



NCA 23-084

CLASSIFICATION: #6. CHILDREN AND FAMILY RELATIONS

A LAW OF THE MUSCOGEE (CREEK) NATION CREATING TITLE 6, CHAPTER 8, ENTITLED, "MUSCOGEE (CREEK) NATION JUVENILE DELINQUENCY CODE"

Be it enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. NEW LAW. The following new law shall be codified in Title 6, Chapter 8 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to not in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law, without further National Council approval:

TITLE 6. CHILDREN AND FAMILY RELATIONS

CHAPTER 8. MUSCOGEE (CREEK) NATION JUVENILE DELINQUENCY CODE

§ 8-101. Purpose and Construction

- A. This Title shall be construed and interpreted to fulfill the following purposes:
1. To secure the care, protection, and mental and physical welfare of children coming within the provisions of this title;
 2. To preserve and retain the unity of the family and to carry out the other purposes of this title in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or for the safety and protection of the community;
 3. To preserve and retain the relationship between any children coming within the provisions of this title and their Nation;
 4. To distinguish, in judicial and other processes affecting children coming within the provisions of this title, between the child who has committed a delinquent act or status offense and the child in need of services, and to provide appropriate and distinct dispositional options for these children and their families;

5. To remove from children committing delinquent acts the legal consequences of criminal behavior, and to substitute programs of supervision, treatment, and rehabilitation that:
 - a) hold them accountable to the community for their actions;
 - b) provide for the safety and protection of the community;
 - c) promote the development of competencies that will enable them to become responsible and productive members of the community;
 - d) promote healing; and
 - e) provide developmentally appropriate interventions
6. To set forth procedures through which the provisions of this title are to be executed and enforced, while ensuring the rights of the parties are recognized and protected; and
7. to coordinate services for children and their families, with an emphasis on prevention, early intervention, diversion, and community-based alternatives.

§ 8-102. Repeal of Prior Law

The provisions in this title shall repeal and replace all conflicting provisions in Title 6 of the Muscogee (Creek) Code.

§ 8-103. Definitions

A. Adult: A person who:

1. is eighteen (18) years of age or older; and
2. is not a "child" as defined in subsection (c).

B. Best interests of the Child: This standard contemplates the support necessary to encourage the child's emotional, physical, mental, spiritual, and cultural well-being. The best interests of the child refer to both the interests of the child as an individual and as a member of the community.

C. Child: A person who:

1. is under eighteen (18) years of age; or
2. is eighteen (18) years of age or older and:
 - a) is alleged, or found by the Juvenile Court, to have committed a delinquent act or status offense; and
 - b) consequently, comes or remains within the jurisdiction of the Juvenile Court under the provisions of this title.

D. Custodian: An adult entrusted with the temporary physical care, custody and control of a child by the child's parent, or otherwise entrusted with the custodial, personal, or financial care of a child under Muscogee (Creek) Nation custom.

E. Delinquent Act: An act committed by a child that would be a criminal violation of the Muscogee (Creek) Code if committed by an adult. However, neither a traffic offense, nor a criminal violation of the provisions of Title 23: Hunting and Fishing of the Muscogee (Creek) Code, shall be considered a delinquent act, unless at least one of the following conditions apply:

1. such offense would be a felony if committed by an adult; or
2. the child accused of such offense has two (2) or more previous guilty adjudications for the same offense.

F. Guardian: A person assigned specific rights and responsibilities by court order to care for another person and the person's real and personal property.

G. Guardian ad Litem: An individual appointed by the Juvenile Court to represent the best interests of the child in proceedings conducted pursuant to the provisions of this title.

H. Juvenile Prosecutor: The attorney who shall represent the Nation in all proceedings before the Juvenile Court.

I. Juvenile Residential Care Facility: Any residential facility, other than a secure juvenile detention facility.

J. Parent: The term "parent" as used in this title:

1. shall include, subject to the provisions of subsection (2), all biological or adoptive parents of the child, whether singular or plural; and
2. shall not include a person whose parental rights have been legally terminated, nor an unwed father whose paternity has not been acknowledged or established.

K. Runaway: a child who:

1. has intentionally abandoned a placement ordered by the Juvenile Court or another court having jurisdiction over the child;
2. has intentionally and repeatedly violated an order of the Juvenile Court directing the child to remain at the child's home or legal residence at specified times or under specified circumstances; or
3. without good cause and without the consent of his or her parent, guardian, or custodian, is intentionally absent from the child's home or legal residence:

- a) with the intent to abandon the child's home or legal residence;
- b) for a period of more than twelve (12) hours;
- c) between the hours of 8:00pm and 5:00am; or
- d) in circumstances presenting a substantial risk to the health, welfare, person or property of the child or others.

L. **Secure Juvenile Detention Facility:** Any public or private facility that includes construction fixtures designed to physically restrict the movements and activities of children detained there, including a secure treatment facility.

M. **Solitary Confinement:** the placement of a juvenile in a secure juvenile detention facility away from all the others who are detained in the same facility.

N. **Staff-secure:** A term describing any public or private facility where the movement and activities of children are restricted by rules and personnel, but not by construction fixtures.

O. **Status Offense:** Generally, an infraction that would not be a criminal offense if the child were an adult. The definition of Status Offense shall also include any act which would be a criminal offense if the child were an adult, but is nonetheless excluded from the definition of "delinquent act", as that term is defined in subsection (e) of this section. Status Offenses include, but are not limited to: being a truant; being a runaway; violating any curfew imposed by the Muscogee (Creek) Nation; possessing alcohol or tobacco in violation of the Muscogee Code; possessing cannabis without a legal prescription in violation of the Muscogee Code; violating the Muscogee Traffic Code, except where such traffic violation would constitute a "delinquent act" as that term is defined in subsection (e) of this section; violating Title 23: Hunting and Fishing of the Muscogee (Creek) Code, except where such violation would constitute a "delinquent act" as that term is defined in subsection (e) of this section.

P. **Tribal Juvenile Justice:** The office or individual who shall be responsible for:

1. acting as an unbiased liaison between:
 - a) the child;
 - b) the child's parent, guardian, or custodian;
 - c) Muscogee (Creek) Nation agencies, service providers, school officials, and other persons and entities entrusted with the care and supervision of children who are within Muscogee (Creek) Nation jurisdiction;
 - d) alleged victims or other members of the community affected by the child's alleged conduct, condition, or circumstances;
 - e) the Juvenile Prosecutor; and
 - f) the Juvenile Court.

2. coordinating services for all children coming within the provisions of this title;
3. providing recommendations to the Juvenile Prosecutor regarding the initiation of proceedings before the Juvenile Court, as well as diversion options and other alternatives to judicial proceedings;
4. providing recommendations regarding the disposition of matters coming before the Juvenile Court in proceedings conducted pursuant to the provisions of this title;
5. monitoring and facilitating compliance by the child and the child's parent, guardian, or custodian with:
 - a) the conditions of diversion agreements and deferrals;
 - b) conditions of release imposed by the Juvenile Court; and
 - c) disposition and other orders entered by the Juvenile Court.
6. identifying services that may be necessary or appropriate to meet the needs of children coming within the provisions of this title; and
7. performing related functions specifically delegated to Tribal Juvenile Justice under the provisions of this title.

Q. Truant: A child who has had three (3) or more unexcused absences in a single month, or six (6) or more unexcused absences in a single year, where those absences have not been approved by the child's parent, guardian, or custodian.

SUBCHAPTER 2. ROLES AND RESPONSIBILITIES

§ 8-201. Parental Responsibilities

A. The parent, guardian, or custodian of any child coming within the jurisdiction of the Juvenile Court under the provisions of this title shall have the following responsibilities:

1. to attend all Juvenile Court hearings involving the child, or to show cause before the Juvenile Court why they should be excused from any hearing they are unable to attend;
2. to bring the child before the Juvenile Court when so ordered; and
3. to monitor the child's compliance with all orders entered or conditions imposed by the Juvenile Court, and to make all reasonable efforts to ensure that the child complies with such orders or conditions.

B. Where the responsibility imposed by § 2.1(a)(1) conflicts with the work schedule of the child's parent, guardian, or custodian, or would otherwise cause undue hardship for the child's parent, guardian, custodian, or family, the Juvenile Court:

1. shall, whenever possible, permit the child's parent, guardian, or custodian to attend the hearing by phone, video conferencing technology, or similar means; and
2. may consider the availability and practicability of such alternatives in determining whether the child's parent, guardian, or custodian should be excused from attending the hearing.

§ 8-202. Excuse from Parental Responsibilities

A. The child's parent shall be excused from the responsibilities imposed by § 2.1 if the child is under the care and control of a guardian or custodian as the result of a court order.

B. The child's parent, guardian, or custodian may be excused from the responsibilities imposed by § 2.1 if it appears to the Juvenile Court that there may be a conflict of interest between the child and the child's parent, guardian, or custodian.

C. A showing that the child's parent, guardian, or custodian has voluntarily transferred physical custody of the child to another person shall not excuse the child's parent, guardian or custodian from the responsibilities imposed by § 2.1.

§ 8-203. Parental Non-Compliance

Any parent, guardian, or custodian who fails to comply with the requirements of § 2.1 may be ordered to appear before the Juvenile Court to show cause why they should not be held in contempt.

§ 8-204. Directory of Services

A. Tribal Juvenile Justice shall compile and maintain a directory of public, private, and tribal services and resources available to children and families who are members of the tribal community, which may include, but not limited to:

1. crisis intervention services;
2. individual, group, or family counseling;
3. family mediation;
4. victim-offender mediation or reconciliation;
5. delinquency prevention and diversion programs;
6. assistance and education for victims or perpetrators of domestic violence;
7. parent training, education, and support;
8. homemaker or parent aide services;
9. housekeeping and childcare services;
10. short-term respite care;
11. runaway centers and emergency shelters;

12. residential placement options for children in the juvenile justice system;
13. chemical dependency evaluations, treatment, and interventions;
14. mental health screening, assessment, treatment, and services;
15. educational assessments, evaluations, and advocacy;
16. special education, tutorial, and remedial academic services;
17. vocational, job training, and employment services;
18. programs for building resiliency skills; and
19. community, cultural, social, and recreational activities.

B. In order to ensure that the directory of services is current and comprehensive, in compiling and maintaining the directory, Tribal Juvenile Justice shall consult periodically with:

1. tribal and community agencies or other entities providing or coordinating services to children and families;
2. local school officials;
3. tribal and local law enforcement officials;
4. the Juvenile Prosecutor;
5. juvenile defense attorneys; and
6. the Juvenile Court.

C. Tribal Juvenile Justice shall provide regularly updated copies of the directory of services to:

1. the Juvenile Court;
2. the Juvenile Prosecutor;
3. juvenile defense attorneys;
4. tribal law enforcement;
5. all persons appearing before the Juvenile Court as guardians ad litem; and
6. any tribal agencies or departments providing or coordinating services to children and families.

D. Within thirty (30) days of the enactment of these provisions by the National Council, the Juvenile Court shall enter a written order:

1. directing Tribal Juvenile Justice to compile the directory of services, and to furnish copies as required by subsection (c), within a period not to exceed sixty (60) days from the enactment of these provisions; and
2. establishing a schedule for maintaining and updating the directory of services, allowing for a period not to exceed two (2) years between updates.

If there is reason to believe that a child who is the subject of any proceedings conducted pursuant to the provisions of this title may be abused or neglected, the Juvenile Court shall direct Tribal Juvenile Justice to request that the Child and Family Services Administration review the underlying facts of the case and conduct any further investigation that may be required.

SUBCHAPTER 3. JURISDICTION

§ 8-301. Subject Matter Jurisdiction

The Juvenile Court shall have jurisdiction over any case involving a child who is at least ten (10) years of age who is who is alleged to have committed a delinquent act or status offense within the boundaries of the Muscogee (Creek) Reservation and is either:

1. an Indian child subject to federal jurisdiction under 18 U.S.C. § 1153, or
2. a non-Indian child subject to tribal jurisdiction under 25 U.S.C. § 1304.

The Juvenile Court shall also have jurisdiction over any case involving a child at least ten (10) years of age who is a citizen of, or eligible for citizenship in, the Muscogee (Creek) Nation and who is alleged to have committed a delinquent act or status offense, wherever the conduct that constitutes the offense occurs. The Muscogee (Creek) Nation may transfer jurisdiction or intervene in any case over which it has jurisdiction.

§ 8-302. Personal Jurisdiction

A. The Juvenile Court shall have personal jurisdiction over any juvenile, regardless of whether he or she is domiciled within the territory of the Muscogee (Creek) Nation, that is alleged to have committed a delinquent act or status offense within the boundaries of the Muscogee (Creek) Reservation. In addition, the Juvenile Court may have personal jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court if the parent, guardian, or custodian has been served with a summons pursuant to § 5.07.

B. In determining whether the assertion of personal jurisdiction is fair, the court shall consider whether:

1. the case relates to, or arises out of, contact, including minimal, isolated, or sporadic contact, with the Muscogee (Creek) Nation community;
2. the person has purposefully availed themselves, or the child, of the privilege of conducting activities in or around the Muscogee (Creek) Nation, including invoking the benefits and protection of Muscogee (Creek) Nation law.

SUBCHAPTER 4. RIGHTS OF PARTIES

§ 8-401. Parties in Juvenile Proceedings

A. The parties to all proceedings conducted pursuant to the provisions of this title shall be:

1. the child;
2. the Muscogee (Creek) Nation; and
3. following adjudication, the child's parent, guardian, or custodian.

§ 8-402. Due Process Rights

A. In all proceedings conducted pursuant to the provisions of this title, the parties shall have the right to due process, including:

1. the right to adequate notice of all proceedings, and the opportunity to be heard before an unbiased finder of fact;
2. the right to discovery;
3. the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the party's own behalf;
4. the right to cross-examine witnesses, except in such cases as the provisions of this title expressly permit the use of hearsay testimony; and
5. the right to findings which are based solely upon evidence properly admitted in hearings before the Juvenile Court.

§ 8-403. Privilege Against Self-Incrimination

A. Every child coming within jurisdiction of the Juvenile Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this title.

B. No statement, admission, or confession made by, nor incriminating information obtained from, a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this title, including, but not limited to, that which is court-ordered, shall be admitted into evidence in any proceedings before the Juvenile Court or the Tribal Court.

§ 8-404. Fingerprinting and Photographs

A. A child shall not be fingerprinted or photographed, nor have any tissue sample taken, for purposes of identification in connection with any matter coming within the provisions of this title, except by written order of the Juvenile Court.

B. Fingerprints, photographs, or tissue samples taken pursuant to a written order of the Juvenile Court shall be used only as specified in the written order.

§ 8-405. Records-Confidentiality

A. Except by an order of the Juvenile Court entered in accordance with the provisions of subsection (b), all records and files pertaining to any proceedings conducted pursuant to the provisions of this title, including but not limited to law enforcement records and court files, shall be confidential and shall not be open to inspection to any but the following:

1. the child, provided that:
 - a) the child's request for inspection has been made through counsel for the child;
 - b) the Juvenile Court enters an order permitting inspection by the child without the intervention of counsel; or
 - c) the child has reached eighteen (18) years of age;
2. counsel for the child;
3. the child's parent, guardian, or custodian, except as provided in subsection (b);
4. the child's guardian ad litem;
5. the Tribal Juvenile Justice; and
6. the Juvenile Prosecutor.

B. The Juvenile Court may enter an order providing that specific records and files pertaining to proceedings conducted pursuant to the provisions of this title shall not be open to inspection by the child's parent, guardian, or custodian, following:

1. a hearing on the matter, at which the child shall be represented by counsel and the child's parent, guardian, or custodian shall have the right to be represented by counsel; and
2. a finding by the Juvenile Court that such inspection would jeopardize the mental or physical welfare of the child.

C. The Juvenile Court may, on a case-by-case basis, enter an order permitting the inspection, by specified persons or agencies, of records and files which would otherwise be confidential under subsection (a), following:

1. a hearing on the matter, at which the child shall be represented by counsel; and
2. a finding by the Juvenile Court that such inspection is in the best interests of the child.

D. All records and files pertaining to any child who is subject to the provisions of this title shall be kept separate from records and files pertaining to adults.

E. The name, picture, place of residence, or any other identifying information concerning any child, parent, guardian, or custodian, or any person appearing as a witness in any proceedings held pursuant to the provisions of this title, shall not be published in any newspaper, newsletter, electronic publication, or internet site, and shall not be given for any other publicity.

F. Any person who violates any provision of this section shall be ordered to appear before the Juvenile Court to show cause why they should not be held in contempt.

SUBCHAPTER 5. RULES AND PROCEDURES

§ 8-501. Rules in Delinquency Proceedings

Delinquency proceedings before the Juvenile Court shall be governed by the rules of evidence and procedure governing criminal proceedings before the Tribal Court, to the extent that such rules are not in conflict with the provisions of this title.

§ 8-502. Calculation of Time Limits

A. Subject to the provisions of subsection (b), all time limits set forth in the provisions of this title shall be measured in calendar days, inclusive of weekends and holidays, unless otherwise specified.

B. If, under the provisions of this title, the time limit for any action would otherwise expire on a weekend or holiday, the time limit for such action shall be extended to the next business day.

§ 8-503. Hearings-Scheduling

A. All hearings conducted pursuant to the provisions of this title shall be closed to the public, and shall be scheduled, to the extent possible:

1. on a calendar or in a location separate from hearings before the Tribal Court;
2. so as to assign the highest priority to cases in which the child is detained in a secure juvenile detention facility;
3. outside of school hours; and
4. so as to accommodate the work schedule of the child's parent, guardian, or custodian.

§ 8-504. Hearings-Continuances

A. The time limit within which any hearing is required to be held under the provisions of this title may be extended only if the Juvenile Court grants a continuance pursuant to the provisions of this section.

B. The Juvenile Court shall grant a continuance only upon a showing of good cause and only for that period of time shown to be necessary by the moving party.

C. Whenever the Juvenile Court grants a continuance, it shall enter the facts which require the continuance into the court record.

D. If a party makes no objection to a continuance, the absence of such an objection shall be deemed consent to the continuance.

E. If the child is detained in a secure juvenile detention facility, no continuance may be granted without the child's consent.

§ 8-505. No Derivative Proceedings

A. Except as provided in subsections (b), (c), and (d), the fact that a child has violated an order of the Juvenile Court shall not be the basis for subjecting the child to:

1. secure detention or incarceration;
2. charges of delinquency; or
3. a finding of contempt.

B. Where the violation consists of an alleged act that would constitute a delinquent act in the absence of the order violated, the alleged act may be the basis for a delinquency petition filed in accordance with the provisions of Chapter 8 of this title.

C. Where the child is alleged to have violated a no-contact or protection order, and the violation of such an order would constitute a violation of the criminal code, the alleged violation may be the basis for a delinquency petition filed in accordance with the provisions of Chapter 8 of this title.

D. Where the child has violated conditions of release imposed by the Juvenile Court, the Court may conduct a hearing to review the need for detention in accordance with the provisions of § 6.11(b).

§ 8-506. Use of Disposition and Evidence in Other Proceedings

Neither the adjudication nor disposition of any child in accordance with the provisions of this title, nor any evidence admitted in a hearing before the Juvenile Court, shall be admissible as evidence against the child in any proceeding in another court, including the Tribal Court.

§ 8-507. Summons

A. Upon the filing of a delinquency petition, the Juvenile Court shall issue a written summons, to be served in accordance with the provisions § 8-509, to:

1. the child,
2. the child's parent, guardian, or custodian; and
3. any other person whose presence the Juvenile Court deems necessary for the initial hearing.

B. The summons issued under subsection (a) shall:

1. contain the name of the court, the title of the proceedings, and the date, time, and location of the initial hearing;
2. advise the parties of their rights under the provisions of this title; and
3. be accompanied by a copy of the delinquency petition.

C. The Juvenile Court may endorse upon the summons an order directing the child's parent, guardian, or custodian to bring the child before the Juvenile Court.

D. Where counsel has not already been appointed or retained to represent the child, a copy of the summons shall be served upon Tribal Juvenile Justice in accordance with the provisions of § 8-509.

§ 8-508. Notice of Hearings

Unless the provisions of this title specify otherwise, notice of any hearing conducted pursuant to the provisions of this title shall be served on the child; the child's parent, guardian, or custodian; and any other person the Juvenile Court deems necessary for the hearing at least five (5) days prior to the hearing, in accordance with the provisions of § 8-509.

§ 8-509. Summons or other Notice-Service

A. Whenever a summons or notice of any hearing is required under the provisions of this title, such notice shall be delivered:

1. personally, by a law enforcement officer or an officer of the Juvenile Court;
2. by registered or certified mail, with the return receipt to be signed only by the addressee, in which case service shall be deemed effective upon delivery; or
3. electronically, in accordance with the provisions of §8- 510.

B. If notice cannot be delivered by one of the means authorized in subsection (a), it may be delivered by regular first-class mail, in which case service shall be deemed effective on the third (3rd) day after mailing.

C. Counsel for any represented party shall be served, in accordance with the provisions of this section, with a copy of any summons or notice required under the provisions of this title.

D. Where counsel has not already been appointed or retained to represent the child, the written notice to counsel required by subsection (c) shall be served on Tribal Juvenile Justice.

§ 8-510. Electronic Service and Filing

A. The Juvenile Court may adopt rules permitting the parties to file motions, pleadings, and other documents by e-mail, facsimile, or other electronic means.

B. Service of any notice or filing upon a party may be accomplished by e-mail, facsimile, or other electronic means, if that party has filed written notice in the Juvenile Court consenting to service by such means.

C. A party may withdraw consent to electronic service by written notice, filed in the Juvenile Court and served upon the other parties in accordance with the provisions of §8-509.

D. Electronic service or filing under the provisions of this section shall be deemed effective on the business day following its electronic transmission, unless rules adopted and published by the Juvenile Court provide otherwise.

E. Electronic service or filing by any party under the provisions of this section shall be undertaken in a manner that complies with the provisions of § 8- 405.

F. The written notice required under subsection (b) shall include an affirmation that the consenting party has taken appropriate measures to ensure the confidentiality of electronic notices or filings to be received by that party.

G. Safeguards required for compliance with subsections (e) and (f) shall include:

1. restricting, to the extent necessary for compliance with the provisions of § 8-405, access to e-mail accounts, fax machines, or other accounts, and hardware or software within the party's control and used by the party to send or receive electronic notice or service;
2. securing access to such accounts, hardware, or software by the use of passwords, security codes, or other security measures reasonably calculated to ensure the confidentiality of electronic notices or filings to be sent or received by the party;

3. reasonable measures to ensure the confidentiality of any printed, archival, backup, or other electronic or hard copies of such notices or filings;
4. any other appropriate measures or procedures which may be required under the circumstances.

§ 8-511. Failure to Appear – Investigation and Recommendation

A. In all proceedings conducted pursuant to the provisions of this title, if the child or the child's parent, guardian, or custodian fails to appear before the Juvenile Court after being so ordered, Tribal Juvenile Justice shall:

1. promptly investigate the reasons for the failure to appear;
2. where appropriate, provide the child and the child's parent, guardian, or custodian with transportation assistance or information and referrals to social, community, or tribal services or resources which may be appropriate for addressing factors contributing to the failure to appear; and
3. make appropriate recommendations to the Juvenile Court, in keeping with the provisions of this title.

§ 8-512. Service – Waiver

A. Service may be waived by any person by written stipulation or by voluntary appearance before the Juvenile Court.

B. The child may waive service only if the child has consulted with counsel and the Juvenile Court, after personally addressing the child and counsel for the child, finds such waiver to be knowing, voluntary, and in the best interests of the child.

§ 8-513. Right to Counsel

A. If counsel is available at no fee, the Court must appoint counsel to the child at all stages of the proceedings pursuant to the provisions of this title.

B. If the Court establishes probable cause at the initial hearing pursuant to § 8.043 the Court must ensure that the child is represented by counsel at that point.

C. The child's parent, guardian, or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian, or custodian pursuant to the provisions of this title.

§ 8-514. Hearings – Advisement of Rights

A. At the commencement of all hearings conducted pursuant to the provisions of this title, the Juvenile Court shall advise the child, in language the child will easily understand:

1. of the nature and purpose of the proceedings;
2. of the right to counsel;
3. of the right to remain silent, and that any statement made by the child may be considered by the Juvenile Court as evidence that the child committed a delinquent act or status offense; and
4. of the right to appeal any final order of the Juvenile Court.

§ 8-515. Jeopardy

A. In all proceedings conducted pursuant to the provisions of this title, jeopardy shall attach when:

1. the court accepts a valid admission in accordance with the provisions of § 9.017; or
2. the child denies the allegations in an adjudicatory hearing pursuant to the provisions of § 9.019.

§ 8-516. Interrogation—Advisement of Rights

A. Prior to interrogating a child, the law enforcement officer or other official shall advise the child, in language the child will easily understand:

1. that the child has the right to remain silent, and anything the child says may be used against the child in court;
2. that the child has the right to have his or her parent, guardian, or custodian present during any questioning; and
3. that the child has the right:
 - a) to be represented by counsel, to the extent counsel is available at no fee;
 - b) to consult with counsel prior to any questioning; and
 - c) to have counsel present during any questioning.

§ 8-517. Factors Relating to Admissibility of Child's Statement

A. Before permitting any child's statement to be introduced as evidence against the child, the Juvenile Court must find that the statement was voluntarily and knowingly made, taking into account these and any other relevant factors:

1. whether the child had the opportunity to consult with his or her parent, guardian, or custodian, or counsel before making the statement;

2. the child's age, maturity, and level of education;
3. the child's level of intelligence and mental development, as well as the presence of any cognitive or mental disability or impairment;
4. the child's physical and mental condition at the time the statement was made;
5. the length of time the child was detained prior to interrogation, and the length of time the child was interrogated before making the statement;
6. the environment in which the interrogation took place;
7. the number of law enforcement officers who conducted or were present during the interrogation, as well as their physical characteristics and demeanor;
8. any use of deception by the law enforcement officer(s) conducting the interrogation;
9. whether, either prior to or during the interrogation, the child was held in isolation, deprived of food or sleep, or subjected to other potentially coercive measures.

SUBCHAPTER 6. CUSTODY, DETENTION AND RELEASE

§ 8-601. Detention – Grounds

- A. A child shall not be detained unless:
 1. there is probable cause to believe the child has committed a delinquent act;
 2. no less restrictive alternatives will suffice; and
 3. there is clear and convincing evidence that the child should be detained because:
 4. such detention is necessary to prevent the child from committing further offenses or endangering the safety of others; or
 5. there is a substantial risk that the child may flee or be removed from the jurisdiction of the Juvenile Court.

§ 8-602. Taking a Child into Temporary Custody

- A. A law enforcement officer may take a child into temporary custody if:
 1. the Juvenile Court has issued a custody order in accordance with the provisions of § 6.03; or
 2. the officer has probable cause to believe the child has committed a delinquent act, provided that the officer must contact TJJ before taking the child into custody, or immediately thereafter, to confirm that temporary custody is justified.

- B. A law enforcement officer taking a child into temporary custody pursuant to the provisions of this section shall advise the child as required by § 5.16:

1. at the earliest reasonable opportunity; and
2. whether or not the law enforcement officer intends to interrogate the child.

C. As soon as practicable, but no more than twelve (12) hours after taking the child into custody, a law enforcement officer must either:

1. return the child to the custody of the child's parent, guardian, or custodian or alternative care as authorized by § 6.07;
2. contact Tribal Juvenile Justice to determine if there is probable cause to believe that detention is warranted under § 6.01; or
3. if safe return cannot be accomplished under (1), but secure detention is not warranted under § 6.01, coordinate with Tribal Juvenile Justice and the appropriate child welfare agencies to arrange for emergency custody under Title 6, § 1-605(B) or § 1-605(C).

§ 8-603. Custody Order

A. The Juvenile Court may issue a written order that a law enforcement officer shall take a child into immediate temporary custody if the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe:

1. the child has:
 - a) violated conditions of release imposed by the Juvenile Court under § 6.12, or
 - b) committed a delinquent act; and
2. either of the following conditions exist:
 - a) the conduct, condition, or surroundings of the child pose an immediate substantial risk to the health, welfare, or safety of the child or another person; or
 - b) there is a substantial risk that the child may flee from the jurisdiction of the Juvenile Court.

B. A custody order issued in accordance with the provisions of this section shall specify:

1. that the child is to be brought immediately before the Juvenile Court;
2. that the child is to be returned to the custody of the child's parent, guardian, or custodian; or

3. where the child is to be placed, in accordance with the provisions of §6.06; or
4. that there is probable cause to believe that detention is warranted under § 6.01 and that the child may be held in detention pending a detention hearing to be conducted in accordance with the provisions of § 6.08.

§ 8-604. Notification of Parent, Guardian, or Custodian

A. Whenever a child taken into custody pursuant to the provisions of this title is not immediately released to the child's parent, guardian, or custodian, the law enforcement officer taking the child into custody shall immediately notify the child's parent, guardian or custodian of:

1. the reason the child was taken into custody;
2. the location where the child has been placed; and
3. the steps the parent may take to learn more information or seek release of the child, including contact information for Tribal Juvenile Justice.

B. This section shall be construed to require:

1. all reasonable efforts to notify the child's parent, guardian, or custodian in accordance with the provisions of subsection (a); and
2. if the child's parent, guardian, or custodian cannot be notified, all reasonable efforts to notify any other persons known to the law enforcement officer who may qualify as an alternative placement under § 6.06.

C. For the purposes of this section, "reasonable efforts" shall include telephone, e-mail, and personal contacts at the home, place of employment, or other locations the person to be notified is known to frequent.

§ 8-605. Review and Action by Tribal Juvenile Justice

A. Upon being notified that a child has been taken into custody pursuant to the provisions of § 6.02, and has not been released to the child's parent, guardian or custodian, Tribal Juvenile Justice must:

1. if the Juvenile Court has issued a custody order in accordance with the provisions of §6.03, confirm that the child has been placed as specified in the custody order, and proceed in accordance with the provisions of subsection (c); or
2. if the Juvenile Court has not issued a custody order in accordance with the provisions of § 6.03, immediately review the need for detention under § 6.01, and:

- a) if Tribal Juvenile Justice believes that detention is not necessary and authorized under § 6.01, release the child to the child's parent, guardian, or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under § 5.07 of this title; or
- b) if Tribal Juvenile Justice believes that continued detention is necessary and authorized under § 6.01, confirm or arrange for the placement of the child in accordance with the provisions of § 6.07 and request that the Juvenile Prosecutor schedule a detention hearing with the court.

B. Upon releasing the child to the child's parent, guardian, or custodian, Tribal Juvenile Justice shall refer the child's parent, guardian, or custodian to any social, community, or tribal services or resources that may be appropriate for addressing the needs of the child and the child's parent, guardian, or custodian.

C. If Tribal Juvenile Justice does not release the child to the child's parent, guardian, or custodian, Tribal Juvenile Justice shall immediately:

1. file written notice in the Juvenile Court of:
 - a) the reason, date, and time the child was taken into custody;
 - b) the location where the child is being detained; and
 - c) the need to conduct a detention hearing in accordance with the provisions of § 6.08;
2. provide copies of the written notice required under subsection (1) to the child, the child's parent, guardian, or custodian, the Juvenile Prosecutor, and counsel for the child; and
3. inform the child of the actions taken by Tribal Juvenile Justice to comply with the requirements of this subsection.

§ 8-606. Release to Parent, Guardian, or Custodian –Alternatives

A. Where the provisions of this title permit or require the release of a child to the child's parent, guardian, or custodian, and the parent, guardian, or custodian in unavailable, the child may instead be:

1. released to a relative or other responsible adult, with reasonable attempt of notification to the child's parent, guardian, or custodian; or
2. delivered to Tribal Juvenile Justice, a juvenile residential care facility, a community reception center, the child's home, or an appropriate service agency until the child's parent, guardian, or custodian can be notified.

§ 8-607. Restrictions on Detention and Placement

- A. In no case shall a child be:
1. detained in a secure juvenile detention facility, unless such detention is necessary and authorized under § 6.01 of this title;
 2. detained in a jail, adult lock-up, or other adult detention facility;
 3. subjected for any reason to solitary confinement; or
 4. detained in a secure juvenile detention facility or subject to other out-of-home-placement for any of the following reasons:
 - a) to treat or rehabilitate the child prior to adjudication;
 - b) to punish the child or to satisfy demands by a victim, the police, or the community;
 - c) to allow the child's parent, guardian, or custodian to avoid his or her legal responsibilities;
 - d) to permit more convenient administrative access to the child; or
 - e) to facilitate interrogation or investigation.

§ 8-608. Detention Hearing

- A. Requirement and Time Limit
1. Whenever a child is taken into custody pursuant to the provisions of § 6.02, and is not released to the child's parent, guardian, or custodian, the Juvenile Court shall conduct a detention hearing within two (2) days. If the second (2nd) day falls on a weekend or holiday, the time limit extends to the next business day in accordance with § 5.02(b).
 2. Notwithstanding the provisions of § 5.04 of this title, the detention hearing shall not be continued so as to fall outside the time limit imposed by this section.
 3. If the detention hearing is not held within the time limit imposed by this section, the child shall immediately be released to the child's parent, guardian, or custodian, or an alternative placement pursuant to §6.06.
- B. Order on Detention Hearing
1. At the detention hearing, the Juvenile Court shall enter a written order releasing the child without conditions unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe the child has committed a delinquent act.
 2. If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile Court shall, at the conclusion of the detention hearing, enter a written order:
 - a) releasing the child without conditions;

- b) releasing the child, and setting forth conditions of release imposed in accordance with the provisions of § 6.10;
 - c) making a determination that detention is warranted under §6.01, setting forth the specific facts upon which that finding is based, and specifying where the child is to be detained until the next hearing.
3. If the child is to be detained in a secure juvenile detention facility, the written order shall specify the date and time of the first detention review hearing to be held in accordance with the provisions of § 6.084.
 4. No provision of this Chapter shall be interpreted to prohibit the Juvenile Court from releasing the child from detention prior to the appointment or appearance of counsel for the child.

C. Detention –Rehearing

1. Upon the filing of a motion for rehearing and a declaration stating the relevant facts, the Juvenile Court shall rehear the detention matter within two (2) days if:
 - a) the child was not released at the detention hearing;
 - b) the child’s parent, guardian, or custodian did not receive notice of the detention hearing; and
 - c) the child’s parent, guardian or custodian did not appear or waive appearance at the detention hearing.

D. Mandatory Detention Review Hearings

1. The Juvenile Court shall conduct a detention review hearing before the end of each ten (10) day period in which the child is detained in a secure juvenile detention facility prior to adjudication.
2. The Juvenile Court shall conduct the detention review hearing for the purpose of determining:
 - a) whether the circumstances of the child, the posture of either party, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;
 - b) whether detention remains necessary and authorized under § 6.01; and
 - c) whether the child should be released from secure detention in favor of a less restrictive alternative.
3. At the conclusion of each detention review hearing conducted pursuant to the provisions of this section, the Juvenile Court shall enter a written order revoking, modifying, or extending its prior detention order.

4. If the child is to remain in a secure juvenile detention facility, the written order shall specify the date and time of the next detention review hearing to be held in accordance with the provisions of this section.
5. Notwithstanding the provisions of § 5.04 of this title, no detention review hearing shall be continued so as to fall outside the time limits imposed by this section.

§ 8-609. Detention and Conditional Release Orders –Termination

An order of the Juvenile Court providing for either detention or conditional release shall immediately and automatically terminate, and the child shall immediately be released from any detention, restrictions or other conditions or obligations imposed, if a delinquency petition is not filed within the time limits imposed by § 8.02.

§ 8-610. Conditions of Release – In Lieu of Detention

A. Before ordering that a child be detained, the Juvenile Court shall consider whether the need for detention can be eliminated by imposing conditions of release and, if so, shall release the child with conditions. The court may impose such conditions of release, including:

1. a court-imposed curfew;
2. a requirement that the child or the child's parent, guardian, or custodian report to Tribal Juvenile Justice at specified intervals;
3. an order requiring the child to remain at home at all times when the child is not:
 - a) in the presence of the child's parent, guardian, or custodian;
 - b) attending school or participating in other activities approved by the Juvenile Court; or
 - c) legally required to be elsewhere;
4. community supervision, including but not limited to use of ankle monitoring;
5. law-abiding behavior, including refraining from using or possessing alcohol or non-prescribed drugs;
6. regular school attendance or continuation in a course of study designed to lead to achieving a high school diploma or the equivalent;
7. compliance with orders prohibiting or restricting contact between the child and the alleged victim or other persons or locations connected with the alleged delinquent act; or
8. other reasonable conditions calculated to ensure the child's appearance at future hearings and to protect the safety of the child and the community.

§ 8-611. Conditional Release Orders –Violations

A If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated conditions of release imposed in accordance with the provisions of § 6.10, the Juvenile Court may:

1. following a hearing on the matter, impose additional or modified conditions of release in accordance with the provisions of § 6.10; and
2. conduct a hearing to review the need for detention in accordance with the provisions of § 6.01.

SUBCHAPTER 7. INTAKE, REFERRAL, AND TRANSFER

§ 8-701. Intake and Preliminary Investigation –Requirement

Whenever a child is alleged to have committed a delinquent act or status offense, Tribal Juvenile Justice shall conduct a preliminary investigation to determine whether the interests of the child or the community require that further action be taken.

§ 8-702. Intake –Time Limit

A. Where the child was taken into custody and has not been released without conditions, Tribal Juvenile Justice shall conduct the preliminary investigation:

1. within one (1) business day after the detention hearing, if the child has not been released; or
2. within five (5) days after the detention hearing, if the child has been released with conditions pursuant to the provisions of § 6.10.

§ 8-703. Informal Conference –Requirement

A. Subject to the provisions of § 7.05, Tribal Juvenile Justice shall, during the course of the preliminary investigation, conduct an informal conference to include:

1. the child; and
2. the child's parent, guardian, or custodian.

B. If counsel has already been appointed or retained to represent the child, Tribal Juvenile Justice must notify the child's attorney before conducting the informal conference.

§ 8-704. Informal Conference –Purpose and Conduct

A. The purpose of the informal conference shall be:

1. to assist Tribal Juvenile Justice in making the recommendation required under § 7.14; and
2. where the alleged facts are sufficient to support the filing of a delinquency petition in accordance with the provisions of § 8.01, to identify and discuss services, interventions, agreements, or other alternatives which would render the filing of a delinquency petition unnecessary.

B. To the extent possible, the informal conference shall be treated as a non-adversarial effort to resolve the issues presented by the child's alleged conduct, without the intervention of the Juvenile Court.

C. Subsection (b) shall not be interpreted:

1. to require the waiver of any right or privilege by the child or the child's parent, guardian, or custodian, including but not limited to the privilege against self-incrimination;
2. to require disclosure by counsel for the child of any matter that would otherwise be confidential or protected from disclosure by any applicable rule or statute;
3. to relieve counsel for the child of any ethical or professional obligations otherwise imposed by statute, rules of professional conduct, or similar court rules; or
4. to require counsel for the child to proceed in a manner that is inconsistent with those obligations.

D. Statements made by the child at the informal conference shall be inadmissible, in any subsequent hearing or proceeding, as evidence that the child committed a delinquent act or status offense, but may be considered at a disposition hearing conducted in accordance with the provisions of § 10.07.

§ 8-705. Informal Conference –Participation Voluntary

A. Prior to conducting the informal conference, Tribal Juvenile Justice shall inform the child and the child's parent, guardian, or custodian:

1. of their rights under the provisions of this title;
2. of the nature and purpose of the informal conference; and
3. that participation in the informal conference is voluntary.

B. If the child declines to attend or participate in the informal conference:

1. Tribal Juvenile Justice shall, subject to the other provisions of this section, conduct the informal conference without the participation of the child; and

2. counsel for the child may, to the extent that such efforts are consistent with counsel's professional and ethical obligations to the child:
 - a) attend and participate in the informal conference on behalf of the child; and
 - b) otherwise confer with Tribal Juvenile Justice to further the purposes of the informal conference, as set forth in § 7.04.

C. If the child's parent, guardian, or custodian declines to attend or participate in the informal conference, Tribal Juvenile Justice shall conduct the informal conference with the child and without the participation of the child's parent, guardian or custodian if the parent, guardian, or custodian consents to the child's participation.

D. Tribal Juvenile Justice may conduct the information conference without either the child or the child's parent, guardian, or custodian, provided that TJJ keeps a record of the proceedings of the informal conference.

§ 8-706. Transferring Jurisdiction—Generally

A. If the federal government, another tribe, or the Muscogee (Creek) Nation Tribal Court may have concurrent jurisdiction over a child, then the decision of whether or not to transfer jurisdiction must be based on the following factors:

1. the best interests of the child;
2. the available resources in each jurisdiction for rehabilitation;
3. the safety of the Muscogee (Creek) Nation.

§ 8-707. Transferring Jurisdiction to Federal Authorities

A. If a child is alleged to have committed an offense that would be considered a violation of 18 U.S.C. § 1153, 18 U.S.C. § 1152, or any other federal statute, then the Juvenile Prosecutor may contact federal authorities to inquire about the possibility of transferring jurisdiction to the federal government.

B. Before deciding to transfer jurisdiction, the Juvenile Prosecutor shall request a conference with federal authorities to acquire all relevant information to make the decision to transfer based on the factors outlined in § 7.06.

C. If the federal government is willing to assert jurisdiction, after the conference, the Juvenile Prosecutor must decide whether to transfer jurisdiction over the child based on the factors outlined in § 7.06.

D. If the federal government has jurisdiction over a child's case and decides to assert its jurisdiction, then the Juvenile Prosecutor shall not file a petition in the Muscogee (Creek) Nation Juvenile Court, unless the child's best interests so require.

E. If the federal government declines jurisdiction, then the delinquency case shall proceed pursuant to the provisions of this title.

§ 8-708. Transferring Jurisdiction to Tribal Court—Standard

A. The Juvenile Court may transfer jurisdiction of the child to Tribal Court only if the requirements set forth in §7.09 are met and the Court finds clear and convincing evidence that both of the following circumstances exist:

1. There are no reasonable prospects for rehabilitating the child through resources available to the Juvenile Court.
2. The offense(s) allegedly committed by the child evidence a pattern of conduct that constitutes a substantial danger to the public.

§ 8-709. Transferring Jurisdiction to Tribal Court—Transfer Petition

A. The Juvenile Prosecutor may file a petition requesting the Juvenile Court to transfer the child to the jurisdiction of the adult Tribal Court if:

1. the child is fifteen (15) years of age or older;
2. is alleged to have committed an act that would have been considered a major crime under 18 U.S.C. § 1153 if committed by an adult; and
3. the alleged offense is considered a “crime of violence” under 18 U.S.C. § 16.

§ 8-710. Transferring Jurisdiction to Tribal Court—Transfer Hearing

A. The Juvenile Court shall conduct a hearing to determine whether jurisdiction over the matter should be transferred to Tribal Court.

B. The transfer hearing shall be held within ten (10) days of receipt of the petition by the Court.

C. The Court shall give written notice of the time, place, and purpose of the hearing to the child and the child’s parent, guardian, or custodian at least three (3) days before the hearing.

D. *Transferring Jurisdiction to Tribal Court--Prehearing Report in Transfer Proceedings-* At least three (3) days prior to the transfer hearing, the petitioner shall prepare a prehearing report for the Juvenile Court and make copies of that report available to the child and the child’s attorney, parent, guardian, or custodian. The report shall address the factors described in § 7.08.

E. Transferring Jurisdiction to Tribal Court—Deciding Factors in Transfer Hearing - The following factors shall be considered when determining whether to transfer jurisdiction of the child to Tribal Court:

1. The nature and seriousness of the offense with which the child is charged;
2. The nature and condition of the child, as evidenced by his age and mental condition; and
3. The child's past record of offenses.

§ 8-711. Transferring Jurisdiction to Tribal Court—Written Transfer Order

A child may be transferred to Tribal Court only if the Juvenile Court issues a written order that contains specific findings and reasons for the transfer after the conclusion of the transfer hearing. The written order terminates the jurisdiction of the Juvenile Court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the Tribal Court for a criminal offense unless the case has been transferred to Tribal Court as provided in this Chapter.

§ 8-712. Status Offenses—Diversion

A. The Juvenile Prosecutor shall not file a delinquency petition pursuant to Chapter 8 in any case involving an alleged status offense unless:

1. the child violates a diversion agreement, as defined in § 7.17 and § 7.18, or
2. the child refuses rehabilitative services.

B. If a child is alleged to have committed a status offense, Tribal Juvenile Justice may refer the case to an appropriate tribal child welfare agency. If the child's parent, guardian, or custodian refuses rehabilitative services, Tribal Juvenile Justice must refer the case to the appropriate child welfare agency before filing a delinquency petition pursuant to Chapter 8.

C. This provision shall not be construed to prevent a referral to a diversionary court, such as a wellness court, drug court, or teen court.

§ 8-713. Concurrent Jurisdiction with Other Tribes

A. If a child who is alleged to have committed a delinquent act or status offense is a citizen of, eligible for citizenship in, or otherwise affiliated with another Tribe, then Tribal Juvenile Justice must contact the child's Tribe to inquire about the following:

1. The availability of services provided by the child's Tribe.
2. The possibility of transferring jurisdiction to the child's Tribe.

B. Based on the information acquired, Tribal Juvenile Justice shall attempt to obtain any available services for the child and recommend to the Juvenile Prosecutor whether or not the case should be transferred to the child's Tribe.

C. Tribal Juvenile Justice shall base its transfer recommendation on the factors in § 7.06.

D. Based on the recommendation by Tribal Juvenile Justice and considering the factors set forth in § 7.06, the Juvenile Prosecutor may decide to transfer the case to the child's Tribe.

E. To the extent practicable, the Juvenile Prosecutor should avoid duplicative or inconsistent proceedings; however, nothing in this section shall be construed to prohibit the concurrent exercise of jurisdiction by MCN and the child's Tribe if a joint exercise of jurisdiction would best facilitate the provision of service to the child.

§ 8-714. Recommendation by Tribal Juvenile Justice

A. Upon concluding the preliminary investigation, Tribal Juvenile Justice shall make one of the following recommendations to the Juvenile Prosecutor:

B. Tribal Juvenile Justice shall recommend that no further action be taken in the matter, if Tribal Juvenile Justice determines that:

1. the alleged facts are not sufficient to support the filing of a delinquency petition in accordance with the provisions of § 8.01; or
2. the best interests of neither the child nor the community require that further action be taken.

C. Tribal Juvenile Justice shall recommend that the child and the child's parent, guardian, or custodian enter into a diversion agreement pursuant to the provisions of § 7.17, if Tribal Juvenile Justice determines that:

1. the alleged facts are sufficient to support the filing of a delinquency petition in accordance with the provisions of § 8.01; and
2. the best interests of both the child and the community may be adequately addressed through one or more of the diversion options set forth in § 7.19.

D. Tribal Juvenile Justice shall recommend the initiation of proceedings under Title 6 of the Muscogee (Creek) Code, if Tribal Juvenile Justice determines that:

1. the alleged facts are sufficient to support the submission of a request for services under that title; and

2. the best interests of both the child and the community may be adequately addressed through child welfare proceedings.

E. Tribal Juvenile Justice shall recommend that the Juvenile Prosecutor file a delinquency petition in accordance with the provisions of § 8.01, if Tribal Juvenile Justice determines that:

1. the alleged facts are sufficient to support the filing of a delinquency petition;
2. the best interests of either the child or the community require the intervention of the Juvenile Court; and
3. the best interests of either the child or the community cannot be adequately addressed through child welfare proceedings.

§ 8-715. Recommendation –Factors to be Considered

A. In determining the appropriate recommendation to be made in accordance with § 7.14, Tribal Juvenile Justice shall consider factors including:

1. the nature and seriousness of the alleged act;
2. the child's previous contacts with the police, Tribal Juvenile Justice, or the Juvenile Court of any jurisdiction;
3. the age, maturity, and individual circumstances of the child;
4. the willingness of the child to participate in a voluntary program;
5. the participation and input of the child's parent, guardian, or custodian;
6. the likelihood that services and resources to meet the child's needs can be identified and secured without the intervention of the Juvenile Court; and
7. any statement expressing support for diverting the matter or addressing the matter informally and without the intervention of the Juvenile Court, made by:
 - a) the complainant or the alleged victim; or
 - b) any law enforcement officer familiar with the underlying facts of the matter or the circumstances of the child.

§ 8-716. Notice to Juvenile Court

A. The Juvenile Prosecutor shall immediately file written notice in the Juvenile Court whenever:

1. the Juvenile Court has entered a detention order, or any order imposing restrictions or other conditions or obligations upon the child in connection with the matter; and
2. the Juvenile Prosecutor, having received and considered the recommendation of Tribal Juvenile Justice, determines that:

- a) no further action should be taken in the matter;
 - b) the matter should proceed by way of a diversion agreement entered into pursuant to the provisions of § 7.17; or
 - c) the matter should be addressed through child welfare proceedings.
- B. Upon the filing of the written notice required by subsection (a):
1. the Juvenile Court shall enter a written order releasing the child from any detention, restrictions, or other conditions or obligations previously imposed in connection with the matter; and
 2. if the child is being detained, Tribal Juvenile Justice shall ensure that the child is released as soon as practicable, but not more than twelve (12) hours after the entry of the order of release.

§ 8-717. Diversion Agreement –Form and Substance

A. Upon the Juvenile Prosecutor's acceptance of a recommendation for diversion pursuant to the provisions of § 7.14(b), the child and the child's parent, guardian, or custodian may enter into a written diversion agreement setting forth:

1. the rights of the child and the child's parent, guardian, or custodian under the provisions of this title;
2. that entry into a diversion agreement is voluntary, and that the child or the child's parent, guardian, or custodian may withdraw from the diversion agreement at any time;
3. that withdrawal from the diversion agreement may lead to the filing of a delinquency petition in accordance with the provisions of § 8.01; and
4. particular conditions, which may include any of the options specified in § 7.19, to be fulfilled by the child and the child's parent, guardian, or custodian over a period not to exceed six (6) months.

§ 8-718. Diversion Agreement –Fulfillment of Conditions

A. Upon finding by a preponderance of the evidence that the child and the child's parent, guardian, or custodian have fulfilled the conditions of the diversion agreement, the Juvenile Court shall dismiss with prejudice any subsequent delinquency petition arising out of the alleged incident and no further action shall be taken in the matter.

B. If the child or the child's parent, guardian, or custodian do not fulfill the conditions of the diversion agreement, Tribal Juvenile Justice may:

1. confer with the child and the child's parent, guardian, or custodian for the purpose of effecting necessary or recommended modifications to the

diversion agreement, including an extension of time up to a maximum of one (1) year; or

2. recommend that the Juvenile Prosecutor file a delinquency petition in accordance with the provisions of § 8.01.

§ 8-719. Diversion Options

A. Subject to the provisions of subsection (b), the conditions of a diversion agreement entered into pursuant to the provisions of § 7.17, an order deferring adjudication entered in accordance with the provisions of § 8.05, or an order deferring disposition entered in accordance with the provisions of § 10.08(b)(2) may include any of the following:

1. referral of the child or the child's parent, guardian, or custodian to social, community, or tribal services or resources appropriate for addressing the needs of the child and the child's parent, guardian, or custodian;
2. referral of the matter to an elders or youth panel, community accountability board, or other forum suitable for addressing the needs of both the child and the community;
3. referral to a specialized court, such as a Healing to Wellness Court, a truancy court, or a peer court;
4. participation in traditional Muscogee (Creek) dispute resolution systems;
5. participation by the child in cultural, educational, or other programs or activities aimed at rehabilitation, community involvement, or competency development, or which are otherwise appropriate for addressing the child's needs;
6. participation by the child or the child's parent, guardian or custodian in an educational or counseling program designed to deter delinquent acts, status offenses, or other conduct or conditions which would be harmful to the child or the community;
7. participation by the child's parent, guardian, or custodian in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;
8. a requirement that the child or the child's parent, guardian, or custodian undergo medical, psychological, or psychiatric examination or treatment;
9. a requirement that the child pay restitution;
10. a requirement that the child perform community service;
11. a requirement that the child maintain satisfactory school attendance, or otherwise pursue a course of study designed to lead to achieving a high school diploma or the equivalent;
12. participation by the child in structured after-school, evening, or other court-approved programs appropriate for addressing the needs of the child and providing for the safety of the community; and
13. other reasonable conditions aimed at:

- a) holding the child accountable for his or her actions;
- b) providing for the safety and protection of the community; or
- c) promoting the development of competencies which will enable the child to become a responsible and productive member of the community.

B. The conditions of a diversion agreement entered into pursuant to the provisions of § 7.17, an order deferring adjudication entered in accordance with the provisions of § 8.05, or an order deferring disposition entered in accordance with the provisions of § 10.08(b)(2) shall not include:

1. detention in a secure juvenile detention facility, nor participation in alternative programs or services specifically intended as alternatives to secure detention or otherwise directed solely at meeting the needs of adjudicated youth; or
2. a requirement that the child's parent, guardian, or custodian undergo medical, psychological, or psychiatric treatment, unless such treatment is:
 - a) recommended by a qualified medical, psychological, or psychiatric professional; and
 - b) necessary to:
 - 1) address conditions which contributed to the alleged delinquent act or status offense; or
 - 2) allow the child to remain with or be returned to the custody of the child's parent, guardian, or custodian.

SUBCHAPTER 8. PRE-ADJUDICATION

§ 8-801. Delinquency Petition –Contents

- A. Adjudicative proceedings under this Chapter shall be initiated by a petition:
1. signed and filed by the Juvenile Prosecutor on behalf of the Nation;
 2. certifying that, to the best of the Juvenile Prosecutor's knowledge, information and belief, there are sufficient grounds to believe the child has committed a delinquent act or status offense; and
 3. setting forth with specificity:
 - a) the name, birth date, residence, and tribal affiliation of the child;
 - b) the name and residence of the child's parent, guardian or custodian;
 - c) a citation to the specific section(s) of this title which give the Juvenile Court jurisdiction over the proceedings;

- d) a citation to the specific criminal statute or other law or ordinance which the child is alleged to have violated; and
- e) a plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged acts occurred.

B. The delinquency petition shall be accompanied by a statement signed by Tribal Juvenile Justice and:

- 1. certifying that the requirements of Chapter 7 were satisfied prior to the filing of the petition;
- 2. stating whether Tribal Juvenile Justice was able to conduct an informal conference as required by § 7.03, and if so, who was in attendance at the informal conference;
- 3. stating whether the child was afforded the opportunity to enter into a diversion agreement pursuant to the provisions of § 7.17, and if so, whether the child entered into a diversion agreement prior to the filing of the petition; and
- 4. stating whether Tribal Juvenile Justice recommended the filing of the petition.

§ 8-802. Delinquency Petition – Time for Filing

A. Where the child was taken into custody and has not been released without conditions, the delinquency petition shall be filed:

- 1. within five (5) days after the detention hearing, if the child has not been released; or
- 2. within thirty (30) days after the detention hearing if the child has been released on conditions pursuant to the provisions of § 6.10.

B. Where a child was not taken into custody, or was released without conditions, the delinquency petition shall be filed within one (1) year from the date on which the Nation becomes aware of the alleged delinquent acts or status offenses that form the basis for the petition, except that this time period may be extended to two (2) years from such date to accommodate a diversion agreement entered into pursuant to § 7.14(b).

§ 8-803. Delinquency Petition – Amendment

A. The delinquency petition may be amended to cure defects of form at any time.

B. The delinquency petition may be amended to allege additional delinquent acts or status offenses:

1. at any time prior to the initial hearing;
2. after the initial hearing, but no later than three (3) business days prior to the adjudication hearing, upon a showing of good cause;
3. within three (3) business days of the adjudication hearing, only upon:
 - a) a showing of good cause based on exceptional and unforeseeable circumstances; and
 - b) a finding by the Juvenile Court that the amendment will not prejudice the rights of the child.

C. The delinquency petition shall not be amended to allege additional delinquent acts or status offenses after jeopardy has attached.

D. Whenever the delinquency petition is amended, the amended petition shall be served in accordance with the provisions of § 5.09 of this title.

E. Whenever the delinquency petition is amended to allege additional delinquent acts or status offenses, the Juvenile Court shall, upon a motion by the child, continue the adjudication hearing for such a period as is required in the interests of justice.

§ 8-804. Initial Hearing

A. *Time Limit* - The initial hearing shall be held:

1. within ten (10) days of the filing of the delinquency petition, if the child was taken into custody and has not been released; or
2. within thirty (30) days of the filing of the delinquency petition, if the child was not taken into custody or has been released.

B. *Initial Hearing –Conduct* - At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

1. the nature and purpose of the proceedings;
2. the contents of the delinquency petition;
3. the possible consequences if the child is found to have committed a delinquent act or status offense;
4. the right to counsel;
5. the privilege against self-incrimination;
6. the right to an adjudication in accordance with the provisions of this Chapter;
7. the right to cross-examine witnesses;
8. the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;
9. the right to appeal any final order of the Juvenile Court.
10. the Juvenile Court shall not accept an admission at the initial hearing.

C. *Initial Hearing –Probable Cause Determination* - At the initial hearing, the Juvenile Court shall enter a written order dismissing the delinquency petition unless the Juvenile Court finds that the delinquency petition establishes probable cause to believe the child has committed a delinquent act or status offense.

D. *Initial Hearing –Judicial Diversion* - If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act or status offense, the Juvenile Court in its discretion may enter a written order dismissing the delinquency petition without prejudice, if the Juvenile Court determines that:

1. the interests of both the child and the community may be adequately addressed through one or more of the diversion options set forth in § 7.19;
2. the child, after consulting with and being advised by counsel, is willing to participate in an informal conference pursuant to the provisions of §§ 7.03 – 7.05; and
3. either of the following conditions is met:
 - a) prior to the filing of the delinquency petition, the child did not enter into a diversion agreement pursuant to the provisions of § 7.17; or
 - b) notwithstanding the failure of a previous diversion agreement, the Juvenile Court finds reason to believe that further efforts to divert the matter may be successful.

E. Following the dismissal of a delinquency petition under subsection (a):

1. the child and the child's parent, guardian, or custodian may enter into a written diversion agreement pursuant to the provisions of § 7.17; and
2. the Juvenile Prosecutor may refile the delinquency petition in accordance with the provisions of § 8.01 if:
 - a) the child and the child's parent, guardian, or custodian do not voluntarily enter into a diversion agreement pursuant to § 7.17; or
 - b) the child or the child's parent, guardian, or custodian do not fulfill the conditions of the diversion agreement pursuant to § 7.17.

F. *Initial Hearing –Discretionary Dismissal* - The Juvenile Court may, upon its own motion or the motion of the child, dismiss the delinquency petition if:

1. the Juvenile Court finds that the alleged conduct:
 - a) did not actually cause or threaten the harm sought to be prevented by the statute defining the alleged delinquent act or status offense, or did so only to a trivial extent; or

b) cannot reasonably be regarded as within the contemplation of the National Council in enacting the statute defining the alleged delinquent act or status offense;

G. the alleged victim is a member of the child's family, and the Juvenile Court finds that the alleged conduct may be more appropriately addressed by the child's parent, guardian, or custodian; or

H. upon the recommendation or agreement of the alleged victim, the Juvenile Court finds that the alleged conduct may be more appropriately addressed, by:

1. the child's parent, guardian, or custodian;
2. voluntary participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;
3. voluntary restitution or other conciliatory efforts or conduct on the part of the child; or
4. other informal, traditional, or community-based alternatives.

§ 8-805. Deferred Adjudication

A. *Motion for Deferred Adjudication* - At any time after the filing of the delinquency petition, but prior to adjudication, the Muscogee (Creek) Nation and the child may agree to move the Juvenile Court for an order deferring adjudication.

B. The motion for deferred adjudication shall propose particular conditions, which may include any of the options specified in § 7.19, to be fulfilled by the child and the child's parent, guardian, or custodian over a period specified in accordance with the provisions of § 8.053.

C. The motion for deferred adjudication shall include a statement by the child that contains an acknowledgment of his or her rights under the provisions of this title, and a waiver of the time limits for adjudication set forth in § 9.011.

D. *Order on Motion for Deferred Adjudication* - The Juvenile Court shall grant the motion for deferred adjudication only upon finding, after inquiring of both the child and counsel for the child, that the child:

1. fully understands his or her rights under the provisions of this title;
2. has voluntarily, intelligently, and knowingly waived the time limits for adjudication set forth in § 9.011; and
3. fully understands the conditions to be imposed.

E. Subject to the provisions of subsection (a), the Juvenile Court shall grant the motion for deferred adjudication unless the Juvenile Court finds that the proposed conditions are unreasonable, excessive, or insufficient, considering:

1. the nature and seriousness of the allegations;
2. the needs of the child; and
3. the safety of the community.

F. Upon granting the motion for deferred adjudication, the Juvenile Court shall enter a written order setting forth:

1. the findings required under subsection (a), as well as any findings required under § 8.053(d);
2. the conditions to be fulfilled by the child and the child's parent, guardian, or custodian during the deferral period; and
3. the duration and ending date of the deferral period.

G. Upon denying the motion for deferred adjudication, the Juvenile Court:

1. shall enter a written order setting forth the findings required under subsection (b); and
2. may propose alternative conditions to be considered by the parties.

H. *Deferred Adjudication –Initial Deferral Period* - The initial period of a deferred adjudication:

1. shall be specified in both the motion for deferred adjudication and the order deferring adjudication;
2. shall be limited to the period of time reasonably necessary for the fulfillment of the deferral conditions;
3. shall not exceed six (6) months, except as provided in subsection (d); and
4. may exceed six (6) months, but shall not exceed one (1) year, where the order deferring adjudication includes specific findings by the Juvenile Court that:
 - a) due to treatment recommendations or similar considerations, fulfillment of the deferral conditions will require a longer deferral period; and
 - b) the purposes of the deferral cannot be accomplished by the imposition of alternative conditions requiring a shorter deferral period.

I. *Deferred Adjudication –Review Hearings* - Upon entering an order deferring adjudication under § 8.052, the Juvenile Court shall set a hearing to determine whether the child and the child's parent, guardian, or custodian have fulfilled the deferral conditions.

J. Prior to the ending date of the deferral period, the Juvenile Court may set one (1) or more interim review hearings to monitor compliance with or fulfillment of the deferral conditions.

K. At any review hearing conducted pursuant to the provisions of this section:

1. the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the order deferring adjudication; and
2. the Muscogee (Creek) Nation shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian, or custodian has engaged in any conduct prohibited by the order deferring adjudication.

L. *Deferred Adjudication –Fulfillment of Conditions* - If the child and the child's parent, guardian, or custodian fulfill the deferral conditions, the Juvenile Court shall, no later than the ending date of the deferral period, enter a written order:

1. dismissing the delinquency petition with prejudice; and
2. releasing the child from any restrictions or other conditions or obligations previously imposed by the Juvenile Court.

M. If the child or the child's parent, guardian, or custodian does not fulfill the deferral conditions, the Juvenile Court may enter a written order:

1. continuing the review hearing to allow additional time for the child or the child's parent, guardian, or custodian to fulfill the deferral conditions;
2. modifying the deferral conditions;
3. extending the deferral for an additional period not to exceed three (3) months; or
4. revoking the order deferring adjudication and setting the case for adjudication in accordance with the provisions of Chapter 9.

N. The Juvenile Court shall not enter an order extending the deferral period or modifying the deferral conditions unless the child, after consulting with and being advised by counsel, consents to the proposed extension or modification.

SUBCHAPTER 9. ADJUDICATION

§ 8-901. Adjudication Hearing

A. *Time Limit* - The adjudication hearing shall be held:

1. within ten (10) days of the initial hearing, if the child was taken into custody and has not been released; or

2. within thirty (30) days of the initial hearing, if the child was not taken into custody or has been released.

B. *Purpose* - The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child has committed a delinquent act or status offense.

C. *Burden of Proof* - The Muscogee (Creek) Nation shall bear the burden of proving the allegations of the delinquency petition beyond a reasonable doubt.

D. *Conduct* - The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.

E. At the commencement of the adjudication hearing, the Juvenile Court:

1. shall first advise the child in accordance with the provisions of § 5.14; and
2. shall then inquire whether the child admits or denies the allegations of the delinquency petition.

F. *Proffer of Admission Inquiry by Juvenile Court* - Before accepting an admission by the child to the allegations of the delinquency petition, the Juvenile Court:

1. shall inquire of the child, in language the child will easily understand:

- a) concerning the number and duration of meetings between the child and counsel;
- b) whether the child is satisfied that counsel has conducted a thorough factual investigation of the matter;
- c) whether the child is satisfied that counsel has answered the child's questions, and has clearly explained:

- 1) the nature of the proceedings, including the purpose of the adjudication hearing and the procedures to be followed if the child denies the allegations or if the Juvenile Court does not accept an admission by the child;
- 2) the child's rights under the provisions of this Title;
- 3) the alternatives to an admission by the child; and
- 4) the likely consequences of an admission by the child;

2. shall inquire of counsel for the child:

- a) concerning the number and duration of meetings between the child and counsel;

- b) whether counsel has conducted a thorough factual investigation of the matter;
- c) whether counsel has thoroughly researched, investigated, and addressed any legal issues presented by the matter; and
- d) whether counsel is satisfied:

- 1) that the child understands each of the items set forth in subsection (a)(1)(C); and
- 2) that there are no compelling factual or legal defenses or arguments which the Juvenile Court should hear or consider before accepting an admission by the child;

- 3. shall inquire of the Juvenile Prosecutor, whether the Juvenile Prosecutor is satisfied that there is independent evidence, admissible in accordance with the provisions of this Title, to corroborate an admission by the child;
- 4. shall inquire of the parties and Tribal Juvenile Justice, whether the proffer of admission by the child is based upon an agreement between the parties regarding disposition recommendations to be submitted to the Juvenile Court in accordance with the provisions of §§ 10.01, et seq.;
- 5. shall provide the child's parent, guardian, or custodian an opportunity to be heard with regard to any matter addressed pursuant the preceding subsections.

G. Nothing in this section shall be interpreted:

- 1. to require disclosure by counsel for the child of any matter that would otherwise be confidential or protected from disclosure by any applicable rule or statute;
- 2. to relieve counsel for the child of any ethical or professional obligations otherwise imposed by statute, rules of professional conduct or similar court rules; or
- 3. to require counsel for the child to proceed in a manner that is inconsistent with those obligations.

H. *Admission on Agreed Recommendations* - If the proffer of admission by the child is based upon an agreement regarding the disposition recommendations to be submitted to the Juvenile Court:

- 1. Tribal Juvenile Justice shall provide the Juvenile Court with a written summary of those recommendations in accordance with the provisions of § 10.02(c); and
- 2. the Juvenile Court shall review the written summary, and make further inquiries as necessary, to determine:

- a) whether the child and the child's parent, guardian, or custodian fully understand the disposition recommendations; and
- b) whether the child and Tribal Juvenile Justice have in fact reached an agreement regarding the disposition recommendations.

I. If the recommendations set forth in the full predisposition report required by § 10.01 are materially different from those presented to the Juvenile Court prior to the acceptance of an admission by the child, the child shall be permitted to withdraw the admission.

J. *Admission –Acceptance by Juvenile Court* - The Juvenile Court shall accept an admission by the child and proceed to disposition only upon finding:

1. that the child fully understands each of the items set forth in § 9.015(a)(1)(C);
2. that the child voluntarily, intelligently, and knowingly admits facts sufficient to support a finding that the child committed a delinquent act or status offense;
3. that the child has not, in his or her admission or in response to the inquiries required by § 9.015(a)(1), set forth facts which, if found to be true by the Juvenile Court, would be a defense to the allegations;
4. that there are no other compelling factual or legal bases for declining to accept the admission.

K. *Admission of Allegations –Substance* - An admission by the child to the allegations of the delinquency petition shall not require an admission to all of the alleged facts, but only to those facts necessary to support a finding by the Juvenile Court that the child committed a delinquent act or status offense.

L. *Denial of Allegations* - If the child denies the allegations, the Juvenile Court shall proceed to hear evidence on the delinquency petition.

M. If the child stands mute, refuses to answer, or answers evasively, the Juvenile Court shall enter a denial of the allegations and proceed to hear evidence on the delinquency petition.

§ 8-902. Finding on Adjudication

A. If, having accepted an admission by the child, or upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the allegations of the delinquency petition have been proven beyond a reasonable doubt, the Juvenile Court shall:

1. enter its finding in writing;

2. set the matter for disposition in accordance with the provisions of Chapter 10; and
3. specify in writing whether the child is to be continued in any out-of-home placement pending the disposition hearing, including any findings required by § 6.01 if the child is being detained;
4. specify in writing any restrictions or conditions imposed by the Court pending disposition, including continuation of any previously imposed restrictions or conditions;
5. inform the child and the child's parent, guardian, or custodian of the option to prepare alternative predisposition reports under § 10.03.

B. If the Juvenile Court finds that the allegations of the delinquency petition have not been proven beyond a reasonable doubt, it shall enter a written order dismissing the petition and releasing the child from any detention, restrictions, or other conditions previously imposed in connection with the delinquency proceedings.

SUBCHAPTER 10. DISPOSITION

§ 8-1001. Predisposition Report –Requirement

A. Prior to the disposition hearing, Tribal Juvenile Justice shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for the supervision, treatment, or rehabilitation of the child, and giving preference to the least restrictive dispositional alternatives appropriate for:

1. holding the child accountable for his or her actions;
2. providing for the safety of the child and the community; and
3. developing competencies which will enable the child to become a responsible and productive member of the community.

§ 8-1002. Predisposition Report –Contents

A. The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include, but are not limited to:

1. a description of the child's home environment, family relationships, and background;
2. information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;
3. the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;

4. discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;
5. the identification of appropriate educational and vocational goals for the child, examples of which may include:
 - a) regular school attendance and completion of the child's current grade;
 - b) attainment of a high school diploma or its equivalent;
 - c) successful completion of literacy or vocational courses; or
 - d) enrollment in an apprenticeship, internship, or similar program;
6. a summary of the Juvenile Court's factual findings, along with relevant information regarding the nature and circumstances of the delinquent act or status offense;
7. the impact on the community of the delinquent act or status offense, as well as any restitution or conciliatory efforts voluntarily undertaken by the child; and
8. a summary of the child's prior contacts with the juvenile justice system.

B. The predisposition report shall include a detailed explanation of:

1. the sources of all information included;
2. the necessity of the proposed disposition, taking into account the particular needs of the child and the safety of the community; and
3. the anticipated benefits to the child and the community of the proposed disposition.

C. If, prior to adjudication, the child and Tribal Juvenile Justice reach an agreement regarding the disposition recommendations to be submitted to the Juvenile Court, Tribal Juvenile Justice shall:

1. prepare a written summary of the agreed upon recommendations; and
2. prior to the adjudication hearing, furnish copies of the written summary to the Juvenile Prosecutor, the child, counsel for the child, and the child's parent, guardian, or custodian.

§ 8-1003. Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian, or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 10.06.

§ 8-1004. Predisposition Examinations and Investigations

A. Following an adjudication hearing at which the child is found to have committed a delinquent act or status offense, and prior to the entry of any disposition orders, the Juvenile Court may enter a written order:

1. requiring the child undergo a medical, psychological, or psychiatric examination; or
2. requiring the child's parent, guardian, or custodian undergo a medical, psychological, or psychiatric examination, where their ability to care for or supervise the child is an issue before the Juvenile Court;
3. directing Tribal Juvenile Justice:
 - a) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 10.02(a); and
 - b) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.

B. Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:

1. the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and
2. upon receiving the results of any such examination or investigation, the Juvenile Court:
 - a) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 10.13; and
 - b) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 10.13.

§ 8-1005. Predisposition Reports and Examinations –Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this Chapter shall be subject to the provisions of § 4.05 of this title.

§ 8-1006. Predisposition Reports and Examinations –Filing and Service

A. Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this Chapter shall be filed in the Juvenile Court and served upon the Juvenile Prosecutor, Tribal Juvenile Justice, the child, and the child's parent, guardian, or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 5.09 of this title.

B. The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

§ 8-1007. Disposition Hearing

A. *Time Limit* - The disposition hearing shall be held:

1. within ten (10) days of the adjudication hearing, if the child was taken into custody and has not been released; or
2. within thirty (30) days of the adjudication hearing, if the child was not taken into custody or has been released.

B. The disposition hearing may be combined with the adjudication hearing conducted pursuant to § 9.01, provided that the parties have had the opportunity to submit, and the Court has reviewed, any predisposition reports, alternative predisposition reports, examinations or other information needed to make the determination required by § 10.08.

C. *Purpose* - The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

1. whether the child is in need of supervision, treatment, or rehabilitation; and
2. the appropriate disposition of the matter.

D. *Conduct* - At the disposition hearing, the Juvenile Court:

1. shall afford the parties the opportunity:
 - a) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and
 - b) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;
 - c) shall consider the predisposition report and recommendations prepared by Tribal Juvenile Justice, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and
 - d) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 10.072.

§ 8-1008. Orders on Disposition

A. If the Juvenile Court finds that the child does not need supervision, treatment, or rehabilitation, it shall dismiss the proceedings and enter a written order releasing the child from any detention, restrictions, or other conditions previously imposed.

B. If the Juvenile Court finds that the child does need supervision, treatment, or rehabilitation, the Juvenile Court may enter:

1. any written disposition orders authorized under § 10.11; or
2. a written order deferring disposition for a period not to exceed six (6) months, and setting forth:
 - a) particular conditions, which may include any of the options specified in § 7.19 to be fulfilled by the child and the child's parent, guardian, or custodian during the deferral period; and
 - b) the ending date of the deferral period.

C. In exercising its discretion under subsection (b), the Juvenile Court:

1. shall enter a written order deferring disposition, in accordance with the provisions of subsection (b)(2), unless the Juvenile Court determines that the best interests of either the child or the community cannot be adequately addressed through one or more of the diversion options set forth in § 7.19; and
2. shall in all cases enter the least restrictive orders appropriate considering:
 - a) the nature and seriousness of the delinquent act or status offense;
 - b) the circumstances, age, and mental and physical condition of the child;
 - c) the child's culpability, as indicated by the circumstances of the acts that were the subject of the adjudication; and
 - d) the child's past record of delinquency, if any.

D. All orders entered by the Juvenile Court pursuant to the provisions of subsection (b) shall be:

1. explained to the child in language the child can easily understand; and
2. accompanied by a written statement of:
 - a) the facts relied upon by the Juvenile Court in entering those orders; and
 - b) the reasons for rejecting less restrictive alternatives.

§ 8-1009. Deferred Disposition –Review Hearings

A. Upon entering an order deferring disposition under § 10.08(b)(2), the Juvenile Court shall set a hearing to determine whether the child and the child's parent, guardian, or custodian have fulfilled the deferral conditions.

B. Prior to the ending date of the deferral period, the Juvenile Court may also set one or more interim review hearings to monitor compliance with or fulfillment of the deferral conditions.

C. At any review hearing conducted pursuant to the provisions of this section:

1. the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the order deferring disposition; and
2. the Muscogee (Creek) Nation shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian, or custodian has engaged in any conduct prohibited by the order deferring disposition.

§ 8-1010. Deferred Disposition –Fulfillment of Conditions

A. If the child and the child's parent, guardian, or custodian fulfill the deferral conditions, the Juvenile Court shall, no later than the ending date of the deferral period, enter a written order:

1. dismissing the delinquency petition with prejudice; and
2. releasing the child from any restrictions or other conditions or obligations previously imposed by the Juvenile Court.

B. If the child or the child's parent, guardian, or custodian does not fulfill the deferral conditions, the Juvenile Court may enter a written order:

1. continuing the review hearing to allow additional time for the child or the child's parent, guardian, or custodian to fulfill the deferral conditions;
2. modifying the deferral conditions;
3. extending the deferral for an additional period not to exceed three (3) months; or
4. revoking the order deferring disposition.

C. Upon revoking the order deferring disposition, the Juvenile Court may proceed to enter any written disposition orders authorized under § 10.11.

§ 8-1011. Disposition Options

A. Pursuant to the provisions of § 10.08(b)(1), the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the safety of the community:

1. an order permitting the child to remain with his or her parent, guardian, or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;
2. an order requiring the child or the child's parent, guardian, or custodian to participate in an educational or counseling program designed to deter delinquent acts or status offenses or other conduct or conditions presenting a threat to the welfare of the child or the community;
3. an order requiring the child's parent, guardian, or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;
4. an order requiring the child or the child's parent, guardian, or custodian to undergo a medical, psychological, or psychiatric evaluation;
5. an order requiring the child or the child's parent, guardian, or custodian to undergo medical, psychological, or psychiatric treatment, where such treatment is:
 - a) recommended by a qualified medical, psychological, or psychiatric professional; and
 - b) necessary to:
 - 1) address conditions which contributed to the child's adjudication; or
 - 2) allow the child to remain with or be returned to the custody of the child's parent, guardian, or custodian.
 - c) an order requiring the child to pay restitution;
 - d) an order requiring the child to perform community service;
 - e) an order requiring the child to attend structured after-school, evening, educational, vocational, or other court-approved programs appropriate for meeting the needs of the child and providing for the safety of the community;
 - f) an order prohibiting the child from driving a motor vehicle for a period not to exceed the date on which the child reaches eighteen (18) years of age;
 - g) an order placing the child in the temporary legal custody of a relative or other responsible adult, subject to such conditions and limitations as the Juvenile Court may prescribe;
 - h) an order providing for supervised or conditional release in accordance with the provisions of § 6.10; and

- i) an order providing for out-of-home placement of the child in a non-secure setting, such as with a relative or in a foster home;
- j) an order providing for out-of-home placement in a staff-secure setting, such as a group home or staff-secure treatment center;
- k) an order providing for confinement of the child in a secure juvenile detention facility that complies with the restrictions set forth in § 6.07 (b) – (d).

B. If a child found by the Juvenile Court to have committed a delinquent act or status offense has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.

§ 8-1012. Out-of-Home Placement and Secure Confinement –Limitations

A. The Juvenile Court shall not enter a disposition order providing for out-of-home placement of the child unless the Court determines that the needs of the child or the community cannot be addressed, considering the factors set forth in § 10.08(c)(2), if the child remains at home:

- 1. If the Juvenile Court determines under § 10.08(c)(2) that out-of-home placement is required, the Court shall place the child in the least restrictive setting that meets the needs of the child and the community. A non-secure placement is less restrictive than a staff-secure placement, and a staff-secure placement is less restrictive than a secure juvenile detention facility.

B. The Juvenile Court shall not enter a disposition order providing for the secure confinement of the child unless:

- 1. no less restrictive alternatives will suffice; and
- 2. there is clear and convincing evidence that the child should be placed in a secure facility because:
 - a) such confinement is necessary to avert a substantial risk to the health, welfare, person, or property of the child or others;
 - b) there is a substantial risk that the child may flee the jurisdiction of the Juvenile Court; or
 - c) each of the following conditions is met:
 - 1) the child has repeatedly failed to comply with the disposition orders of the Juvenile Court;
 - 2) less restrictive alternatives have repeatedly failed to bring the child into compliance; and

- 3) secure confinement is reasonably calculated to bring the child into compliance.

C. The Juvenile Court shall not enter a disposition order providing for the detention or other out-of-home placement of the child for any of the reasons set forth in § 6.07 (d) of this title.

D. In no event shall a child be detained in a secure juvenile detention facility for a total period exceeding that for which an adult could be incarcerated for the same act under the Muscogee (Creek) Nation Code.

E. For the purposes of interpreting and applying subsection (c), the total period of secure confinement:

1. shall include any period during which the child was detained in a secure juvenile detention facility prior to adjudication; and
2. shall be limited, where the child is found to have committed multiple delinquent acts in connection with a single incident, to the period for which an adult could be incarcerated for the most serious of those acts under the Muscogee (Creek) Nation Code.

§ 8-1013. Disposition Orders –Review

A. The Juvenile Court shall conduct a hearing to review any disposition orders entered pursuant to the provisions of § 10.08(b)(1):

1. at least once every six (6) months, if the child has not been placed in a secure juvenile detention facility or other out-of-home placement;
2. at least once every thirty (30) days, if the child is confined in a secure juvenile detention facility; and
3. at least once every forty-five (45) days, if the child is in an out-of-home placement other than a secure juvenile detention facility.

B. The Juvenile Court shall conduct the hearing for the purpose of determining:

1. whether the child and the child's parent, guardian, or custodian are in compliance with those disposition orders;
2. the extent to which those disposition orders have accomplished their intended purposes;
3. whether those disposition orders should:
 - a) continue in effect without modification or extension;
 - b) be terminated in accordance with the provisions of § 10.14(b); or
 - c) be modified or extended in accordance with the provisions of § 10.15.

C. Where the child is has been placed in a secure juvenile detention facility or other out-of-home placement, the Juvenile Court shall consider:

1. whether the circumstances of the child, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;
2. whether secure confinement or other out-of-home placement remains necessary and authorized under § 10.12; and
3. whether the child should be released from secure confinement or other out-of-home placement in favor of a less restrictive alternative.

D. At any review hearing conducted pursuant to the provisions of this section:

1. the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and
2. the Muscogee (Creek) Nation shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

§ 8-1014. Disposition Orders –Duration and Termination

A. Disposition orders entered by the Juvenile Court shall continue in force for not more than one (1) year, unless they are extended in accordance with the provisions of § 10.15.

B. The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

C. With the exception of an order requiring the child to pay restitution, all disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the delinquency proceedings, when the child reaches twenty-one (21) years of age.

§ 8-1015. Disposition Orders –Modification or Extension

A. Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

B. The modification hearing shall be held within thirty (30) days of the filing of the motion for modification.

C. Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.

D. In making the determination required by subsection (a), the Juvenile Court may consider:

1. the extent to which the child and the child's parent, guardian, or custodian have complied with any disposition orders previously entered by the Juvenile Court;
2. evidence that the child has committed a subsequent delinquent act;
3. changes in treatment or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and
4. any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.

E. All modified disposition orders shall be subject to the requirements of § 10.08(c) and § 10.08(d).

F. An extension ordered in accordance with the provisions of this section shall not exceed six (6) months from the expiration of the prior order, and in no event shall the duration of a disposition order be extended:

1. for longer than reasonably necessary to accomplish the purpose of the order;
2. beyond a total of three (3) years; or
3. past the date on which the child shall reach twenty-one (21) years of age.

§ 8-1016. Disposition Orders –Violations

A. The violation of a disposition order entered pursuant to the provisions of § 10.08(b)(1) may be reported to Tribal Juvenile Justice, who may file a motion for modification pursuant to the provisions of § 10.15.

B. A child detained as the result of an alleged violation of a disposition order shall immediately be released unless a modification hearing is held within the time limits imposed by § 10.15(b).

C. The Juvenile Court enters, in accordance with the provisions of § 10.15, modified disposition orders providing for continued detention or secure confinement; or:

1. the alleged violation includes the commission of a delinquent act, and:

- a) a new delinquency petition is filed, in accordance with the provisions of § 8.01, prior to the modification hearing; and
- b) continued detention, pending further delinquency proceedings, is necessary and authorized under § 6.01.

SUBCHAPTER 11. EXPUNGEMENT

§ 8-1101. Records—Expungement

A. All records and files pertaining to any proceedings conducted pursuant to the provisions of this title, including but not limited to law enforcement records and court files, shall be expunged when the child reaches twenty-five (25) years of age.

B. No further inspection or use of any record or file to be expunged in accordance with the provisions of this section shall be permitted.

SUBCHAPTER 12. APPEALS

§ 8-1201. Right to Appeal

A. Subject to the limitation set forth in subsection (c), any party to any proceedings conducted pursuant to the provisions of this title may appeal from:

- 1. any final order of the Juvenile Court, including but not limited to all disposition orders; and
- 2. a finding that the child committed a delinquent act or status offense.

B. The Nation shall not be permitted to appeal an order dismissing a delinquency petition in accordance with the provisions of § 9.02(b).

§ 8-1202. Rules in Appellate Proceedings

A. Appeals from the Juvenile Court shall be conducted in accordance with the appellate rules governing appeals from the Tribal Court, to the extent that:

- 1. such rules are not in conflict with the provisions of this title;
- 2. the time limits imposed by such rules, when applied in conjunction with the provisions of this title, do not unduly burden the right to appeal.

§ 8-1203. Time Limit for Appeal

Written notice of the appeal shall be filed within fifteen (15) days after the entry of the final order or finding of the Juvenile Court.

§ 8-1204. Record of Proceedings

A. Within three (3) business days of the filing of the notice of appeal, a record of the proceedings shall be made available to the child, the child's parent, guardian, or custodian, and counsel for the child.

B. The record of the proceedings shall be provided without cost, except that the costs of any transcription services shall be payable by the party seeking the appeal.

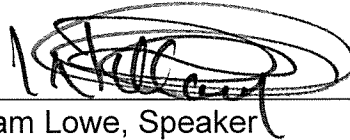
§ 8-015. Stay on Appeal

The Juvenile Court shall stay any order from which a party has filed written notice of appeal in accordance with the provisions of § 12.03 unless the Juvenile Court finds, after consideration of any reasonable alternatives, that enforcement of the order is necessary to avert a substantial risk to the health, welfare, or safety of the child or others.

SECTION THREE. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 26th day of August, 2023.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



William Lowe, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members attending this meeting on the 26th day of August, 2023 and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Alicia Stroble, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 31st day of August, 2023 to the above Law, **NCA 23-084** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

David W Hill

David W. Hill, Principal Chief
Muscogee (Creek) Nation

