication of Identity Prohibited.
Section 6-302.4	Inspection of Court Records.
Section 6-302.5	Expungement of Records.
Section 6-302.6	Law Enforcement Records.

**SECTION 6-302.1**                      **CONFIDENTIAL COURT RECORDS.**

A. Except as provided by this Section and except as otherwise specifically required by tribal and federal laws, the following records are Confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Delinquent Child Court records;
2. Prosecutor records;
3. Law Enforcement Agency records;
4. Juvenile Probation Officer records; and
5. Delinquent Child mental health records.

B. The limitation of Subsection A of this Section shall not apply to statistical information and other abstract information obtained pursuant to the provisions of the Chickasaw Nation's Children's Code.

C. Except as otherwise specifically provided by tribal and federal laws pertaining to educational records, medical records, drug or alcohol treatment records, Law Enforcement Agency, or social service records, the records listed in Subsection A of this Section shall be Confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the Court. A subpoena or subpoena duces tecum purporting to compel testimony or disclosure of such information or record shall be invalid.

D. When Confidential records may be relevant in a criminal, civil, or administrative proceeding, an order of the Court authorizing the inspection, release, disclosure or correction of Confidential records shall be entered by the Court only after a judicial review of the records and a

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determination of necessity pursuant to the following procedure:

1. A motion shall be filed with the Court describing with specificity the Confidential records being sought and setting forth in detail the compelling reason why the inspection, release, disclosure or correction of Confidential records should be ordered by the Court. A motion that does not contain the required specificity or detail may be subject to dismissal by the Court;

2. Upon the filing of the motion, the Court shall set a date for a hearing and shall require notice of not less than twenty (20) days to the agency or person holding the records and to any other interested party. The Court may also enter an ex parte order compelling the person or department holding the records to either produce the records to the Court on or before the date set for hearing or file an objection to the producing of such records to the Court. The Court may shorten the time allowed for notice due to exigent circumstances;

3. At the hearing, should the Court find that a compelling reason does not exist for the Confidential records to be judicially reviewed, the matter shall be dismissed; otherwise, the Court shall order that the records be produced for a judicial review; and

4. The judicial review of the records shall include a determination, with due regard for the confidentiality of the records and the privacy of persons identified in the records, as to whether an order should be entered authorizing the inspection, release, disclosure or correction of the records based upon the need for the protection of a legitimate public or private interest.

E. The Court may, for good cause shown, prohibit the release of such Confidential records or testimony or authorize a release of the Confidential information or testimony upon such conditions as the Court deems necessary and appropriate, subject to the provisions of this Section.

F. Any public or private agency, entity, or professional person required to produce Confidential records pursuant to this Section may require payment of reasonable fees from the party seeking the records prior to any records being produced; provided, the Court may waive such costs in a Delinquent action. The Department shall be permitted to assess reasonable fees for records produced.

G. Nothing in this Section shall be construed as:

1. authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or

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in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;

2. abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

3. prohibiting the disclosure of Confidential information to any educational institution, facility, or educator to the extent necessary to enable the educator to better provide educational services and activities for a child and provide for the safety of students; or

4. prohibiting the Department from obtaining, without a court order, nondirectory education records.

### **SECTION 6-302.2                      IDENTITY CONFIDENTIAL.**

No fingerprint, photograph, name, address, or other information concerning the identity of an alleged Delinquent Child or a Delinquent Child under the provisions of this Delinquent Children's Code may be transmitted to any other person or agency, except a Law Enforcement Agency or juvenile probation agency when necessary to assist in apprehension, to conduct a current investigation, or to comply with a Court order.

### **SECTION 6-302.3                      PUBLICATION OF IDENTITY PROHIBITED.**

The name, picture, place of residence, or identity of any Child, Parent, Guardian, Custodian, or person appearing as a witness in proceedings under this Delinquent Children's Code shall not be published in any public media nor given any other publicity unless, for good cause, it is specifically permitted by order of the Court. Any person who violates the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

### **SECTION 6-302.4                      INSPECTION OF COURT RECORDS.**

All Court records of proceedings under this Delinquent Children's Code are Confidential, except in the following circumstances:

A. Records of Court proceedings shall be open to inspection by the Parent(s), Guardian(s), or attorney(s) of record in the Child's case, and to any agency to which Custody of the Child has been transferred; or

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B. With consent of the Court, records of Court proceedings may be inspected by the Child and by persons having a legitimate interest in the proceedings.

**SECTION 6-302.5                      EXPUNGEMENT OF RECORDS.**

A. Any Child who has been adjudicated Delinquent, who was taken into Police Custody on a Delinquent Child allegation, or who was the subject of a Delinquent Child petition may later petition the Court for the Expungement of his record, or the Court, on its own motion, may initiate Expungement proceedings concerning the record of any alleged Delinquent Child or Delinquent Child proceeding. Such petition shall be filed or such Court order entered no sooner than the date of dismissal of the Delinquent Child proceeding.

B. Upon the filing of a petition for Expungement, the Court shall set a date for hearing and notice shall be given to all parties no less than thirty (30) days prior to the hearing. The Expungement hearing may be closed at the Court's discretion.

C. Upon a finding that the harm to privacy of the Child or dangers of adverse consequences outweigh the Court's interest in retaining the records, the Court may order the records, or any part thereof, to be Expunged.

D. Upon an order of Expungement, the Court shall order sealed all records in the Delinquent Child proceeding that are the subject of the Expungement. Such order of Expungement shall include those records in the possession or control of the Court and any records in the possession or control of any other agency.

E. Upon entry of an order of Expungement or any part thereof, the subject official actions shall be deemed never to have occurred. The Child and all juvenile and criminal justice agencies may properly reply that no record exists with respect to such Child upon any inquiry in the matter.

F. Copies of the order of Expungement shall be sent to each agency or official named therein.

G. Inspection of the records included in the order of Expungement may thereafter be permitted by the Court only upon petition by the Child who is the subject of the records or the Prosecutor and only for such purposes named in the petition.

H. In any Delinquent Child proceeding in which the Court orders the petition dismissed on the merits at the Adjudication Hearing, the Court may order the records Expunged. Such order of Expungement may be entered without delay upon petition of the Child or any party or upon the Court's own motion.



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I. Nothing in this Section shall be construed to authorize the physical destruction of any Delinquent Child records.

J. For the purposes of this Delinquent Children's Code, Court index references of sealed material shall be destroyed, removed or obliterated.

**SECTION 6-302.6**

**LAW ENFORCEMENT RECORDS.**

A. The records of the Chickasaw Lighthorse Police Department concerning all Children alleged to be Delinquent and/or Delinquent Children under the provisions of this Delinquent Children's Code are Confidential and shall be maintained separately from the records of arrest of Adults and may not be inspected or disclosed to the public, including those records of Children taken into Police Custody or issued a citation, except:

1. to the victim in each case under this Delinquent Children's Code, as provided in the policies and procedures of the Chickasaw Lighthorse Police Department, however, such information contained within the records may be redacted as appropriate; or
2. by order of the Court; or
3. when disclosure is to a Chickasaw Nation, federal or state officer, employee, or agency in their official capacity who shows a bona fide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Chickasaw law.

**ARTICLE C  
WARRANTS AND FAILURE TO APPEAR  
(PR30-007, 5/17/13)**

Section 6-303.1	Search Warrant.
Section 6-303.2	Issuance and Return of Search Warrant.
Section 6-303.3	Expiration of Search Warrant.
Section 6-303.4	Failure to Appear after Warrant.

**SECTION 6-303.1                      SEARCH WARRANT.**

A.     A search warrant may be issued by the Court to search any place for the recovery of any Delinquent Child or alleged Delinquent Child within the jurisdiction of the Court.

B.     Such warrant shall be issued only on the conditions that the application for the warrant shall:

1.     be in writing and supported by affidavit sworn to or affirmed by the Court;
2.     name or describe with particularity the Child being sought;
3.     state that the Child is believed to be a Delinquent Child and the reasons for such belief;
4.     state the address or legal description of the place to be searched; and
5.     state the reasons why it is necessary to proceed pursuant to this Section.

**SECTION 6-303.2                      ISSUANCE AND RETURN OF SEARCH WARRANT.**

A.     If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the Child being sought and the place to be searched for the Child.

B.     The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located.

C.     The search warrant shall state the grounds for probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and shall be issued in a form substantially similar to other search warrants.

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D. The search warrant shall be served in between the hours of 6:00 o'clock a.m. and 10:00 o'clock p.m. unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Court may so direct.

E. A copy of the search warrant, the application, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the Child is to be sought, or if no one is home, a copy shall be left in plain sight within the place searched.

F. If the Child is found, the Child shall be taken into Police Custody and transported to and placed in a Detention or Shelter facility subject to the conditions of Section 6-305.3, "Detention Prior to Initial Appearance Hearing."

G. The search warrant shall be returned to the Court immediately upon service, and the Law Enforcement Officer shall subscribe on the search warrant his name, the date and time of service, the place where the Child was delivered by him. A copy shall be delivered to the Prosecutor. If the Child was not found, such information should be subscribed on the search warrant.

**SECTION 6-303.3**

**EXPIRATION OF SEARCH WARRANT.**

A search warrant for a Child shall be null and void if not served within twenty (20) days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

**SECTION 6-303.4**

**FAILURE TO APPEAR AFTER WARRANT.**

A. In the event that the Child's Parent(s), Guardian(s) or Custodian(s) fails to appear before the Court after being so ordered, or fails to bring the Child before the Court after being so ordered, the Court may:

1. issue a written order directing the Child's Parent(s), Guardian(s) or Custodian(s) to appear before the Court to show cause why they should not be held in contempt under this Section; or

2. issue a Bench Warrant directing that the Parent(s), Guardian(s) or Custodian(s) be brought before the Court to show cause why they should not be held in contempt under this Section.

B. If a Child sixteen (16) years of age or older fails to appear before the Court after being so ordered, the Court may issue a Pickup Order under Section 6-305.1, "Taking Children

into Police Custody,” directing that the Child be brought before the Court to show cause why he should not be held in contempt under this Section.

C. If a Child under sixteen (16) years of age fails to appear before the Court after being so ordered, and there is sworn testimony that the Child has willfully refused to appear, the Court may issue a Pickup Order under Section 6-305.1, “Taking Children into Police Custody,” directing that the Child be brought before the Court to show cause why he should not be held in contempt under this Section.

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**ARTICLE D  
INTERROGATION AND ADMISSIBILITY  
(PR30-007, 5/17/13)**

Section 6-304.1	Advisement of Rights.
Section 6-304.2	Conduct of Custodial Interrogations.
Section 6-304.3	Inadmissible Statements and Derivative Evidence.
Section 6-304.4	Other Statements.
Section 6-304.5	Factors Relating to Admissibility.

**SECTION 6-304.1                      ADVISEMENT OF RIGHTS.**

Any time a Child is taken into Police Custody pursuant to the provisions of this Delinquent Children's Code, the Law Enforcement Officer taking the Child into Police Custody shall advise the Child, prior to any questioning and in language the Child will easily understand, that:

- A. the Child has the right to remain silent, and anything the Child says can be used against the Child in Court;
- B. the Child has the right to an attorney during questioning; and
- C. the Child has the right to the presence of his Parent, Guardian or Custodian during questioning.

**SECTION 6-304.2                      CONDUCT OF CUSTODIAL INTERROGATIONS.**

- A. A Custodial Interrogation of an alleged Delinquent Child shall conform with all the requirements for the interrogation of an Adult.
- B. No information gained by a Custodial Interrogation of an alleged Delinquent Child under sixteen (16) years of age nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the alleged Delinquent Child unless the Custodial Interrogation about any alleged offense by any Law Enforcement Officer, officer of the Court, or employee of the Department is done in the presence of the Parent(s), Guardian(s), Custodian(s), or attorney of the alleged Delinquent Child.
- C. No such Custodial Interrogation shall commence until the alleged Delinquent Child and the Parent(s), Guardian(s), Custodian(s), or attorney of the alleged Delinquent Child have been fully advised of the constitutional and legal rights of the alleged Delinquent Child,

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including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the Court if the parties are without sufficient financial means.

**SECTION 6-304.3 INADMISSIBLE STATEMENTS AND DERIVATIVE EVIDENCE.**

A. An oral, written, or other statement of a Child under sixteen (16) years of age made as a result of a Custodial Interrogation shall be inadmissible as evidence against the Child in any Delinquent Child proceeding, unless all of the following occur:

1. the Child's Parent(s), Guardian(s), Custodian(s), or attorney is present when the statement is made, in accordance with Section 6-304.1, "Advisement of Rights";
2. a record is made of the Custodial Interrogation; and
3. the record is accurate and not intentionally altered.

B. If the Court finds that a statement is inadmissible under this Section, then any statements or other evidence derived directly or indirectly from such inadmissible statement also shall be inadmissible as evidence against the Child in any Delinquent Child proceeding, unless the statement is acquired in accordance with an advisement of rights pursuant to Section 6-304.1, "Advisement of Rights," or the other evidence has been obtained from an independent source.

**SECTION 6-304.4 OTHER STATEMENTS.**

A. The provisions of Section 6-304.3, "Inadmissible Statements and Derivative Evidence," shall not preclude the admission of a statement made by a Child under sixteen (16) years of age if:

1. the statement is made by the Child in open court;
2. the statement is spontaneous;
3. the statement is voluntary and bears on the truthfulness or accuracy of the Child as a witness, provided that such a statement is used for the purpose of impeachment; or
4. the statement is made in response to a question that is:
  - a. routinely asked during the processing of a Child being taken into Police Custody; and

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b. not a question that the Law Enforcement Officer knows or should know is reasonably likely to elicit an incriminating response.

B. The Nation shall bear the burden of proving by a preponderance of the evidence that a statement falls within one of the exceptions identified in Subsection A.

**SECTION 6-304.5**

**FACTORS RELATING TO ADMISSIBILITY.**

When permitting any Child's statement to be introduced as evidence against the Child, including for the purposes of impeachment, the Court should determine whether the Child was advised of, understood, and voluntarily waived his rights. In so determining, the Court may consider the following factors:

A. whether the Child had the opportunity to consult with a Parent, Guardian or Custodian, or counsel before making the statement;

B. the Child's age, maturity, and level of education;

C. the Child's level of intelligence and mental development, as well as the presence of any cognitive or mental disability or impairment;

D. the length of time the Child was detained prior to the Custodial Interrogation, and the length of the Custodial Interrogation;

E. the environment in which the Custodial Interrogation took place, as well as the physical characteristics and demeanor of the Law Enforcement Officer(s) conducting the Custodial Interrogation;

F. any use of deception by the Law Enforcement Officer(s) conducting the Custodial Interrogation; or

G. whether, either prior to or during the Custodial Interrogation, the Child was held in isolation, deprived of food or sleep, or subjected to coercive measures such as threats or physical punishment.

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**ARTICLE E  
POLICE CUSTODY**

Section 6-305.1	Taking Children into Police Custody.
Section 6-305.2	Notification of Parents.
Section 6-305.3	Detention Prior to Initial Appearance Hearing.
Section 6-305.4	Release of Child in Police Custody.
Section 6-305.5	Extension of Detention Period.
Section 6-305.6	Detention and Shelter.
Section 6-305.7	Authorization for Medical Treatment.

**SECTION 6-305.1**                      **TAKING CHILDREN INTO POLICE CUSTODY.**

A.     A Child may be taken into Police Custody by a Law Enforcement Officer if any of the following occur:

1.     the Law Enforcement Officer has probable cause to believe that the Child has committed an offense under the Chickasaw Nation Code;
2.     the Court has issued a Pickup Order or Bench Warrant;
3.     the Officer has reasonable cause to believe that the Child is a runaway from his Parent(s), Guardian(s), or Custodian(s); or
4.     the Officer has reasonable cause to believe that the Child has violated the conditions of Probation and is under the continuing jurisdiction of the Court.

B.     In all other cases, a Child may be taken into Police Custody only upon an order of the Court or as otherwise provided by law.

**SECTION 6-305.2**                      **NOTIFICATION OF PARENTS.**

When a Child is taken into Police Custody, the Law Enforcement Officer shall notify the Child's Parent(s), Guardian(s), or Custodian(s) without unnecessary delay and inform him that the Child is in Police Custody and that all parties have a right to a prompt hearing pursuant to Section 6-306.1, "Initial Appearance Hearing," to determine whether continued Police Custody of the Child is necessary. Such notification may be made to a person with whom the Child is residing if his Parent(s), Guardian(s), or Custodian(s) cannot be located. If the Law Enforcement Officer taking the Child into Police Custody is unable to make such notification, it may be made by any other Law Enforcement Officer, Juvenile Probation Officer, Detention facility administrator, or jailor in whose physical custody the Child is placed.



**SECTION 6-305.3**

**DETENTION PRIOR TO INITIAL APPEARANCE HEARING.**

A. A Law Enforcement Officer is authorized to place an alleged Delinquent Child in Detention prior to an Initial Appearance Hearing if he reasonably believes all of the following to be true:

1. there is probable cause to believe the Child committed the alleged offense under the Chickasaw Nation Code;
2. the alleged offense is serious enough to warrant continued Detention;
3. no less restrictive alternatives will suffice; and
4. there is clear and convincing evidence that the Child should be placed in Detention because:
  - a. the Child may abscond or be removed from the jurisdiction of the Court; or
  - b. the Child's Detention is necessary to protect the person or property of others or the Child.

B. A Child shall not be placed in Detention prior to an Initial Appearance Hearing for any of the following reasons:

1. to treat or rehabilitate the Child prior to an Initial Appearance Hearing;
2. to punish the Child or to satisfy demands by a victim, the Law Enforcement Agency or the community;
3. to allow a Parent to avoid his legal responsibilities;
4. to permit more convenient administrative access to the Child;
5. to facilitate further interrogation or investigation; or
6. due to the lack of a more appropriate facility.

C. The Child shall have the right to an attorney during any hearing regarding the Detention of an alleged Delinquent Child.

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D. Whenever a Law Enforcement Officer places a Child in Detention prior to an Initial Appearance Hearing, the Officer shall notify the Prosecutor in writing no later than forty-eight (48) hours, exclusive of Saturdays, Sundays and legal holidays.

E. The duration of a Detention under this Section shall not exceed forty-eight (48) hours, exclusive of Saturdays, Sundays and legal holidays.

**SECTION 6-305.4**

**RELEASE OF CHILD IN POLICE CUSTODY.**

A. After a Law Enforcement Officer determines that a Child in Police Custody is to be released or transferred from Police Custody, the Law Enforcement Officer shall:

1. release the Child to his Parent(s), Guardian(s) or Custodian(s) upon their written promise to bring the Child before the Court at a specified date and time;
2. deliver the Child to a medical or other treatment facility if the Child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances, and the Court may authorize or consent to said treatment in accordance with Section 6-305.7, "Authorization for Medical Treatment"; or
3. deliver the Child to the Detention or Shelter facility pursuant to the limitations under Section 6-305.3, "Detention Prior to Initial Appearance Hearing."

B. If the Law Enforcement Officer determines that no action is required under Subsection A, the Officer shall release the Child to his Parent(s), Guardian(s) or Custodian(s), and issue a verbal warning as may be appropriate. Under this Subsection, the Child shall be held in Police Custody no longer than is reasonably necessary to obtain the Child's name, age, residence, and other necessary information, contact his Parent(s), Guardian(s), Custodian(s), or other responsible Adult, and release him to the same.

**SECTION 6-305.5**

**EXTENSION OF DETENTION PERIOD.**

For good cause shown and after probable cause has been shown, the Court may order that the Child be held in Detention for more than seventy-two (72) hours prior to the Initial Appearance Hearing. In no case shall the total period of Detention prior to the Initial Appearance Hearing exceed one-hundred twenty (120) hours, exclusive of Saturdays, Sundays, and legal holidays. Such extension shall be in writing or may be made verbally and reduced to writing within twenty-four (24) hours.

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**SECTION 6-305.6**

**DETENTION AND SHELTER.**

A. A Child who must be taken from his home for an alleged Delinquent offense, but who does not require physical restriction may be given temporary care in a Shelter facility designated by the Court and shall not be placed in Detention.

B. No Child under the age of thirteen (13) years and, except upon the order of the Court, no Child thirteen (13) years of age or older and under seventeen (17) years of age shall be detained in a jail, lockup, or other place used for confinement of Adult offenders or persons charged with a crime(s).

C. A Child thirteen (13) years of age or older shall be detained separately from Adult offenders or persons charged with a crime(s), including any Child ordered by the Court to be held for criminal proceedings.

**SECTION 6-305.7**

**AUTHORIZATION FOR MEDICAL TREATMENT.**

A. When any Child is taken into Police Custody pursuant to this Delinquent Children's Code and it reasonably appears to the Law Enforcement Officer or person acting pursuant to Court order that the Child is in need of immediate medical treatment to preserve the health of the Child, any Law Enforcement Officer or person acting pursuant to Court order shall have the authority to authorize medical examination and medical treatment for any Child found to be in need of medical treatment as determined by a competent medical authority in the absence of the Parent(s), Guardian(s), Custodian(s), or other person having physical custody and control of the child who is competent to authorize medical treatment.

B. The Law Enforcement Officer or person acting pursuant to Court order shall authorize said medical treatment only after exercising due diligence to locate the Parent(s), Guardian(s), Custodian(s), or other person legally competent to authorize said medical treatment. The Parent(s), Guardian(s), Custodian(s), or other person having physical custody and control shall be responsible for such medical expenses as ordered by the Court.

C. No Law Enforcement Officer or person acting pursuant to Court order authorizing such treatment in accordance with the provisions of this Section for any Child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

D. After a Child has been adjudicated a Delinquent Child, the Court may consent to any necessary emergency, preventive, general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency, facility, or person having Custody of the Child.

**ARTICLE F  
INITIAL APPEARANCE  
(PR30-007, 5/17/13)**

Section 6-306.1      Initial Appearance Hearing.

**SECTION 6-306.1                      INITIAL APPEARANCE HEARING.**

A.      The Initial Appearance Hearing shall be held in accordance with Section 6-301.9, “Hearings,” upon the appearance of an alleged Delinquent Child in response to a Delinquent petition or summons or, if the Child was held in Detention, within seventy-two (72) hours of placement in Detention, exclusive of Saturdays, Sundays and legal holidays.

B.      At the Initial Appearance Hearing, the Court shall fully advise the Child and his Parent(s), Guardian(s), or Custodian(s) of his legal rights, including, but not limited to, the following:

1.      the nature and purpose of the Delinquent Child proceedings, including the contents of the Delinquent Child petition;
2.      the right to be represented by an attorney, at the Nation’s expense, during all stages of the proceedings;
3.      the right to a jury trial upon demand, where applicable;
4.      the right to see, hear, and cross-examine all witnesses against him;
5.      the right to call witnesses on his own behalf and to have Court process compel the attendance of witnesses; and
6.      the right not to be compelled to testify against himself;
7.      the right to appeal any final order of the Court.

C.      If the Court determines that the Child should be under supervision prior to the Adjudication Hearing, then the Court may order that the Child be placed under appropriate restrictions as the Court deems necessary, up to and including Detention and drug and/or alcohol testing.

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**ARTICLE G  
ADJUDICATION  
(PR30-007, 5/17/13)**

Section 6-307.1	Prosecutor Intake.
Section 6-307.2	Deferred Prosecution.
Section 6-307.3	Petition Form.
Section 6-307.4	Delinquent Child Petition.
Section 6-307.5	Summons.
Section 6-307.6	When Summons Unnecessary.
Section 6-307.7	Additional Parties to Be Summoned.
Section 6-307.8	Service of Summons.
Section 6-307.9	Failure to Appear after Summons.
Section 6-307.10	Adjudication Hearing.
Section 6-307.11	Dismissal of Petition.
Section 6-307.12	Sustaining Petition.
Section 6-307.13	Temporary Orders.
Section 6-307.14	Medical Examination.

**SECTION 6-307.1**                      **PROSECUTOR INTAKE.**

A.     Upon receiving a request to file a petition and the accompanying reports and files from a Law Enforcement Agency, the Prosecutor shall review the case file, reports, and any witness statements to determine if there is sufficient evidence to establish jurisdiction of the Court over the Child and whether to proceed with the Delinquent Child action.

B.     If the Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the Court over the Child or to proceed with the Delinquent Child action, he shall, in writing, decline to file the requested petition, or, in his discretion, may request the Law Enforcement Agency to conduct a further investigation into the matter.

C.     If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the Court over the Child and to establish that the alleged offense(s) was committed by the Child, he shall file a petition concerning the Child and proceed with the Delinquent Child action.

**SECTION 6-307.2**                      **DEFERRED PROSECUTION.**

A.     Prior to the filing of a Petition, the Prosecutor may defer prosecution of a non-violent offense committed by an alleged Delinquent Child.

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B. A deferred prosecution shall consist of a contract between the Child, the Child's Parent(s), Guardian(s), or other Custodian(s), the Prosecutor, and the Juvenile Probation Officer, whereby the Child agrees to undergo specified treatment for or otherwise remedy the condition noticed, including an agreement to do or refrain from doing certain acts. The Prosecutor shall agree not to file a petition in the case so long as the Child and the Parent(s), Guardian(s), or other Custodian(s) comply with the obligations under the contract.

C. Each such contract shall contain the following:

1. the specific facts or allegations, including dates, which gave rise to the condition addressed by the contract;
2. the specific treatment programs the Child agrees to successfully complete and their duration;
3. the specific acts which the Child agrees to do or to refrain from doing;
4. the specific services to be offered by the Chickasaw Nation and accepted by the family;
5. a fixed, limited time for the contract to run, not to exceed six (6) months;
6. a condition that the Prosecutor will not file a petition based on the facts or allegations stated in the contract if the Child and the Child's Parent(s), Guardian, or Custodian(s) comply with the contract terms for the full term of the contract; and
7. that all parties to the contract have received a copy of the contract.

D. No deferred prosecution contract may place physical custody in any person or agency other than the Parent(s), Guardian(s), or other Custodian(s) unless it bears the approval in writing by the Court.

**SECTION 6-307.3**

**PETITION FORM.**

The Prosecutor shall verify, sign and file all petitions alleging a Child to be Delinquent. Such petitions and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

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**IN THE DISTRICT COURT OF THE CHICKASAW NATION**

The Chickasaw Nation )  
In The Interest Of: )  
 )  
\_\_\_\_\_ ) Case No.  
 )  
An Alleged Delinquent Child, )  
And Concerning )  
 )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
Respondent(s) )

**DELINQUENT CHILD PETITION**

**SECTION 6-307.4**                      **DELINQUENT CHILD PETITION.**

A. The petition shall set forth plainly the Child’s tribal affiliation with an Indian Tribe, the facts which bring the Child within the Court's jurisdiction, and the citation to the law(s) which the Child is alleged to have violated. The Petition shall also state the name, age, and residence of the Child and, if known, the name(s) and residence(s) of his Parent(s), Guardian(s), or Custodian(s) or of his nearest known Adult relative if no Parent(s), Guardian(s), or other Custodian(s) is known.

B. A petition may be amended by order of the Court at any time before an order of adjudication has been made, provided that the Court shall grant the parties additional time to prepare as may be required to ensure a full and fair hearing.

**SECTION 6-307.5**                      **SUMMONS.**

Upon filing of a petition the clerk of the Court shall issue a summons to the respondent Parent(s), Guardian(s) or Custodian(s) and the Child. The summons shall be in substantially the following form:

**IN THE DISTRICT COURT OF THE CHICKASAW NATION**

The Chickasaw Nation )  
In The Interest Of: )  
 )

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\_\_\_\_\_ ) Case No. \_\_\_\_\_  
An Alleged Delinquent Child, )  
And Concerning: )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
Respondent(s) )

**DELINQUENT CHILD SUMMONS**

The District Court of the Chickasaw Nation to:

\_\_\_\_\_, Respondents

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Court alleging that the above named \_\_\_\_\_ is a delinquent child and that as the (parent) (guardian) (custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the courtroom of the District Court of the Chickasaw Nation, 821 N. Mississippi, Ada, Oklahoma, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_p.m. and to there remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you.

YOU MAY SEEK THE ADVICE OF AN ATTORNEY on any matter relating to this action at your own expense. Upon application to the Court, and after a finding of indigency, the child may qualify for Court-appointed counsel.

YOUR FAILURE TO RESPOND TO THIS SUMMONS OR TO APPEAR AT THIS HEARING CONSTITUTES YOUR CONSENT TO THE CHILD BEING ADJUDICATED A DELINQUENT CHILD, AND A BENCH WARRANT MAY BE ISSUED.

\_\_\_\_\_  
Court Clerk  
[Seal]  
[Return.]



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**SECTION 6-307.6**                      **WHEN SUMMONS UNNECESSARY.**

A summons need not issue or be served upon any respondent Parent(s), Guardian(s), or Custodian(s) who appears voluntarily, or who waives service in writing before a notary public or court clerk, or who has promised to appear at the hearing in writing. However, such person shall be entitled to a copy of the petition and summons upon request.

**SECTION 6-307.7**                      **ADDITIONAL PARTIES TO BE SUMMONED.**

The Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

**SECTION 6-307.8**                      **SERVICE OF SUMMONS.**

A. Service of summons shall be conducted in accordance with Title 5 of the Chickasaw Nation Code.

B. If the Parent(s), Guardian(s), or Custodian(s) of the Child required to be summoned cannot be found within the jurisdiction of the Chickasaw Nation, the fact of the Child's presence within the Chickasaw Nation at the time of the alleged offense(s) shall confer jurisdiction on the Court as to any absent Parent(s), Guardian(s), or Custodian(s) if due notice has been given in the following manner:

1. If the residence of the person to be served outside the jurisdiction of the Chickasaw Nation is known, then a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of the requested receipt.

2. If the person to be served has no residence within the jurisdiction of the Chickasaw Nation, his place of residence is not known, or when he cannot be found within the jurisdiction of the Chickasaw Nation after due diligence, then service may be accomplished by publication in accordance with Title 5 of the Chickasaw Nation Code.

**SECTION 6-307.9**                      **FAILURE TO APPEAR AFTER SUMMONS.**

A. Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a Bench Warrant may be issued.

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B. If after reasonable effort the summons cannot be served or if the welfare of the Child requires that he be brought immediately into the custody of the Court, then a Bench Warrant may be issued for the Parent(s), Guardian(s), or Custodian(s) or a Pickup Order or search warrant may be issued for the Child as provided in Article C of this Chapter.

C. If the Parent(s), Guardian(s) or Custodian(s) who has signed a written promise to appear and bring the Child before the Court, or who has waived or acknowledged service, fails to appear with the Child on the date set by the Court, then a Bench Warrant may be issued for the Parent(s), Guardian(s) or Custodian(s), or a Pickup Order may be issued for the Child, or both.

**SECTION 6-307.10                      ADJUDICATION HEARING.**

A. The Adjudication Hearing shall be conducted according to the general rules of evidence and criminal procedure in Title 5 of the Chickasaw Nation Code.

B. The Court shall consider whether the allegations of the Delinquent Child petition are supported by evidence beyond a reasonable doubt; except that jurisdictional matters regarding an Indian Child shall be deemed admitted by or on behalf of the Child unless specifically denied prior to the Adjudication Hearing.

C. When the evidence presented at the Adjudication Hearing discloses issues that have not been raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent.

1. In such event, the Court, on the motion of any interested party or on its own motion, shall order the petition to be amended to conform to the evidence.

2. If the amendment results in a substantial departure from the original allegations in the petition, the Court shall continue the hearing on the motion of any interested party, or the Court may grant a continuance on its own motion if it finds it to be in the best interests of the Child or any other party to the proceeding.

**SECTION 6-307.11                      DISMISSAL OF PETITION.**

When the finder of fact determines that the allegations of the petition are not supported by evidence beyond a reasonable doubt, the Court shall order the petition dismissed and the Child discharged from any Detention or restriction previously ordered. The Child's Parent(s), Guardian(s), or Custodian(s) shall also be discharged from any restriction placed on them by the Court in the dismissed action. All orders from other courts or actions are still in effect.

**SECTION 6-307.12**                      **SUSTAINING PETITION.**

When the finder of fact determines that the allegations of the petition are supported by evidence beyond a reasonable doubt, the Court shall sustain the petition and make an Adjudication Hearing order stating the Child to be Delinquent and making the Child a Ward of the Court.

**SECTION 6-307.13**                      **TEMPORARY ORDERS.**

Upon sustaining a petition, the Court shall make such temporary orders, including but not limited to Detention, as may be necessary to address any interim issues existing between the Adjudication Hearing and the Disposition Hearing.

**SECTION 6-307.14**                      **MEDICAL EXAMINATION.**

The Court may have the Child examined by a physician, psychiatrist, psychologist, or other treatment professional, and the Court may place the Child in a hospital or other suitable facility for this purpose.

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**ARTICLE H  
DISPOSITION  
(PR30-007, 5/17/13)**

Section 6-308.1	Disposition Hearing.
Section 6-308.2	Disposition Hearing Procedures.
Section 6-308.3	Treatment Plan.
Section 6-308.4	Continuance.
Section 6-308.5	Order of Protection.
Section 6-308.6	Delinquent Child Disposition.
Section 6-308.7	Modification of Disposition Hearing Orders.
Section 6-308.8	Review Hearings.
Section 6-308.9	New Hearing Authorized.
Section 6-308.10	Continuing Jurisdiction.
Section 6-308.11	Appeals.

**SECTION 6-308.1                      DISPOSITION HEARING.**

A. After making an Adjudication Hearing order finding the Child to be a Delinquent Child and a Ward of the Court, the Court shall hear evidence on the question of the proper disposition best serving the interests of the Delinquent Child and the Chickasaw Nation at a Disposition Hearing scheduled for that purpose.

B. The Disposition Hearing shall take place within sixty (60) days after the Delinquent Child's Adjudication Hearing.

C. The Juvenile Probation Officer shall provide the Court with a proposed treatment plan for the Delinquent Child which shall include the treatment, services, and terms of Probation which should be approved by the Court to attempt to restore and rehabilitate the Delinquent Child.

D. The Court shall enter a Disposition Hearing order which shall include the treatment, services, terms of Probation, and other necessary provisions regarding the Delinquent Child, the Parent(s), Guardian(s), or Custodian(s).

**SECTION 6-308.2                      DISPOSITION HEARING PROCEDURES.**

The Disposition Hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Court shall order the writer of any report or study to appear and answer questions regarding such report if it be challenged by any party.

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**SECTION 6-308.3**

**TREATMENT PLAN.**

- A. The treatment plan shall be filed with the Court and a copy delivered to the parties or their attorney at least five (5) days prior to the Disposition Hearing.
- B. The treatment plan shall contain at a minimum:
1. a brief social and family history;
  2. a brief statement of the causes for the Court to exercise its jurisdiction;
  3. the specific treatment programs the Delinquent Child, Parent(s), Guardian(s), or Custodian(s) should be required to complete, their duration, and what is expected to be accomplished;
  4. the specific actions the Parent(s), Guardian(s), Custodian(s) and/or Delinquent Child should be ordered to do or refrain from doing and the reasons therefor;
  5. the specific treatment or other social services offered by the Chickasaw Nation which the Delinquent Child and/or Parent(s), Guardian(s), or Custodian(s) should be required to accept;
  6. the terms of Probation; and
  7. any other provisions intended to restore or rehabilitate the Delinquent Child.

**SECTION 6-308.4**

**CONTINUANCE.**

If the Disposition Hearing is continued, the Court shall make an appropriate order for Detention of the Delinquent Child or for his release to the Custody of his Parent(s), Guardian(s), Custodian(s), or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

**SECTION 6-308.5**

**ORDER OF PROTECTION.**

A. The Court may make an order of protection in assistance of, or as a condition of, any Disposition Hearing order authorized by this Delinquent Children's Code. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the Parent(s), Guardian(s), Custodian(s), or any other person who is party to the proceeding.

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- B. The order of protection may require any such person:
1. to refrain from contact with the Delinquent Child or his residence;
  2. to permit the Parent(s), Guardian(s), or Custodian(s) to visit the Delinquent Child at stated periods;
  3. to abstain from offensive conduct against the Delinquent Child, his Parent(s), Guardian(s), or Custodian(s) to whom Custody of the Delinquent Child has been given;
  4. to give proper attention to the care of the Delinquent Child's residence;
  5. to cooperate in good faith with an agency:
    - a. which has been given Custody of the Delinquent Child; or
    - b. to which the Delinquent Child has been referred by the Court;
  6. to refrain from acts of commission or omission that tend to make a home an improper place for a Child; or
  7. to perform any legal obligation of support.

C. When such an order of protection is made applicable to the Parent(s), Guardian(s), or Custodian(s), it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such Parent(s), Guardian(s), or Custodian(s), subject to the penalty provided in Subsection E of this Section.

D. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the Delinquent Child and the Nation will be served thereby.

E. A person failing to comply with an order of protection without good cause may be found in contempt of Court.

**SECTION 6-308.6                      DELINQUENT CHILD DISPOSITION.**

- A. Placement in Detention:

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1. If a Child has been adjudicated as a Delinquent Child and the Court has determined the need for Detention in a Detention facility, the Department shall transmit the Detention order and any other information pertinent to the care and treatment of the Delinquent Child to the Detention facility.

2. If a Delinquent Child is to serve Detention, the designated Detention facility shall provide the Court with any information concerning a Delinquent Child committed to its care which the Court may at any time require.

3. An order of Detention of a Delinquent Child in a designated facility pursuant to this Section shall not exceed one (1) year, except as otherwise authorized by the Indian Civil Rights Act, as amended.

4. The Prosecutor may request that the Court extend the Detention for additional periods of time not to exceed one (1) year increments. The motion shall set forth the reasons why it would be in the best interest of the Delinquent Child or the public to extend the Detention. Upon filing the motion, the Court shall set a hearing to determine whether the motion should be sustained or denied and the Prosecutor shall notify all interested parties.

5. Each Detention order in a designated facility shall be reviewed no later than six (6) months after the order is entered and at least once each six (6) months thereafter.

B. Probation: If a Child has been adjudicated a Delinquent Child and the Court has determined that there is not a need for Detention, the Court shall place the Delinquent Child on Probation under Article I of this Chapter.

C. Other Placement: If a Child has been adjudicated a Delinquent Child, then the Court may order that the Delinquent Child be placed in a medical facility, psychiatric facility, or a substance abuse facility, upon a determination made by the Court that:

1. there is not a need for Detention but there are other medical, psychiatric or substance abuse issues that require inpatient treatment at such a facility; or

2. there is a need for Detention but such Detention should be delayed to first address other medical, psychiatric or substance abuse issues which require inpatient treatment at such a facility.

**SECTION 6-308.7**

**MODIFICATION OF DISPOSITION HEARING ORDERS.**

A. The Court may modify, extend, or revoke its Disposition Hearing orders, following a hearing conducted upon its own motion or the motion of any party, if the Court finds by clear and convincing evidence that such modification, extension or revocation is necessary to accomplish the purposes of the Disposition Hearing order.

B. The Court shall set a hearing on the motion and shall give notice to the Delinquent Child and his Parent(s), Guardian(s), or Custodian(s), and any other parties to the proceeding.

C. In making the determination required by Subsection A, the Court may consider:

1. evidence that the Delinquent Child has violated or failed to comply with the Disposition Hearing order previously entered by the Court;
2. evidence that the Delinquent Child has committed a subsequent offense;
3. changes in treatment or other recommendations relied upon by the Court in entering the Disposition Hearing order to be modified;
4. changes in the Delinquent Child's circumstances; or
5. changes requested by the Delinquent Child.

D. If the Court finds that no modification, extension, or revocation is necessary, the Court shall deny the motion.

E. If the Court modifies, extends, or revokes the Disposition Hearing order of a person over eighteen (18) years of age, the Court may sentence him to an authorized facility for incarceration, in addition to any other action(s) permitted by this Delinquent Children's Code.

**SECTION 6-308.8**

**REVIEW HEARINGS.**

Every case regarding a Delinquent Child shall be periodically reviewed by the Court at a review hearing at least once every six (6) months following the Disposition Hearing or upon motion by any party.

**SECTION 6-308.9**

**NEW HEARING AUTHORIZED.**

A. The Delinquent Child or the Delinquent Child's Parent(s), Guardian(s), or Custodian(s) may petition the Court for a new hearing on the following grounds:



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1. that new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the adjudication, has been discovered; or

2. that irregularities in the proceedings prevented a fair hearing.

B. If it appears to the Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the Delinquent Child.

**SECTION 6-308.10**                    **CONTINUING JURISDICTION.**

A. The jurisdiction of the Court over any Child adjudicated a Delinquent Child shall automatically terminate when the Delinquent Child reaches twenty (20) years of age.

B. The jurisdiction of the Court over any Child adjudicated a Delinquent Child may be terminated earlier by court order or when the matter is closed.

**SECTION 6-308.11**                    **APPEALS.**

A. Any party to a Delinquent Child proceeding may appeal any final order of the Court in the same manner as civil appeals in accordance with Title 5 of the Chickasaw Nation Code. The time limits governing criminal appeals under Title 5 of the Chickasaw Nation Code shall not apply to this Section.

B. The Chickasaw Nation shall have the same right to appeal questions of law in Delinquent Child cases as in criminal cases.

**ARTICLE I  
JUVENILE PROBATION  
(PR30-007, 5/17/13)**

Section 6-309.1      Probation Powers of the Court.  
Section 6-309.2      Violations of Probation.

**SECTION 6-309.1                      PROBATION POWERS OF THE COURT.**

A.      The duration, terms and conditions of Probation shall be specified by rules or orders of the Court. The Court, as a condition of Probation for a Delinquent Child, has the power to impose a Commitment, placement, or Detention, whether continuous or at designated intervals. Each Delinquent Child placed on Probation shall be given a written statement of the duration, terms and conditions of his Probation and shall have such duration, terms and conditions fully explained to him.

B.      The Court may release a Delinquent Child from Probation or modify the terms and conditions of Probation, but any Delinquent Child who has complied satisfactorily with the terms and conditions for the duration of his Probation shall be released from Probation.

**SECTION 6-309.2                      VIOLATIONS OF PROBATION.**

A.      Any party to the Delinquent Child proceeding may file a motion regarding a violation of Probation of a Delinquent Child under Section 6-308.7, "Modification of Disposition Hearing Orders."

B.      Violations of Probation by a Delinquent Child shall include, but are not limited to the following:

1.      missed appointments with the Juvenile Probation Officer without good cause;
2.      testing positive for drugs, alcohol, any other intoxicants, commercial tobacco, or any other prohibited or counterfeit substance whether or not legal to possess, or refusing to submit to such testing;
3.      failure to comply with Community Service requirements;
4.      failure to pay fees, including fines, costs, or restitution, as ordered by the Court, or failure to follow a payment plan regarding said fees;

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5. failure to comply with any conditions under the treatment plan or other special conditions, as ordered by the Court.

C. The Juvenile Probation Officer may impose the following sanctions without requiring modification of the Disposition Hearing order pursuant to Subsection A:

1. more frequent contact by the Probationer;
2. increased and/or random drug testing;
3. heightened curfew restrictions;
4. a referral to any service that may be beneficial to the Probationer;
5. making reasonable adjustments to the time, place, and manner of Community Service hours; or
6. other graduated sanctions as allowed by the Chickasaw Nation Code and/or Juvenile Probation Officer policies.

D. A Juvenile Probation Officer shall not independently impose Detention, monetary sanctions, or alter the length of Probation, or impose any other sanction that would otherwise require a modification by the Court under Subsection A of this Section.

**CHAPTER 4  
ADOPTION  
(PR30-007, 5/17/13)**

Section 6-401.1	Purpose of Adoptions.
Section 6-401.2	Definitions.
Section 6-401.3	Jurisdiction over Adoptions.
Section 6-401.4	Types of Adoptions.
Section 6-401.5	Administration of Title IV-E Adoption Assistance Program.
Section 6-401.6	Eligibility to Adopt by Statutory Process.
Section 6-401.7	Petition for Adoption.
Section 6-401.8	Consent to Statutory Adoption.
Section 6-401.9	Voluntary Relinquishment.
Section 6-401.10	Effect of Termination of Parent-Child Relationship.
Section 6-401.11	Consents and Relinquishments Executed in another Jurisdiction.
Section 6-401.12	When Consent Is Unnecessary.
Section 6-401.13	Notice for Adoptions without Consent.
Section 6-401.14	Consent of Child.
Section 6-401.15	Appointment of Guardian <i>Ad Litem</i> .
Section 6-401.16	Home Study Report.
Section 6-401.17	Waiver of Home Study Report.
Section 6-401.18	Temporary Custody Order Pending Adoption.
Section 6-401.19	Preparation of Health, Social, Educational and Genetic History Report.
Section 6-401.20	Denial of Adoption Petition for Certain Felony Offenses.
Section 6-401.21	Adoption Hearing.
Section 6-401.22	Report and Final Decree of Adoption.
Section 6-401.23	Contents of Final Decree of Adoption.
Section 6-401.24	Effect of Final Decree of Statutory Adoption.
Section 6-401.25	Open Adoptions.
Section 6-401.26	Records and Hearings Confidential.
Section 6-401.27	Certificates of Adoption.
Section 6-401.28	Adoption of Adults.
Section 6-401.29	Appeals.

**SECTION 6-401.1                      PURPOSE OF ADOPTIONS.**

The purpose of an adoption is to establish a formal and legal family relationship between two (2) or more persons which, after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Chapter shall be so recognized by every agency and level of the government, except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

**SECTION 6-401.2**

**DEFINITIONS.**

As used in the Chickasaw Nation Adoption Code:

1. “Abandonment” or “Abandoned” means:
  - a. the Parent has voluntarily left the Child alone or in the care of another who is not the Parent of the Child and has failed to return within a reasonable amount of time, taking into consideration such factors as the age of the child and the surrounding circumstances; or
  - b. the Parent has failed, for a period of six (6) consecutive months, to maintain a significant parental relationship with a Child through visitation or communication in which incidental or token visits or communication are not considered significant; or
  - c. the Parent has failed to respond to notice of Deprived Child proceedings after receiving proper service.
2. “Adoptee” means an individual who is adopted or is to be adopted.
3. “Adult” means an individual who has attained eighteen (18) years of age.
4. “Chickasaw Adult” means an individual who has attained eighteen (18) years of age and who is a citizen of the Chickasaw Nation.
5. “Chickasaw Child” is a Child who is a citizen of, or eligible for citizenship in the Chickasaw Nation.
6. “Child” or “Indian Child” (plural, “Children” or “Indian Children”) means an unmarried person who is under age eighteen (18) and is either a) a citizen of an Indian tribe or b) is eligible for citizenship in an Indian tribe and is the biological Child of a citizen of an Indian tribe.
7. “Child-Placing Agency” means any child welfare agency authorized by the Chickasaw Nation to place Children for adoption.
8. “Contested Proceeding” means any proceeding pursuant to the Chickasaw Nation Adoption Code in which an interested party enters an appearance to contest the petition for adoption.

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9. “Court” means the Chickasaw Nation District Court.
10. “Department” means the Chickasaw Nation department assigned the responsibility of protecting children under the Deprived Children’s Code.
11. “Guardian” means an individual who has been appointed by a court with the duty to care for another’s person or property.
12. “Indian Child's Tribe” means (a) the Indian Tribe in which an Indian Child is a citizen or eligible for citizenship or (b), in the case of an Indian Child who is a citizen of or eligible for citizenship in more than one Indian Tribe, the Indian Tribe with which the Indian Child has the more significant contacts.
13. “Indian Country” means the land within the Chickasaw Nation boundaries described in the Chickasaw Nation Constitution, as amended, and as defined in 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Chickasaw Nation.
14. “Indian Tribe” means a federally recognized Indian Tribe, as defined by 25 U.S.C. Section 450(b) et. seq.
15. “Parent” means an individual who is the biological or adoptive parent of a Child or who is legally recognized as a mother or father of a Child. The term “Parent” does not include an individual whose parental relationship to a Child has been terminated.
16. “Petitioner(s)” means an individual(s) who files a petition for adoption under this Chapter.
17. “Presumed Father” means a man who, by operation of law is recognized as the father of a Child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed to be the father of a Child if:
  - a. he and the mother of the Child are married to each other and the Child is born during the marriage;
  - b. he and the mother of the Child were married to each other and the Child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;

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c. before the birth of the Child, he and the mother of the Child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the Child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;

d. for the first two (2) years of the Child's life, he resided in the same household with the Child and openly held out the Child as his own; or

e. after the birth of the Child, he and the mother of the Child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the Child, and:

(1) the assertion is in a record with the State of Oklahoma Department of Health, Division of Vital Records or the State of Oklahoma Department of Human Services;

(2) he agreed to be and is named as the Child's father on the Child's birth certificate; or

(3) he promised in a record to support the Child as his own.

18. "Putative Father" means the father of a Child born out of wedlock or a Child whose mother was married to another person at the time of the birth of the Child or within the ten (10) months prior to the birth of the Child and includes, but is not limited to, a man who has acknowledged or claims paternity of a Child, a man named by the mother of the Child to be the father of the Child, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception.

19. "Relinquishment" or "Relinquish" means the voluntary surrender of rights to a Child, including legal and physical custody of the Child, to a Child-Placing Agency, the Department, or any person, upon approval by the Court.

20. "State" means any state, territory, or possession of the United States, the commonwealth of Puerto Rico, and the District of Columbia.

21. "Stepparent" means an individual who is the spouse or surviving spouse of a Parent of a Child, but who is not a legal Parent of the Child.

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22. “Termination of Parental Rights” means the end of a legally recognized parent-child relationship, which may be voluntary or involuntary.

23. “Traditional Custodian” means those relatives and friends of the Child other than the Parent(s), who, based on the traditions, customs, and common law of the Chickasaw Nation or of the family, have accepted the rights, duties, and responsibilities of assisting the Parent(s) in rearing the Child and providing for the Child’s support.

### **SECTION 6-401.3                      JURISDICTION OVER ADOPTIONS.**

A. For purposes of this Chapter, the “territorial boundaries of the Chickasaw Nation” shall include the land described in the Chickasaw Constitution and Title 5 of the Chickasaw Nation Code.

B. The Court shall have exclusive jurisdiction over any Chickasaw Child who resides or is domiciled in Indian Country within the territorial boundaries of the Chickasaw Nation.

C. The Court shall have concurrent jurisdiction over any Chickasaw Child who resides or is domiciled within the territorial boundaries of the Chickasaw Nation.

D. The Court shall have concurrent jurisdiction over any Chickasaw Child who resides or is domiciled outside the territorial boundaries of the Chickasaw Nation.

E. The Court shall have concurrent jurisdiction over any Indian Child who resides or is domiciled within the territorial boundaries of the Chickasaw Nation.

F. The Court shall have concurrent jurisdiction over any Indian Child who is currently in the custody of the Chickasaw Nation, regardless of the Child’s physical placement.

### **SECTION 6-401.4                      TYPES OF ADOPTIONS.**

There shall be three (3) types of adoptions recognized by the Chickasaw Nation, namely:

A. Statutory adoptions under Chickasaw Nation law entered into pursuant to this Chapter.

B. Statutory adoptions under the laws of some other Indian Tribe, State, or nation having jurisdiction over the parties and the subject matter.

C. Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by



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Chickasaw Nation common law until such time as the proper procedures for such adoptions are written down as a part of the Chickasaw Nation Code at which time traditional adoptions shall be governed by such procedure. Unless otherwise specifically provided by Chickasaw Nation law, traditional adoptions create a particular stated family relationship between persons for all purposes other than enrollment and the probate of decedents' estates.

**SECTION 6-401.5**

**ADMINISTRATION OF TITLE IV-E ADOPTION  
ASSISTANCE PROGRAM.**

The Executive Department is authorized to establish a Title IV-E adoption assistance program for eligible Children who are in the custody of the Chickasaw Nation. The Department, as designated by the Executive Department, shall establish procedures for administering the Title IV-E adoption assistance program.

**SECTION 6-401.6**

**ELIGIBILITY TO ADOPT BY STATUTORY PROCESS.**

A. The following persons are eligible to adopt a Child pursuant to this Chapter, and subject to the placement preferences of Section 6-201.9, "Placement Preferences":

1. a husband and wife jointly;
2. either the husband or wife if the other spouse is a Parent of the Child;
3. an unmarried person who is at least twenty-one (21) years old; or
4. a married person who is legally separated from the other spouse and is at least twenty-one (21) years old.

**SECTION 6-401.7**

**PETITION FOR ADOPTION.**

A. A petition for adoption shall be filed in duplicate, verified by the Petitioner(s), and shall specifically state:

1. the full names, ages and places of residence of the Petitioner(s), and, if married, the place and date of his (their) marriage;
2. his (their) relationship with the Child, if any, and his (their) tribal affiliation by blood and citizenship, if any;
3. when and from whom the Petitioner(s) acquired or intend to acquire physical custody of the Child;

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4. the names of the Child's biological Parents and their tribal affiliation by blood and citizenship, including tribal roll numbers, if known;
5. the date and place of birth of the Child including the jurisdiction issuing the birth certificate for said Child, the Child's sex, race, and tribal affiliation by blood and citizenship, including tribal roll number, if known;
6. the name used for the Child in the proceeding and, if a change in name is desired, the new name;
7. that it is the desire of the Petitioner(s) that the relationship of Parent and Child be established between him (them) and the Child;
8. a full description and statement of the value of all property owned or possessed by the Child;
9. the facts, if any, which excuse the consent of the Parents or either of them to the adoption; and
10. the facts which bring the Child within the jurisdiction of the Court.

B. Any required consents to the adoption shall be filed with the petition or prior to entry of a decree of adoption.

C. An affidavit shall be filed, prior to the final decree of adoption, which discloses to the Court all of the costs, funds, or monies expended by the adoptive family or expected to be expended in connection with the adoption of a Child.

1. No final decree of adoption shall be entered until the Court is satisfied that all costs and expenses have been disclosed, are reasonable, and that the costs and expenses do not violate the provisions of Subsection (2) of this Section. Upon its review of the affidavit of monies expended, the Court shall in writing disapprove any expenditure that the Court deems unreasonable or in violation of this Section and may order reimbursement of any consideration given in violation thereof.

2. Except as otherwise specifically provided by law, the following list of adoption-related costs and expenses specified in this paragraph may be deemed proper items for a person to pay in connection with an adoption:

- a. reasonable attorney fees and Court costs,

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- b. reasonable medical expenses for birth mother and Child to be adopted,
- c. reasonable adoption counseling expenses for birth parents before and after the birth of the Child, not to exceed six (6) months from placement of the Child,
- d. reasonable fees of a licensed Child-Placing Agency,
- e. in cases of extraordinary need, reasonable expenses for necessities of the birth mother that are incurred during or as a result of the pregnancy, not to exceed two (2) months from placement of the Child,
- f. reasonable costs for travel or transportation of the birth mother or Child as same is incurred for medical or adoption placement needs,
- g. reasonable expenses for a home study, and
- h. reasonable expenses legally required by any governmental entity related to the adoption of a Child.

**SECTION 6-401.8**

**CONSENT TO STATUTORY ADOPTION.**

A. Adoption of a Child may be decreed only if consent to such adoption has been executed and filed in the Court by:

1. both Parents, if living, or the surviving Parent, unless their parental rights have been terminated by judicial decree;
2. Parent(s) less than sixteen (16) years of age may give their consent only with the written consent of one (1) of the Parent(s), Guardian(s), or a Guardian *Ad Litem* of the minor Parent;
3. the Guardian or Traditional Custodian having physical custody of said Child for the preceding six (6) month period, if both Parents are deceased; or
4. an employee or the executive head of an agency having custody of the Child by judicial decree with the specific authority granted by the Court to consent to the adoption of the Child, if parental rights have been terminated by judicial decree.

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B. Where any Parent(s), Guardian(s), or Traditional Custodian(s) voluntarily consents to an adoption, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the Parent(s), Guardian(s) or Traditional Custodian(s). The Court shall certify that the Parent(s), Guardian(s) or Traditional Custodian(s) either fully understood the explanation in English or that it was interpreted into a language that the Parent(s), Guardian(s), or Traditional Custodian(s) understood.

C. Any consent given by the Parent(s) prior to or within ten (10) days after the birth of a Child shall not be valid.

D. Any consent given for the adoption of a Child may be revoked and withdrawn by the Parent(s), Guardian(s), or Traditional Custodian(s) at any time prior to the entry of a final decree of adoption and the Child shall be returned to the Parent(s), Guardian(s), or Traditional Custodian(s).

E. After the entry of a final decree of adoption the Parent(s), Guardian(s), or Traditional Custodian(s) may withdraw consent thereto upon the grounds that consent to adoption was obtained through fraud or duress and may petition the Court to vacate such decree, provided that the petition to vacate is filed no later than two (2) year after the final decree of adoption. Upon a finding, based on clear and convincing evidence, that such consent was obtained through fraud or duress, the Court shall vacate such decree and determine placement based on the best interest of the Child.

F. In any case under this Section where the Court determines that a Child must be returned to the Parent(s), Guardian(s), or Traditional Custodian(s), the Court may, if necessary determine custody according to the best interests of the Child.

G. A consent to adoption by a Parent, approved by the Court, shall terminate the Parent-Child relationship.

H. A consent to adoption by a Guardian or Traditional Custodian, approved by the Court, shall terminate any rights they may have to the care, custody, and control of the Child.

I. After the consent to adoption is approved by the Court, the former Parent(s), Guardian(s), or Traditional Custodian(s) is not entitled to any notice of proceedings for the adoption of the Child by another, nor has he any right to object to the adoption or to otherwise participate.

**SECTION 6-401.9**

**VOLUNTARY RELINQUISHMENT.**

A. Any Parent, Guardian, or Traditional Custodian of a Child may Relinquish any rights they may have to the care, custody and control of a Child.

B. A voluntary Relinquishment shall be made by filing a petition in the Court with notice to the Department, the prosecutor, the non-petitioning Parent, Guardian, and/or Traditional Custodian(s). The individuals entitled to notice may intervene in said action. The Petitioner(s) may Relinquish generally, in which case the Court shall assume jurisdiction over the Child, or specifically to a particular person for adoption. A Relinquishment shall be valid only upon approval and decree of the Court.

1. The voluntary Relinquishment shall be signed under oath and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail in English and were fully understood by the Parent(s), Guardian(s), or Traditional Custodian(s) or that the consent was translated into a language that the Parent(s), Guardian(s), or Traditional Custodian(s) understood.

2. The person executing the voluntary Relinquishment shall be represented by counsel or shall waive any right to counsel. When it appears to the Court that the Parent(s), Guardian(s), or Traditional Custodian(s) executing a voluntary Relinquishment desires counsel but cannot employ counsel because said person is indigent, the Court shall appoint counsel.

3. A voluntary Relinquishment is effective when it is signed and may not be revoked after the Court's order terminating parental rights is entered; except upon clear and convincing evidence that the voluntary Relinquishment was executed by reason of fraud or duress, provided that a petition to vacate the voluntary Relinquishment is filed no more than one (1) year after the Court's order terminating parental rights.

4. The Court may terminate the rights of a Parent(s), Guardian(s), or Traditional Custodian(s) to a Child based upon a duly executed Relinquishment, if the Court finds it would be in the best interests of the Child.

C. A voluntary Relinquishment by a Parent, approved by the Court, shall terminate the Parent-Child relationship.

D. A voluntary Relinquishment by a Guardian or Traditional Custodian, approved by the Court, shall terminate any rights they may have to the care, custody, and control of the Child.

E. After the voluntary Relinquishment is approved by the Court, the former Parent(s), Guardian(s), or Traditional Custodian(s) is not entitled to any notice of proceedings for the adoption of the Child by another, nor has he any right to object to the adoption or to otherwise participate.

**SECTION 6-401.10**

**EFFECT OF TERMINATION OF PARENT-CHILD  
RELATIONSHIP.**

A. The Termination of Parental Rights terminates the Parent-Child relationship, including:

1. the Parent's right to the custody of the Child;
2. the Parent's right to visit the Child;
3. the Parent's right to control the Child's training and education;
4. the necessity for the Parent to consent to the adoption of the Child;
5. the Parent's right to the earnings of the Child; and
6. the Parent's right to inherit from or through the Child.

B. Provided, that nothing herein shall in any way affect the right of the Child to inherit from the Parent.

C. No order or decree entered pursuant to this Section shall disentitle a Child to any benefit due him from any third person, including but not limited to, any Indian Tribe, any agency, any State, or the United States.

D. Termination of the Parent-Child relationship shall not terminate the duty of the Parent to support the Child. Any order terminating the Parent-Child relationship shall indicate that the duty of the Parent to support his or her Child will remain effective until the entry of the final decree of adoption.

E. Voluntary Relinquishment or consent to adoption shall not affect the Child's tribal citizenship status, nor the Child's rights or privileges as a citizen of the Chickasaw Nation nor shall it affect the jurisdiction of the Court over the Child.

**SECTION 6-401.11**

**CONSENTS AND RELINQUISHMENTS EXECUTED IN ANOTHER JURISDICTION.**

A voluntary Relinquishment or a consent to adoption which is executed in another jurisdiction shall be recognized as valid and given effect in all proceedings brought pursuant to the Chickasaw Nation Code provided the voluntary Relinquishment or consent to adoption was executed in accordance with the federal Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq.

**SECTION 6-401.12**

**WHEN CONSENT IS UNNECESSARY.**

A. Adoption of a Child may be decreed without the consent required by Section 6-401.8, "Consent to Statutory Adoption," only if the Parent(s), Guardian(s), or Traditional Custodian(s):

1. is deceased;
2. has their parental or custodial rights terminated by a decree of a court of competent jurisdiction;
3. has Abandoned the Child;
4. has been adjudicated incompetent by reason of mental disease, defect, injury or by abuse of alcohol or drugs and it appears, by a preponderance of the evidence, that such person will be unable to provide the necessary care and control of said Child for a significant period of time prior to the Child reaching majority;
5. has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse or neglect that is heinous and shocking as defined in Section 6-201.4 (A)(29)-(A)(30), "Definitions," or that the Child or sibling of such Child has suffered severe harm or injury as a result of such physical or sexual abuse;
6. has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse subsequent to a previous finding that such Parent has physically or sexually abused the Child or a sibling of such Child or failed to protect the Child or a sibling of such Child from physical or sexual abuse;
7. has been convicted of a crime of having caused the death of a sibling of the Child as a result of the physical or sexual abuse or chronic neglect of such sibling;

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8. has been convicted of a crime as set forth in Section 6-206.3 (B)(2), “Reasonable Efforts not Required in Certain Cases,” of this Title; or

9. in the case of a Parent who does not have custody, has for a period of twelve (12) consecutive months out of the last fourteen (14) months immediately preceding the filing of the petition for adoption, has willfully failed, refused or neglected to contribute to the support of the Child:

a. as specified by an order entered by a court of competent jurisdiction adjudicating the duty, amount and manner of support; or

b. if no court order has been made ordering certain support, then within the Parent’s available means through contribution of financial support for physical necessities such as food, clothing and shelter, or by performing labor or other services for and at the request of the person or agency having custody.

B. Consent to adoption is not required for a Child born out of wedlock if:

1. The Child is placed for adoption within ninety (90) days of birth, and the father, Presumed Father or Putative Father has failed to show he has exercised parental rights or duties towards the Child, including but not limited to, failure to contribute to the support of the mother of the Child to the extent of his financial ability during her term of pregnancy;

2. The Child is placed for adoption within fourteen (14) months of birth, and the father, Presumed Father or Putative Father has failed to show that he has exercised parental rights or duties towards the Child, including but not limited to, failure to contribute to the support of the Child to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the Child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the Child eligible for adoption without the consent of the father, Presumed Father or Putative Father; or

3. The father, Presumed Father or Putative Father has been convicted of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the Parent for a period such that the Parent will be unable to provide the necessary care and control of said Child for a significant period of time prior to the Child reaching majority.



**SECTION 6-401.13**

**NOTICE FOR ADOPTIONS WITHOUT CONSENT.**

A. After the filing of a petition for adoption alleging that the consent of the Parent(s), Guardian(s), or Traditional Custodian(s) is not necessary, the Court shall set a hearing at a date and time certain to determine whether consent is not necessary.

B. Notice to appear and show cause why their consent is necessary shall be served on the Parent(s), including the Putative Father, Guardian(s) and Traditional Custodian(s), if any, and the Indian Child's Tribe. Said notice shall be served in the same manner that civil summons is served. Such notice shall apprise the notified parties of their legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the Child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of any rights to the Child.

C. Notwithstanding Subsection B of this Section, notice to appear is not required when the Parent(s), Guardian(s), or Traditional Custodian(s) is either deceased or has had their parental or custodial rights terminated by a decree of a court of competent jurisdiction.

D. If the identity or whereabouts of a Putative Father or Parent is unknown, the Court must determine whether the Putative Father or Parent can be identified or located. The determination must be based on evidence that includes inquiry of appropriate persons in an effort to identify an unknown Parent or Putative Father for the purpose of providing notice. The inquiry under this Section must include:

1. Whether the natural mother was married at the probable time of conception of the Child, or at a later time;
2. Whether the natural mother was cohabiting with a man at the probable time of conception of the Child;
3. Whether the natural mother has received payments or promises of support, other than from a governmental agency, with respect to the Child or because of her pregnancy;
4. Whether the natural mother has named any individual as the father on the birth certificate of the Child or in connection with applying for or receiving public assistance;
5. Whether any individual has formally or informally acknowledged or claimed paternity of the Child in a jurisdiction in which the woman resided during or since her pregnancy, or in which the Child has resided or resides, at the time of the

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inquiry;

6. Whether the Child has been enrolled as a citizen of the Chickasaw Nation or another Indian Tribe; and

7. Any other information deemed pertinent to ascertain the identity or whereabouts of the Putative Father or Parent.

E. If, after the Court makes inquiry pursuant to Subsection C of this Section, it determines that the Putative Father or Parent can be identified and located, then the Court shall require notice to be served upon him pursuant to this Section.

F. If the Court finds that the identity or whereabouts of the Putative Father or Parent cannot be ascertained, and this fact is attested to by affidavit of the consenting party, the Court shall order that notice be given by publication. The notice shall be published pursuant to Title 5 of the Chickasaw Nation Code. When notice is given by publication, the order allowing adoption without consent shall not become final for a period of fifteen (15) days from the date of the order.

G. A party entitled to notice pursuant to this Section may waive the right to notice. The waiver shall be in writing and shall include a statement affirming that the person signing the waiver understands that the waiver shall constitute grounds for adoption without consent of such person pursuant to the provisions of this Section.

**SECTION 6-401.14**                      **CONSENT OF CHILD.**

Whenever a Child is of sufficient maturity and understanding the Court may, and in every case of a Child over twelve (12) years of age the Court shall, require the consent of the Child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such Child in private concerning the adoption prior to approving the Child's consent.

**SECTION 6-401.15**                      **APPOINTMENT OF GUARDIAN *AD LITEM*.**

A. In a proceeding pursuant to this Chapter, the Court may appoint a Guardian *Ad Litem* for a Child.

1. The Guardian *Ad Litem* shall objectively advocate on behalf of the Child and investigate all matters concerning the best interests of the Child. In addition to the other duties specified by the Court, a Guardian *Ad Litem* shall have the following responsibilities:

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- a. review relevant documents, reports and other information;
- b. meet with and/or observe the Child;
- c. consider the Child's wishes, as appropriate;
- d. interview caregivers and others with knowledge relevant to the case;
- e. advocate for the Child's best interests by participating in appropriate aspects of the case;
- f. maintain the confidentiality of information related to the case;
- g. monitor the Child's best interests throughout any judicial proceeding; and
- h. advise the Court of his findings and recommendations, if any.

2. The Guardian *Ad Litem* shall be given access to the Court file and access to all records and reports relevant to the case and to any record and reports of examination of the Child's Parent(s), Guardian(s), or Traditional Custodian(s), as specified by the Court, subject to such protective orders regarding identifying information as the Court deems advisable.

3. Any person participating in a judicial proceeding as a Guardian *Ad Litem* shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

**SECTION 6-401.16                      HOME STUDY REPORT.**

A. Upon the filing of a petition for adoption, the Court shall order an investigation of the adoptive home to be conducted by:

1. the agency having Custody or Guardianship of the Child; or
2. a person qualified by training or experience approved by the Court.

B. The Court shall further order that a written home study report of such investigation of the adoptive home by the designated investigator shall be filed with the Court within the time fixed by the Court and in no event more than sixty (60) days from the issuance of

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the order for investigation, unless such time is extended by the Court.

C. A home study report must include at a minimum the following:

1. An appropriate inquiry to determine whether the proposed home is a suitable one for the Child; and any other circumstances and conditions which may have a bearing on the adoption and of which the Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge and discretion;

2. At least one (1) individual interview with each adoptive Parent, each school-age Child, and any other household member; one joint interview with the Adoptive Parent and Adoptee; a home visit; and three (3) written references;

3. Verification that the home is a healthy, safe environment in which to raise a Child;

4. Verification of marital status, employment, income, access to medical care, and physical health and history; and

5. A review of a criminal background check and a child abuse and neglect information system check that includes:

a. A national fingerprint-based criminal background check, a search of the Chickasaw Nation sex offender registry, the Oklahoma Department of Corrections' sex offender registry, the national sex offender registry and a search of the child abuse and neglect information system; and

b. A child abuse registry check from every other State in which the person has resided during the five-year period, for each adoptive Parent or other household member age eighteen (18) years and older who has not maintained continuous residency in Oklahoma for five (5) years prior to the home study report or home study update.

D. The Court may order agencies named in Subsection A above located in one or more counties to make separate investigations on separate parts of the inquiry, as may be appropriate. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

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E. Following issuance of an interlocutory decree of adoption, or if the interlocutory decree is waived, prior to issuance of a final decree, the investigator conducting the home study or another investigator who meets the qualifications specified in this Chapter, shall observe the Child in the proposed adoptive home and report in writing to the Court on any circumstances or conditions which may have a bearing on the granting of a final adoption decree. If the interlocutory decree was not waived, the investigator must certify that the final examination described in this Subsection has been made since the granting of the interlocutory order. This supplemental report shall include a determination as to the legal availability or status of the Child for adoption and shall be filed prior to the final decree of adoption.

F. Upon the filing of the home study report, the investigator shall serve written notice upon the parties that the home study report has been filed with the Court.

**SECTION 6-401.17**

**WAIVER OF HOME STUDY REPORT.**

A. When the Petitioner is the spouse of a Parent, or in the event that a home study report has been made within the six (6) months preceding the filing of the petition for adoption, the Court may, in its discretion, waive the making and filing of a home study report.

B. The Court may, upon motion, waive the home study report under the following circumstances:

1. one of the Petitioners is the grandparent, aunt, uncle or Adult sibling of the Child, and the Child has resided with the Petitioners on a continuous basis since birth for at least six (6) months or if an older Child, for one or more years immediately prior to the filing of the adoption petition; and

2. provided that each Petitioner and all members of the Petitioner's household who are over eighteen (18) years of age must submit to a criminal records check as set forth in Section 6-401.16 (C)(5)(a)-(b), "Home Study Report," and subject to Section 6-401.20, "Denial of Adoption Petition for Certain Felony Offenses," of this Chapter and provide an official copy of such information to the Court; and

3. it is found to be in the best interests of the Child to waive the home study report.

**SECTION 6-401.18**

**TEMPORARY CUSTODY ORDER PENDING ADOPTION.**

A. If a mother of a Child born out of wedlock or a mother and father of a Child born in wedlock appear before a judge of the Court prior to the birth of the Child and request that the Court issue a temporary order of custody effective after the birth of the Child to the Department

or a prospective adoptive Parent who has presented to the Court a favorable pre-placement home study report, the Court may, following the birth of the Child but prior to the execution of a consent to adoption or voluntary Relinquishment by such Parent(s), issue an order of temporary custody to the Department with authority to place or, upon review by the Court of a pre-placement home study report, to the prospective adoptive Parent.

1. A pre-birth request by a mother of a Child born out of wedlock or of the mother and father of a Child born in wedlock for an order of temporary custody shall not be construed as consent to the adoption of the Child or a voluntary Relinquishment.

2. Until such time as a consent to adoption or voluntary Relinquishment is signed by the mother of a Child born out of wedlock or by both Parents of a Child born in wedlock, the mother of the Child born out of wedlock or either Parent of the Child born in wedlock may apply to the Court at any time to vacate the order of temporary custody. Upon such application, the Court shall set aside the temporary custody order and order that the Child be returned to the Parent(s).

3. The temporary order of custody issued pursuant to this Subsection shall, by its own terms, expire no later than ninety (90) days after it has been issued by the Court. Provided, the Court upon application may grant an extension if, prior to the application, the mother of a Child born out of wedlock or the mother and father of a Child born in wedlock have executed a consent to adoption or voluntary Relinquishment.

B. 1. After a birth mother of a Child born out of wedlock executes a consent to adoption or a voluntary Relinquishment pursuant to Section 6.401.8, "Consent to Statutory Adoption," or Section 6-401.9, "Voluntary Relinquishment," the Court may issue an order granting temporary custody of the Child to the Department with authority to place, or upon review by the Court of a pre-placement home study report, to a prospective adoptive Parent.

2. After the mother and father of a Child born in wedlock execute a consent to adoption or voluntary Relinquishment pursuant to Section 6-401.8, "Consent to Statutory Adoption," or Section 6-401.9, "Voluntary Relinquishment," the Court may issue an order granting temporary custody of the Child to a Child-Placing Agency, a licensed attorney or, upon review by the Court of the pre-placement home study, to a prospective adoptive Parent.

3. The temporary order of custody issued pursuant to this Subsection shall, by its own terms, expire no later than ninety (90) days after it has been issued by the Court. Provided, the Court upon application may grant an extension for good cause.

**SECTION 6-401.19**

**PREPARATION OF HEALTH, SOCIAL, EDUCATIONAL,  
AND GENETIC HISTORY REPORT.**

- A. This Section does not apply to an adoption by the Child's:
1. grandparent;
  2. aunt or uncle by birth, marriage, or prior adoption;
  3. Stepparent; or
  4. relative within the 3<sup>rd</sup> degree of consanguinity.
- B. Prior to placing a Child for adoption, a report on the available health, social, educational, and genetic history of the Child shall be prepared.
- C. The Department shall prepare such report or, in the event of a private adoption, such report shall be prepared by a Child-Placing Agency or other entity who places the Child for adoption.
- D. The Department shall prescribe the form to be used to record the medical history of the Child and the Child's biological relatives. The Department shall furnish the forms upon request.
- E. The Department or entity who places the Child for adoption shall provide the prospective adoptive Parents a copy of the report as early as practicable before the first meeting of the adoptive Parents with the Child. The copy of the report may be edited to protect the identity of birth Parents and their families.

**SECTION 6-401.20**

**DENIAL OF ADOPTION PETITION FOR CERTAIN  
FELONY OFFENSES.**

- A. The petition for adoption shall not be approved if the Petitioner(s) or any other person residing in the home of the Petitioner(s) has been convicted of any of the following felony offenses:
1. within the five-year period preceding the date of the petition, physical assault, domestic abuse, battery or a drug-related offense;
  2. child abuse or neglect;

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3. a crime against a Child, including, but not limited to, child pornography;  
or

4. a crime involving violence, including, but not limited to, rape, sexual assault or homicide, but excluding those crimes specified in Paragraph 1 of this Subsection.

B. Under no circumstances shall a Child be placed in the custody of or within the same household as an individual subject to the Chickasaw Nation Sex Offender Registration and Notification Act as amended, the Oklahoma Sex Offender Registration Act as amended, the Adam Walsh Child Protection and Safety Act of 2006 as amended, or an individual who is married to or living with an individual subject to said acts.

C. A deferred sentence involving the offenses listed in Subsection A shall be considered in determining the Petitioner's suitability as an adoptive Parent, regardless of whether the deferred sentence constitutes a criminal conviction.

**SECTION 6-401.21                      ADOPTION HEARING.**

A. At any time after the written home study report has been filed, the Court, upon motion or request of the Petitioner(s) or upon its own motion, shall fix a time for hearing the petition for adoption. The Petitioner(s) and Adoptee shall appear personally at the hearing. Provided that, if the joint Petitioners are husband and wife and it would be unduly difficult for one of the Petitioners to appear at the hearing, the Court may waive the attendance of that Petitioner if the other spouse is present.

B. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear personally or be represented by an attorney.

C. The Court shall examine the Petitioner's(s') financial ability, suitability, and moral and physical fitness. If the Court is satisfied that the best interest of the Child will be promoted by the adoption, the Court may enter a final decree of adoption or may place the Child in the legal custody of the Petitioner(s) for a period of not more than six (6) months prior to entering a final decree of adoption.

D. If the Court determines that the adoption will not be in the best interest of the Child, the petition shall be denied and the Court shall arrange suitable care and placement of the Child.



**SECTION 6-401.22**

**REPORT AND FINAL DECREE OF ADOPTION.**

A. If the Court does not enter a final decree of adoption at the time of the hearing for adoption but places the Child in the legal custody of the Petitioner(s), within six (6) months after the Child has been in the custody of the Petitioner(s), the Court shall request a supplementary written report as to the welfare of the Child and the current situation and conditions of the adoptive home and the Petitioner(s). If the Court is satisfied that the proposed adoption is in the best interest of the Child, a final decree of adoption may be entered.

B. If the Court determines that the adoption will not be in the best interest of the Child, the petition shall be denied and the Court shall arrange suitable care and placement of the Child.

**SECTION 6-401.23**

**CONTENTS OF FINAL DECREE OF ADOPTION.**

The final decree of adoption shall include, at a minimum, the following findings and/or orders:

- A. the Child is within the jurisdiction of the Court;
- B. the Child is eligible for adoption;
- C. the names of the Child's biological Parents and their tribal affiliation by blood and citizenship, including tribal roll numbers, if known;
- D. the Petitioner(s) and the home of the Petitioner(s) are adequate and capable for the proper care of the Child;
- E. the new name of the Child, if any; and
- F. a Parent-Child relationship exists between the Petitioner(s) and the Child.

**SECTION 6-401.24**

**EFFECT OF FINAL DECREE OF STATUTORY ADOPTION.**

A. After a final decree of adoption is entered, all the rights, duties, and legal consequences of the Parent-Child relationship shall thereafter exist between the Adoptee, the Petitioner(s), and the kindred of the Petitioner(s). The Adoptee shall inherit real and personal property from the adopting family and the adopting family shall inherit from the Adoptee in accordance with law as if such Adoptee were the natural Child of the Petitioner(s).

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B. After a final decree of adoption is entered, the natural Parent(s) of the Adoptee, unless the spouse of a Petitioner, shall be relieved and terminated from all parental rights and responsibilities for said Adoptee, including the right to inherit from the Adoptee, provided that the Adoptee shall remain eligible to inherit from the natural Parents and retain all rights to citizenship in an Indian Tribe by virtue of his birth to said natural Parents.

C. After a final decree of adoption is entered, the Guardian(s) or Traditional Custodian(s), if any, shall be relieved and terminated from all rights and responsibilities for said Adoptee.

D. Within two (2) years after the final decree of adoption is filed or the refusal of the adoptive Parents to allow visitation, whichever is later, the Court may, upon application of a Traditional Custodian, former Guardian or a natural Grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation is in the best interest of the Child. The Court may enforce such visitation rights and make orders thereto at any time after the timely filing of an application therefor. Notice of the application shall be served upon the adoptive Parents.

**SECTION 6-401.25                      OPEN ADOPTIONS.**

A. The parties to an adoption proceeding may enter into agreements regarding future communication with or contact between Adoptees, adoptive Parents, and natural Parent(s), former Guardian(s) or Traditional Custodian(s). These agreements are not legally enforceable unless the terms are set forth in a written court order entered in accordance with this Section.

1. The Court may not enter an order unless the terms of the agreement are approved in writing by:

- a. the prospective adoptive Parents;
- b. any natural Parent whose parental rights have not been terminated;
- c. the Department, if the Child is in the custody of the Department at the time of the placement for adoption; and
- d. a Guardian *Ad Litem*, if appointed.

2. The Court may not enter an order unless the Court finds that the terms of the agreement are in the Child's best interest.

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B. Failure to comply with the terms of an agreed order regarding communication or contact is not a basis for setting aside a decree of adoption. Agreed orders may be enforced through a civil action, provided that:

1. prior to or upon the filing of a civil action to enforce the agreed order, the parties must be given the option to bring their dispute before the Chickasaw Nation Peacemaking Court; and
2. the agreed order continues to be in the best interests of the Child.

**SECTION 6-401.26                      RECORDS AND HEARINGS CONFIDENTIAL.**

Unless the Court shall otherwise order:

A. 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 the parties, Guardian(s), Traditional Custodian(s), representatives of the Department if deemed necessary by the Court, and persons whose presence is requested by the parties.

B. All papers, records and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

1. upon order of the Court for good cause shown;
2. upon the Adoptee reaching the age of eighteen (18), the Adoptee may review the records unless the natural Parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal citizenship and degree of blood, shall be redacted prior to allowing the Adoptee access to copies of the records;
3. upon request of the former Guardian(s), Traditional Custodian(s) and natural Grandparent(s), unless the natural Parent(s) have, by affidavit, requested anonymity, in which case the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting Parent(s) request anonymity, by affidavit, the former Guardian(s), Traditional Custodian(s) and natural Grandparent(s) may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the Child; and

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4. upon order of the Court for the purpose of obtaining the Child's eligibility for enrollment with an Indian Tribe.

**SECTION 6-401.27                      CERTIFICATES OF ADOPTION.**

A. For each adoption or adoption vacated due to fraud or duress, the attorney or Child-Placing Agency handling the adoption or vacated adoption shall prepare, and the clerk of the Court shall certify, within thirty (30) days after the decree becomes final, a certificate of such decree on a form furnished by the state registrar of vital statistics.

B. The attorney or Child-Placing Agency handling the adoption or vacated adoption shall forward such completed certificate along with the affidavit of nondisclosure, if applicable, to the state registrar of vital statistics.

**SECTION 6-401.28                      ADOPTION OF ADULTS.**

A. An Adult Adoptee may be adopted by any other Adult person with the consent of the Adult Adoptee, or his guardian, and with the consent of the spouse of the adoptive Parent, if any. Consent of the Adult Adoptee's Parents is not required unless said Adult Adoptee has been adjudicated incompetent.

B. Such adoption shall follow the procedure otherwise set forth herein, including giving notice to the biological Parent(s). An investigation and home study report shall not be required for this Section.

C. Such adoption shall create a Parent-Child relationship of Parent and Child between the parties, but shall not destroy the Parent-Child relationship between the biological Parents unless specifically requested by the Adult Adoptee in writing in open court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance but not including tribal enrollment eligibility, shall be that the Adult Adoptee is the offspring of both sets of Parents equally.

D. Proceedings and records relating to the adoption of an Adult shall be open to the public as are the records of other civil cases.

**SECTION 6-401.29                      APPEALS.**

An appeal to the Chickasaw Supreme Court may be taken from any final order, judgment or decree rendered hereunder by any party aggrieved thereby in the manner provided for civil appeals in Title 5 of the Chickasaw Nation Code.

**CHAPTER 5  
GUARDIANSHIPS AND CONSERVATORSHIPS;  
CHILDREN AND INCOMPETENTS**

(Renumbered PR30-007, 5/17/13)

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Section 6-501.2	Purpose.
Section 6-501.3	Jurisdiction.
Section 6-501.4	Applicable Law.
Section 6-501.5	Reserved.
Section 6-501.6	Definition of Guardian.
Section 6-501.7	Definition of Ward.
Section 6-501.8	Classifications of Guardians.
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Section 6-501.13	Appointment of Guardian; Exclusive Jurisdiction.
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Section 6-501.16	Judge May Act at Chambers or in Court; Practice.
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Section 6-501.18	Guardian of Property of Person Not Residing Within the Chickasaw Nation.
Section 6-501.19	Guardian Powers.
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Section 6-501.31	Appointment of Guardian when Minor has Attained 14 Years of Age.
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**SECTION 6-501.1**                      **SHORT TITLE.**

This Act shall be known and may be cited as the Chickasaw Nation Guardianship and Conservatorship Act of 2003 (“Act”). (PR20-014, 6/27/03)

**SECTION 6-501.2**                      **PURPOSE.**

A. It is the purpose of this Act to promote the general welfare of all Chickasaw citizens by establishing a system of General and Limited Guardianships for Minors and for Incapacitated and Partially Incapacitated Persons which provides for the protection of their rights and the management of their financial resources.

B. It is the purpose of the system of General and Limited Guardianships for Incapacitated and Partially Incapacitated Persons established by this Act to provide for the participation of such persons, as fully as possible, in the decisions which affect them. It is the intent of the Chickasaw Tribal Legislature:

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1. that the courts of the Chickasaw Nation shall exercise the authority conferred by this Act so as to encourage the development of maximum self-reliance and independence of the Incapacitated or Partially Incapacitated Person and make appointive and other orders only to the extent necessitated by the mental and adaptive limitations or other condition of the Incapacitated or Partially Incapacitated Person warranting the procedure;

2. that in performing their duties and exercising their powers, Guardians and Limited Guardians of Incapacitated or Partially Incapacitated Persons shall:

a. assure, to the extent reasonably possible, that the rights of the Wards for whom they are appointed are protected;

b. encourage, to the extent reasonably possible, Incapacitated or Partially Incapacitated Persons to participate to the maximum extent of their abilities in all decisions which affect them and to act on their own behalf on all matters in which they are able to do so within the limitations imposed by the Court; and

c. as appropriate, assist their Wards to develop or regain to the maximum extent possible their capacity to meet the essential requirements for their health or safety, or to manage their financial resources or both.

**SECTION 6-501.3**                      **JURISDICTION.**

Territorial jurisdiction, subject matter jurisdiction and personal jurisdiction shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

**SECTION 6-501.4**                      **APPLICABLE LAW.**

Applicable law shall be in accordance with Title 5, Chapter 2, Article A of the Chickasaw Nation Code.

**SECTION 6-501.5**                      **RESERVED.**

(PR20-014, 6/27/03)

**SECTION 6-501.6**                      **DEFINITION OF GUARDIAN.**

A "Guardian" is a Person appointed by the Court to take care of the Person or property of another. "Guardian" includes Persons appointed as General and Limited Guardians of the

Person,  
General and Limited Guardians of property, and Special Guardians, but does not include Persons appointed as Guardians *Ad Litem*.

**SECTION 6-501.7**                      **DEFINITION OF WARD.**

A Person over whom a Guardian is appointed and a Person over whose property a Guardian or Conservator is appointed is called a “Ward.”

**SECTION 6-501.8**                      **CLASSIFICATIONS OF GUARDIANS.**

Guardians are either General, Limited or Special.

**SECTION 6-501.9**                      **GENERAL AND LIMITED GUARDIANS.**

A.     A “General Guardian” is a Guardian of the Person or of all the property of the Ward or of both such Person and property.

B.     A “Limited Guardian” is a Person authorized by the Court to exercise limited powers over the Person of the Ward, or over the property of the Ward, or over both such Person and property.

**SECTION 6-501.10**                      **APPOINTMENT OF SPECIAL GUARDIAN.**

A Special Guardian may be appointed by the Court pursuant to Section 6-308.57 of this Act.

**SECTION 6-501.11**                      **DEFINITIONS.**

A.     As used in this Act:

1.     "Abuse" means the intentional infliction of physical pain, injury, or mental anguish or the deprivation of food, clothing, shelter, or medical care to an Incapacitated Person, Partially Incapacitated Person, or a Minor by a Guardian or other Person responsible for providing these services. “Abuse” may be a noun, verb or adjective;

2.     "Confidential Information" means medical records, physical, psychological or other Evaluations of a Ward or subject of the proceeding, initial and subsequent Guardianship Plans, reports of Guardians, Limited Guardians and conservators submitted to the Court in connection with a proceeding pursuant to the provisions of this Act;

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3. "Conservator" means a Guardian, protector or preserver. A Conservator is appointed by a court to manage the affairs of an Incompetent Person or to liquidate business or to manage the estate of one who is unable to manage property and business affairs effectively.
4. "Court" means the District Court or Supreme Court of the Chickasaw Nation as appropriate.
5. "Estate" means the property of the Person whose affairs are subject to a Guardianship Proceeding;
6. "Evaluation" means a professional assessment of:
  - a. the ability of an Adult to receive and evaluate information effectively or communicate decisions;
  - b. the impact of any impairment of these skills on the capacity of the individual to meet the essential requirements for his physical health or safety, or to manage his financial resources; and
  - c. the services necessary to provide for the Ward;
7. "Exploitation" means an unjust or improper use of the resources of an Incapacitated Person, a Partially Incapacitated Person, or a Minor for the profit or advantage, pecuniary or otherwise, of a Person other than an Incapacitated Person, a Partially Incapacitated Person, or a Minor through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense;
8. A "Guardian of an Incapacitated Person" means a Person who has been appointed by a court to serve as the Guardian of an Incapacitated Person to assure that the essential requirements for the health and safety of said Person are met, to Manage the Estate or financial resources of said Person, or both;
9. "Guardian *Ad Litem*" means, with respect to a Guardianship Proceeding, a Person appointed by a court to assist the subject of the proceeding in making decisions with regard to the Guardianship Proceeding, or to make said decisions when the subject of the proceeding is wholly incapable of making said decisions even with assistance. The Chickasaw Nation Court Advocate may serve as a Guardian *Ad Litem* as long as such appointment would not cause a conflict of interest as to any Party, the Court Advocate or the Court;

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10. "Guardianship Plan" means the plan for the care and treatment of a Ward, the plan for the management of the financial resources of a Ward, or both;
11. "Guardianship Proceeding" means a proceeding for the appointment of a Guardian, or for other orders regarding the condition, care or treatment or for the management of the financial resources of a Ward;
12. "Guardianship Report" means any report required by this Act;
13. "Incapacitated Person" means a Person eighteen (18) years of age or older:
- a. who is impaired by reason of:
    - I. mental illness;
    - ii. mental retardation or developmental disability;
    - iii. physical illness or disability;
    - iv. drug or alcohol dependency; or
    - v. such other similar cause; and
  - b. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said Person:
    - I. lacks the capacity to meet essential requirements for his physical health or safety; or
    - ii. is unable to manage his financial resources. Whenever in the Chickasaw Nation Code "Incompetent Person" appears and refers to a Person who has been found by a court to be an Incompetent Person because of an impairment or condition described in this Paragraph, it shall have the same meaning as "Incapacitated Person" but shall not include a Person who is a Partially Incapacitated Person;
14. "Intangible Personal Property" means cash, stocks and bonds, mutual funds, money market accounts, certificates of deposit, insurance contracts, commodity accounts, and other assets of a similar nature;

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15. "Letters" means a document issued by a court subsequent to the appointment of a Guardian which designates the name of the Guardian and specifies the authority and powers of said Guardian. Such document shall be endorsed thereon with the oath of the Guardian that he will perform the duties of his office as Guardian according to law;
16. A "Limited Guardian" means a Person appointed by a court to serve as the Guardian of a Partially Incapacitated Person and who is authorized by a court to exercise only:
- a. some of the powers of a Guardian of the Person or whose power as Guardian of the Person extends only to certain matters pertaining to the care or control of the Ward as specified by the court, or
  - b. certain powers as Guardian of the property over the Estate or financial resources of the Ward, or whose powers as Guardian of the property extend only to some portion of the Estate or financial resources of the Ward;
17. "Manage Financial Resources" or "Manage the Estate" means those actions necessary to obtain, administer, and dispose of real property, business property, benefits and income, and to otherwise manage personal financial or business affairs;
18. "Minor" means a Person under eighteen (18) years of age;
19. "Neglect" means the failure to provide protection for an Incapacitated Person, a Partially Incapacitated Person, or a Minor who is unable to protect the Person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the Person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury. "Neglect" may be a noun, verb or adjective;
20. "Organization" means a corporation, trust, business trust, partnership, association, or other legal entity;
21. "Partially Incapacitated Person" means an Incapacitated Person whose impairment is only to the extent that without the assistance of a Limited Guardian said Person is unable to:
- a. meet the essential requirements for his physical health or safety; or

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b. manage all of his financial resources or to engage in all of the activities necessary for the effective management of his financial resources. A finding that an individual is a Partially Incapacitated Person shall not constitute a finding of legal incompetence. A Partially Incapacitated Person shall be legally competent in all areas other than the area or areas specified by a court in its dispositional or subsequent orders. Such Person shall retain all legal rights and abilities other than those expressly limited or curtailed in said orders;

22. "Party" means the Person or entity filing a petition, application, motion, acceptance of a testamentary nomination, or objection; the subject of a Guardianship Proceeding; and the Guardian, the Guardian *Ad Litem* and the conservator, if any such Persons have been appointed;

23. "Person" means an individual;

24. "Property" means real Property, personal Property, income, any interest in such real or personal Property and includes anything that may be the subject of ownership;

25. "Subject of the Proceeding" means a Minor or an Adult:

a. who is the subject of a petition requesting the appointment of a Guardian, Limited Guardian or Special Guardian;

b. for whom a Guardian or Limited Guardian has been appointed by a court, or

c. an Adult for whom a conservator is requested or appointed; and

26. "Surcharge" means the imposition of personal liability by a court on a Guardian or Limited Guardian for willful or negligent misconduct in the administration of the Estate or other financial resources of a Ward.

### B. Medical Treatment:

1. Nothing in this Section shall be construed to mean an Incapacitated Person, a Partially Incapacitated Person, or a Minor is Abused or Neglected for the sole reason that a Guardian or other Person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the Person or Minor in their trust, and, in the case of an Adult, in

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accordance with the practices of or the express consent of the Incapacitated or Partially Incapacitated Person.

2. Nothing contained in this Subsection B shall prevent a court from immediately assuming Custody of a Minor and ordering whatever action may be necessary, including medical treatment, to protect the Minor's health or welfare.

**SECTION 6-501.12**                    **APPLICABILITY OF ACT; POWER OF APPOINTMENT;  
NOT A LIMITATION OF PARENTAL RIGHTS.**

A. Except as otherwise specifically provided by law, this Act applies to:

1. Minors;
2. Incapacitated and Partially Incapacitated Persons; and
3. Property located in the Chickasaw Nation of nondomiciliaries who are Minors or Incapacitated or Partially Incapacitated Persons, or Property coming into the control of a Guardian who is subject to the laws of the Chickasaw Nation.

B. No Person, whether a Parent or otherwise, has any power as a Guardian, except by appointment by a court. The provisions of this Act shall not be construed to limit the parental rights of Parents as the natural Guardians of their Children.

**SECTION 6-501.13**                    **APPOINTMENT OF GUARDIAN; EXCLUSIVE  
JURISDICTION.**

A. A Guardian of the Person or Property, or both, of a Person residing within the territorial jurisdiction of the Chickasaw Nation, who is a Minor, or an Incapacitated or Partially Incapacitated Person, may be appointed in all cases by the Court as provided in this Act.

B. After the service of notice in a proceeding seeking the appointment of a Guardian or other order, in subsequent proceedings pertaining to the Guardianship of a Ward and until termination of the proceeding, the Court has exclusive jurisdiction to determine:

1. the need for a Guardian or other order; and
2. how the Estate of the Ward shall be managed, expended, or distributed to or for the use of the Ward or the dependents of the Ward.



**SECTION 6-501.14**

**JURISDICTION OF COURT OVER GUARDIANS AND  
GUARDIANSHIP PROCEEDINGS.**

A. In all cases the Court has exclusive jurisdiction to control such Guardian in the management and disposition of the Person and Property of the Ward.

B. The Court has jurisdiction over Guardianship Proceedings, and has the following powers, which must be exercised in the manner prescribed by statute, to:

1. Appoint and remove Guardians for Minors and for Incapacitated and Partially Incapacitated Persons;
2. Issue and revoke Letters of Guardianship;
3. Control the conduct of Guardians with regard to the care and treatment provided to their Wards;
4. Control the conduct of Guardians with regard to the management of the financial resources of their Wards, including but not limited to the power to:
  - a. compel Guardians to submit plans, reports, inventories and accountings to the Court;
  - b. compel payment and delivery by Guardians of Property belonging to their Wards;
  - c. order the payment of debts, the sale of Property, and order and regulate the distribution of Property which has been placed under the control or management of a Guardian, and
  - d. settle the accounts of Guardians;
5. Appoint appraisers of the Property of Wards;
6. Compel the attendance of witnesses and the production of documents and Property;
7. After a petition has been filed for appointment of a Guardian for a Minor, and for Incapacitated Person or Partially Incapacitated Person, make or modify any temporary order of Guardianship during the progress of the proceedings that would be in the best interest of the Ward. Any such temporary order may be entered ex parte with

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written notice sent to all parties directing them to appear before the Court, at a time and place therein specified, not more than twenty (20) days from the time of making such order, to show cause why the order should not be granted for temporary Guardianship; and

8. Exercise all powers conferred by this Act and to make such orders as may be necessary for the exercise of said powers.

C. The Court shall establish by court rule a system for:

1. the filing of Guardianship and Conservatorship cases and records which distinguish them from probate cases; and

2. monitoring the filing of annual reports and inventories required by this Act for the purpose of assuring that the Court will be notified of annual reports as they fall due and whether or not said reports are filed.

**SECTION 6-501.15**

**VENUE FOR GUARDIANSHIP PROCEEDINGS.**

The venue for a Guardianship Proceeding is in the District Court of the Chickasaw Nation.

**SECTION 6-501.16**

**JUDGE MAY ACT AT CHAMBERS OR IN COURT;  
PRACTICE.**

A. The power conferred upon the Court in relation to Guardians and Wards may be exercised in chambers or elsewhere in the discretion of the Judge. Any hearing held pursuant to the provisions of this Act may be held at such place as the Court directs.

B. Any order appointing a Guardian must be entered as and become a decree of the Court.

C. Except as otherwise specifically provided by this Act, the provisions of the Chickasaw Nation Code relative to the Estates of decedents, so far as they relate to the practice in the Court, apply to proceedings under this Act. The rules of civil procedure including the rules concerning discovery, vacation of orders and appellate review, govern proceedings subject to this Act.

**SECTION 6-501.17**

**GUARDIANS AD LITEM NOT AFFECTED.**

A. Nothing contained in this Act affects or impairs the power of the Court to appoint

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a Guardian *Ad Litem* to defend the interests of any Minor interested in any suit or matter pending therein.

B. At any point in a Guardianship Proceeding, the Subject of the Proceeding, his attorney, the Guardian of the Subject of the Proceeding or anyone interested in the welfare of the Subject of the Proceeding may file an application to have a Guardian *Ad Litem* appointed by the Court, or the Court on its own motion may appoint a Guardian *Ad Litem*. If not precluded by a conflict of interest, a Guardian *Ad Litem* may be appointed to represent several Persons or interests.

**SECTION 6-501.18**                      **GUARDIAN OF PROPERTY OF PERSON NOT RESIDING WITHIN THE CHICKASAW NATION.**

A Guardian of the Property, within the Chickasaw Nation, of a Person not residing therein, who is a Minor, or an Incapacitated or Partially Incapacitated Person, may be appointed by the Court as provided by this Act.

**SECTION 6-501.19**                      **GUARDIAN POWERS.**

A Guardian has only those powers over the Person or the Property of the Ward, or both such Person and Property, as ordered by the Court pursuant to this Act.

**SECTION 6-501.20**                      **POWER OF GUARDIAN OVER THE PERSON; CHANGE OF WARD'S ABODE; POWER OF LIMITED GUARDIANS.**

A. A Guardian, including a Special Guardian, of the Person is charged with the Custody of the Ward, and must look to the support, health and education of the Ward. Except as provided herein, he may fix the place of abode of the Ward at any place within the territorial jurisdiction of the Chickasaw Nation, but not elsewhere, without permission of the Court and any change in the place of abode of a Ward shall be reported to the Court.

B. Limited Guardians of Partially Incapacitated Persons shall not have Custody of the Person of the Ward and shall have only those powers or controls over the Person of the Ward specifically ordered in a dispositional order or other order of the Court.

**SECTION 6-501.21**                      **DUTIES OF GUARDIAN OF THE PROPERTY; POWERS; FIDUCIARY DUTY.**

A. A Guardian of the Property must keep safely the Property of his Ward. He must not permit any unnecessary waste or destruction of the real Property, nor make any sale of such Property without the order of the Court, but must so far as it is in his power, maintain the same,

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with its buildings and appurtenances, out of the income or other Property of the Estate, and deliver it to the Ward or the successors of the Ward at the close of his Guardianship, in as good condition as he received it.

B. A Guardian of the Property, in relation to powers conferred pursuant to the provisions of this Act, shall act as a fiduciary and shall perform, diligently and in good faith, as a prudent Person would in managing his own Property, not with regard to speculation but with regard to conservation and growth, and the specific duties and powers assigned by the Court.

**SECTION 6-501.22                      CONFIDENTIAL INFORMATION.**

A. Confidential Information filed with or submitted to the Court in conjunction with any proceeding pursuant to this Act, shall not constitute a public record and shall be sealed by the Court. Access to Confidential Information shall be strictly controlled. Except upon court order, no Confidential Information shall be disclosed to Persons other than:

1. the Subject of the Proceeding and the subject's attorney;
2. the Guardian *Ad Litem*;
3. if the subject of the Confidential Information is a Ward, the Guardian or Conservator of such Ward; and
4. if the subject of the Confidential Information is the Guardian or Conservator, the Ward and the subject's attorney, and the attorney of such Guardian or Conservator.

B. The fact of the existence of a Guardianship or Conservatorship of a Person or that Person's Estate shall not be considered Confidential Information.

**SECTION 6-501.23                      GUARDIANSHIP LETTERS.**

Letters of Guardianship are evidence of the transfer of the management or administration of all assets, or the part thereof specified in the Letters, of a Ward to the Guardian. An order terminating a Guardianship is evidence of transfer of the management or administration of all assets subject to the Guardianship from the Guardian to the Ward, or to successors of the Ward.

**SECTION 6-501.24                      RESERVED.**

(PR20-014, 6/27/03)

**SECTION 6-501.25                      TIME COMPUTATION.**

The time within which an act is to be done, as provided for in the Chickasaw Nation Code, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday, it shall be excluded. The provisions of this Section are hereby declared to be a clarification

of the law as it existed prior to the effective date of this Act and shall not be considered or construed to be a change of the law as it existed prior to the effective date of this Act.

**SECTION 6-501.26                      APPOINTMENT OF GUARDIAN OF MINOR.**

A.     The District Court, when it appears necessary or convenient, may appoint Guardians for the Persons and Estates, or either, or both of them, of Minors.

B.     Such appointment may be made on the verified petition of a relative or other Person on behalf of such Minor.

C.     Before making the appointment, the Court must cause notice of the hearing on the petition for appointment of a Guardian for a Minor to be given in the form required by the Court to the Minor himself if the Minor has attained the age of fourteen (14) as of the date the petition is filed. The Court shall also cause notice to be sent to the following Persons:

1.     the then-living Parents of the Minor and any other Person having care of the Minor, if such Parent or Person is not one of the petitioners;
2.     if the Minor has no then-living Parent, then to one of the then-living Grandparents who is not one of the petitioners and who is not married to one of the petitioners; and
3.     if there is no such then-living Grandparent or if there is no such then-living Grandparent whose address is known to the petitioner, then notice shall be given to an Adult relative, if any, of the Minor, who resides within the territorial jurisdiction of the Chickasaw Nation.

D.     Such notice shall be mailed to each Person, entitled to notice pursuant to this Section, at that Person's address as last-known to the petitioner, at least ten (10) days prior to the date set by the Court for hearing on the petition. Provided the Court may direct a shorter notice period if the Court deems such shorter notice period to be appropriate under the circumstances. If there is no Person other than the Minor who is entitled to notice, or if the address of any Person, other than the Minor, who is entitled to notice is not known to the petitioner, the petition shall so

allege. The Court may direct that notice, other than notice to the Minor if the Minor has attained the age of fourteen (14), be waived or be given to any Person or Persons other than the Minor in such manner as the Court determines and directs.

**SECTION 6-501.27**                      **GUARDIAN NOMINATIONS.**

A.        A Guardian of the Person or Estate, or of both, of a Child born, or likely to be born, may be nominated by will or by other written instrument, to take effect upon the death of the Parent so nominating:

1.        if the Child is born in wedlock, by either Parent or by both Parents.
2.        if the Child is born out of wedlock, by the mother of the Child or by the natural father of the Child, if said natural father has acknowledged paternity or has been judicially determined to be the father of the Child at a paternity proceeding, or by both such mother and father.

B.        A nomination made by a Parent who has relinquished parental rights pursuant to an adoption proceeding or whose parental rights have been terminated by a court of competent jurisdiction shall have no effect.

**SECTION 6-501.28**                      **NOMINATION AND APPOINTMENT BY MINOR; AGE OF MINOR.**

If the Minor is under the age of fourteen (14) years, the Court may name and appoint his Guardian. If the Minor has attained the age of fourteen (14) years, the Minor may nominate his own Guardian, who, if approved by the Court, must be appointed accordingly.

**SECTION 6-501.29**                      **PREFERENCE ORDER FOR CUSTODY OR GUARDIANSHIP.**

A.        Custody should be awarded or a Guardian appointed in the following order of preference according to the best interests of the Child to:

1.        a Parent or to both Parents jointly except as otherwise provided in Subsection B below;
2.        a Grandparent;
3.        a Person who was indicated by the wishes of a deceased Parent;

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4. a relative of either Parent;
5. the Person in whose home the Child has been living in a wholesome and stable environment including but not limited to a foster Parent; or
6. any other Person deemed by the Court to be suitable and able to provide adequate and proper care and guidance for the Child.

B. Subject to Subsection E below, when a Parent having physical Custody and providing support to a Child becomes deceased or when the Custody is judicially removed from such Parent, the Court may only deny the noncustodial Parent Custody of the Child or Guardianship of the Child if:

1. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the determination of Custody or Guardianship action, the noncustodial Parent has willfully failed, refused, or Neglected to contribute to the Child's support:
  - a. in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or
  - b. according to such Parent's financial ability to contribute to the Child's support if no provision for support is provided in a decree of divorce or an order of modification subsequent thereto, and
2. the denial of Custody or Guardianship is in the best interest of the Child;
3. the noncustodial Parent has abandoned the Child;
4. the parental rights of the noncustodial Parent have been terminated;
5. the noncustodial Parent has been convicted of any crime regarding Child Abuse or any crime against public decency and morality in any jurisdiction;
6. the Child has been adjudicated deprived in any jurisdiction as a result of the actions of the noncustodial Parent and such Parent has not successfully completed any required service or treatment plan required by a court of competent jurisdiction; or
7. the Court finds it would be detrimental to the health or safety of the Child for the noncustodial Parent to have Custody or be appointed Guardian.

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C. The Court may consider the preference of the Child in awarding Custody of the Child if the Child is of sufficient age to form an intelligent preference.

D. In every case involving the Custody of, Guardianship of or visitation with a Child, the Court shall consider evidence of ongoing domestic Abuse which is properly brought before it. If the occurrence of ongoing domestic Abuse is established by clear and convincing evidence, there shall be a rebuttable presumption that it is not in the best interests of the Child to have Custody, Guardianship or unsupervised visitation granted to the abusive Person.

E. In every case involving the Custody of, Guardianship of or visitation with a Child, the Court shall determine whether any individual seeking Custody of, Guardianship of or visitation with a Child:

1. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or

2. is residing with a Person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.

F. There shall be a rebuttable presumption that it is not in the best interests of the Child to have Custody, Guardianship or unsupervised visitation granted to any individual who:

1. is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction; or

2. is residing with a Person who is or has been subject to the registration requirements of a sex offenders act or any similar act in any jurisdiction.

### **SECTION 6-501.30**

### **MINOR AT 14 YEARS OF AGE MAY NOMINATE GUARDIAN SUBJECT TO APPROVAL OF COURT.**

When a Guardian has been appointed by the Court for a Minor under the age of fourteen (14) years, the Minor, at any time after he has attained age fourteen (14), may nominate his own Guardian, subject to the approval of the Court.

### **SECTION 6-501.31**

### **APPOINTMENT OF GUARDIAN WHEN MINOR HAS ATTAINED 14 YEARS OF AGE.**

If a Guardian nominated by a Minor who has attained the age of fourteen (14) years is not approved by the Court or if, after being notified by the Court, the Minor neglects for ten (10)



days to nominate a suitable Person, the Court may name and appoint a Guardian in the same manner as if the Minor was under the age of fourteen (14) years.

**SECTION 6-501.32**                      **APPOINTMENT OF PARENTS AS GUARDIANS.**

A Minor's Parent who is competent to transact his or her own business and not otherwise unsuitable or disqualified by law to serve as the Guardian of said Minor, shall be entitled to the Guardianship of the Minor until the Minor has attained the age of fourteen (14) years. The Parent petitioning the Court for appointment as Guardian of the Minor must have the endorsement or nomination of the other Parent, if the natural Parents of the Minor are married and living together. In cases where both Parents are separately seeking appointment as Guardian of the Minor, the Court may, upon full investigation, appoint the Parent who in the judgment of the Court is the most competent to look after the interest of said Minor.

**SECTION 6-501.33**                      **APPOINTED GUARDIAN IN CHARGE OF EDUCATION.**

If the Minor has no father or mother living who is competent to have charge of the education of the Minor, the Guardian appointed by the Court shall have the same.

**SECTION 6-501.34**                      **EXPENSES OF EDUCATION AND MAINTENANCE OF MINOR MAY BE DEFRAIDED OUT OF MINOR'S PROPERTY.**

A. If any Minor, having a Parent or Parents living, has Property, the income of which is sufficient for his maintenance and education in a manner more expensive than such Parent or Parents can reasonably afford, regard being had to all of the circumstances of the case, the expenses of the education and maintenance of such Minor may be defrayed out of the income of the Property of the Minor in whole or in part, as judged reasonable and as directed by the Court. The charges therefore may be allowed accordingly in the settlement of the accounts of the Guardian of the Minor.

B. Any order appointing a Guardian of the Minor who has a Parent living or other Person legally responsible for the support of the Child shall:

1. provide for the payment of Child support by the Parent or other responsible Party pursuant to the Chickasaw Nation Child support guidelines, and
2. contain an income assignment provision.

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3. The provisions of this Subsection B shall not apply to Parents whose rights and responsibilities have been terminated to the Child unless the termination order requires payment of Child support.

4. Any Guardianship or Conservatorship for a Minor created on or after the date of passage of this Act shall comply with the provisions of this Subsection B. Guardianships or Conservatorships for a Minor in existence prior to the date of passage of this Act shall comply with the provisions of this Subsection B only as ordered by the Court.

**SECTION 6-501.35**                    **APPOINTMENT CONDITIONS.**

A. When any Person is appointed Guardian of a Minor, the Court may include in the order of appointment conditions providing for the care, treatment, education and welfare of the Minor.

B. The performance of such conditions shall be a part of the duties of the Guardian, for the faithful performance of which he and the sureties on his bond are responsible.

**SECTION 6-501.36**                    **INVESTMENTS IN LIFE INSURANCE.**

A Guardian legally holding funds or assets belonging to or for the benefit of a Minor may with the approval of the Court or other court in which such Estate is pending, invest such funds or assets or any part thereof, in single premium life, single premium endowment, or single premium annuity contracts of legal reserve life insurance companies as are duly licensed and qualified to transact business.

**SECTION 6-501.37**                    **CONTRACTS.**

Such contracts may be issued on the life of a Ward or beneficiary of a trust fund, and shall be so drawn by the insuring company so that the proceeds, or avails thereof shall be the sole Property of the Person whose funds are invested.

**SECTION 6-501.38**                    **GUARDIAN; AGENT OF COMPANY; COMMISSIONS.**

Such contracts may not be purchased from any company for which the Guardian is acting as agent, or receives any commission, or part of any commission, directly or indirectly paid by such company to its agent soliciting or selling such contract.

**SECTION 6-501.39**                    **WHEN POWER OF GUARDIAN APPOINTED FOR MINOR CEASES.**

The power of a Guardian appointed for a Minor ceases upon:

1.     the removal of the Guardian;
2.     the solemnized marriage of the Ward; or
3.     the Ward's attaining majority.

**SECTION 6-501.40**                    **MINOR WARD AT MAJORITY; RELEASE OF.**

After a Minor Ward has come to his majority, such Ward may settle accounts with his Guardian and give him a release, which is valid, subject to approval of the Court, if obtained fairly and without undue influence.

**SECTION 6-501.41**                    **DISCHARGE OF GUARDIAN BY COURT.**

A Guardian of a Minor appointed by a court is not entitled to his discharge until one (1) year after the majority of the Ward unless the Court determines that the Minor has earlier validly released said Guardian after a final accounting.

**SECTION 6-501.42**                    **ESTATE OF MINORS NOT EXCEEDING \$10,000; ESTATE OF MINORS EXCEEDING \$10,000; DISPOSITION.**

A.     When the whole Estate of a Minor does not exceed the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize and direct:

1.     the delivery of the Property or any portion thereof to one or more custodians designated by the Court; or
2.     the payment or delivery of the Property or any portion thereof to the Parent of the Minor, or to the Person having the care or Custody of the Minor, or to the Minor. The Person receiving the Property shall pay necessary expenses of the Minor and hold, manage, and dispose of the Property in the manner directed by the Court.

B.     When the whole Estate of a Minor exceeds the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize and direct:

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1. the delivery of Property having a value of up to ten thousand dollars (\$10,000) to one or more custodians designated by the Court; or
2. the payment or delivery of up to ten thousand dollars (\$10,000) of the Property or any portion thereof to the Parent of the Minor, or to the Person having the care or Custody of the Minor, or to the Minor. The Person receiving the Property shall pay necessary expenses of the Minor and hold, manage, and dispose of the Property in the manner directed by the Court.

C. The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the individual or custodian designated by the Court pursuant to this Section is discharged and released to the same extent as if payment, delivery, transfer, or issuance was made to a Guardian of the Minor, and the Person is not required to see to the application thereof. A Person making payment, delivery, transfer, or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for by this Act.

### **SECTION 6-501.43                      APPOINTMENT OF GUARDIAN PETITION.**

- A. Any Person interested in the welfare of a Person believed to be an Incapacitated Person or Partially Incapacitated Person may file a petition alleging that such Person is an Incapacitated or Partially Incapacitated Person, and request the appointment of a Guardian.
- B. The petition shall be verified and shall specify:
1. the names and addresses of Persons entitled to notice and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner;
  2. the nature and degree of the alleged incapacity;
  3. the relief requested and the facts and reasons supporting the need for such relief including, where applicable, a description of any acts or behavior of the Subject of the Proceeding which gave rise to the allegations; and
  4. The estimated value of all Intangible Personal Property of the Ward.
- C. A copy of the results of any physical, psychological or other appropriate professional Evaluation of the condition of the Subject of the Proceeding which has been completed within sixty (60) days prior to the filing of the petition, may be attached to the petition at the time it is filed.

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D. A Guardianship Plan or plans substantially in the form required by Section 6-308.61 or Section 6-308.63 of this Act or both, as appropriate, may be attached to the petition at the time it is filed or may be submitted to the Court at the time of the hearing.

**SECTION 6-501.44**                      **NOMINATION OF GUARDIAN BY PERSON 18 YEARS OF AGE; PRIORITIES OF NOMINATIONS.**

A. Every Person eighteen (18) years of age or older who is of sound mind and not acting under duress, menace, fraud or undue influence, may nominate a Guardian of his Person and Property, or of either, as provided by this Section. Such nomination shall, in the event of the incapacity or partial incapacity of said Person be proved in the same manner as any other writing. The nomination shall be binding on any Court having jurisdiction of said Guardianship subject to the disqualification of the nominee by the Court.

B. Such nomination shall be in writing and shall be signed by the Person making such nomination. The nomination shall be substantially in the following form:

“Nomination of Guardian by an Adult

I, \_\_\_\_\_, being of sound mind and not acting under any duress, menace, fraud, or other undue influence do hereby nominate \_\_\_\_\_  
(Name, current residence, and relationship, if any, of the nominee) to serve as the Guardian of my (Person, Property, both) in the event that after the date of this instrument I become incapacitated.

Executed at \_\_\_\_\_, \_\_\_\_\_ (city, state) on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Signature”

C. In such nomination, the Person making it may nominate an alternate Guardian or Guardians to act in the event a previously named nominee is unable or unwilling to act as Guardian.

D. If the same Person has executed more than one nomination of a Guardian:

1. The most recent nomination shall control; or

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2. If two (2) or more nominations bear the same most recent date the Court may appoint one of the nominees or may appoint more than one of the nominees as coguardians upon determining the nominator to be an Incapacitated or Partially Incapacitated Person.

E. This Section shall not be construed as amending or in any manner affecting special powers of attorney, durable powers of attorney or express trusts.

**SECTION 6-501.45**                      **NOMINATION OF GUARDIAN OR LIMITED GUARDIAN BY WILL FOR INCAPACITATED PERSON.**

A Parent of an unmarried Incapacitated or Partially Incapacitated Person, the spouse of a married Incapacitated or Partially Incapacitated Person, or an Adult Child of such Person who is serving as Guardian or Limited Guardian may nominate by will, or by other writing executed by the nominating Parent or Parents, spouse, or Adult Child, an individual to serve as Guardian or Limited Guardian upon the death or incapacity of the nominator. Such nomination shall be executed by the nominator in the same manner as provided for herein.

**SECTION 6-501.46**                      **PRIORITIES FOR SELECTION OF GUARDIAN OR LIMITED GUARDIAN; APPOINTMENT OF ORGANIZATION; INQUIRY AS TO SUITABILITY OF GUARDIAN; APPOINTMENT OF PUBLIC AGENCY.**

A. The following priorities shall guide the selection by the Court of a Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person from among those eligible:

1. the individual or individuals nominated by the Subject of the Proceeding;
2. the current Guardian or Limited Guardian appointed or recognized by the appropriate court of any other jurisdiction in which the Incapacitated or Partially Incapacitated Person resides;
3. an individual nominated by the will or by other writing of a deceased Parent, spouse, or an Adult Child who was serving as the Guardian or Limited Guardian of the Subject of the Proceeding;
4. the spouse of the Subject of the Proceeding;
5. an Adult Child of the Subject of the Proceeding;

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6. a Parent of the Subject of the Proceeding;

7. a sibling of the Subject of the Proceeding; or

8. any individual approved by the Court with whom the Subject of the Proceeding has been living for more than six (6) months prior to the filing of the petition. Provided that any owner, operator, administrator or employee of a facility shall not be appointed Guardian or Limited Guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity and is otherwise eligible for appointment.

B. When the Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person is the Guardian of Property only, the Court may appoint an Organization which is eligible to manage the financial resources of an individual and has fiduciary powers, or its successor in interest, when:

1. such Organization is nominated by the Subject of the Proceeding; or

2. such Organization is nominated by a Person eligible to make such nomination; or

3. the appointment of such Organization is in the best interest of the Subject of the Proceeding.

C. The Court shall make reasonable inquiry to determine whether the Person or Organization proposed to serve as the Guardian or Limited Guardian of an Incapacitated or Partially Incapacitated Person is suitable and will exercise the powers and carry out the duties and responsibilities of Guardian or Limited Guardian in the best interest of the Ward. The Court shall also inquire of the proposed Guardian of the Person of the Ward as to how the Guardian proposes to provide for the care of the Ward, and of the proposed Guardian of the Estate of the Ward as to how the Guardian proposes to manage the Property of the Ward and to provide for the Ward's financial care. The Court shall make such orders with respect thereto as the Court deems to be for the best interest of the Ward.

D. A public agency shall not be appointed to serve as Guardian for an Adult except as provided herein or by any other law of the Chickasaw Nation..

**SECTION 6-501.47**                      **NOMINEE UNABLE OR UNWILLING TO SERVE.**

In the event the Person nominated is unable, unwilling, or cannot qualify to so serve, the

Court shall make a finding of such fact and shall proceed to the appointment of a Guardian as if such nomination had not been made, taking into account any alternative Guardian named in the nomination.

**SECTION 6-501.48**

**RIGHTS OF INCAPACITATED OR PARTIALLY  
INCAPACITATED PERSON; CONFIDENTIALITY;  
RELIEF FROM COSTS AND FEES; RECORD.**

A. In all hearings conducted pursuant to this Act, an individual who is alleged to be or found to be an Incapacitated or Partially Incapacitated Person shall have a right to:

1. notice;
2. be present at such hearings;
3. compel the attendance of witnesses;
4. present evidence;
5. cross-examine witnesses;
6. appeal adverse orders and judgments as provided by the rules of civil procedure;
7. representation by court-appointed counsel upon request; and
8. request that the proceedings be closed to the public.

B. The requirement of notice to the Subject of the Proceeding shall not be waived. The requirement that the Subject of the Proceeding be present at a hearing may be waived only for good cause shown. The Court shall make inquiries to determine whether there is sufficient cause to waive the right to be present. Whenever the requirement that the Subject of the Proceeding be present is waived, the Court shall make a finding on the record as to the reason the Subject of the Proceeding is not present at the proceeding and the alternatives which were considered to enable the Subject of the Proceeding to be present.

C. Any Person may apply for permission to participate in a proceeding or to be admitted to a proceeding which has been closed to the public. The Court may grant the request to participate upon determining that the best interest of the Subject of the Proceeding will be served thereby. The Court may, for good cause shown, grant the request of such Person for permission to be admitted to the closed proceeding upon determining that said Person has a



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legitimate interest in the proceedings. In granting either request, the Court may impose any appropriate conditions it deems necessary.

D. If the Subject of the Proceeding is under the influence of psychotropic medication, during any judicial hearing held pursuant to this Act, the Court shall be advised of this fact, the purpose of the medication, and the effect which it may have on the individual's actions, demeanor and participation at the hearing.

E. Statements of individuals alleged or found to be partially Incapacitated or Incapacitated Persons made during the course of the Evaluations, examinations and treatment pursuant to this Act shall be privileged and confidential. Such statements shall not be admissible without the individual's consent in any civil or criminal proceeding other than a proceeding held pursuant to this Act.

F. A Party to a proceeding held pursuant to this Act may be relieved of court costs and filing fees.

G. At the request of any Party to a proceeding pursuant to the provisions of this Act, the Court shall order that a stenographic or mechanical record of the proceeding be made.

**SECTION 6-501.49                      VULNERABLE ADULTS.**

A. As used in this Section:

1. "Vulnerable Adult" means a Person, eighteen (18) years of age or older, who is a victim of Abuse, Neglect or Exploitation, or who is disabled; and

2. "Best interests" means a determination with regard to a Vulnerable Adult that is made from the perspective of the Vulnerable Adult, considering, but without giving primary importance to, the convenience of the Vulnerable Adult's relatives, caregivers or health care providers, and without regard for the perceived quality of life of the Vulnerable Adult or the Vulnerable Adult's perceived nearness to death.

B. The Court may appoint a Guardian *Ad Litem* upon the request of a Vulnerable Adult, the attorney of a Vulnerable Adult, the Court Advocate, a department of tribal government or the Court on its own motion or any other Party to the action.

C. A Guardian *Ad Litem* shall not be the Vulnerable Adult's attorney, an employee of the Court or an employee of any Chickasaw tribal agency having duties or responsibilities related to the Vulnerable Adult.

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D. The Guardian *Ad Litem* shall be appointed to advocate objectively on behalf of the Vulnerable Adult and act as an officer of the Court to investigate all matters concerning the Best Interests of the Vulnerable Adult. In addition to other duties required by the Court and as specified by the Court, a Guardian *Ad Litem* shall have the following responsibilities:

1. review documents, reports, records and other information relevant to the case, meet with and observe the Vulnerable Adult in appropriate settings, and interview relatives, health care providers, adult protective services workers and any other Persons with knowledge relevant to the case;
2. advocate for the Vulnerable Adult's best interests by participating in the case, attending any hearings in the matter and advocating for appropriate services for the Vulnerable Adult when necessary;
3. maintain the confidentiality of information related to the case;
4. monitor the Vulnerable Adult's best interests throughout any judicial proceeding; and
5. present written reports on the Vulnerable Adult's best interests that include conclusions and recommendations, and the facts upon which they are based.

E. The Guardian *Ad Litem* shall be given access to the court files and agency files and access to all documents, reports, records and other information relevant to the case and to any records and reports of examination of the Vulnerable Adult's relatives, Guardian or custodian, made pursuant to the laws relating to Adult Abuse and Neglect, including reports generated by service providers.

F. A court-appointed Guardian *Ad Litem* for Vulnerable Adults may be compensated.

G. Any Person participating in a judicial proceeding as a court-appointed Guardian *Ad Litem* for Vulnerable Adults shall be presumed *prima facie* to be acting in good faith and in so doing shall be immune from any civil liability that otherwise might be incurred or imposed.

### **SECTION 6-501.50**

### **APPOINTMENT OF ATTORNEY AND GUARDIAN AD LITEM; EXPLANATION AND INQUIRY BY COURT IF SUBJECT NOT REPRESENTED; RECORD.**

A. If at or prior to a hearing on a petition alleging a Person to be an Incapacitated or Partially Incapacitated Person, or if at any point in the course of a proceeding pursuant to said petition, the Subject of the Proceeding is not represented by counsel, the Court may appoint an

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attorney as provided in this Section, and the Court may at any time subsequent to the filing of said petition appoint a Guardian *Ad Litem* to assist the Court in making a determination as to whether or not an attorney should be appointed for the Subject of the Proceeding. If available, an attorney appointed by the Court may be a public defender.

B. If the Subject of the Proceeding is present at the hearing on the petition and is not represented by counsel at said hearing:

1. the Court shall explain on the record:
  - a. the purpose and potential consequences of the proceeding; and
  - b. the right to be represented by counsel upon request and that if the Subject of the Proceeding wishes to be represented by counsel, the Court will appoint an attorney to represent the Subject of the Proceeding at the hearing on the petition.
2. Following such explanation, the Court shall inquire of the Subject of the Proceeding whether he wishes to have an attorney appointed.
  - a. If the Subject of the Proceeding requests the appointment of an attorney, the Court shall appoint an attorney.
  - b. If the Subject of the Proceeding does not request the appointment of an attorney and the Court is in doubt as to whether the Subject of the Proceeding is capable of making an informed decision regarding the appointment of an attorney and the Court determines that it is in the best interest of the Subject of the Proceeding to be represented by counsel, the Court shall appoint an attorney for the subject of the proceeding, or if the Court determines that the appointment of counsel is not in the best interest of the Subject of the Proceeding, the Court shall not appoint an attorney.
  - c. If the Subject of the Proceeding does not request the appointment of an attorney and the Court determines that the Subject of the Proceeding is capable of making an informed decision regarding the appointment of an attorney, the Court shall not appoint an attorney.
3. The Court may make the explanation and inquiry required by this subsection, regarding the purpose and potential consequences of the proceeding and the appointment of an attorney, prior to the hearing on the petition. At the hearing on the petition the Court shall include on the record the facts related to said explanation and

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inquiry, the determinations made by the Court with respect thereto and the reasons for such determinations.

C. If the Subject of the Proceeding is not present at the hearing on a petition alleging him to be an Incapacitated or Partially Incapacitated Person and is not represented by counsel and the Court has not made the explanation and inquiry as provided by Paragraph B.3 above, the Court shall make sufficient inquiry to determine affirmatively whether it would be in the best interest of the Subject of the Proceeding to appoint counsel to represent the Subject of the Proceeding at the hearing on the petition.

1. If the Court determines that it is in the best interest of the Subject of the Proceeding to be represented by counsel, the Court shall appoint an attorney.

2. If the Court determines that the appointment of counsel is not in the best interest of the Subject of the Proceeding, the Court shall not appoint an attorney.

D. Whenever the Court determines that the appointment of counsel is not in the best interests of the Subject of the Proceeding, or if the Subject of the Proceeding does not request the appointment of an attorney and the Court determines that the Subject of the Proceeding is capable of making an informed decision regarding the appointment of counsel, the Court shall explain on the record the reason for such determination.

E. Court-appointed Attorneys:

1. If an attorney is appointed, the Court shall delay the hearing on the petition only for the period of time necessary for the attorney to prepare the case for the hearing but in no event less than five (5) days after such appointment.

2. The attorney appointed by the Court shall be replaced by another attorney if:

a. the Subject of the Proceeding prefers the services of an attorney other than the one initially appointed for him;

b. the preferred attorney agrees to accept the responsibility; and

c. the Subject of the Proceeding or the attorney whom he prefers notifies the Court of the preference and the attorney's acceptance of employment.

3. An attorney appointed pursuant to this Section shall contact the Subject of the Proceeding promptly after receiving notification of his appointment. An attorney

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appointed pursuant to the provisions of this Section shall be compensated pursuant to this Act.

F. Terms of Appointment:

1. Except as provided by Paragraph 2 below or as otherwise ordered by the Court, the responsibility of an attorney appointed hereunder ceases upon the appointment of a Guardian or Limited Guardian of the Subject of the Proceeding or when a determination not to appeal the decision is made. The Court may appoint an attorney to represent a Ward at any subsequent proceeding.

2. Whenever there is an appeal of a decision made subsequent to a hearing on a petition requesting the appointment of a Guardian or Limited Guardian, the responsibility of an attorney appointed pursuant to this Subsection continues with respect to the appeal until the conclusion of the appeal proceedings. Upon application of the attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceedings.

G. In all cases where independent counsel is retained by or on behalf of the Subject of the Proceeding, the Court shall make independent inquiry to determine whether counsel is independent and whether any conflict of interest exists which would preclude proper representation of the Subject of the Proceeding or which would be detrimental to the best interest of the Subject of the Proceeding. The Court shall appoint other counsel where retained counsel is found not to be independent.

H. Proceedings brought pursuant to the provisions of this Section shall be made a part of the record in the Guardianship Proceeding.

**SECTION 6-501.51**                      **EVALUATIONS OF SUBJECT OF PROCEEDING IN CONNECTION WITH PROCEEDING.**

A. After the filing of the petition, the Court may, on its own motion or at the request of any Party to the proceeding, if the Court determines it to be for the best interest of the Ward, order an Evaluation of the Subject of the Proceeding in connection with any proceeding pursuant to the provisions of this Act where the capacity of said Person is a material issue.

B. Any Evaluations made pursuant to this Act, as appropriate for the condition or alleged condition of the Person being evaluated, shall be performed by:

1. a physician;

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2. a psychologist;
3. a social worker with a graduate degree in social work and field training or experience in working with Incapacitated or Partially Incapacitated Persons; or
4. other expert with knowledge of the particular incapacity or disability which the individual is alleged or has been found to have, or knowledge of the skills required to meet the essential requirements for the individual's physical health or safety or to manage that individual's financial resources.

C. An Evaluation report prepared and signed by the Person or Persons performing the Evaluation shall be submitted to the Court prior to the hearing at which the Court shall consider the report. The report shall include, but not be limited to:

1. a description of the nature and extent of the incapacity of the Person, if any;
2. a description of the mental, emotional and physical condition of the Person, his ability to function in the ordinary activities of daily life and, if appropriate, the educational condition, adaptive behavior and social skills of the Person;
3. an opinion regarding the kind and extent of assistance, if any, required by the Person;
4. an assessment and review of any services necessary to provide for the well-being of the Person in the following areas:
  - a. physical health;
  - b. mental health;
  - c. social skills; and
  - d. adequate and appropriate living conditions;
5. an opinion regarding:
  - a. the probability that the extent of the incapacity, if any, of the Person may significantly lessen or increase; and

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- b. the type of services or treatment, if any, appropriate for the Subject of the Proceeding or which could facilitate improvement in the condition of the Subject of the Proceeding; and
- 6. a description of any tests or other evaluative techniques used.

**SECTION 6-501.52**

**PETITIONS FOR GUARDIANS OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSONS; NOTICE.**

When it is represented to the Court in a petition filed pursuant to this Act alleging that a Person is an Incapacitated Person or Partially Incapacitated Person, the Court shall set a date for a hearing on the petition which date shall be no more than thirty (30) days after the filing of the petition. The Court shall cause notice to be served and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner.

**SECTION 6-501.53**

**NOTICE OF HEARING ON PETITION REQUESTING APPOINTMENT OF GUARDIAN FOR INCAPACITATED OR PARTIALLY INCAPACITATED PERSON.**

A. The Court shall cause notice to be served of the time and place of the hearing on the petition requesting the appointment of a Guardian for an Incapacitated or Partially Incapacitated Person on:

- 1. the Subject of the Proceeding; and
- 2. the following Persons, other than the petitioner, who are known to the petitioner or whose existence and address can be ascertained by the petitioner with reasonably diligent efforts:
  - a. the spouse, if any, of the Subject of the Proceeding;
  - b. the attorney, if any, of the Subject of the Proceeding;
  - c. all Adult Children of the Subject of the Proceeding;
  - d. if there is no such Adult Child, the then living Parent or Parents of the Subject of the Proceeding; or
  - e. if there is no such Parent, all Adult Brothers and Sisters of the Subject of the Proceeding and all Adult grandchildren of the Subject of the Proceeding;

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3. in case no Person listed in Paragraph 2 above is given notice, notice shall be given to at least one (1) and not more than three (3) of the nearest Adult relatives of the Subject of the Proceeding who are known to the petitioner or whose existence and address can be ascertained with reasonably diligent efforts;

4. if not the petitioner, any Person or Organization which, in the petition, is proposed to serve as Guardian or Limited Guardian or, to the extent such nomination is known to the petitioner, who is nominated by will or other writing to serve as Guardian or Limited Guardian;

5. to the extent known to the petitioner:

a. the Person or facility having care or Custody of the Subject of the Proceeding; and

b. any department of tribal government which is providing services to the Subject of the Proceeding;

6. as appropriate, the Veterans Administration or any other federal agency;  
and

7. any other Person as directed by the Court.

B. A copy of the pleading which gave rise to the notice shall be attached to any notice served pursuant to this Section.

C. Except for actions appointing a Special Guardian pursuant to this Act:

1. Notice shall be served personally on the individual who is the Subject of the Proceeding at least ten (10) days before the time set for hearing. Such Personal service may be made by the attorney for the petitioner, Bureau of Indian Affairs police, or approved process server. The Person making such services shall make proper return thereof.

2. Notice to other Persons entitled to notice of a hearing on the original petition requesting the appointment of a Guardian shall be mailed by regular first-class mail at least ten (10) days before the time set for the hearing. Such service by mail may be made by the Court Clerk, deputy Court Clerk or attorney for the petitioner.

D. The notice to the Subject of the Proceeding shall set forth the date, time, place, and purpose of the hearing to which the notice refers. Such notice shall be substantially in the



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following form:

“NOTICE OF HEARING TO: \_\_\_\_\_

Service Address \_\_\_\_\_ . You are hereby notified that a petition has been filed alleging that you are an \_\_ Incapacitated, \_\_ Partially Incapacitated Person and are incapable of \_\_ caring for yourself, \_\_ managing your Property. The petition requests that a \_\_\_ Guardian, \_\_ Limited Guardian be appointed by the Court to make decisions for you regarding \_\_ yourself, \_\_ your Property. A copy of the petition is attached. The hearing on the petition will be held on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ (PM) (AM). At the hearing, a ( ) Guardian, ( ) Limited Guardian may be appointed for your ( ) Person, ( ) Property. The Judge will explain to you the nature, purpose and effect of the proceedings. You have the right to attend the hearing. You may confront and cross-examine all witnesses and present your own witnesses. You have the right to request that your hearing be closed to the public. You may request that an expert be appointed to examine you and if the Judge believes that an examination is necessary, the Judge will order an Evaluation to be done. You have the right to hire an attorney of your choice to represent you. If you do not have an attorney and you wish to be represented by an attorney at the hearing, the Court will appoint one for you. You may request the appointment of an attorney orally or in writing prior to the hearing or at the hearing. If you are able, you will be required to pay the cost of an attorney appointed by the Court.”

**SECTION 6-501.54                      GUARDIAN APPOINTED; WHEN.**

A.        At the hearing on the petition the Court shall determine whether or not it is necessary to appoint a Guardian of the Person, Property or both. If a Guardian is needed, the Court shall determine:

1.        when a General or Limited Guardian of the Person of the Subject of the Proceeding is requested, the essential requirements for the health and safety of the Subject of the Proceeding and the skills and knowledge necessary to meet those requirements;
2.        when a General or Limited Guardian of the Property of the Subject of the Proceeding is requested, the type and amount of the financial resources of the Subject of the Proceeding, the essential requirements for managing the financial resources, and the skills and knowledge necessary to manage the financial resources;
3.        the nature and extent of the incapacity of the Subject of the Proceeding, if any; and
4.        whether by clear and convincing evidence the Subject of the Proceeding is an Incapacitated or Partially Incapacitated Person.

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B. If after a full hearing and examination upon such petition, the Court finds by clear and convincing evidence that the Subject of the Proceeding is an Incapacitated or Partially Incapacitated Person:

1. if the Court finds the Subject of the Proceeding to be an Incapacitated Person, the Court shall appoint:

a. a General Guardian of the Person; and

b. as the Court determines to be necessary and appropriate, a Guardian of the Property of the Ward;

2. if the Court finds the Subject of the Proceeding to be a Partially Incapacitated Person the Court shall appoint, as necessary and appropriate for said Person:

a. a Limited Guardian of the Person; or

b. a General or a Limited Guardian of the Property of said Person; or

c. a Limited Guardian of the Person and a General or Limited Guardian of the Property of said Person.

C. The Court may appoint the same or separate Persons to serve as Guardian or Limited Guardian of the Person and Guardian or Limited Guardian of the Property of a Ward.

**SECTION 6-501.55**

**CONTENTS OF ORDER APPOINTING GUARDIAN;  
SPECIFIC DETERMINATIONS REGARDING CAPACITY;  
GUARDIANSHIP PLAN.**

A. The order appointing a Guardian, based upon evidence adduced, shall set forth:

1. the determinations made by the Court at the hearing;

2. the name and address of the individual, if any, appointed to serve as the Limited Guardian or Guardian;

3. the specific limitations imposed upon the Ward, if the Ward is a Partially Incapacitated Person;

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4. any authority granted a Guardian of the Person of the Ward to change the place of abode of the Ward outside of the territorial jurisdiction of the Chickasaw Nation without the prior permission of the Court; and

5. Whenever the Court determines a review hearing is necessary or desirable, the date of the review hearing.

B. In establishing the specific limitations on the legal activities of a Ward for whom a Limited Guardian of the Person is appointed, the Court shall make specific determinations regarding the capacity of the Subject of the Proceeding, including but not limited to determining whether the Ward retains sufficient capacity:

1. to vote;

2. to serve as a juror;

3. to operate a motor vehicle;

4. to be licensed or continue to practice any profession of the Ward; and

5. to make Personal medical decisions including but not limited to decisions to withhold or withdraw life-sustaining procedures, to donate organs, to undergo elective surgery, or to consent to routine or necessary medical or other professional care, treatment or advice.

C. In establishing the specific limitations on the legal abilities of a Ward for whom a Limited Guardian of the Property is appointed, the Court shall make specific determinations regarding the capacity of the Subject of the Proceeding, including but not limited to determining whether the Ward retains sufficient capacity to:

1. appoint an agent to act on his behalf;

2. enter into contracts;

3. grant conveyances; or

4. make gifts of Property.

D. If not submitted with the petition or at the hearing, the Guardian or Limited Guardian shall submit a Guardianship Plan as required by this Act, or both, as appropriate and a copy of said plan shall be mailed to those Persons entitled to notice pursuant to this Act. The

Guardianship Plan as approved by the Court shall be made a part of the order of the Court. Said plan may be modified as provided by this Act.

E. The Court may, in its discretion, make such further orders as the Court deems necessary for the best interest of the Ward for care of the Ward and maintenance or management of the Ward's Property, including but not limited to:

1. order the Guardian of the Property of the Ward to provide the Ward from such Property with specified amounts of money, monthly, or from time to time, which the Ward may dispose of as the Ward shall determine and for which, other than a showing of the amounts paid to the Ward, the Guardian will not be required to account. Such order may be modified upon application of the Guardian or any interested Person, and a hearing conducted thereon, with notice of the hearing on such application to be given to those Persons entitled to notice pursuant to this Act; and

2. the amount of the bond as required by this Act.

**SECTION 6-501.56**

**ASSIGNMENT OF POWERS AND DUTIES TO LIMITED  
GUARDIAN; CREATION OF LIMITED GUARDIANSHIP;  
LIMITATION OR SPECIFICATION OF ASSETS.**

A. The Court may assign to a Limited Guardian of the Person any portion of the powers and duties of a General Guardian of the Person except the power to take Custody of the person of the Ward. The Court may also assign to the Limited Guardian the duty to assist the Ward in those particular areas in which the capacity of the Ward is impaired including, but not limited to, the duty to assist the Ward in:

1. meeting the requirements for his health or safety;
2. protecting his rights;
3. obtaining necessary services;
4. fulfilling his civic duties; and
5. any other areas as determined necessary by the Court and which are not specifically prohibited by this Act.

B. An order specifying that only part of the Property or Estate of a Ward is under the control or management of the Guardian creates a Limited Guardianship of the Property.

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1. The Court may assign to a Limited Guardian of Property any of the duties and powers of a General Guardian of the Property regarding the management of financial resources which the Partially Incapacitated Person lacks the capacity to perform; or

2. the Court may assign to a Limited Guardian of Property the duty of assisting the Ward to perform any of such functions with regard to any financial resource of the Ward.

C. If the Court limits any power conferred on the Guardian of Property or specifies that management of some but not all assets of the Ward be placed under the control of a Guardian of the Property, the limitation or specification of assets subject to the Guardianship must be endorsed upon the Letters of Guardianship.

**SECTION 6-501.57**

**APPOINTMENT OF SPECIAL GUARDIAN IN CERTAIN INSTANCES; NOTICE; POWERS; DURATION; BOND; REMOVAL.**

A. The Court may appoint a Special Guardian for a Person who appears to be or has been found to be an Incapacitated or Partially Incapacitated Person when it appears:

1. there is imminent danger that the health or safety of said Person will be seriously impaired or that the financial resources of said Person will be seriously damaged or dissipated unless immediate action is taken; and

2. no other Person appears to have authority to act in the circumstances or the Guardian previously appointed is unable to or refuses to take action.

B. The request for appointment of a Special Guardian may be included in the petition to appoint a Guardian or by separate petition, either of which must be verified.

C. The Court may appoint an attorney, separate and apart from the petitioner's attorney, for the Subject of the Proceeding who does not have legal representation and either cannot afford a private attorney or cannot retain counsel due to incapacity and may proceed to hear the petition as same pertains to appointment of a Special Guardian with or without notice. If notice is required, the notice shall set a time for hearing on the petition within seventy-two (72) hours. Notice shall be Personally served in the manner as the Court directs on the Subject of the Proceeding and on the following other Persons:

1. the Subject of the Proceeding;

2. the attorney of the Subject of the Proceeding, if any;

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3. the spouse of the Subject of the Proceeding, if any, and if the spouse is not the petitioner; and

4. at least one other Adult relative of the Subject of the Proceeding or any other Person who is not the petitioner, as directed by the Court.

D. The Court may without notice appoint a Special Guardian upon the filing of the petition, upon presentation of evidence of the incapacity of the Subject of the Proceeding, upon a showing that an immediate or reasonably foreseeable serious physical harm to the Subject of the Proceeding or serious impairment of the financial resources of said Person will result from a delay, and upon presentation of a proposed emergency plan of care for the Subject of the Proceeding. Whenever a Special Guardian is immediately appointed as provided by this subsection, the Court shall cause a copy of the petition, to be served on the following Persons in the manner the Court directs:

1. the Subject of the Proceeding;

2. the spouse of the Subject of the Proceeding, if any, if the spouse is not the petitioner; and

3. at least one other Adult relative of the Subject of the Proceeding, if such relative is known or can be ascertained with reasonable diligence, or by any other Person who is not the petitioner, as directed by the Court.

E. The Court shall grant the Special Guardian only those powers necessary to act with respect to the particular emergency, as determined by the Court. The Special Guardian shall be granted only powers to accomplish acts that are both supported by the proposed emergency plan of care and found necessary by the Court. Power to change the place of residence of the Subject of the Proceeding shall be specifically granted by the Court upon a showing that the needs of the Subject of the Proceeding cannot be met within such subject's present residential arrangements. The Court's approval shall be required for any changes in either the emergency plan of care or the specified powers of the Special Guardian. The Letters for a Special Guardian shall state that the Person is a Special Guardian, the date of the expiration of the Special Guardianship, and the specific power or powers of the Special Guardian.

F. The appointment of a Special Guardian shall be effective from the date of appointment until a Guardian is appointed pursuant to this Act, or for thirty (30) days, whichever is less.

G. The Court shall not require bond if the appointment is over the Person only, and may require or waive bond if the appointment is as to the Property of the Ward.

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H. The authority of any Guardian or Limited Guardian previously appointed by the Court is suspended with regard to the powers granted to the Special Guardian, but not otherwise, for as long as a Special Guardian has authority as provided by this Section.

I. The Court may remove a Special Guardian at any time. The Special Guardian shall file a report showing all actions taken during the Special Guardianship and shall make any other report the Court requires.

**SECTION 6-501.58**                      **PROCEEDINGS TO DETERMINE RESTORATION TO CAPACITY.**

A. Any Person who has been judicially determined to be an Incapacitated or Partially Incapacitated Person, the Guardian or Limited Guardian, any relative of the Ward or any friend of the Ward may apply by petition to the Court to have the fact of the Ward's restoration to capacity judicially determined. The petition shall be verified, and shall state that such Person is no longer Incapacitated or partially Incapacitated.

B. Upon receiving the petition, the Court shall appoint a day for the hearing. Such hearing shall be set within thirty (30) days after the date of the filing of the petition. The Court shall cause notice to be served and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner. At the hearing, the Guardian or relative of the petitioner, and in the discretion of the Court, any other Person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in all other civil matters, and may be called and examined by the judge on his own motion. If it is found that the petitioner is no longer Incapacitated or partially Incapacitated and capable of taking care of himself or his Property, or both, his restoration to capacity shall be adjudged, and the Guardianship of such Person shall cease.

**SECTION 6-501.59**                      **GUARDIAN OF INCOMPETENT; DISCHARGE; PRESUMED COMPETENT.**

Whenever a Guardian or Limited Guardian who has been appointed for an Incapacitated or Partially Incapacitated Person has been discharged by the final order of a court having jurisdiction thereof, and no other Guardian has been appointed for said Person by a court of competent jurisdiction, the Person for whom said Guardian had been appointed shall be presumed to be fully restored and shall be presumed to be fully capable and competent to make contracts and transact any and all business as though said Person had never been declared to be Incapacitated or partially Incapacitated.

**SECTION 6-501.60**

**DUTIES AND POWERS OF GUARDIAN OR LIMITED  
GUARDIAN; DILIGENT AND GOOD FAITH  
PERFORMANCE OF DUTIES AND POWERS;  
TERMINATION OF GUARDIANSHIP.**

A. A Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person is responsible for the care or control of the Ward pursuant to the provisions of this Act, and the orders of the Court, and the Guardianship Plan approved by the Court and shall perform diligently and in good faith any specific duties and powers assigned by the Court.

B. Minimum Requirements:

1. A Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall:

a. become or remain sufficiently acquainted with the Ward and maintain sufficient contact with the Ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the Ward;

b. assure that the Ward has a place of abode in the least restrictive, most normal setting consistent with the requirements for his health or safety; and

c. provide any required consents or approvals on behalf of the Ward as authorized by the Court.

2. A Guardian or Limited Guardian of the Person, if consistent with the terms of an order of the Court, may:

a. if no Guardian of the Property or Conservator for the Estate of the Ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any Person of a duty to support the Ward or to pay sums for the welfare of the Ward; and

b. consent to routine or necessary medical or other professional care, treatment, or advice for the Ward without liability by reason of the consent for injury to the Ward resulting from the negligence or acts of third Persons unless a Parent would have been liable in the circumstances.

C. If satisfied that the incapacity or partial incapacity of the Ward has ceased, the Guardian or Limited Guardian shall file a petition requesting a determination on the restoration



to capacity of the Ward and the termination of the Guardianship.

**SECTION 6-501.61**

**PROPOSED GUARDIANSHIP PLAN FOR CARE AND TREATMENT OF WARD.**

A. If not filed with the petition or submitted to the Court at the time of the hearing, within ten (10) days after his appointment the Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall file with the Court, for its approval, a proposed plan for the care and treatment of the Ward and shall submit subsequent or modified plans as required by this Act. Upon the application of the Guardian or Limited Guardian, the Court may extend the time for filing the plan for not more than thirty (30) days. The Court may approve a plan acceptable to the Court without notice or hearing or may, as necessary, order the modification of the plan at the initial review hearing.

B. Proposed Guardianship Plans:

1. The proposed Guardianship Plan and any subsequent Guardianship Plans for the care and treatment of the Ward shall state:

- a. the services which are necessary to meet the essential requirements for the physical health or safety of the Ward taking into account the contents and recommendations of an Evaluation report made with respect to the Ward, if any;
- b. the means for obtaining those services;
- c. the manner in which the Guardian or Limited Guardian, the Ward, and the Guardian of the Property of the Ward or the Conservator, or if an Organization or another Person has been appointed to serve in that capacity, will exercise and share decision-making authority; and
- d. such other services necessary to assist in fulfilling the needs of the Ward, the terms of the most recent dispositional order applying to such Guardian or Limited Guardian, and the duties of such Guardian or Limited Guardian.

2. Each such plan shall be substantially in the following form:

**“Plan for the Care and Treatment of a Ward**

I, \_\_\_\_\_, the (Guardian, Limited Guardian) for

\_\_\_\_\_  
\_\_\_\_\_ (Name and address of the Ward)

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hereby submit this (initial, annual or as ordered by the Court) Guardianship Plan for the care and treatment of said Ward.

1. I believe the services necessary for the physical health and safety of the Ward are: \_\_\_\_\_  
\_\_\_\_\_.

2. Those services will be obtained or provided as follows: \_\_\_\_\_  
\_\_\_\_\_.

3. The Guardian (or Conservator) of the Property (Name or indicate as not applicable) of the Ward, the Ward, and I plan to cooperate and share decision-making authority with regard to the Ward within the provisions of the dispositional order as follows: \_\_\_\_\_  
\_\_\_\_\_.

4. I believe the following services will assist in fulfilling the needs of the Ward, implementing the terms of the most recent dispositional order applying to me as (Guardian or Limited Guardian):  
\_\_\_\_\_  
\_\_\_\_\_.

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)”

C. If ordered by the Court, the plan for the care and treatment of the Ward shall be prepared with the assistance of any Person designated by the Court to provide such assistance.

**SECTION 6-501.62**                      **DUTY TO KEEP PROPERTY OF WARD SAFE;**  
**FIDUCIARY DUTIES.**

A. A Guardian of the Property must keep safe the Property of his Ward and shall act as a fiduciary as provided by this Act. Subject to the order and the Guardianship Plan for the management of the financial resources of the Ward, a Guardian or Limited Guardian of the Property of the Ward:

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1. shall expend or distribute, authorize the expenditure or distribution of, and assist in the expenditure or distribution of, the principal of or income from the financial resources placed under his supervision and control to assure that:

a. the essential requirements for the physical health or safety of the Ward are met;

b. the Property rights of the Ward are protected;

c. the financial resources of the Ward which are subject to the Guardianship are prudently managed; and

d. the Guardian or Limited Guardian of the Person of the Ward, if any, or if other than the Guardian or Limited Guardian of the Property, is able to perform the duties and powers assigned by the Court;

2. may expend funds of the Estate for the support of Persons legally dependent on the Ward and others who are members of the Ward's household who are unable to support themselves, and who are in need of support; and

3. may, subject to prior specific approval by the Court, make gifts to charity, Persons, which may include the Guardian or Limited Guardian, or both such charity and Persons, as the Ward might have been expected to make, based upon an established pattern of giving made by the Ward prior to the appointment of a Guardian or Limited Guardian or if the Court finds it is in the best interest of the Subject of the Proceeding on the basis of tax or Estate planning. The Court may approve gifts of small amounts for holidays, birthdays or similar occasions and shall specify in the order the maximum amount which may be expended for such purpose and the Person or Persons to whom such gifts can be made, which may include Guardians or Limited Guardians.

B. Limited Guardians of Property shall consider the size of the financial resources of the Ward which have not been placed under their supervision or control.

C. If satisfied that the incapacity or partial incapacity of the Ward has ceased, the Guardian or Limited Guardian of the Property shall file a petition requesting a determination on the restoration to capacity of the Ward and the termination of the Guardianship.

**SECTION 6-501.63**

**PLANS FOR MANAGEMENT OF FINANCIAL  
RESOURCES OF WARD; FORM.**

A. If not filed with the petition or submitted to the Court at the time of the hearing,

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within two (2) months after his appointment, a Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person shall file with the Court for its approval a proposed plan for the management of the financial resources of the Ward that are under his management or administration, and an inventory as required pursuant to this Act. Said Guardian or Limited Guardian shall submit subsequent or modified plans as required by this Act.

B. Initial and subsequent Guardianship Plans for the management of the financial resources of the Ward shall state:

1. the services which are necessary to manage the Property of the Ward placed under the control of the Guardian or Limited Guardian;
2. the means for obtaining those services;
3. the manner in which the Guardian or Limited Guardian of the Property of the Ward, the Ward, and the Guardian or Limited Guardian of the Person, or if another individual has been appointed to serve in that capacity, will exercise and share decision-making authority;
4. such other services necessary to assist in the management of the Property placed under the Guardian or Limited Guardian in fulfilling the needs of the Ward and the duties of such Guardian or Limited Guardian, and the terms of the most recent dispositional order.

C. Each such plan shall be substantially in the following form:

**“Plan for the Management of the Property of the Ward**

I, \_\_\_\_\_, the (petitioner, Guardian or Limited Guardian) for \_\_\_\_\_ (Name and address) hereby submit this (initial, annual or as ordered by the Court) Guardianship Plan.

1. I believe the services necessary to manage the Property of the Ward which is subject to this Plan are as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. Those services will be provided in the following manner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

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3. The Guardian (or Limited Guardian) of the Person, (Name, or indicate as not applicable) the Ward, and I plan to cooperate and share decision-making authority with regard to the Ward within the provisions of the dispositional order as follows: \_\_\_\_\_

\_\_\_\_\_

4. I believe the following services will assist in the management of the Property of the Ward subject to my control, implementing the terms of the most recent dispositional order applying to me as (Guardian or Limited Guardian) of the Property: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)”

**SECTION 6-501.64**

**HOMESTEAD OF INCAPACITATED OR PARTIALLY  
INCAPACITATED PERSON; SALE OR LEASE BY  
GUARDIAN AUTHORIZED.**

Guardians of Incapacitated and Partially Incapacitated Persons are authorized and empowered subject to the dispositional order and the Guardianship Plan to sell and convey all or part of the homestead of the Incapacitated or Partially Incapacitated Person, and to lease all or part of the homestead of the Incapacitated or Partially Incapacitated Person for oil, gas, and other mineral exploration, development and production purposes and for agricultural purposes.

**SECTION 6-501.65**

**SALE OR LEASE PROCEDURE; JOINDER BY SPOUSE.**

When the Ward owns an interest in a tract of real Property in addition to a homestead interest, no conveyance, deed, contract or lease executed pursuant to the authority granted by this Act shall be valid, unless the sale or leasing be conducted in the manner provided by law for the sale or leasing of other lands of an Incapacitated or Partially Incapacitated Person, be approved by the court in which the Guardianship Proceeding is pending, and the spouse of the Ward be a Party to such conveyance, deed, contract or lease and join in the execution and acknowledgment thereof, but when the Ward owns no interest in a tract of real Property other than a homestead interest or possible homestead interest, a Guardian may execute a conveyance thereof on behalf of the Ward for the purpose of waiving such homestead interest or possible homestead interest, if so authorized by order of the court in which such proceeding is pending, made pursuant to

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application and notice sent by ordinary mail to the Persons set forth in this Act at least ten (10) days prior to the hearing of such application.

**SECTION 6-501.66**                      **APPLICABLE ONLY TO HOMESTEAD; CUMULATIVE.**

Sections 6-308.66 and 6-308.67 of this Act apply only to the homestead and are cumulative and in addition to any such procedures now provided or permissible under existing statutes.

**SECTION 6-501.67**                      **ESTATES OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSONS NOT EXCEEDING \$10,000.00; DISPOSITION.**

A.        When the whole Estate of an Adult who has been adjudicated to be Incapacitated or Partially Incapacitated does not exceed the value of ten thousand dollars (\$10,000), the Court may, in its discretion, without the appointment of a Guardian or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable Person designated by the Court, or, if the assets do not consist of money, authorize the delivery thereof to a suitable Person designated by the Court. The Person receiving such Property shall hold and dispose of the same in such manner as the Court directs.

B.        The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the Person designated by the Court under this Section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a Guardian of the Incapacitated or Partially Incapacitated Person, and he is not required to see to the application thereof. A Person making payment, delivery, transfer or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for in this Act.

**SECTION 6-501.68**                      **ESTABLISHMENT OF CONSERVATORSHIP BY REASON OF PHYSICAL DISABILITY; CONSENT; NOTICE; HEARING.**

When it is represented to the Court upon verified petition of any Person, any relative, or friend that:

1.        a Person is an inhabitant or resident of the territorial jurisdiction of the Chickasaw Nation or is not a resident of such jurisdiction of the Chickasaw Nation but has Property within such jurisdiction;

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2. that such Person is, by reason of physical disability only, unable to manage his Property; and

3. that such Person voluntarily consents to the establishment of a Conservatorship and the appointment of a Conservator, the Court must cause notice to be served Personally on the Person so alleged to be unable to manage his Property and on such other Persons and in such manner as the Court directs, of the time and place of hearing such petition, not less than five (5) days before the time so appointed, and such Person, if able to attend, must be produced before the Court at the hearing.

**SECTION 6-501.69**                      **APPOINTMENT OF CONSERVATOR AFTER FULL HEARING AND EXAMINATION - CONSENT.**

If, after a full hearing and examination upon such petition, it appears to the Court that the Person in question is, by reason of physical disability, unable to manage his Property and that such Person consents to the appointment of a Conservator, the Court shall appoint a Conservator of the Estate of such Person. A Conservator shall not be appointed if the Person in question does not consent to the appointment.

**SECTION 6-501.70**                      **INELIGIBILITY.**

No Person shall be appointed Conservator of an Estate who would be ineligible to act as Guardian of the Ward in such case.

**SECTION 6-501.71**                      **CONSERVATOR'S POWERS AND DUTIES; JURISDICTION.**

A Conservator shall have the same powers and duties, including the submission of plans and reports, as a Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person as required by this Act. All laws relative to the jurisdiction of the Court over the Estate of a Person under Guardianship as an Incapacitated or Partially Incapacitated Person, including the investment, management, sale or mortgage of his Property and the payment of his debts, shall be applicable to the Estate of a Person under Conservatorship.

**SECTION 6-501.72**                      **DISCHARGE AND ACCOUNTING.**

A Conservator may be discharged by the Court upon the application of the Ward or otherwise upon such notice to the Conservator and next of kin of said Ward as the Court may determine reasonable and proper, when it appears that the Conservatorship is no longer necessary. In the event of the death, resignation or removal of a Conservator, the Court, on the application of the former Ward and upon such notice to the next of kin of said Ward as the Court

may order, may certify that said Ward is discharged by operation of law if it appears that the Conservatorship of said Ward is no longer necessary. Upon the termination of a Conservatorship, a Conservator shall account to the Court as otherwise provided by this Act for Guardians of Property.

**SECTION 6-501.73**                    **COMPENSATION.**

The Conservator shall receive as compensation for his services the compensation provided by law for Guardians.

**SECTION 6-501.74**                    **SUBSEQUENT APPOINTMENT OF GUARDIAN OF SAID WARD.**

Any subsequent appointment of a Guardian of said Ward as an Incapacitated or Partially Incapacitated Person shall be an appointment as Guardian of the Person only of said Ward and shall not include the appointment of such Guardian of the Estate of said Ward or in any manner affect the Custody, management and the handling of the Estate of said Ward by the Conservator so long as such Conservatorship proceedings are pending.

**SECTION 6-501.75**                    **LIMITATION ON POWER TO CONTRACT.**

Upon the appointment of a Conservator, the Ward shall not thereafter have the power to enter into any contract creating an obligation against his Estate except for necessities.

**SECTION 6-501.76**                    **EFFECT ON PRIOR CONSERVATORSHIPS.**

All Conservatorships created prior to the effective date of this Act, with the consent of the Person for whose Property a Conservator was appointed, are hereby validated. Each such Conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the Conservatorship action or by other evidence.

**SECTION 6-501.77**                    **APPOINTMENT OF GUARDIAN OF MORE THAN FIVE WARDS PROHIBITED; EXCEPTIONS.**

No Person shall be appointed Guardian of any Minor or Incapacitated or Partially Incapacitated Person, who is, at the time of the hearing of the application for appointment, the Guardian of as many as five Persons, other than his own family or relatives. The provisions of this Section and Section 6-308.78 of this Act shall not apply to boards of control and superintendents of eleemosynary or charitable institutions, under the control and charge of the state, where under the law such boards of control and superintendents may be appointed as Guardians of the Estates, or of the Persons, of those Committed to their charge or safekeeping.



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The provisions of this Section shall not prohibit the appointment of officers or managers of fraternal or benevolent orders or homes and church orphanages as to inmates of such institutions.

**SECTION 6-501.78**                      **VIOLATIONS; PUNISHMENT.**

Any Person or official violating the provisions of Section 6-308.77 of this Act shall be guilty of a misdemeanor.

**SECTION 6-501.79**                      **DISQUALIFICATION BY FINANCIAL RELATIONS WITH JUDGE; REMOVAL OF INELIGIBLE GUARDIANS; LIABILITY FOR CONTINUING TO ACT; REMOVAL OF JUDGE.**

No natural Person shall be eligible to act as Guardian of an Estate under the jurisdiction of any Judge of the District Court, if said Judge of the District Court is under any financial obligation whatsoever to such Person. If any Judge of the District Court, while holding the office of Judge of the District Court, becomes pecuniarily liable to any Guardian of any Minor or Incapacitated or Partially Incapacitated Person, such liability shall operate to disqualify such Guardian. It is hereby made the duty of the Judge of the District Court to enter on the court docket such disqualifying conditions. The disqualification shall also apply if such Person, except a Parent who is Guardian of his or her own Child or Children has rendered financial aid to said judge, in securing his nomination and election to the office of Judge of the District Court, or his appointment as Judge of the District Court. Persons who have heretofore been appointed Guardians, who are not eligible to act under this Section shall be by the Judge of the District Court removed and successors appointed, as provided by law. If any Person not eligible to act under this Section continues to act as Guardian, after such ineligibility has been legally determined, such Person and the surety upon his bond shall be liable to the Estate of the Minor or Incapacitated or Partially Incapacitated Person for all money unlawfully paid by such ineligible Guardian out of the Estate of such Minor or Incapacitated or Partially Incapacitated Person, and if a Judge of the District Court knowingly permits an ineligible Person to act, he shall be removed from office.

**SECTION 6-501.80**                      **ELIGIBILITY OF NON-RESIDENTS; FOREIGN TRUST COMPANIES; DOMESTIC CORPORATIONS OR TRUST COMPANIES.**

No Person who has not been a resident, in good faith, of the Chickasaw Nation for one (1) year past shall be appointed Guardian of the Property or Person of a Minor or an Incapacitated or Partially Incapacitated Person by the Court, and no foreign trust company or institution shall be appointed Guardian of the Property or Person of any Minor or an Incapacitated or Partially Incapacitated Person by the Court. Provided that this shall not prevent

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one from being appointed Guardian of his own spouse, Child, Children, grandchild, grandchildren, Parent, Grandparent, Brother, Sister, Aunt, Uncle, Niece or Nephew even though he be a nonresident. No domestic corporation or trust company shall be appointed or qualify as Guardian of a Minor or Incapacitated or Partially Incapacitated Person unless such company is at the time a resident of and maintains its usual place of business within the Chickasaw Nation. A domestic corporation or a natural Person not a resident of the Chickasaw Nation may be appointed as such Guardian upon the written request in a will or otherwise of a Person eligible to make such nomination pursuant to the provisions of this Act.

**SECTION 6-501.81**                      **INQUIRY TO DETERMINE WHETHER PERSON IS SUITABLE TO SERVE AS GUARDIAN.**

A. In conducting an inquiry to determine whether a Person is suitable to serve as a Guardian, the Court shall determine if:

1. the Person proposed to serve as Guardian is a Minor or an Incapacitated or Partially Incapacitated Person;
2. the Person proposed to serve as Guardian is a convicted felon;
3. the Person proposed to serve as Guardian is insolvent or has declared bankruptcy during five (5) years prior to the filing of the pleading proposing such Person to serve as Guardian;
4. the Person proposed to serve as Guardian or is under any financial obligation to the Ward; or
5. there exists a conflict of interest which would preclude or be substantially detrimental to the ability of the Person to act in the best interest of the Subject of the Proceeding if such Person is appointed.

B. No Minor, Partially Incapacitated Person or Incapacitated Person shall be appointed Guardian of a minor, Incapacitated or Partially Incapacitated Person.

C. If the Person proposed to serve is a convicted felon, the Court shall make further inquiry into the nature of the felony and the circumstances surrounding the conviction. The Court shall appoint such Person proposed to serve only upon determining that the facts underlying the conviction do not give rise to a reasonable belief that Person proposed to serve will be unfaithful to or neglectful of his fiduciary responsibilities, and that the appointment is in the best interest of the Ward.

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D. If the Person proposed to serve as Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person is insolvent or has declared bankruptcy within five (5) years prior to the filing of the pleading proposing that such Person serve, the Court shall appoint such Person only after giving due consideration to the nature and extent of the Property of the Ward and the anticipated actions necessary to Manage the Estate of the Ward, and only upon a determination that such appointment is in the best interest of the Ward. Insolvency or bankruptcy shall not automatically preclude a Person proposed to serve as Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person.

E. If the Person proposed to serve as Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person is under any financial obligation to the Ward, the Court shall make further inquiry into the nature and extent of such obligation. The Court shall appoint the Person proposed to serve only after a determination that such obligation will not impair the ability of the Person proposed to serve to discharge his fiduciary responsibilities, and that the appointment is in the best interest of the Ward. Being under financial obligation to the Ward shall not automatically preclude a Person proposed to serve as Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person.

F. A current or potential conflict of interest which is not substantial and not likely to preclude or impair the ability of a Person proposed to serve as a Guardian acting in the best interest of his Ward shall not, by itself, disqualify such Person from appointment.

**SECTION 6-501.82**

**GUARDIAN'S BOND; LETTERS TO ISSUE ON FILING.**

A. Before the entry of an order appointing a Person or Organization as a Guardian of the Person and before the Letters issue, the Court may require the Person or Organization to be appointed to provide a bond to the Chickasaw Nation, with sufficient sureties, to be approved by the Court, and in such penal sum as the Court shall order, conditioned that the Guardian will faithfully execute the duties of the trust according to law.

B. Bond Requirements:

1. Before the entry of an order appointing a Person or Organization as the Guardian of a Minor or as the Guardian or Limited Guardian of the Property of an Incapacitated or Partially Incapacitated Person takes effect, and before the Letters issue, the Court shall require the Person or Organization to be appointed to provide a bond, in an amount not less than the value of Intangible Personal Property as alleged in the petition or otherwise determined by the Court at the hearing on the petition, to the Chickasaw Nation, with sufficient sureties, to be approved by the Court, and in such penal sum as the Court shall order, conditioned that the Guardian will faithfully execute the duties of the trust according to law.

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2. For purposes of this Paragraph 2, Personal Property shall not include Property owned with a joint tenant. the Court may order that a bond is not necessary upon a finding by the Court that:

a. the anticipated annual income to a Ward for one (1) year plus the value of the Personal Property of the Ward is less than forty thousand dollars (\$40,000); and

b. the Guardian of the Ward is either a Parent, spouse, Brother, Sister, Grandparent, Child, or grandchild of the Ward.

C. In the event the Intangible Personal Property of the Ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the Court at the hearing on the petition, the Guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the Intangible Personal Property, which bond will be in substitution for the bond originally filed on the appointment of the Guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the Intangible Personal Property shown in future annual accountings, provided however, no bond shall be reduced except upon order of the Court.

### **SECTION 6-501.83**

### **PETITION REQUESTING FOR FURTHER SECURITY; SUSPENSION OF POWERS; ORDER.**

When a petition is presented praying that a Guardian be required to give further security, or to give bond where, by order of the Court no bond was originally required, and it is alleged on oath that such is necessary to serve the best interest of the Ward or his Estate, the Judge may, by order, suspend his powers until the matter can be heard and determined. If the Judge determines a bond or other security is in the best interests of the Ward or his Estate, the Judge shall order the same to be posted, and if it is not given within a reasonable time, to be fixed by the Judge, the Guardian shall be removed.

### **SECTION 6-501.84**

### **COURT MAY REQUIRE NEW BOND; DISCHARGING SURETIES.**

The Court may require a new bond to be given by a Guardian whenever the Court deems it necessary, and may discharge the existing sureties from further liability, after due notice is given as the Court may direct, when it shall appear that no injury can result therefrom to those interested in the Estate.

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**SECTION 6-501.85**                      **BONDS TO BE PRESERVED; BREACH OF CONDITION;  
ACTIONS ON BONDS.**

Every bond given by a Guardian must be filed and preserved in the office of the Court Clerk, and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the Ward or of any Person interested in the Person or Estate of the Ward.

**SECTION 6-501.86**                      **STATUTE OF LIMITATION OF ACTION; EFFECT OF  
DISABILITY.**

No action can be maintained against the sureties on any bond given by a Guardian, unless it be commenced within three (3) years from the discharge or removal of the Guardian; but if at the time of such discharge a Person entitled to bring such action is under any legal disability to sue, the action may be commenced by such Person at any time within three (3) years after such disability is removed.

**SECTION 6-501.87**                      **INVENTORY AND ACCOUNT OF WARD'S ESTATE.**

A.        Every Guardian or Limited Guardian of the Property of a Ward shall file an inventory of the Estate of his Ward within two (2) months after his appointment. The time to file an inventory may be extended by the Court for good cause shown. The Court may, upon application made for that purpose by any interested Person, compel the Guardian or Limited Guardian of the Property of a Ward to render a revised inventory or account to the Court of the Estate of his Ward. Each inventory and account returned or rendered must be sworn to by the Guardian or Limited Guardian.

B.        The Guardian shall state his opinion of the value of the Estate of the Ward described in the first inventory. Such inventory shall be filed with the district Court Clerk. Whenever any other Property of the Estate of any Ward is discovered, not included in the inventory of the Estate already returned, and whenever any other Property has been succeeded to or acquired by any Ward, or for his benefit, like proceedings must be had for the return thereof. If requested by the Ward, Judge or any interested Person, such Property must be appraised by appraisers appointed, sworn and acting in the manner provided for regulating the settlement of the Estate of decedents.

C.        The Court shall not waive any inventory of Property of the Ward which is required by this Section.

**SECTION 6-501.88**

**ACCOUNT SETTLEMENT AND ALLOWANCE;  
REPORTS; CONSOLIDATION OF REPORTS;  
ACCOUNTING INFORMATION.**

A. Except as otherwise provided by Subsection B below, a Guardian or Limited Guardian of the Property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the Court for settlement and allowance as part of the Guardianship Report as required by Section 6-308.91 of this Act.

B. Annual Accountings:

1. In addition, a Guardian or Limited Guardian of the Property shall:

a. present accounts whenever the Court requires that such report or accounts be presented; and

b. with the annual report of accounts, report any changes of Property listed on the inventory required by Section 6-308.87 of this Act. The report shall state the compensation requested by the Guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the Ward, or the Ward's financial resources, the details thereof shall be set forth in the annual report required by Subsection A above.

3. Except as otherwise directed by the Court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this Subsection B regarding the filing of an annual accounting and annual plan shall not apply to any Guardianship of the Property of a Ward if the Ward's financial resources or assets, other than a homestead, are worth less than forty thousand dollars (\$40,000) if a bond has been posted, or are worth less than ten thousand dollars (\$10,000) regardless of whether or not a bond has been posted, and if the Guardian or Limited Guardian of the Property is the spouse or a relative of the Ward within the fourth degree of consanguinity.

C. In addition to the reports required by Subsections A and B above, a Guardian or Limited Guardian shall submit a report:

1. if the Ward is an Incapacitated or Partially Incapacitated Person, when there is a significant change in the capacity of the Ward to meet the essential requirements for the physical health or safety of the Ward or to manage the financial resources of the Ward;

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2. if the Ward is a Minor, any significant change in the condition of the Minor or in the condition of the Estate of the Minor;
3. when the Guardian or Limited Guardian resigns or is removed; and
4. when the Guardianship is terminated.

D. Reports:

1. Unless waived at the discretion of the Court, a Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person shall file a report on the Guardianship of the Person pursuant to Section 6-308.90 of this Act.

2. Unless waived at the discretion of the Court, a Guardian of the Person of a Minor Ward shall file such reports of the Guardianship of the Person of the Ward as required by the Court in such form as the Court may require.

3. A Guardian or Limited Guardian of the Property of a Ward shall file a report on the Guardianship of the Property pursuant to Section 6-308.91 of this Act.

E. The Court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same Person or Organization is required to file reports as to both the Person and the Property of a Ward, the reports may be consolidated.

G. An accounting information submitted by a Guardian or Limited Guardian of the Property of a Ward shall be verified and shall be rendered in a manner determined by the Court with respect to an information of an Estate of a decedent. Such information shall also set forth any charges to the Property of the Ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the Property of the Ward placed under the control of the Guardian or Limited Guardian.

H. In addition to other specified information any order of the Court approving an annual Guardianship Plan and report shall include the date certain by which the Guardian shall file the next annual report.

**SECTION 6-501.89**

**ACCOUNT RENDERED BY TWO OR MORE JOINT  
GUARDIANS.**

When an account is rendered by two (2) or more joint Guardians, the Court may allow the

same upon oath of any of them.

**SECTION 6-501.90**

**REPORT ON GUARDIANSHIP OF INCAPACITATED OR  
PARTIALLY INCAPACITATED PERSON.**

A. A report on the Guardianship of the Person of an Incapacitated or Partially Incapacitated Person shall set forth:

1. the name and place of abode of the Ward and the name and address of the Guardian or Limited Guardian;
2. any significant change in the capacity of the Ward to meet the essential requirements for his physical health or safety;
3. the services being provided to the Ward and the relationship of those services to the individual Guardianship Plan;
4. any significant actions taken by the Guardian or Limited Guardian or Guardian during the reporting period;
5. any significant problems relating to the Guardianship which have arisen during the reporting period;
6. the reasons, if any, why the appointment should be continued; and
7. the reasons, if any, why no less restrictive alternative will permit the Incapacitated or Partially Incapacitated Person to meet the essential requirements for his physical health or safety.

B. The report shall be substantially in the following form:

**“Report on the Guardianship of a Person**

I, (Name) the (Guardian/Limited Guardian of the Person) for (Name) , an (Incapacitated/Partially Incapacitated) Person hereby submit this (annual, court-ordered) Guardianship Report.

1. The present place of abode of the Ward is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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2. The type of home or facility in which the Ward lives is \_\_\_\_\_  
and the name of the Person in charge of the home or facility is \_\_\_\_\_.

3. My present street address and telephone number is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

4. During the last year, I have seen the Ward \_\_\_\_\_ times. I otherwise or also have  
become or remained familiar with the needs and care of the Ward as follows: \_\_\_\_\_

The nature of my visits to the Ward have been: \_\_\_\_\_  
\_\_\_\_\_.

5. The following services are currently being provided to the Ward: \_\_\_\_\_  
\_\_\_\_\_.

6. These services (are, are not) provided for in the current Guardianship Plan. The reason  
they are not shown in the current Guardianship Plan is: \_\_\_\_\_  
\_\_\_\_\_.

7. The Ward was last seen by a physician on: \_\_\_\_\_, \_\_\_\_\_. The purpose  
of the visit was: \_\_\_\_\_  
\_\_\_\_\_.

8. I (have, have not) observed any major change in the Ward's physical or mental condition  
during the last year. (If so,) these are my observations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

9. I (have, have not) taken any significant action for or on behalf of the Ward since the last  
time I submitted a Guardianship Report. (If so,) I took the following actions: \_\_\_\_\_  
\_\_\_\_\_.

10. There (have, have not) been any significant problems relating to the Ward or to my  
Guardianship of the Ward since the last time I submitted a Guardianship Report or, if this is an  
initial report, since the issuance of my Letters. (If so,) I have observed these problems: \_\_\_\_\_  
\_\_\_\_\_.

11. It is my opinion that the Guardianship (should, should not) be continued. (If so,) the basis

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for my belief is as follows: \_\_\_\_\_  
\_\_\_\_\_.

12. I believe the Ward (would, would not) be able to manage essential requirements for physical health and safety with fewer restrictions on the Ward's ability to act for himself or herself. (If so,) the basis for my belief is as follows:

\_\_\_\_\_  
\_\_\_\_\_.

13. My opinion of the present care being provided to the Ward is as follows: \_\_\_\_\_  
\_\_\_\_\_.

14. The place of abode of the Ward (has, has not) changed since the last Guardianship Report. (If so,) the place of abode of the Ward was changed for the following reasons: \_\_\_\_\_  
\_\_\_\_\_.

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)

Telephone: \_\_\_\_\_”

C. Whenever there are changes or proposed changes to the Guardianship Plan, an Individual Guardianship Plan, substantially in the same form as provided in Section 6-308.61 of this Act, shall be submitted with the Guardianship Report and shall show any such changes or proposed changes in the Guardianship Plan since last submitted to and approved by the Court.

D. Attached to the report shall be:

1. an accounting of any monies received by the Guardian or Limited Guardian on behalf of the Ward;
2. any expenditures made by the Limited Guardian or Guardian on behalf of the Ward;
3. any compensation requested by the Guardian or Limited Guardian; and

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4. Copies of any appropriate medical records, Evaluations, or other similar documentation pertinent to the reporting period.

**SECTION 6-501.91**

**CONTENTS OF REPORT ON GUARDIANSHIP OR LIMITED GUARDIANSHIP OF PROPERTY OF WARD.**

A. A report on the Guardianship or Limited Guardianship of the Property of a Ward shall set forth:

1. the name and place of abode of the Ward, and the name and address of the Guardian or Limited Guardian;
2. if the Ward is an Incapacitated or Partially Incapacitated Person, significant changes in the capacity of the Ward to manage his financial resources and the services being provided to the Ward and the relationship of those services to the individual Guardianship Plan for the management of financial resources;
3. any significant actions taken by the Guardian or Limited Guardian during the reporting period;
4. any significant problems relating to the Guardianship which have arisen during the reporting period; and
5. if the Ward is an Incapacitated or Partially Incapacitated Person, the reasons, if any, why the Guardianship should not be terminated, or why no less restrictive alternative would permit the Ward to manage his financial resources.

B. If the Ward is an Incapacitated or Partially Incapacitated Person, reports on the Guardianship of the Property shall be substantially in the following form:

**“Report on the Guardianship of Property**

I, (Name) the (Guardian or Limited Guardian of the Property) of (Name) , an Incapacitated (or a Partially Incapacitated) Person, hereby submit this (annual, court-ordered) Report.

1. List any significant changes in the capacity of the Ward to manage his or her financial resources: \_\_\_\_\_

2. The services currently being provided to the Ward are as follows: \_\_\_\_\_

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3. These services (are, are not) provided for in the current Guardianship Plan as approved by the Court. The reason these services are not shown in the current plan are as follows: \_\_\_\_\_

4. I (have, have not) taken any significant actions for or on behalf of the Ward since the last time I submitted a Guardianship Report. (If so:) These actions are as follows: \_\_\_\_\_

5. There (have, have not) been any significant problems relating to the Guardianship since the last time I submitted a Guardianship Report. (If so:) The problems are as follows: \_\_\_\_\_

6. In my opinion, the Guardianship (should, should not) be continued. The reasons for my belief are as follows:

7. It is my belief that the Ward (would, would not) be able to manage his or her financial resources with fewer restrictions on the Ward's ability to act for him or herself. The reasons for my belief are as follows:

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)”

C. If the Ward is a Minor, reports on the Guardianship of the Property shall be substantially in the following form:

“Report on the Guardianship of a Minor

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I, (Name) the (Guardian or Limited Guardian of the Property) of (Name) , a Minor, hereby submit this (annual, court-ordered) Report.

1. The services currently being provided to the Ward are as follows: \_\_\_\_\_  
\_\_\_\_\_.

2. These services (are, are not) provided for in the current Guardianship Plan as approved by the Court. The reason these services are not shown in the current plan are as follows: \_\_\_\_\_  
\_\_\_\_\_.

3. I (have, have not) taken any significant actions for or on behalf of the Ward since the last time I submitted a Guardianship Report. (If so:) These actions are as follows: \_\_\_\_\_  
\_\_\_\_\_.

4. There (have, have not) been any significant problems relating to the Guardianship since the last time I submitted a Guardianship Report. (If so:) The problems are as follows: \_\_\_\_\_  
\_\_\_\_\_.

I hereby swear that the answers set forth above are true and correct to the best knowledge and belief of the undersigned, subject to the penalties of making a false affidavit or declaration.

Date: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Guardian or Limited Guardian)”

D. Whenever there are changes or proposed changes to the Guardianship Plan, an individual Guardianship Plan for the management of financial resources, substantially in the same form as provided in Section 6-308.63 of this Act, shall be submitted with the Guardianship Report and shall show any such changes or proposed changes in the Guardianship Plan since last submitted and approved by the Court.

E. The Report:

1. shall contain a complete financial statement of the financial resources of the Ward under the control or supervision of the Guardian or Limited Guardian of the Property;

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2. shall contain an accounting of any receipts and disbursements received, or expenditures made by the Guardian or Limited Guardian on behalf of the Ward;
3. may include any request for compensation for the Guardian; and
4. may include any compensation request for the attorney for the Ward.

F. As directed by the Court, following submission of a report or in conjunction with an initial or annual review or any subsequent proceeding, a Guardian or Limited Guardian shall submit to an actual review of the financial resources placed under his control.

**SECTION 6-501.92**

**MAILING OF COPIES OF ANNUAL REPORT UPON FILING; HEARING; REPORT WITHOUT NOTICE; COMPENSATION; NEW BOND; APPOINTMENT OF COUNSEL TO REPRESENT WARD.**

A Annual reports; Copies:

1. Upon the filing of an annual report the Court shall immediately cause a copy of the report to be mailed by first-class mail to:
  - a. the Persons entitled to notice pursuant to Section 6-308.26 of this Act for Minors; or
  - b. those Persons entitled to notice pursuant to Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act for Adults; and
  - c. the attorney of the Ward, if any.
2. Attached to the copy of the report shall be a statement notifying the Person receiving copies of said reports that any objection to the report must be filed within fifteen (15) days after the date of the filing of the annual report with the Court.
3. Any Person entitled to receive a copy of the annual report may file an objection to said report within fifteen (15) days after the filing of the annual report with the Court.

B. Hearing on an Annual report; Notice:

1. After notice, the Court may on its own motion hold a hearing on an annual report and shall hold a hearing:

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- a. upon the filing of an objection to the annual report; or
- b. when the Court is considering issuing an order other than an order accepting the report and granting the relief requested.

2. Notice for a hearing on an annual report shall be given, by mail, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act for Minors or Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act for Adults at least ten (10) days prior to the date set for the hearing. Notice shall be in such form as the Court may direct and shall be sent by regular first-class mail.

C. The Court may enter an order granting the relief requested in the report without notice if the Court determines that such relief should be granted immediately. In that event, the Court shall grant such relief on a temporary basis pending a hearing on the report or the expiration of the fifteen (15) days within which an objection to the report may be filed.

D. When no objection to an annual report is filed and no hearing on the annual report is held as otherwise provided by this Section, the Court shall issue an order accepting the annual report and granting the relief requested.

E. The compensation for the Guardian, the Guardian's attorney, and any other Person entitled to compensation from the Property of the Ward shall be determined by the Court in the manner required by the provisions of this Act. Such order, whether issued at the expiration of the fifteen (15) days within which an objection to the annual report may be filed or after a hearing on the report, shall be final with respect to all Persons given copies of the annual report or notice of such hearing, except with regard to any such Person who may be determined to have been subject to a legal disability at the time such notice was given. Such order also shall be final with respect to the Guardian except with respect to challenge by the Ward upon the removal of the Ward's legal disability.

F. With regard to an annual report of a Guardian of the Property of a Ward, the Court shall examine the changes, if any, to the Property of the Ward as set forth in the report. If the Guardian was required to submit a bond, and if the total value of the Ward's Property which is subject to the proceeding differs significantly from the total value of the Ward's Property as last disclosed to the Court:

1. the Court shall direct such Guardian to obtain a new bond of such lesser or greater penal amount as will adequately protect the Ward's Property which is subject to the proceeding;

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2. such new bond shall be filed with the district Court Clerk within thirty (30) days following the date of the order; and

3. if the Court requires a new bond of a greater penal amount than the bond previously submitted, failure of the Guardian to submit such new bond within the thirty-day period set forth in this Subsection F shall constitute grounds for removal of such Guardian or Limited Guardian.

G. At any hearing held upon an annual report:

1. if required by the Court, the Guardian or Limited Guardian shall be present;

2. the Court shall review the annual report and consider any objection made thereto, and thereupon enter such order as the Court deems appropriate; and

3. the Court may make any order which the Court deems to be in the best interest of the Ward or the Estate of the Ward. The Court may also set for further hearing, with prior notice to be given as provided in this Section, any other matter which the Court deems should be considered in the best interest of the Ward or the Estate of the Ward. Subject to appeal or vacation within the time permitted, an order entered after the hearing of an annual report after notice adjudicates as to liabilities concerning the matters considered in connection with said hearing.

H. At a hearing upon an annual report the Court may appoint an attorney to represent the Ward who is an Incapacitated or Partially Incapacitated Person, in the same manner and with the same compensation as provided in this Act for appointment of an attorney for the Subject of the Proceeding following the filing of a petition for appointment of a Guardian or Limited Guardian of the Person or Property of an alleged Incapacitated or Partially Incapacitated Person. The appointment of such attorney shall cease:

1. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;

2. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the Ward until final disposition of the appeal or as otherwise ordered by the Court; or



3. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceeding.

**SECTION 6-501.93**      **APPLICATIONS TO COURT FOR RELIEF; CONTENTS FOR APPLICATION; NOTICE AND HEARING; ORDER; APPOINTMENT OF COUNSEL; JOINDER; EVALUATION OF WARD; HEARING WITHOUT NOTICE.**

A. After the appointment of a Guardian, the Ward, any Person interested in the welfare of the Ward, or a Guardian may make application to the Court for:

1. termination of the Guardianship;
2. removal of the Guardian;
3. resolution of a dispute pertaining to the Guardianship Plan;
4. if the Ward is an Incapacitated or Partially Incapacitated Person, the imposition of additional restrictions upon the legal capacity of the Ward to act on his own behalf or the removal of one or more existing restrictions; or
5. a review hearing.

B. Such application shall set forth:

1. the names and addresses of the individuals and entities entitled to notice;
2. the relief requested; and
3. the alleged facts and reasons supporting the request.

C. Any Person entitled to notice of the hearing on an application filed pursuant to this Section may object to the relief requested in the application. If the Ward is a Minor, notice shall be as provided by Section 6-308.26 of this Act. If the Ward is an Incapacitated or Partially Incapacitated Person, notice shall be given to those Persons entitled to notice pursuant to Paragraphs 1, 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act and shall be given as provided by Section 6-308.53 of this Act and to the attorney of the Subject of the Proceeding, if any, and if known to the petitioner.

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D. The Court shall set an application filed pursuant to this Section for hearing on a date certain and shall cause notice to be given to the Persons entitled thereto by regular first-class mail at least ten (10) days prior to such date. However, except for an order terminating a Guardianship, the Court may enter an order granting the relief requested in the application without notice if the Court determines that such relief should be granted immediately. In that event, the Court may grant such relief on a temporary basis and proceed to set the application for further hearing following the giving of notice as provided by this subsection. At the hearing, based upon the evidence adduced, the judge may continue, modify or vacate his temporary order.

E. At the hearing held upon an application filed pursuant to this Section for which notice is required, the Court may, based upon the evidence adduced, enter an order granting or denying the relief requested. At such hearing, the Court also may make any other order which the Court deems to be in the best interests of the Ward or the Estate of the Ward. The Court may also set for further hearing, with prior notice to be given as provided in this Section, any other matter which the Court deems should be considered in the best interest of the Ward or the Estate of the Ward.

F. With respect to any matter set for hearing pursuant to this Section, the Court may appoint an attorney to represent at such hearing a Ward who is an Incapacitated or Partially Incapacitated Person, in the same manner and with the same compensation as provided in this Act for appointment of an attorney for the Subject of the Proceeding following the filing of a petition for appointment of a Guardian or Limited Guardian of the Person or Property of an alleged Incapacitated or Partially Incapacitated Person. The appointment of such attorney shall cease:

1. upon the entry by the Court of an order pertaining to the matters considered at such hearing, unless the Court otherwise directs, either in the order appointing such attorney or in the order pertaining to the matters considered at such hearing;
2. unless an appeal is taken from the order of the Court pertaining to the matters considered at such hearing, in which event such attorney shall continue to represent the Ward until final disposition or as otherwise ordered by the Court; or
3. upon application of said attorney, the Court may allow the attorney to withdraw from the case and shall appoint another attorney to represent the Subject of the Proceeding in any appeal proceeding.

G. After notice, the Court may join the issues raised in separate applications or separate objections for determination at a single hearing, unless the Court determines joinder would be prejudicial to the interests of the Ward.

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H. As necessary and appropriate the Court may order an Evaluation of the Ward in connection with any Guardianship Proceeding subsequent to the appointment of a Guardian.

I. The Court may hear an application other than with respect to the matters set forth in subsection A of this Section, with or without notice as the Court determines. If the Court requires notice to be given, the Court shall specify the Persons to whom notice shall be given and the manner and time in which such notice shall be given.

**SECTION 6-501.94**                      **COMPENSATION OF GUARDIANS.**

A. Every Guardian must be allowed the amount of his reasonable expenses in the execution of his trust, and he must also have such compensation for his services as the Court in which his accounts are settled deems just and reasonable.

B. To the extent that the services of a Guardian or Limited Guardian of the Property are for the collection of income of the Ward, compensation for such services shall not exceed seven and one-half percent (7 ½ %) of the income so collected. For the purposes of this Section, "income" means funds received by and accounted for by the Guardian or Limited Guardian on behalf of the Ward, other than from the sale of Property of the Ward, plus the net proceeds from the sale of Property of the Ward in excess of the value of such Property as last determined in the Guardianship Proceeding.

C. All compensation and reimbursements pursuant to this Section shall be approved by the Court prior to payment.

**SECTION 6-501.95**                      **JOINT GUARDIANS' COMPENSATION.**

Joint Guardians shall not receive more compensation than a single Guardian.

**SECTION 6-501.96**                      **ATTORNEY FEES.**

A. Payment of Compensation:

1. An attorney, other than a Public Defender or Court Advocate, for a Ward or a subject of a proceeding pursuant to this Act or whose services are obtained by a Guardian on behalf of a Ward is entitled to reasonable compensation to be paid from and as a charge against the Estate of the Ward. Reasonable compensation for attorney services rendered and expenses made on behalf of the Guardian of the Ward incurred prior to the appointment of the Guardian may be paid from and charged against the Estate of the Ward, as approved by the Court prior to payment.

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2. Guardians *Ad Litem*, other than an employee of a public agency or an employee of a private agency which provides such service pursuant to a contract with a public agency, appointed pursuant to the provisions of this Act are entitled to reasonable compensation.

3. A Person conducting an Evaluation of the Subject of the Proceeding, whose services resulted in the appointment of a Limited Guardian or Guardian or other order beneficial to the Subject of the Proceeding, is entitled to reasonable and necessary compensation.

B. Compensation; How Made:

1. Compensation and reimbursements pursuant to this Section shall be paid from the financial resources of the Subject of the Proceeding unless the Court determines that such payment of compensation and reimbursements would:

a. substantially impede the partially Incapacitated or Incapacitated Person from meeting the essential requirements for his physical health or safety; and

b. substantially impair the financial resources of such Person, or substantially impede his ability to obtain the services necessary for developing or regaining his abilities to the maximum extent possible.

2. If not otherwise compensated or reimbursed pursuant to the provisions of Paragraph 1 above:

a. any attorney or Guardian *Ad Litem* appointed by the Court who is entitled to compensation shall be compensated from the court fund;

b. the cost of services provided by a Person conducting an Evaluation, when such Person is the employee of a public agency or the employee of a private agency which provides such services for Guardianship Proceedings pursuant to an agreement with a public agency, shall be borne by the public agency, or by the private agency in accordance with the terms of such agreement; and

c. if the Person conducting an Evaluation is a private individual or agency and the cost of the services provided is not otherwise compensable under a state or federal public assistance program, compensation for the cost of services shall be from the court fund.

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3. Compensation or reimbursement from the court fund for attorneys and Guardian *Ad Litem* may be made at the discretion of the Court.

C. All compensation and reimbursements pursuant to the provisions of this Section shall be approved by the Court prior to payment.

**SECTION 6-501.97**                      **COSTS; GUARDIAN TO APPROVE MINOR ENTERING ARMED SERVICES.**

A. No costs shall be required by the Court Clerk in any Guardianship Proceeding where the proceeding is for the purpose of appointing a Guardian to approve or authorize the Ward to enter the armed forces of the United States.

B. If the Court waives the report, the Court may waive the fee for the filing of the annual Guardianship Report, if any is required, for a Guardian or Limited Guardian of the Person of an Incapacitated or Partially Incapacitated Person or for a Guardian of the Person of a Minor.

**SECTION 6-501.98**                      **APPOINTING MORE THAN ONE GUARDIAN; BOND.**

The Court may appoint more than one Guardian of any Person or Property subject to Guardianship. Such Guardians shall be governed and liable in all respects as a sole Guardian. Such Guardian shall give bond in like manner and with like conditions as prescribed for sole Guardians unless waived.

**SECTION 6-501.99**                      **TWO OR MORE GUARDIANS.**

A. If there are two (2) Guardians who are residents of the Chickasaw Nation, the act of one (1) alone shall be effectual:

1. if a coguardian is laboring under any legal disability from serving, said coguardian in such case shall be relieved from official liability; provided however, proper finding and valid order of the Court is first obtained; or

2. if a coguardian has given the other coguardian authority in writing to act for both.

B. If there are more than two (2) Guardians, the act of a majority of them is valid.

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**SECTION 6-501.100**                    **DEATH OF ONE OF TWO OR MORE JOINT GUARDIANS.**

On the death of one (1) of two (2) or more joint Guardians, the power continues to the survivor until a further appointment is made by the Court.

**SECTION 6-501.101**                    **NONRESIDENT WARD'S GUARDIAN; NOTICE.**

When a Person liable to be put under Guardianship, according to the provisions of this Act, resides without the Chickasaw Nation, and has Estate therein, any friend of such Person, or any one interested in his Estate, in expectancy or otherwise, may apply to the Court for the appointment of a Guardian; and if, after notice given to all interested, in such manner as the judge orders, and a full hearing and examination, it appears proper, a Guardian for such absent Person may be appointed.

**SECTION 6-501.102**                    **POWERS OF NONRESIDENT GUARDIAN.**

Every Guardian appointed under the preceding section has the same powers and performs the same duties, with respect to the Estate of the Ward found within the Chickasaw Nation, and with respect to the Person of the Ward, if he shall cease to reside therein, as are prescribed with respect to any other Guardian appointed under this Act.

**SECTION 6-501.103**                    **JURISDICTION OF FIRST APPOINTMENT.**

The Guardianship which is first lawfully granted, of any Person residing without the Chickasaw Nation, extends to all the Estate of the Ward within the Chickasaw Nation, and excludes all other jurisdictions.

**SECTION 6-501.104**                    **BOND OF GUARDIAN OF NONRESIDENT.**

Every such Guardian must give bond to the Chickasaw Nation, in the manner and with like conditions as hereinbefore provided for other Guardians, except that the provisions respecting the inventory, the disposal of the Estate and effects, and the account to be rendered by the Guardian must be confined to such Estate and effects as come to his hands in this jurisdiction.

**SECTION 6-501.105**                    **REMOVAL OR IMPAIRING RIGHT OF WARD TO PROPERTY.**

When the Guardian and Ward are both nonresidents, and the Ward is entitled to Property within the jurisdiction of the Chickasaw Nation which may be removed to a state, territory, foreign country or another Indian nation without conflict with any restriction or limitation

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thereupon, or impairing the right of the Ward thereto, such Property may be removed to the state, territory, foreign country or other Indian nation of the residence of the Ward, upon the application of the Guardian to the Court.

**SECTION 6-501.106**                    **REMOVAL APPLICATION; CONTENTS;  
REQUIREMENTS.**

A.     The application must be made upon ten (10) days' notice to the resident Personal representative or Guardian, if there be such, and upon such application the nonresident Guardian must produce and file a certificate, under the hand of the clerk, judge, surrogate or other authorized officer, and the seal of the court from which his appointment was derived, showing:

1.     A transcript of the record of his appointment.
2.     That he has entered upon the discharge of his duties.
3.     That he is entitled by the laws of the state, territory, country or Indian nation of his appointment to the possession of the Estate of the Ward; or must produce and file a certificate under the hand and seal of the clerk, judge, surrogate or other authorized officer of the court having jurisdiction in the country of his residence, of the Estates of Persons under Guardianship, or of the highest court in such state, territory, country or Indian nation, that by the laws of such jurisdiction the applicant is entitled to the Custody of the Estate of his Ward without the appointment of any court.

B.     Upon such application, unless good cause to the contrary be shown, the Court must make an order granting to such Guardian leave to take and remove the Property of his Ward to the state, territory or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his Ward.

**SECTION 6-501.107**                    **ORDER FOR DISCHARGE OF PERSONAL  
REPRESENTATIVE OR LOCAL GUARDIAN.**

Such order is a discharge of the Personal representative, local Guardian, or other Person in whose possession the Property may be at the time the order is made, on filing with the Court the receipt therefor of the foreign Guardian of such absent Ward.

**SECTION 6-501.108**                    **PAYMENT OF JUST DEBTS.**

Every Guardian appointed under the provisions of this Act shall pay all just debts due from the Ward out of the Personal Estate and income from the real Estate of the Ward, if sufficient. If said Estate and income is not sufficient, then payment shall be made out of the real

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Estate of the Ward, upon obtaining an order for the sale thereof, the proceeds of such sale shall be disposed of in the manner provided by law for the sale of real Estate of decedents.

**SECTION 6-501.109**                      **COLLECTION AND SETTLEMENT OF ACCOUNTS;  
APPEARANCE FOR WARD.**

A Guardian must settle all accounts of the Ward, and demand, sue for, and receive all debts due to the Ward, or may, with the approval of the Court, compromise or compound for the same and give discharges to the debtors on receiving a fair and just settlement of such claim. A Guardian shall appear for and represent the Ward in all legal suits and proceedings, unless another Person is appointed for that purpose as Guardian or next friend. A Guardian, with the approval of the court exercising jurisdiction in the suit or proceeding, may compromise and settle any claim made by, on behalf of or against the Ward in such suit or proceeding.

**SECTION 6-501.110**                      **DISCHARGE AND RELEASE.**

The Person making payment, delivery, transfer or issuance of Property or evidence thereof to the Person designated by such court under this Section is discharged and released to the same extent as if such payment, delivery, transfer or issuance was made to a Guardian of the Minor or Incapacitated or Partially Incapacitated Person, and he is not required to see to the application thereof. A Person making payment, delivery, transfer or issuance of Property, or evidence thereof, to a next friend or Guardian *Ad Litem* may be discharged and released as provided for in this Act.

**SECTION 6-501.111**                      **ESTATE MANAGEMENT; INCOME APPLIED TO  
MAINTENANCE AND SUPPORT OF WARD; SALE OF  
REALTY.**

Every Guardian must Manage the Estate of his Ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance and support of the Ward, and his family, if there be any; and if such income and profits be insufficient for that purpose, the Guardian may sell the real Estate, upon obtaining an order of the Court, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the Ward and his family, if there be any.

**SECTION 6-501.112**                      **CREDIT IN SETTLEMENT FOR MAINTENANCE AND  
SUPPORT OF WARD; PAYMENT BY THIRD PERSON.**

When a Guardian has advanced for the necessary maintenance, support and education of his Ward, an amount not disproportionate to the value of the Estate or condition of life of the Ward and the same is made to appear to the satisfaction of the Court, by proper supporting



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documents and proofs, the Guardian must be allowed credit therefor in his settlement. Whenever a Guardian fails, Neglects, or refuses to furnish suitable and necessary maintenance, support or education for his Ward, the Court may order the Guardian to do so and enforce such order by proper process. Whenever any third Person, at the request of the Ward, supplies a Ward with such suitable and necessary maintenance, support or education which is shown to have been done after refusal or Neglect of the Guardian to supply the same, the Court may direct the Guardian to pay therefor out of the Estate of the Ward, and may enforce such payment by due process.

### **SECTION 6-501.113**                    **EXECUTION OF WAIVERS OR CONTENTS FOR WARDS.**

The duly appointed and acting Guardian, Limited Guardian, Conservator, attorney in fact, or any other Person legally authorized to act on behalf of any Minor or Incapacitated or partially Incapacitated heir, devisee or legatee may execute waivers or consents for his Ward as authorized by the Court. There shall be attached to each waiver or consent a certified copy of the instrument authorizing him to perform such act.

### **SECTION 6-501.114**                    **AUTHORIZATION TO INVEST THE PROCEEDS OF SALES AND MONEY IN ESTATE.**

The Court, on the application of a Guardian or any Person interested in the Estate of any Ward, after such notice to Persons interested therein as the judge shall direct, may authorize and require the Guardian to invest the proceeds of sales, and any other of his Ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the Court may make such other orders and give such directions as are needful for the management, investment and disposition of the Estate and effects, as circumstances require.

### **SECTION 6-501.115**                    **INVESTMENT OF MONIES BELONGING TO ESTATES; PURCHASE OF HOMESTEADS FOR INCAPACITATED OR PARTIALLY INCAPACITATED PERSONS.**

A.        Except as may be otherwise provided by law, the money belonging to Estates of Minors and Incapacitated or Partially Incapacitated Persons, subject to the jurisdiction of the Court, can only be invested in one or more of the following:

1.        real estate and first mortgages upon real Property which do not exceed fifty percent (50%) of the actual value of the Property;
2.        United States bonds, or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States government, or any authorized agency thereof;

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3. Chickasaw Nation bonds;
4. state bonds;
5. bonds of municipal corporations; or
6. accounts in savings and loan associations and credit unions located within the Chickasaw Nation or the State of Oklahoma, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations, and credit unions located within the Chickasaw Nation or the State of Oklahoma, not to exceed the amount insured by the United States government.

B. Upon application to the Court by the Guardian of the Estate of the Incapacitated or Partially Incapacitated Person, showing to the satisfaction of the Court:

1. that the Incapacitated or Partially Incapacitated Person is vitally in need of a home;
2. that the Incapacitated or Partially Incapacitated Person owns no suitable homestead;
3. that the Incapacitated or Partially Incapacitated Person has sufficient monthly, semi-annual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of a homestead; and
4. that it would be in the best interest of the Incapacitated or Partially Incapacitated Person that a suitable homestead be purchased on that basis.

The Court may enter an order authorizing the Guardian to execute and deliver a note and mortgage, under such tenor and terms as the Court will approve, for the purpose of securing payment of any remaining cost of such a homestead. Any note and mortgage given by a Guardian under the provisions of this Section shall, if authorized by the Court as provided for in this Section, be endorsed "approved" by the Judge. When so authorized and endorsed, the note and mortgage shall be a binding obligation against the Ward and the Estate of the Ward until fully paid. The Ward, if subsequently restored to competency to transact business, shall be held firmly bound by the note and mortgage in the same manner and to the same extent as though the Ward had given the homestead purchase-money note and mortgage.

C. When an individual Guardian enters into an agreement with a bank or trust company, or when the Guardian is a bank or trust company qualified and acting under the supervision of the State of Oklahoma Banking Board or of the Comptroller of the Currency of the

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United States of America, the Guardian may, upon application to the Court, invest funds coming into its hands as Guardian in any Property, Real, Personal or mixed, in which an individual may invest the individual's own funds unless otherwise provided by law.

**SECTION 6-501.116**                    **WHEN INCOME OF ESTATE IS INSUFFICIENT FOR MAINTENANCE.**

When the income of an Estate under Guardianship is not sufficient to maintain the Ward and his family, or to maintain and educate the Ward when a Minor, his Guardian may sell the real or Personal Estate of the Ward for that purpose, upon obtaining an order therefor.

**SECTION 6-501.117**                    **SALE OF PROPERTY.**

When it appears to the satisfaction of the Court, upon the petition of the Guardian, that for the benefit of the Ward or the real or Personal Estate of the Ward, or some part of said Estate, should be sold, and the proceeds thereof invested, the Guardian may sell the same for such purpose upon obtaining an order therefor.

**SECTION 6-501.118**                    **PROCEEDS OF SALE TO BE APPLIED FOR CERTAIN PURPOSES; INVESTMENT; MAINTENANCE.**

If the Property is sold for the purposes mentioned in Sections 6-308.116 and 6-308.117 of this Act, the Guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power as provided in this Act, until the capital is needed for the maintenance of the Ward and his family, or the education of his Children, or for the education of the Ward when a Minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been Personal Estate of the Ward.

**SECTION 6-501.119**                    **PETITION; FACTS AND CIRCUMSTANCES.**

To obtain an order for such sale, the Guardian must present to the Court a verified petition therefor, setting forth the condition of the Estate of the Ward and the facts and circumstances on which the petition is founded.

**SECTION 6-501.120**                    **SALE OF WARD'S PROPERTY; HEARING; NOTICE ORDER.**

If it appears to the Court, from the petition, that it is necessary or would be beneficial to the Ward or the Estate of the Ward that the real or Personal Estate, or some part of such Estate, should be sold, the Court shall thereupon make an order directing all Persons entitled to notice

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pursuant to Section 6-308.26 of this Act for Minors or Section 6-308.53 of this Act for Adults to appear before the Court, at a time and place therein specified in the order and notice, not less than ten (10) nor more than thirty (30) days from the time of making such order, unless notice is waived, as provided in Section 6-308.121 of this Act, to show cause why an order should not be granted for the sale of such Estate. If it appear that it is necessary or would be beneficial to the Ward to sell the Personal Estate or some part of it, the Court must order the sale to be made.

**SECTION 6 501.121**                      **MAILING OR PUBLICATION OF ORDER; WAIVER OF NOTICE.**

The Court shall cause copies of said order to be mailed to the Persons entitled to notice of the proceeding at least ten (10) days before the hearing on the petition. If the mailing address of any such Person is unknown, a copy of the order must be published one time in some newspaper in the county of the location of said property and the hearing of said petition shall not be less than ten (10) days from the date of publication of such notice. If written consent to making the order of sale is given by all Persons entitled to notice, except the Ward if the Ward has been adjudicated to be fully Incapacitated, said order of sale may be made at once without giving the notice.

**SECTION 6-501.122**                      **HEARING PETITION UPON ORDER.**

The Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear the petition and examine the proofs and allegations of the petitioner and any objections made by Persons entitled to notice of the proceeding.

**SECTION 6-501.123**                      **PARTITION OF REAL ESTATE.**

The Guardian may join in and assent to a partition of the real estate of the Ward with the written approval of the Court, whenever such assent may be given by any Person.

**SECTION 6-501.124**                      **PERSONAL REPRESENTATIVES MAY SELL OIL, GAS AND MINING LEASES.**

Personal representatives including but not limited to Guardians of the Property, Guardians of Minors or of Incapacitated or Partially Incapacitated Persons are hereby authorized and empowered to sell and execute oil and gas or other mining leases upon the lands belonging to the Estates of such deceased Persons or of such Minors or Incapacitated or Partially Incapacitated Persons in consideration of a royalty or part or portion of the production thereof where such consideration is money.

**SECTION 6-501.125**                      **GUARDIAN MAY BE EXAMINED; WITNESSES.**

At the hearing on the petition the Guardian may be examined on oath, witnesses may be produced and examined, and process to compel the attendance and testimony of witnesses may be issued by the Court.

**SECTION 6-501.126**                      **AWARD OF COSTS TO PREVAILING PARTY ON OBJECTION.**

If any Person entitled to notice of the proceeding enters an objection to the requests made in the petition, the Court may, in granting or refusing the order requested by the petition, award costs to the prevailing Party, and enforce the payment thereof.

**SECTION 6-501.127**                      **ORDER FOR SALE EITHER PUBLIC OR PRIVATE.**

If, after a full examination, it appears necessary or for the benefit of the Ward that the real or Personal Estate of the Ward, or some part thereof, should be sold, the Court may grant an order therefor, specifying therein the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

**SECTION 6-501.128**                      **SALE BOND BY GUARDIAN.**

Every Guardian authorized to sell real estate shall, before the sale, give bond to the Chickasaw Nation, with sufficient surety to be approved by the Court, with condition to sell the same in the manner and to account for the proceeds of the sale as provided for in this Act. The Court may order that such bond is not required if the Court specifically finds that the general bond, if any, of the Guardian is of a sufficient penal amount to provide for the proceeds of the sale in addition to the Property secured by said bond or upon a finding by the Court that:

1.        the anticipated annual income to a Ward for one (1) year plus the value of the Personal Property of the Ward, after sale, is less than forty thousand dollars (\$40,000); and
2.        the Guardian of the Ward is either a Parent, spouse, Brother, Sister, Grandparent, Child or grandchild of the Ward.

**SECTION 6-501.129**                      **SALES GOVERNED BY SAME LAW AS IN ESTATES OF DECEDENTS.**

Except as otherwise specifically provided by this Act, all the proceedings pursuant to

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petitions of Guardians for sales of Property of their Wards, giving notice and the hearing of such petitions, granting and refusing an order of sale, directing the sale to be made at public or private sale, reselling the same Property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders, rejecting or confirming sales and reports of sales and ordering and making conveyances of Property sold shall be had and made as provided and required by the provisions of law concerning the Estates of decedents.

**SECTION 6-501.130**                    **TIME EXPIRATION ON ORDER OF SALE.**

No order of sale granted pursuant to Sections 6-308.116 through 6-308.135 of this Act continues in force more than one (1) year after granting the same, without a sale being had.

**SECTION 6-501.131**                    **TERMS OF SALE; SECURITY.**

All sales of real estate of Wards must be for cash, or for part cash and part deferred payments not to exceed ten (10) years, bearing interest from date of sale as, in the discretion of the Court, is most beneficial to the Ward. A Guardian making a sale of real Property shall demand and receive from the purchasers a note and mortgage on the real estate sold, with such additional security, if any, as the Court deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

**SECTION 6-501.132**                    **TIME LIMITATION OF ACTION FOR RECOVERY OF ESTATE SOLD; DISABILITY AND REMOVAL THEREOF.**

No action for the recovery of any Estate sold by a Guardian can be maintained by the Ward, or by any Person claiming under him, unless it is commenced within three (3) years immediately following the termination of the Guardianship or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three (3) years immediately following the removal of such disability.

**SECTION 6-501.133**                    **EXCHANGE OF PROPERTY HELD BY WARD OR WARDS IN COMMON; NOTICE.**

When it shall appear to the Court to be to the advantage or best interests of the Ward, or Wards, to exchange an interest in real estate held by such Ward or Wards in common with another, or others, for other real estate also held in common by such Ward or Wards with another or others, to be owned solely by said Ward or Wards, after such exchange, a Guardian of the Ward's Estate may be authorized by the Court, after hearing and appraisalment, to effectuate such exchange and to give or accept cash in part consideration. The provisions of Section 6-308.121 of this Act governing the giving of notice of hearing of a petition for an order to sell, and

appraisement, shall apply and govern an order authorizing an exchange of real estate of a Ward or Wards by his Guardian.

**SECTION 6-501.134**                    **PERISHABLE PROPERTY SALE; REPORT;  
DETERMINATION OF PERISHABILITY.**

A.        Notwithstanding any other provision contained in this Act, a Guardian or Limited Guardian of the Property of a Ward may sell, at public auction or private sale, without obtaining prior Court authorization for sale, without filing a return of sale, and without obtaining Court confirmation of sale, any Personal Property of the Ward which is perishable, is otherwise likely to depreciate in value, or would cause the Estate of the Ward to incur loss or expense if kept. Title to such Property shall pass to the purchaser thereof without approval of or confirmation by the Court of such sale.

B.        With respect to a Limited Guardian of the Property, this Section shall apply only to Property of the Ward which is subject to such Limited Guardian's control pursuant to a dispositional order.

C.        Any sale of Property made by a Guardian or Limited Guardian of the Property of a Ward pursuant to this Section shall be reported in the accounting next filed by such Guardian or Limited Guardian after the making of the sale. If the Court determines the Property sold was not perishable or was not otherwise likely to depreciate in value and would not have caused the Estate of the Ward to incur loss or expense if kept, the Guardian or Limited Guardian who made such sale shall not be Surcharged or otherwise held liable with respect to such sale if he made a reasonable determination in good faith that the Property sold was perishable, was otherwise likely to depreciate in value, or would have caused the Estate of the Ward to incur loss or expense if kept.

**SECTION 6-501.135**                    **LEGALIZATION OF FORMER LEASES.**

All such leases and grants of mineral oil and gas heretofore made and confirmed by the Court, in consideration of a royalty, part or portion of the production thereof, are hereby legalized.

**SECTION 6-501.136**                    **CAUSES FOR REMOVAL OF GUARDIANS.**

A Guardian may be removed by the Court for any of the following causes:

1.        for abuse of his fiduciary responsibility;
2.        for continued failure to perform his duties;

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3. for incapacity to perform his duties;
4. for gross immorality;
5. for having an interest adverse to the faithful performance of his duties;
6. if the instrument in which the Person was nominated as Guardian is judicially determined to be invalid;
7. in the case of Guardian of the Property, for insolvency; and
8. when it is no longer proper that the Ward should be under Guardianship.

**SECTION 6-501.137**

**POWER OF GUARDIAN SUSPENSION UPON CERTAIN FACTORS; EFFECT OF MARRIAGE OF INCAPACITATED OR PARTIALLY INCAPACITATED PERSON.**

- A. The power of a Guardian is suspended only:
  1. by order of the Court;
  2. if the appointment was made solely because of the Ward's minority, by his obtaining majority; or
  3. the Guardianship over the Person only of a Minor Ward, by the marriage of the Ward.
  
- B. Whenever a Person who has been found by the Court to be an Incapacitated or Partially Incapacitated Person marries, the Court may, upon application of an interested Person, hold a review hearing to determine whether:
  1. the Guardianship should be terminated;
  2. a successor Guardian should be appointed;
  3. the limitations on the Ward, or the powers and duties of the Guardian; or
  4. the Guardianship should be continued unchanged.



**SECTION 6-501.138**

**REMOVAL OR RESIGNATION OF GUARDIAN.**

A. The authority and responsibility of a Guardian terminates upon the death of the Guardian, Conservator, or the Ward, the determination of incapacity of the Guardian or Conservator, or upon removal or resignation of the Guardian or Conservator. Termination does not affect the liability of a Guardian or Conservator for prior acts or the obligation to account for any funds and assets of the Ward under the control of the Guardian or Conservator. The authority and responsibility of a Guardian of a Minor also terminates upon the marriage or majority of the Ward.

B. The Court, after notice and hearing, may remove a Guardian or Conservator for cause if the Guardian or Conservator has failed for thirty (30) days, after he is required to do so, to render an account or make a report, and compel him to surrender the Estate of the Ward to the Person found to be lawfully entitled thereto.

C. Every Guardian or Conservator may resign when it appears proper to allow the same and upon the resignation or removal of a Guardian or Conservator the Court may appoint a successor Guardian or Conservator in the place of the Guardian or Conservator who has resigned or has been removed or make other appropriate orders pursuant to the provisions of this Act.

D. Upon termination of the disability of the Ward or upon his death, or upon the resignation or removal of the Guardian or Conservator, a Guardian or Conservator or the Guardian's or Conservator's Personal representative, or if the Guardian or Conservator is Incapacitated or deceased and there is no Personal representative, then some suitable Person appointed by the Court shall file the Guardian's or Conservator's final account and request for final compensation with the Court within thirty (30) days after such event.

1. The Court shall set the final account for hearing on a date not less than fifteen (15) days after the filing thereof. Notice of such hearing shall be given at least ten (10) days prior to the date set for hearing, by mailing a copy of the notice of hearing by first-class mail:

a. if the Guardianship was established for a Minor or a Minor's Estate, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act if the Ward is still a Minor, or to the Ward only if the Ward has attained majority or has married, or if the Ward is deceased, to the Persons entitled to notice pursuant to Section 6-308.26 of this Act and to the personal representative of the Ward's Estate if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the Person rendering the final account; or

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b. if the Guardianship was established for an Adult or an Adult's Estate, or if the proceeding is a Conservatorship action, to those Persons entitled to notice pursuant to Paragraph 1, unless the Ward is deceased, and Paragraphs 2, 3 and 7 of Subsection A of Section 6-308.53 of this Act and, if the Ward is deceased, to the personal representative of the Ward's Estate if such representative has been appointed and the representative's appointment is known to or ascertainable by reasonably diligent efforts of the Person rendering the final account.

2. Any Person to whom notice is given in accordance with this Subsection may appear at the hearing on the final account and file his exceptions in writing to the final account and contest the same.

3. The settlement of the account and the allowance thereof by the Court shall be conclusive against all Persons interested in the Estate of the Ward, except as to Persons subject to a legal disability at the time the notice of hearing is given.

4. Upon approval of the final account, the Guardian or Conservator and his sureties, if any, shall be discharged.

**SECTION 6-501.139**                      **DISCHARGE OF UNNECESSARY GUARDIANSHIP.**

The Guardian of an Incapacitated or Partially Incapacitated Person or Minor may be discharged by the Court when it appears to the Court, on the application of the Ward or otherwise, that the Guardianship is no longer necessary.

**SECTION 6-501.140**                      **DISTRIBUTION OF PERSONAL PROPERTY OF  
INTESTATE WARD.**

When an Adult Ward shall die intestate leaving any Real or Personal Property, the Guardian shall file with the Court an application for final accounting and discharge of guardian. The Court shall then enter the estate of the deceased ward in a court having jurisdiction over the probate of such deceased person.

**SECTION 6-501.141**                      **CIVIL LIABILITY OF GUARDIANS OR PETITIONERS;  
DAMAGES; WILLFUL OR MALICIOUS FILING OF  
FALSE PETITION OR APPLICATION.**

A. Any Guardian who willfully violates the duties or willfully misuses the powers assigned by the Court and thereby causes injury to the Ward or damages to the financial resources of the Ward shall, in addition to any criminal penalties, be liable in a civil action for

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any actual damages suffered by the Ward. Nothing in this Subsection A shall limit the authority of the Court to Surcharge a Guardian as otherwise provided by law.

B. Any Person who willfully or maliciously files a false petition or application pursuant to the provisions of this Act or a petition or application without a reasonable basis in fact for such a petition pursuant to the provisions of this Act shall be liable in a civil suit for any actual damages suffered by the subject of the petition or application.

**SECTION 6-501.142**                      **CONCEALMENT OR EMBEZZLEMENT CITATION.**

Upon complaint made to the Court by any Guardian, Ward, creditor, or other Person interested in the Estate, or having a prospective interest therein as heir or otherwise, against anyone suspected of having concealed, or conveyed away any of the money, goods or effects, or an instrument in writing, belonging to the Ward or to his Estate, the Court may require such suspected Person to appear before the Court, and may examine and proceed with such Person on such charge in the manner provided by law with respect to Persons suspected of, and charged with, concealing or embezzling the effects of a decedent.

**SECTION 6-501.143**                      **REPORT OF ABUSE OF INCAPACITATED PERSON OR MINOR; FAILURE TO REPORT; IMMUNITY FROM LIABILITY; FALSE REPORT.**

A. Any Person having reasonable cause to believe that an Incapacitated Person, a Partially Incapacitated Person, or a Minor is suffering from Abuse, Neglect, or Exploitation shall make a report to the Chickasaw Nation Indian Child Welfare Department, the office of the Court Advocate or the Bureau of Indian Affairs police department as soon as such Person is aware of the situation.

B. Any Person who knowingly and willfully fails to promptly report any Abuse, Neglect, or Exploitation as required by the provisions of Subsection A above, upon conviction, shall be guilty of a misdemeanor.

C. Any Person participating in good faith and exercising due care in the making of a report pursuant to the provisions of this Section shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

D. Any Person who willfully or recklessly makes a false report or a report without a reasonable basis in fact for such a report pursuant to the provisions of this Section shall be civilly liable for any actual damages suffered by the Person or Persons being reported and for any

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punitive damages set by the Court or jury which may be allowed in the discretion of the Court or jury.

E. No employer shall terminate the employment, prevent or impair the practice or occupation of, or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the provisions of this Section. The Court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this Subsection E.

**CHAPTER 6  
RIGHTS OF MAJORITY AND CHANGES OF NAMES**

**ARTICLE A  
RIGHTS OF MAJORITY**

- Section 6-601.1      Procedure to Confer Rights of Majority; Petition; Jurisdiction and Venue; Decree.
- Section 6-601.2      Procedure to Confer Rights of Majority; Decree.
- Section 6-601.3      Notice of Hearing; Certified Mail and by Publication in Newspaper.

**SECTION 6-601.1**                      **PROCEDURE TO CONFER RIGHTS OF MAJORITY;  
PETITION; JURISDICTION AND VENUE; DECREE.**

The District Court shall have authority to confer upon minors the rights of majority concerning contracts, and to authorize and empower any person, under the age of eighteen (18) years, to transact business in general, or any business specified, with the same effect as if such act or thing were done by a person above that age; and every act done by a person so authorized shall have the same force and effect in law as if done by persons at the age of majority.

**SECTION 6-601.2**                      **PROCEDURE TO CONFER RIGHTS OF MAJORITY;  
DECREE.**

Any minor desiring to obtain the rights of majority for the purposes named in Section 6-309.1 may, by his next friend, file a verified petition in the District Court setting forth the age of the minor petitioner and that said petitioner is then and has been a bona fide resident within the jurisdiction of the Chickasaw Nation for at least one (1) year next before the filing of the petition, and the cause for which the petitioner seeks to obtain the rights of majority. The petition should state whether or not the parents of the minor are living, and if living, their names and addresses; whether or not a guardian has been appointed for the minor and, if a guardian has been appointed, the guardian's name and address; who has legal custody of the minor and, if the person having legal custody is not a parent or the guardian, the name and address of the person who has custody. The District Court, being satisfied that the said petitioner is a person of sound mind and able to transact his affairs and that the interests of the petitioner will be thereby promoted, may, in its discretion, order and decree that the petitioner be empowered to exercise the rights of majority.

**SECTION 6-601.3**                      **NOTICE OF HEARING; CERTIFIED MAIL AND BY  
PUBLICATION IN NEWSPAPER.**

When the petition defined in Section 6-601.2 is filed, the Court shall set a day hearing

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thereof. Notice of the hearing and a copy of the petition shall be sent by certified mail, return receipt requested, delivery restricted to addressee only, to the parents of the minor, if living, to the guardian of the minor, if one has been appointed, or to the person who has custody of the minor if such person is other than parent or guardian of the minor, and if both of the minor's parents are dead, the Court may order that notice be sent by certified mail, return receipt requested, delivery restricted to addressee only, to other relatives of the minor; provided, however, that no notice shall be sent to a person who endorses on the petition that notice of the day of the hearing is waived. Notice of the hearing shall also be given by publication in some newspaper printed in the county of the State of Oklahoma where the petitioner resides at least ten (10) days prior to the day set for the hearing. Before the Court may enter an order conferring majority rights in the hearing provided for herein, proof must be presented to the Court at said hearing that notice was given to all persons entitled thereto and that notice was published as provided herein. (PR31-005, 4/17/14)

**CHAPTER B  
CHANGES OF NAMES**

Section 6-602.1	Right to Petition for Change of Name.
Section 6-602.2	Contents of Petition.
Section 6-602.3	Notice of Filing.
Section 6-602.4	Sworn Evidence.
Section 6-602.5	Judgment.
Section 6-602.6	Fraudulent Use of Judgment.
Section 6-602.7	Concurrent Jurisdiction.

**SECTION 6-602.1**                      **RIGHT TO PETITION FOR CHANGE OF NAME.**

Any Indian who has been domiciled in the territorial jurisdiction of the Court for more than thirty (30) days next preceding the filing of the action, may petition for a change of name in a civil action in the District Court; provided, no person who is required to register as a sex offender pursuant to the Chickasaw Nation Sex Offenders Registration Act may petition for a change of name. If the person be a minor, the action may be brought by guardian or next friend as in other actions. (PR31-007, 9/19/14)

**SECTION 6-602.2**                      **CONTENTS OF PETITION.**

The petition shall be verified and shall state:

1.        the name and address of the petitioner;
2.        the facts as to domicile and residence;
3.        the date and place of birth;
4.        the birth certificate number and place where the birth is registered, if registered;
5.        the name desired by petitioner;
6.        a clear and concise statement of the reasons for the desired change; and
7.        a positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors.

(PR31-007, 9/19/14)

**SECTION 6-602.3**

**NOTICE OF FILING.**

A. Notice of filing of the petition shall be given by publishing the same one (1) time at least ten (10) days prior to the date set for hearing, in some newspaper authorized by law to publish legal notices printed in the county of the State of Oklahoma where the petitioner resides. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The Court, for cause, may continue the matter to a later date.

B. If petitioner is a minor, notice must be made to both natural parents if known and living.

C. The Court may waive the publication requirements of this Section for good cause which includes, but is not limited to, cases of domestic violence in which the court proceedings are sealed.

(PR31-007, 9/19/14)

**SECTION 6-602.4**

**SWORN EVIDENCE.**

The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the Court finds that the change is sought for an illegal or fraudulent purpose, or that a material allegation in the petition is false. (PR31-007, 9/19/14)

**SECTION 6-602.5**

**JUDGMENT.**

The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action. (PR31-007, 9/19/14)

**SECTION 6-602.6**

**FRAUDULENT USE OF JUDGMENT.**

Any person who obtains a judgment under this Chapter 6, Article B, willfully intending to use the same for any illegal or fraudulent purpose, or who thereafter willfully and intentionally uses such judgment, or a copy thereof, for any illegal or fraudulent purpose, shall be deemed guilty of a misdemeanor. (PR31-007, 9/19/14)



**SECTION 6-602.7**

**CONCURRENT JURISDICTION.**

No Indian domiciled in the territorial jurisdiction of the Chickasaw Nation may change his name except as provided in this Chapter 6, Article B, or by marriage (Title 6, Chapter 1 Article C of the Chickasaw Nation Code), or by decree of divorce (Title 6, Chapter 1 Article A of the Chickasaw Nation Code), or by adoption (Title 6, Chapter 4 of the Chickasaw Nation Code), or by the courts of the State of Oklahoma pursuant to the Oklahoma Statutes. (PR31-007, 9/19/14)

**CHAPTER 7  
ELDERLY**

**(RESERVED)**

(Renumbered PR30-007, 5/17/13)

**CHAPTER 8  
DECEDENT'S ESTATES AND TRUSTS**

**(RESERVED)**  
(Renumbered PR30-007, 5/17/13)