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## **TITLE 10A**

### **ARTICLE 1. RESERVED**

### **ARTICLE 2**

### **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **§ 2-1-101. Short title--Cherokee Nation Juvenile Code--Subsequent enactments--Effect of captions**

A. Article 2 of Title 10A of the Cherokee Nation Statutes shall be known and may be cited as the “Cherokee Nation Juvenile Code”.

B. All statutes hereinafter enacted and codified in Article 2 of Title 10A of the Cherokee Nation Code Annotated shall be considered and deemed part of the Cherokee Nation Juvenile Code.

C. Chapter captions are part of the Cherokee Nation Juvenile Code, but shall not be deemed to govern, limit or in any manner affect the scope, meaning or intent of the provisions of any article or part of this Code.

D. The Attorney General shall prepare and prosecute any case or proceeding within the purview of the Cherokee Nation Juvenile Code.

#### **§ 2-1-102. Legislative intent--Construction of chapter--Purpose**

It is the intent of the Legislature that Article 2 of this title shall be liberally construed, to the end that its purpose may be carried out.

The purpose of the laws relating to juveniles alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency. This purpose should be pursued through means that are fair and just, that:

1. Recognize the unique characteristics and needs of juveniles;
2. Give juveniles access to opportunities for personal and social growth;
3. Maintain the integrity of substantive law prohibiting certain behavior and developing individual responsibility for lawful behavior;
4. Provide a system relying upon individualized treatment and best practice for the rehabilitation and reintegration of juvenile delinquents into society;

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5. Preserve and strengthen family ties whenever possible, including improvement of home environment;

6. Remove a juvenile from the custody of parents if the welfare and safety of the juvenile or the protection of the public would otherwise be endangered;

7. Secure for any juvenile removed from the custody of parents the necessary treatment, care, guidance and discipline to assist the juvenile in becoming a responsible and productive member of society; and

8. Provide procedures through which the provisions of the law are executed and enforced and which will assure the parties fair hearings at which their rights as citizens are recognized and protected.

### **§ 2-1-103. Definitions**

When used in the Cherokee Nation Juvenile Code, unless the context otherwise requires:

1. “Adjudicatory hearing” means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Chapter 2 of the Cherokee Nation Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

2. “Alternatives to secure detention” means those services and facilities which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. “Behavioral health” means mental health, substance abuse or co-occurring mental health and substance abuse diagnoses, and the continuum of mental health, substance abuse, or co-occurring mental health and substance abuse treatment;

4. “Behavioral health facility” means a mental health or substance abuse facility;

5. “Child” or “juvenile” means any person under eighteen (18) years of age, except for any person charged and convicted for any offense specified in the Youthful Offender Act or against whom judgment and sentence has been deferred for such offense, or any person who is certified as an adult pursuant to any certification procedure authorized in the Cherokee Nation Juvenile Code for any offense which results in a conviction or against whom judgment and sentence has been deferred for such offense;

6. “Child or juvenile in need of mental health and substance abuse treatment” means a juvenile in need of mental health and substance abuse treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act;

7. “Child or juvenile in need of supervision” means a juvenile who:

a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,

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b. is willfully and voluntarily absent from his or her home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,

c. is willfully and voluntarily absent from school if the juvenile is subject to compulsory school attendance, or

d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

8. “Community-based” means a facility, program or service located near the home or family of the juvenile, and programs of community prevention, diversion, supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, prevention and diversion programs, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

9. “Community intervention center” means a facility which serves as a short-term reception facility to receive and hold juveniles for an alleged violation of a municipal ordinance, state law or who are alleged to be in need of supervision;

10. “Contracted detention facility” means a facility with which the Cherokee Nation has contracted for services and which is secured by locked rooms, buildings and fences, and meets the certification standards and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children. A juvenile detention facility shall not be considered a correctional facility subject to the provisions of Title 57 of the Cherokee Nation statutes;

11. “Core community-based” means the following community-based facilities, programs or services provided through contract with the Department of Juvenile Justice:

a. screening, evaluation and assessment which includes a face-to-face screening and evaluation to establish problem identification and to determine the risk level of a child or adolescent and may result in clinical diagnosis or diagnostic impression,

b. treatment planning which includes preparation of an individualized treatment plan which is usually done as part of the screening, evaluation and assessment,

c. treatment plan reviewing which includes a comprehensive review and evaluation of the effectiveness of the treatment plan,

d. individual counseling which includes face-to-face, one-on-one interaction between a counselor and a juvenile to promote emotional or psychological change to alleviate the issues, problems, and difficulties that led to a referral, including ongoing assessment of the status and response of the juvenile to treatment as well as psychoeducational intervention,

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e. group counseling which includes a method of treating a group of individuals using the interaction between a counselor and two or more juveniles or parents or guardians to promote positive emotional or behavioral change, not including social skills development or daily living skills,

f. family counseling which includes a face-to-face interaction between a counselor and the family of the juvenile to facilitate emotional, psychological or behavior changes and promote successful communication and understanding,

g. crisis intervention counseling which includes unanticipated, unscheduled face-to-face emergency intervention provided by a licensed level or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community,

h. crisis intervention telephone support which includes supportive telephone assistance provided by a licensed level provider or qualified staff with immediate access to a licensed provider to resolve immediate, overwhelming problems that severely impair the ability of the juvenile to function or maintain in the community,

i. case management which includes planned linkage, advocacy and referral assistance provided in partnership with a client to support that client in self-sufficiency and community tenure,

j. case management and home-based services which includes that part of case management services dedicated to travel for the purpose of linkage, advocacy and referral assistance and travel to provide counseling and support services to families of children as needed to support specific youth and families in self-sufficiency and community tenure,

k. individual rehabilitative treatment which includes face-to-face service provided one-on-one by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices,

l. group rehabilitative treatment which includes face-to-face group services provided by qualified staff to maintain or develop skills necessary to perform activities of daily living and successful integration into community life, including educational and supportive services regarding independent living, self-care, social skills regarding development, lifestyle changes and recovery principles and practices,

m. community-based prevention services which include services delivered in an individual or group setting by a qualified provider designed to meet the services needs of a child or youth and family of the child or youth who has been referred because of identified problems in the family or community. The group prevention planned activities must be focused on reducing the risk that individuals will experience behavioral, substance abuse or delinquency-related problems. Appropriate curriculum-based group activities include, but are not limited to, First Offender groups, prevention and relationship enhancement groups, anger management groups, life skills

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groups, substance abuse education groups, smoking cessation groups, STD/HIV groups and parenting groups,

n. individual paraprofessional services which include services delineated in the treatment plan of the juvenile which are necessary for full integration of the juvenile into the home and community, but do not require a professional level of education and experience. Activities include assisting families with Medicaid applications, assisting with school and General Educational Development (GED) enrollment, assisting youth with independent living arrangements, providing assistance with educational problems and deficiencies, acting as a role model for youth while engaging them in community activities, assisting youth in seeking and obtaining employment, providing transportation for required appointments and activities, participating in recreational activities and accessing other required community support services necessary for full community integration and successful treatment,

o. tutoring which includes a tutor and student working together as a learning team to bring about overall academic success, improved self-esteem and increased independence as a learner for the student,

p. community relations which include public or community relations activities directed toward the community or public at large or any segment of the public to encourage understanding, accessibility and use of community-based facilities, programs or services,

q. children's emergency resource centers that are community-based and that may provide emergency care and a safe and structured homelike environment or a host home for children providing food, clothing, shelter and hygiene products to each child served; after-school tutoring; counseling services; life-skills training; transition services; assessments; family reunification; respite care; transportation to or from school, doctors' appointments, visitations and other social, school, court or other activities when necessary; and a stable environment for children who have been detained as delinquent or in need of supervision and temporarily placed by a court, or children in crisis who are in custody of the Department of Juvenile Justice if permitted under the Office's policies and regulations or who have been voluntarily placed by a parent or custodian during a temporary crisis,

r. transitional living programs which include a structured program to help older homeless youth achieve self-sufficiency and avoid long-term dependence on social services,

s. community-at-risk services (C.A.R.S.) which include a program provided to juveniles in custody or under the supervision of the Department of Juvenile Justice or a juvenile bureau to prevent out-of-home placement and to reintegrate juveniles returning from placements. The program shall include, but not be limited to, treatment plan development, counseling, diagnostic and evaluation services, mentoring, tutoring, and supervision of youth in independent living,

t. first offender programs which include alternative diversion programs, as defined by Section 2-2-404 of this title, and

u. other community-based facilities, programs or services designated by the Board as core

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community-based facilities, programs or services;

12. “Day treatment” means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

13. “Delinquent child or juvenile” means a juvenile who:

a. has violated any federal, tribal, or state law or municipal ordinance except a traffic statute or traffic ordinance or has violated any lawful order of the court made pursuant to the provisions of the Cherokee Nation Juvenile Code, or

b. has habitually violated traffic laws, traffic ordinances or boating safety laws or rules;

14. “Director” means the Director of the Department of Juvenile Justice;

15. “Dispositional hearing” means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

16. “Facility” means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles;

17. “Graduated sanctions” means a calibrated system of sanctions designed to ensure that juvenile offenders face uniform, immediate, and consistent consequences that correspond to the seriousness of each offender’s current offense, prior delinquent history, and compliance with prior interventions;

18. “Group home” means a residential facility with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents;

19. “Independent living program” means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

20. “Institution” means a residential facility offering care and treatment for more than twenty residents. Said institution may:

a. have a program which includes community participation and community-based services, or

b. be a secure facility with a program exclusively designed for a particular category of resident;

21. “Juvenile detention facility” means a facility which is secured by locked rooms, buildings and

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fences, and meets the certification standards of the Office and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children;

22. “Municipal juvenile facility” means a facility other than a community intervention center that accepts a child under eighteen (18) years of age charged with violating a municipal ordinance and meets the requirements of Section 2-2-102 of this title;

23. “Office” means the Department of Juvenile Justice;

24. “Person responsible for a juvenile’s health or welfare” includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile’s parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility;

25. “Preliminary inquiry” or “intake” means a mandatory, pre-adjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Cherokee Nation Juvenile Code, whether non-adjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

26. “Probation” means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside an Department of Juvenile Justice facility directly or by contract under prescribed conditions and under supervision by the Office, subject to return to the court for violation of any of the conditions prescribed;

27. “Rehabilitative facility” means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

28. “Responsible adult” means a stepparent, foster parent, person related to the juvenile in any manner who is eighteen (18) years of age or older, or any person having an obligation and authority to care for or safeguard the juvenile in the absence of another person who is eighteen (18) years of age or older;

29. “Secure detention” means the temporary care of juveniles who require secure custody in physically restricting facilities:

a. while under the continuing jurisdiction of the court pending court disposition, or

b. pending placement by the Department of Juvenile Justice after adjudication;

30. “Secure facility” means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which relies on locked rooms and buildings, and fences for physical restraint in order to control behavior of its residents;

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31. “Transitional living program” means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

32. “Youth Services Agency” means a nonprofit corporation with a local board of directors, officers and staff that has been designated by the Board as a Youth Services Agency, that is peer reviewed annually, and that provides community-based facilities, programs or services to juveniles and their families in the youth services service area in which it is located.

## CHAPTER 2

### CUSTODY AND COURT PROCEEDINGS

#### **§ 2-2-101. Taking of child into custody--Detention--Medical treatment--Behavioral health treatment--Hearing on order for medical treatment**

A. A child may be taken into custody prior to the filing of a petition alleging that the child is delinquent or in need of supervision:

1. By a peace officer, without a court order for any criminal offense for which the officer is authorized to arrest an adult without a warrant, or if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child for a substantial length of time or without intent to return, or if the surroundings of the child are such as to endanger the welfare of the child;

2. By a peace officer or an employee of the court without a court order, if the child is willfully and voluntarily absent from the home of the child without the consent of the parent, legal guardian, legal custodian or other person having custody and control of the child if the surroundings of the child are such as to endanger the welfare of the child or, in the reasonable belief of the employee of the court or peace officer, the child appears to have run away from home without just cause. For purposes of this section, a peace officer may reasonably believe that a child has run away from home when the child refuses to give his or her name or the name and address of a parent or other person legally responsible for the care of the child or when the peace officer has reason to doubt that the name and address given by the child are the actual name and address of the parent or other person legally responsible for the care of the child. A peace officer or court employee is authorized by the court to take a child who has run away from home or who, in the reasonable belief of the peace officer, appears to have run away from home, to a facility designated by administrative order of the court for such purposes if the peace officer or court employee is unable to or has determined that it is unsafe to return the child to the home of the child or to the custody of his or her parent or other person legally responsible for the care of the child. Any such facility receiving a child shall inform a parent or other person responsible for the care of the child;

3. Pursuant to an order of the district court issued on the application of the Office of the Attorney

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General. The application presented by the Attorney General shall be supported by a sworn affidavit which may be based upon information and belief. The application shall state facts sufficient to demonstrate to the court that there is probable cause to believe the child has committed a crime or is in violation of the terms of probation, parole or order of the court;

4. By order of the district court pursuant to subsection F of this section when the child is in need of medical or behavioral health treatment or other action in order to protect the health or welfare of the child and the parent, legal guardian, legal custodian or other person having custody or control of the child is unwilling or unavailable to consent to such medical or behavioral health treatment or other action; and

5. Pursuant to an emergency ex parte or a final protective order of the district court issued at the request of a parent or legal guardian pursuant to the Protection from Domestic Abuse Act.

Any child referred to in this subsection shall not be considered to be in the custody of the Department of Juvenile Justice.

B. Whenever a child is taken into custody as a delinquent child, the child shall be detained, held temporarily in the custodial care of a peace officer or other person employed by a police department, or be released to the custody of the parent of the child, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to the court at the time fixed if a petition is to be filed and to assume responsibility for costs for damages caused by the child if the child commits any delinquent acts after being released regardless of whether or not a petition is to be filed. It shall be a misdemeanor for any person to sign the written promise and then fail to comply with the terms of the promise. Any person convicted of violating the terms of the written promise shall be subject to imprisonment in the county jail for not more than six (6) months or a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment. In addition, if a parent, legal guardian, legal custodian, attorney or other responsible adult is notified that the child has been taken into custody, it shall be a misdemeanor for such person to refuse to assume custody of the child within a timely manner. If detained, the child shall be taken immediately before a judge of the district court in the county in which the child is sought to be detained, or to the place of detention or a children's emergency resource center or host home designated by the court. If no judge be available locally, the person having the child in custody shall immediately report the detention of the child to the presiding judge of the judicial administrative district, provided that the child shall not be detained in custody beyond the next judicial day or for good cause shown due to problems of arranging for and transporting the child to and from a secure juvenile detention center, beyond the second judicial day unless the court shall so order after a detention hearing to determine if there exists probable cause to detain the child. The child shall be present at the detention hearing or the image of the child may be broadcast to the judge by closed-circuit television or any other electronic means that provides for a two-way communication of image and sound between the child and the judge. If the latter judge cannot be reached, such detention shall be reported immediately to any judge regularly serving within the judicial administrative district. If detained, a reasonable bond for release shall be set. Pending further disposition of the case, a child whose custody has been assumed by the court may be released to the custody of a parent, legal guardian, legal custodian, or other responsible adult or to any other person appointed by the court, or be detained pursuant to

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Chapter 3 of the Cherokee Nation Juvenile Code in such place as shall be designated by the court, subject to further order.

C. When a child is taken into custody as a child in need of supervision, the child shall be detained and held temporarily in the custodial care of a peace officer or placed within a community intervention center as defined in subsection D of Section 2-7-305 of this title, a children's emergency resource center or host home, or be released to the custody of the parent of the child, legal guardian, legal custodian, attorney or other responsible adult, upon the written promise of such person to bring the child to court at the time fixed if a petition is to be filed. A child who is alleged or adjudicated to be in need of supervision shall not be detained in any jail, lockup, or other place used for adults convicted of a crime or under arrest and charged with a crime.

D. When any child is taken into custody pursuant to this title and it reasonably appears to the peace officer, employee of the court or person acting pursuant to court order that the child is in need of medical treatment to preserve the health of the child, any peace officer, any employee of the court or person acting pursuant to court order shall have the authority to authorize medical examination and medical treatment for any child found to be in need of medical treatment as diagnosed by a competent medical authority in the absence of the parent of the child, legal guardian, legal custodian, or other person having custody and control of the child who is competent to authorize medical treatment. The officer or the employee of the court or person acting pursuant to court order shall authorize said medical treatment only after exercising due diligence to locate the parent of the child, legal guardian, legal custodian, or other person legally competent to authorize said medical treatment. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such medical expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such medical treatment shall have any liability, civil or criminal, for giving such authorization.

E. A child who has been taken into custody as otherwise provided by this Code who appears to be a minor in need of treatment, as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, may be admitted to a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act. The parent of the child, legal guardian, legal custodian, or other person having custody and control shall be responsible for such behavioral health expenses as ordered by the court. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this section for any child found in need of such behavioral health evaluation or treatment shall have any liability, civil or criminal, for giving such authorization.

F. 1. A child may be taken into custody pursuant to an order of the court specifying that the child is in need of medical treatment or other action to protect the health or welfare of the child and the parent, legal guardian, legal custodian, or other responsible adult having custody or control of a child is unwilling or unavailable to consent to such medical treatment or other action.

2. If the child is in need of immediate medical treatment or other action to protect the health or welfare of the child, the court may issue an emergency ex parte order upon application of the Attorney General of the county in which the child is located. The application for an ex parte order

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may be verbal or in writing and shall be supported by facts sufficient to demonstrate to the court that there is reasonable cause to believe that the child is in need of immediate medical treatment or other action to protect the health or welfare of the child. The emergency ex parte order shall be in effect until a full hearing is conducted. A copy of the application, notice for full hearing and a copy of any ex parte order issued by the court shall be served upon such parent, legal guardian, legal custodian, or other responsible adult having custody or control of the child. Within twenty-four (24) hours of the filing of the application the court shall schedule a full hearing on the application, regardless of whether an emergency ex parte order had been issued or denied.

3. Except as otherwise provided by paragraph 2 of this subsection, whenever a child is in need of medical treatment to protect the health or welfare of the child, or whenever any other action is necessary to protect the health or welfare of the child, and the parent of the child, legal guardian, legal custodian, or other person having custody or control of the child is unwilling or unavailable to consent to such medical treatment or other action, the court, upon application of the Attorney General of the county in which the child is located, shall hold a full hearing within five (5) days of filing the application. Notice of the hearing and a copy of the application shall be served upon the parent, legal guardian, legal custodian, or other person having custody or control of the child.

4. At any hearing held pursuant to this subsection, the court may grant any order or require such medical treatment or other action as is necessary to protect the health or welfare of the child.

5. a. The parent, legal guardian, legal custodian, or other person having custody or control of the child shall be responsible for such medical expenses as ordered by the court.

b. No peace officer, any employee of the court or person acting pursuant to court order authorizing such treatment in accordance with the provisions of this subsection for any child found in need of such medical treatment shall have any liability, civil or criminal.

G. As a part of the intake process, an employee of the Department of Juvenile Justice shall inquire as to whether there is any American Indian lineage or ancestry that would make the child eligible for membership or citizenship in a federally recognized American Indian tribe or nation. Any information or records related to taking the child into custody shall be confidential, shall not be open to the general public, and shall not be inspected or their contents disclosed.

## **§ 2-2-102. Personal jurisdiction**

A. 1. Upon the filing of a petition alleging the child to be in need of supervision, or upon the assumption of custody pursuant to Section 2-2-101 of this title, the Cherokee Nation District Court shall have jurisdiction within the boundaries of the Cherokee Nation reservation where a child:

a. resides,

b. is found, or

c. is alleged to be or is found to be in need of supervision.

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2. The court shall have jurisdiction over any parent, legal custodian, legal guardian, stepparent of the child, or any adult person living in the home of the child regardless of where the parent, legal custodian, legal guardian, stepparent, or adult person living in the home of the child is found and who appears in court or has been properly served with a summons pursuant to Section 2-2-107 of this title.

3. When jurisdiction has been obtained over a child who is or is alleged to be in need of supervision, such may be retained until the child becomes eighteen (18) years of age.

4. For the convenience of the parties and in the interest of justice, a proceeding under the Cherokee Nation Juvenile Code, Article 2 of this title, may be transferred to another tribal or state district court. However, prior to transferring a case to a different court, the court shall contact the judge in the other court to confirm that the judge will accept the transfer.

B. 1. Upon the filing of a petition alleging the child to be delinquent or upon the assumption of custody pursuant to Section 2-2-101 of this title, the Cherokee Nation District Court where the delinquent act occurred within the boundaries of the Cherokee Nation Reservation, shall have jurisdiction of the child and over any parent, legal custodian, legal guardian, stepparent of the child or any adult person living in the home of the child regardless of where the parent, legal custodian, legal guardian, stepparent, or adult person living in the home of the child is found and who appears in court or has been properly served with a summons pursuant to Section 2-2-107 of this title.

2. When jurisdiction has been obtained over a child who is or is alleged to be a delinquent, jurisdiction may be retained until the child becomes nineteen (19) years of age upon the court's own motion, motion by the Attorney General or motion by the Department of Juvenile Justice, as provided in Section 2-7-504 of this title.

3. The juvenile proceeding may be filed before the child becomes eighteen (18) years of age; within one (1) year after the date of the eighteenth birthday of the child if the underlying act would constitute a felony if committed by an adult; or within six (6) months after the date of the eighteenth birthday if the underlying act would constitute a misdemeanor if committed by an adult.

C. The district court in which a petition is filed or the district court in which custody has been assumed pursuant to the provisions of Section 2-2-101 of this title may retain jurisdiction of a delinquent child in such proceeding notwithstanding the fact that the child is subject to the jurisdiction of another district court within the state. Any adjudication and disposition made by the court in which said petition is filed shall control over prior orders in regard to the child.

D. Except as otherwise provided in the Cherokee Nation Juvenile Code, a child who is charged with having violated any state statute or municipal ordinance, other than those enumerated in Section 2-5-101, 2-5-205 or 2-5-206 of this title, shall not be tried in a criminal action but in a juvenile proceeding.

E. If, during the pendency of a criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court or municipal court shall transfer the case, together with all the papers, documents and testimony connected

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therewith, to the juvenile division of the district court. The division making the transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release the child to the custody of a suitable person to be brought before the juvenile division.

F. Nothing in this act shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court.

### **§ 2-2-103. Reserved**

### **§ 2-2-104. Preliminary inquiry--Petition**

A. A preliminary inquiry shall be conducted to determine whether the interests of the public or of the child who is within the purview of the Cherokee Nation Juvenile Code require that further court action be taken. If it is determined by the preliminary inquiry that no further action be taken and if agreed to by the Attorney General, the intake worker may make such informal adjustment without a petition.

B. In the course of the preliminary inquiry, the intake worker shall:

1. Hold conferences with the child and the parents, guardian or custodian of the child for the purpose of discussing the disposition of the referral made;
2. Interview such persons as necessary to determine whether the filing of a petition would be in the best interests of the child and the community;
3. Check existing records of any district court or tribal court, law enforcement agencies, Department of Juvenile Justice, and Department of Human Services;
4. Obtain existing mental health, medical and educational records of the child with the consent of the parents, guardian or custodian of the child or by court order; and
5. Administer any screening and assessment instruments or refer for necessary screening and assessments to assist in the determination of any immediate needs of the child as well as the immediate risks to the community. All screening and assessment instruments shall be uniformly used by all intake workers, including those employed by juvenile bureaus, and shall be instruments specifically prescribed by the Department of Juvenile Justice.

C. Upon review of any information presented in the preliminary inquiry, the Attorney General may consult with the intake worker to determine whether the interests of the child and the public will be best served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

D. Informal adjustment may be provided to the child by the intake worker only where the facts reasonably appear to establish prima facie jurisdiction and are admitted and where consent is obtained from the Attorney General, the parent of the child, legal guardian, legal custodian, or

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legal counsel, if any, and the child. The informal adjustment is an agreement whereby the child agrees to fulfill certain conditions in exchange for not having a petition filed against the child. The informal adjustment shall be completed within a period of time not to exceed six (6) months and shall:

1. Be voluntarily entered into by all parties;
2. Be revocable by the child at any time by a written revocation;
3. Be revocable by the intake worker in the event there is reasonable cause to believe the child has failed to carry out the terms of the informal adjustment or has committed a subsequent offense;
4. Not be used as evidence against the child at any adjudication hearing;
5. Be executed in writing and expressed in language understandable to the persons involved; and
6. Become part of the juvenile record of the child.

E. The informal adjustment agreement under this section may include, among other suitable methods, programs and procedures, the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which in the opinion of the intake officer would be beneficial to the child and family of the child;
2. Require the child to undergo a behavioral health evaluation and, if warranted, undergo appropriate care or treatment;
3. Restitution providing for monetary payment by the parents or child to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged. Before setting the amount of restitution, the intake officer shall consult with the victim concerning the amount of damages; or
4. Informal adjustment projects, programs and services may be provided through public or private agencies.

If the intake worker has reasonable cause to believe that the child has failed to carry out the terms of the adjustment agreement or has committed a subsequent offense, in lieu of revoking the agreement, the intake worker may modify the terms of the agreement and extend the period of the agreement for an additional six (6) months from the date on which the modification was made with the consent of the child or counsel of the child, if any.

F. If an informal adjustment is agreed to pursuant to subsection D of this section, the informal adjustment agreement may require the child to pay a fee equal to no more than what the court costs would have been had a petition been filed. The child shall remit the fee directly to the Department of Juvenile Justice and shall be used to defray the costs for the operation of the Department of

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Juvenile Justice.

### **§ 2-2-104.1. Diversion services**

A. Diversion services may be offered to children who are at risk of being the subject of a child-in-need-of-supervision petition. Diversion services shall be designed to provide an immediate response to families in crisis and to divert children from court proceedings. Diversion services may be provided by outside agencies as designated by the district courts, juvenile bureaus, court employees, or a combination thereof.

B. Diversion services shall clearly document diligent attempts to provide appropriate services to the child and the family of the child unless it is determined that there is no substantial likelihood that the child and family of the child will benefit from further diversion attempts.

C. Where the primary issue is truancy, steps taken by the school district to improve the attendance or conduct of the child in school shall be reviewed and attempts to engage the school district in further diversion attempts shall be made if it appears that such attempts will be beneficial to the child.

D. Efforts to prevent the filing of the petition may extend until it is determined that there is no substantial likelihood that the child and family of the child will benefit from further attempts. Efforts at diversion may continue after the filing of the petition where it is determined that the child and family of the child will benefit therefrom.

E. A child-in-need-of-supervision petition shall not be filed during the period that the designated agency, juvenile bureau, or court employee is providing the diversion services. A finding that the case has been successfully diverted shall constitute presumptive evidence that the underlying allegations have been successfully resolved.

F. The designated agency, juvenile bureau, or court employee shall promptly give written notice to the child and family of the child whenever attempts to prevent the filing of the petition have terminated and shall indicate in the notice whether the efforts were successful or whether a child-in-need-of-supervision petition should be filed with the court. A petition may or may not be filed where diversion services have been terminated because the parent or other person legally responsible for the child failed to consent to the diversion plan or failed to actively participate in the services provided.

### **§ 2-2-105. Order removing child from home prohibited absent certain determinations**

No order of the court providing for the initial or continued removal of a child alleged or adjudicated delinquent or in need of supervision from the child's home shall be entered unless the court finds that the continuation of the child in the home of the child is contrary to the welfare of the child. The order shall include either:

1. A determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from the home or, as appropriate, reasonable efforts have been made to

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provide for the return of the child to the home; or

2. A determination as to whether or not an absence of efforts to prevent the removal of the child from the home is reasonable upon consideration of the family circumstances, the safety of the child and the protection of the public; or

3. A determination that reasonable efforts to prevent the removal of the child from the home or to reunify the child and family are not required because:

a. the Cherokee Nation District Court has determined that the parent has subjected the child to one of the following aggravated circumstances: abandonment, torture, chronic abuse, sexual abuse or chronic, life-threatening neglect of the child,

b. the Cherokee Nation District Court has determined that the parent has been convicted of one of the following:

(1) murder of another child of the parent,

(2) voluntary manslaughter of another child of the parent,

(3) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, or

(4) a felony assault that results in serious bodily injury to the child or another child of the parent, or

c. the parental rights of the parent with respect to a sibling have been terminated involuntarily.

### **§ 2-2-106. Petition--Subsequent pleadings--Amended petitions**

A. If a child has been taken into custody pursuant to the provisions of the Cherokee Nation Juvenile Code before a petition has been filed, a petition shall be filed and summons issued within five (5) judicial days from the date of such assumption of custody, or custody of the child shall be relinquished to the parent of the child, legal guardian, legal custodian, or other responsible adult, unless otherwise provided for in the Cherokee Nation Juvenile Code.

B. No pleading subsequent to the petition is required, and the filing of any motion or pleading shall not delay the holding of the adjudicatory hearing.

C. A petition may be amended by order of the court at any time before an order of adjudication has been made, provided that the court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing. A petition shall be deemed to have been amended to conform to the proof where the proof does not change the substance of the act, omission or circumstance alleged. However, the court shall not amend the adjudicatory category prayed for in the petition.

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D. A petition in a juvenile proceeding may be filed by the Attorney General to determine if further action is necessary. The proceeding shall be entitled “In the matter of \_\_\_\_\_, an alleged (delinquent) or (a child alleged to be in need of supervision)”. The petition shall be verified and may be upon information and belief. It shall set forth:

1. With particularity facts which bring the child within the purview of the Cherokee Nation Juvenile Code;
2. The name, age and residence of the child;
3. The names and residences of the parents of the child;
4. The name and residence of the legal guardian of the child, if applicable;
5. The name and residence of the person or persons having custody or control of the child;
6. The name and residence of the nearest known relative, if no parent or guardian can be found;
7. The relief requested; and
8. The specific law under which the child is charged and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child.

E. A copy of the petition shall be attached to and served with the summons.

#### **§ 2-2-107. Summons--Warrant--Service**

A. After a petition shall have been filed, unless the parties provided for in this section shall voluntarily appear, a summons shall be issued which shall recite briefly the nature of the proceeding with the phrase “as described more fully in the attached petition” and requiring the person or persons who have the custody or control of the child to appear personally and bring the child before the court at a time and place stated. The summons shall state the relief requested, and shall set forth the right of the child, parents and other interested parties to have an attorney present at the hearing on the petition.

B. The summons shall be served on the person who has actual custody of the child, and if the child has reached the age of twelve (12) years, a copy shall be served on the child. If the person who has actual custody of the child shall be other than a parent or guardian of the child, a copy of the summons shall be served on the parent or guardian, or both. A copy of the summons shall be served on a custodial parent, guardian or next friend. If no parent or guardian can be found, a summons shall be served on such other person or persons as the court shall designate.

Summons may be issued requiring the appearance of any other person whose presence is necessary.

C. If it subsequently appears that a person who should have been served was not served and has

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not entered an appearance, the court shall immediately order the issuance of a summons which shall be served on said person.

D. Service of summons shall be made as provided for service in civil actions.

1. The court shall not hold the hearing until at least forty-eight (48) hours after the service of the summons, except with the consent of the parent or guardian of the child.

2. If the parent of the child is not served within the Nation, the court shall not hold the hearing until at least five (5) days after the date of mailing the summons, except with the consent of the parent.

E. If after a petition has been filed, it appears that the child is in such condition or surroundings that the welfare of the child requires that custody be immediately assumed by the court, the judge may immediately issue a detention order or warrant authorizing the taking of said child into emergency custody. Any such child shall not be considered to be in the custody of the Department of Juvenile Justice.

F. In a delinquency proceeding, whenever a warrant for the arrest of a child shall issue, it shall state the offense the child is being charged with having committed. Warrants for the arrest or detention of a child shall comport with all other requirements of issuance of arrest warrants for adult criminal offenders.

G. In case the summons cannot be served, or the parties served fail to obey the same, or in any case when it shall be made to appear to the judge that the service will be ineffectual or that the welfare of the child requires that the child should be brought into the custody of the court, a warrant may be issued against the parent or guardian or against the child. Nothing in this section shall be construed to authorize placement of a child in secure detention who is not eligible for secure detention pursuant to Section 2-3-101 of this title.

#### **§ 2-2-108. Examination by health care professionals--Investigation of child's home and custodian's earning capacity**

A. After a petition under the provisions of this article has been filed, the court may order the child to be examined and evaluated for medical issues, including behavioral health diagnoses, by a physician or other appropriate professional to aid the court in making the proper disposition concerning the child.

B. Whenever a child concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the court may order the parent or other person responsible for the care and support of the child to provide such care in a hospital or otherwise. If the parent or other person fails to provide such care, the court may, after due notice, enter an order therefor, and the expense thereof, when approved by the court, shall be a charge upon the county, but the court may adjudge that the person having the duty under the law to support the child pay part or all of the expenses of such care. In an emergency the court may, when health or condition of the child may require it, cause the child to be placed in a public hospital or institution for treatment or special care, or in a

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private hospital or institution which will receive the child for like purpose, and consent to emergency treatment or surgery.

### **§ 2-2-301. Conduct of interrogations--Appointment of counsel--Guardians ad litem**

A. No information gained by a custodial interrogation of a youthful offender under sixteen (16) years of age or a child nor any evidence subsequently obtained as a result of such interrogation shall be admissible into evidence against the youthful offender or child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency, or employee of the court, or employee of the Department of Juvenile Justice is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child. No such custodial interrogation shall commence until the youthful offender or child and the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the youthful offender or child have been fully advised of the constitutional and legal rights of the youthful offender or child, including the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient financial means; provided, however, that no legal aid or other public or charitable legal service shall make claim for compensation as contemplated herein. It is further provided that where private counsel is appointed in such cases, the court shall set reasonable compensation and order the payment out of the court fund. As used in this section, "custodial interrogation" means questioning of a youthful offender under sixteen (16) years of age or child while that youthful offender or child is in law enforcement custody or while that youthful offender or child is being deprived of freedom of action in any significant way by a law enforcement officer, employee of the court, or employee of the Office. Custodial interrogation shall conform with all requirements for interrogation of adult criminal offenders. The term "custodial interrogation" shall not be deemed to mean questioning of a youthful offender or child by a public school administrator or teacher, so long as such questioning is not being conducted on behalf of a law enforcement officer, an employee of the court or an employee of the Office. Any information gained from noncustodial questioning of a child or youthful offender by a public school administrator or teacher concerning a wrongful act committed on public school property shall be admissible into evidence against the youthful offender or child.

B. A custodial interrogation of a youthful offender over sixteen (16) years of age shall conform with all the requirements for the interrogation of an adult.

C. If the youthful offender or child is not otherwise represented by counsel, whenever a petition is filed pursuant to the provisions of Section 2-2-104 or Section 2-5-201 et seq. of this title, the court shall appoint an attorney, who shall not be a Attorney General, for the youthful offender or child regardless of any attempted waiver by the parent or other legal custodian of the youthful offender or child of the right of the youthful offender or child to be represented by counsel. The youthful offender or child shall be represented by counsel at every hearing or review through completion or dismissal of the case. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent. If indigency is established, representation shall be provided to the child in accordance with the applicable standards practice. Provided, if the parent or legal guardian of a child is not indigent but refuses to employ counsel, the court shall appoint counsel to represent the child at detention hearings until

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counsel is provided. Costs of representation shall be imposed on the parent or other legal custodian. Thereafter, the court shall not appoint counsel for a child with a non-indigent parent or legal custodian and shall order the parent or legal custodian to obtain counsel. A parent or legal custodian of an indigent child who has been ordered to obtain counsel for the child and who willfully fails to follow the court order shall be found in indirect contempt of court.

D. Counsel for the child shall advise the child and advocate the expressed wishes of the child, as much as reasonably possible, under the same ethical obligations as if the client were an adult. Upon motion by the state, the child, the attorney for the child, or a parent or legal custodian of the child, the court shall appoint a guardian ad litem.

E. The guardian ad litem shall not be the Attorney General, an employee of the office of the Attorney General, an employee of the court, or an employee of any public agency having duties or responsibilities towards the child. The guardian ad litem shall be given access to the court file and access to all records and reports relevant to the case and to any records and reports of examination of the child's parent or other custodian, made pursuant to this section or Section 1-2-101 of this title. Provided, nothing in this subsection shall obligate counsel for the child to breach attorney-client confidentiality with the child.

### **§ 2-2-401. Trial by jury**

In adjudicatory hearings to determine if a child is delinquent or in need of supervision, any person entitled to service of summons or the state shall have the right to demand a trial by jury, which shall be granted as in other cases, unless waived, or the judge on the judge's own motion may call a jury to try any such case. Such jury shall consist of six persons.

#### **§ 2-2-401.1. Definitions**

As used in this act:

1. "Competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child or to assist in the child's defense. A child is incompetent if, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense;
2. "Credentialed forensic evaluator" means a licensed psychologist, psychiatrist or other physician with necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render such opinions for the court;
3. "Developmental disability" means a severe and chronic disability that is attributable to a mental or physical impairment. Such disabilities include, but are not limited to, cerebral palsy, epilepsy, autism, or other neurological conditions that lead to impairment of general intellectual functioning or adaptive behavior;
4. "Developmental immaturity" means a condition based on a juvenile's chronological age and

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significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability;

5. “Intellectual disability” means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills;

6. “Mental illness” means a substantial disorder of the child's thought, mood, perception, psychological orientation or memory that demonstrably and significantly impairs judgment, behavior or capacity to recognize reality or to meet the ordinary demands of life. “Mental illness” may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior;

7. “Proceeding” means any delinquency proceeding under the Cherokee Nation Juvenile Code.

### **§ 2-2-401.2. Delinquency proceedings--Competency of child--Rebuttable presumption**

A. 1. At any time prior to or during delinquency proceedings pursuant to the Cherokee Nation Juvenile Code, the child’s attorney, the Attorney General, or the court may raise the issue of a child’s competency to participate in the proceeding. If at the time the issue of competency is raised the child is not represented by counsel, the court shall immediately appoint counsel. The court shall stay all proceedings except to allow the filing of a delinquency petition.

2. In any delinquency proceeding pursuant to the Juvenile Code, if the child who is the subject of the proceeding is thirteen (13) years or older and if the child is not otherwise found to be developmentally disabled, developmentally immature, intellectually disabled, or mentally ill, there exists a rebuttable presumption that the child is competent. Such presumption applies only for making a determination as to whether the child is competent and shall not be used or applicable for any other purpose.

B. The court may find a child incompetent without ordering a competency evaluation or hearing if the Attorney General and the child’s attorney, and at least one of the child’s parents, legal guardians, or guardian ad litem agree to the determination.

### **§ 2-2-401.3. Motion for determination of competency--Competency evaluation**

A. When the Attorney General or the child’s attorney has reasonable basis to believe that a child is incompetent to proceed in the delinquency action, the party shall file a motion for determination of competency. The motion shall state that the child is incompetent to proceed and shall state facts sufficient to set forth the reasonable basis to conduct a competency evaluation. If the court raises the issue *sua sponte*, the court by written order shall set forth the reasonable basis that the child is incompetent to proceed.

B. Within five (5) judicial days after the motion is made, the court shall make one of the following

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determinations:

1. That the child is incompetent pursuant to subsection B of Section 2 of this act; or
2. Without conducting a hearing, that there exists a reasonable basis to conduct a competency evaluation; or
3. To schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. Such hearing shall be held within ten (10) judicial days. The court's determination shall be announced no later than one (1) judicial day after the conclusion of the hearing.

C. If the court determines there is a reasonable basis for a competency evaluation or if the Attorney General and the child's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least-restrictive environment, taking into account the public safety and the best interests of the child.

1. The court shall provide in its order that the evaluator shall have access to all relevant confidential and public records related to the child, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the evaluator a copy of the petition and the names and contact information for the judge, Attorney General, child's attorney, and parents or legal guardians.
2. Within five (5) judicial days after the court orders an evaluation, the Attorney General shall deliver to the evaluator copies of relevant police reports and other background information relevant to the child that are in the Attorney General's possession.
3. Within five (5) judicial days after the court orders an evaluation, the child's attorney shall deliver to the evaluator copies of relevant police reports and other relevant records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession.

#### **§ 2-2-401.4. Credentialed forensic evaluators--Exceptions**

- A. An evaluation ordered by the court shall be conducted by a credentialed forensic evaluator.
1. A credentialed forensic evaluator shall demonstrate education or training in the following areas as necessary for the focus of the evaluation ordered by the court:
    - a. forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency,
    - b. evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness,

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c. clinical understanding of child and adolescent development, and

d. familiarity with competency standards in this state.

B. A court may appoint as evaluator a psychologist, psychiatrist, or other physician who does not meet the requirements of subsection A of this section only if exigent circumstances require the evaluator to have specialized expertise to examine the child that would not ordinarily be possessed by a psychologist, psychiatrist, or other physician who meets the requirements of a credentialed forensic evaluator.

### **§ 2-2-401.5. Competency evaluation report**

A. The evaluator shall file with the court a written competency evaluation report within thirty (30) days after the date of the order of appointment. For good cause shown, the court may extend the time for filing for a period not to exceed thirty (30) days. The report shall include the evaluator's opinion as to whether the child, due to developmental disability, developmental immaturity, intellectual disability, or mental illness, is currently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report shall not include the evaluator's opinion as to the details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could be culpable for committing the offense. No statement made by a child during an evaluation or hearing conducted pursuant to this act shall be used against the child on the issue of responsibility or guilt in subsequent court proceedings.

B. A competency evaluation report shall address the following questions:

1. Whether the child is able to understand and appreciate the charges and their seriousness;
2. Whether the child is able to consult with an attorney and rationally and factually assist in his or her defense;
3. Whether the child can understand and reasonably participate in the proceedings;
4. If the answer to question 1, 2 or 3 is no, whether the child can attain competency within a reasonable time pursuant to Section 7 of this act if provided with a course of treatment, therapy, or training;
5. Whether the child poses an imminent threat to the life or safety of him or herself or others; and
6. Whether the child is mentally ill or is a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. If the evaluator concludes that the child's competency is impaired, but that the child may be rendered competent by reasonable accommodations, the report shall include recommendations for reasonable accommodations which the court shall order to assist in compensating for the competency impairments.

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D. If the evaluator concludes there is a substantial probability that the child could attain competency within the periods set forth in subparagraph a of paragraph 3 of subsection C of Section 7 of this act, the competency evaluation report shall include a recommendation as to the least restrictive setting for child competency attainment services consistent with the child's ability to attain competency and the safety of both the child and the public.

E. The competency evaluation report shall also include:

1. The evaluation procedures used, including psychometric tests administered, records reviewed, and identity of persons interviewed;

2. Pertinent background information, including history of educational performance, psychiatric history, and family history;

3. Results of mental status examination; and

4. A description of any psychiatric symptoms or cognitive deficiencies, including a diagnosis, if one has been made.

F. The court shall provide a copy of each competency evaluation report it receives to the Attorney General and the child's attorney, and may provide a copy upon request to the child's parents, legal guardian, and guardian ad litem, if one was appointed.

G. The expense of an evaluation ordered by the court may be recovered from the child or the child's parents or legal guardians based upon their ability to pay. Expenses associated with missed appointments may be recovered from the child's parents or legal guardians.

#### **§ 2-2-401.6. Competency hearing**

A. Not more than fifteen (15) judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine the child's competency to participate in the proceeding. The court may continue the hearing for good cause shown.

B. The competency evaluation report shall be admissible in evidence. The evaluator may be called as a witness and be subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted via teleconference or videoconference. If the court contacts the evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

C. In determining the competency of the child to participate in the proceeding the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the Attorney General and the child's attorney.

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D. 1. Except as otherwise provided, the court shall make a written determination as to the child's competency based on a preponderance of the evidence within ten (10) judicial days after completion of the hearing. The burden of proof shall be on the moving party.

2. The court shall not find a child incompetent to proceed solely because the child is receiving or has received in-patient treatment as a voluntary or involuntary mentally ill patient pursuant to Section 5-501 et seq. of Title 43A of the Cherokee Nation Statutes, or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.

### **§ 2-2-401.7. Court responses to competency determination**

A. After a hearing pursuant to Section 6 of this act, if the court determines by a preponderance of the evidence that the child is competent to proceed, the delinquency proceedings shall be resumed as provided by law.

B. After a hearing pursuant to Section 6 of this act, if the court determines by the preponderance of the evidence that the child is incompetent to proceed and cannot attain competency within the period of time application under subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the petition without prejudice, and take either of the following actions:

1. Refer the matter to Cherokee Nation Indian Child Welfare; or

2. Refer the matter to the Attorney General for consideration of initiating a Child in Need of Supervision or Minor in Need of Mental Health and Substance Abuse Treatment proceeding in accordance with the Cherokee Nation Juvenile Code or Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

C. If the court determines by a preponderance of the evidence that a child is incompetent to proceed but may likely attain competency, the court shall stay the proceedings and order the child to receive services designated to assist the child in attaining competency, based upon the recommendations in the competency evaluation report unless the court makes specific findings that the recommended services are not justified. The court shall order the child's parent or legal guardian to contact a court-designated provider by a specified date to arrange for services.

1. The competency attainment services provided to a child shall be based on a court-approved competency attainment plan described in paragraph 2 of subsection D of this section, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.

2. The court shall order that the competency attainment services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the child. If the child has been released on temporary orders and refuses or fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting.

3. No child shall be required to participate in competency attainment services for longer than is

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required to attain competency. The following maximum periods of participation shall apply:

a. if the services are provided, the child shall not participate in those services for a period exceeding six (6) months or upon the child's 18th birthday, or up to the child's 19th birthday if ordered by the court in order to complete the six months of treatment, if the child is charged with an act that would be a misdemeanor if committed by an adult,

b. if the services are provided, the child shall not participate for a period exceeding twelve (12) months or upon the child's 18th birthday, or up to the child's 19th birthday if ordered by the court in order to complete the twelve months of treatment, if the child is charged as a delinquent for an act that would be a felony if committed by an adult.

D. 1. Within ten (10) judicial days after the court orders the provider responsible for the child's competency attainment services, the court shall deliver to that provider:

a. the name and address of the child's counsel,

b. a copy of the child's Petition,

c. a copy of the competency evaluation report,

d. the name, address, and phone number of the child's parents or legal guardian,

e. the name of the Department of Juvenile Justice employee responsible for the intake, supervision, or custody of the child, if adjudicated,

f. the name of the Cherokee Nation Indian Child Welfare caseworker, if any, and

g. any other relevant documents or reports concerning the child's health that have come to the attention of the court.

2. Not later than ten (10) judicial days after the child contacts the competency attainment provider, a plan for the child to attain competency shall be submitted to the court by the provider. The court shall provide copies of the plan to the Attorney General, the child's attorney, the guardian ad litem, if any, the Department of Juvenile Justice, and the child's parent or legal guardian.

E. The provider shall submit reports to the court pursuant to the following schedule:

1. Every ninety (90) calendar days and upon completion or the termination of services. Each report shall include the following:

a. the services provided to the child, including medication, education and counseling,

b. the likelihood that the competency of the child to proceed will be restored within the applicable period of time set forth in subparagraph a of paragraph 3 of subsection C of this section, and

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c. the progress made towards the goals and objectives for the restoration of competency identified in the recommendations from the competency evaluation as adopted by the court;

2. Three (3) judicial days after the provider's determination that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency;

3. Three (3) judicial days after the provider's determination that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and taking into account the public safety and the best interests of the child. The provider shall include in the report an assessment of the danger the child poses to himself, herself or others and an assessment of the appropriateness of the placement;

4. Three (3) judicial days after the provider's determination that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against the child, to assist in the child's defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations. The report shall include recommendations for the accommodations that would be necessary or advantageous; and

5. Three (3) judicial days after the provider's determination that the child will not achieve the goals of the plan within the applicable period of time pursuant to subparagraph a of paragraph 3 of subsection C of this section. The report shall include recommendations for services for the child and taking into account the public safety and the best interests of the child.

F. The court shall provide copies of any report made by the provider to the Attorney General, the child's attorney, the child's intake worker, and the child's guardian ad litem, if any. The Court shall provide copies of any reports made by the provider to the child's parents or legal guardians, unless the court finds that doing so is not in the best interest of the child.

G. Within fifteen (15) judicial days after receiving a provider's report, the court may hold a hearing to determine if a new order is necessary.

1. If the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the child attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section.

2. If the court determines that the child has not or will not attain competency within the relevant period of time as set forth in subparagraph a of paragraph 3 of subsection C of this section, the court shall dismiss the delinquency charge without prejudice.

3. A dismissal under paragraph 2 of this subsection shall not preclude a future delinquent child proceeding as provided for under Title 10A of the Cherokee Nation Statutes.

H. After a hearing held pursuant to subsection G of this section, the court determines that the child has attained competency, the court shall proceed with the delinquent child's proceeding in

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I. A dismissal under this section does not bar a civil action based on the acts or omissions that formed the basis of the petition.

### **§ 2-2-402. Conduct of adjudicative hearings**

A. All cases of children shall be heard separately from the trial of cases against adults. The adjudicative hearings shall be conducted according to the rules of evidence, and may be adjourned from time to time.

1. Except as provided by paragraph 2 of this subsection, the hearings shall be private; however, all persons having a direct interest in the case as provided in this paragraph shall be admitted. Any victim, relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness of a delinquent act shall be considered to have a direct interest in the case, shall be notified of all court hearings involving that particular delinquent act, and shall be admitted to the proceedings. The court shall, however, remove all persons not having a direct interest in the case or that are not the parents or legal guardian of the child from any hearing where evidence of the medical or behavioral health condition of the child or specific instances of deprivation are being presented. Stenographic notes or other transcript of the hearings shall be kept as in other cases, but they shall not be open to inspection except by order of the court or as otherwise provided by law.

2. Hearings related to the second or subsequent delinquency adjudication of a child shall be public proceedings. The adjudications relied upon to determine whether a hearing is a public proceeding pursuant to this paragraph shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Upon its own motion or the motion of any of the parties to the hearing and for good cause shown, the court may order specific testimony or evidence to be heard in private; provided, the court shall not exclude any relative, legal guardian of a victim, or a person designated by the victim who is not subject to the rule of sequestration as a witness from the hearing during testimony of the victim. For the purposes of this paragraph, “good cause” shall mean a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing. The judge may, for good cause shown, open the court hearings to educate members of the public about juvenile justice issues; however, the identities of the juvenile respondents shall not be published in any reports or articles of general circulation.

B. The child may remain silent as a matter of right in delinquency hearings and in need of supervision hearings, and before the child testifies, the child shall be so advised.

C. A decision determining a child to come within the purview of the Cherokee Nation Juvenile Code shall be based on sworn testimony and the child shall have the opportunity for cross-examination unless the facts are stipulated or unless the child enters into a stipulation that the allegations of the petition are true or that sufficient evidence exists to meet the burden of proof required for the court to sustain the allegations of the petition. In proceedings pursuant to the Cherokee Nation Juvenile Code, the court may allow mileage as in civil actions to witnesses and

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reimbursement for expert witnesses but such shall not be tendered in advance of the hearing. If a child is alleged to be delinquent and the facts are stipulated, the judge shall ascertain from the child if the child agrees with the stipulation and if the child understands the consequences of stipulating the facts.

D. If the court finds that the allegations of a petition alleging a child to be delinquent or in need of supervision are supported by the evidence, the court shall sustain the petition, and shall make an order of adjudication setting forth whether the child is delinquent or in need of supervision and shall adjudge the child as a ward of the court.

E. If the court finds that the allegations of the petition are not supported by the evidence, the court shall order the petition dismissed and shall order the child discharged from any detention or restriction previously ordered. The parents, legal guardian or other legal custodian of the child shall also be discharged from any restriction or other previous temporary order.

F. Any arrest or detention under the Cherokee Nation Juvenile Code or any adjudication in a juvenile proceeding shall not be considered an arrest, detention or conviction for purposes of employment, civil rights, or any statute, regulation, license, questionnaire, application, or any other public or private purposes, unless otherwise provided by law.

### **§ 2-2-403. Preliminary hearing**

A. Except as otherwise provided by law, if a child is charged with a delinquent act as a result of an offense which would be a felony if committed by an adult, the court on its own motion or at the request of the Attorney General shall conduct a preliminary hearing to determine whether or not there is prosecutive merit to the complaint. If the court finds that prosecutive merit exists, it shall continue the hearing for a sufficient period of time to conduct an investigation and further hearing to determine if the child should be held accountable for acts of the child as if the child were an adult if the child should be found to have committed the alleged act or omission.

Consideration shall be given to:

1. The seriousness of the alleged offense to the community, and whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
2. Whether the offense was against persons or property, greater weight being given to transferring the accused person to the adult criminal justice system for offenses against persons and, if personal injury resulted, the degree of personal injury;
3. The sophistication and maturity of the juvenile and capability of the juvenile of distinguishing right from wrong as determined by consideration of a psychological evaluation of the juvenile, home, environmental situation, emotional attitude and pattern of living;
4. The record and previous history of the accused person, including previous contacts with community agencies, law enforcement agencies, schools, juvenile or criminal courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;

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5. The prospects for adequate protection of the public;
6. The likelihood of reasonable rehabilitation of the juvenile if the juvenile is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and
7. Whether the offense occurred while the juvenile was escaping or in an escape status from an institution for delinquent children.

After the investigation and hearing, the court may in its discretion proceed with the juvenile proceeding, or it shall state its reasons in writing and shall certify, based on clear and convincing evidence, that the child shall be held accountable for acts of the child as if the child were an adult and shall be held for proper criminal proceedings for the specific offense charged, by any other division of the court which would have trial jurisdiction of the offense if committed by an adult. The juvenile proceeding shall not be dismissed until the criminal proceeding has commenced and if no criminal proceeding commences within thirty (30) days of the date of the certification, unless stayed pending appeal, the court shall proceed with the juvenile proceeding and the certification shall lapse.

If not included in the original summons, notice of a hearing to consider whether a child should be certified for trial as an adult shall be given to all persons who are required to be served with a summons at the commencement of a juvenile proceeding, but publication in a newspaper when the address of a person is unknown is not required. The purpose of the hearing shall be clearly stated in the notice.

B. Prior to the entry of any order of certification, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances. Subsequent to the entry of an order that a child stand trial as an adult, the child shall have all the statutory and constitutional rights and protections of an adult accused of a crime but shall, while awaiting trial and for the duration of the trial, be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over. Upon conviction, the juvenile may be incarcerated with the adult population. If, prior to the entry of any order of certification, the child becomes eighteen (18) years of age, the child may be detained in a county jail or released on bail. If a child is certified to stand trial as an adult, the court shall make every effort to avoid duplication of the adult preliminary hearing and the prosecutorial hearing in the juvenile certification process. The parties may jointly stipulate to the court that the record for the prosecutorial merit hearing in the juvenile proceeding be used for all or part of the preliminary hearing.

C. Any child who has been certified to stand trial as an adult pursuant to any order entered by any competent court of this state or any other state shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court or be eligible to be tried as a youthful offender in any further proceedings.

D. An order either certifying a person as a child or an adult pursuant to subsection A of this section or denying such certification shall be a final order, appealable when entered and shall not be

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#### **§ 2-2-404. Deferral of delinquency proceedings**

A. A court may defer delinquency adjudication proceedings for one hundred eighty (180) days, plus an additional one hundred eighty (180) days as provided in subsection C of this section, if the child:

1. Is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a misdemeanor or a felony;
2. Enters into a stipulation that the allegations are true or that sufficient evidence exists to meet the burden of proof required for the court to sustain the allegations of the petition; and
3. Has not been previously adjudicated a delinquent.

If the child is alleged to have committed or attempted to commit a delinquent offense that if committed by an adult would be a felony, the deferral shall be upon agreement of the Attorney General.

B. During such period of deferral, the court may require the following:

1. Participation in or referral to counseling, a period of community service, drug or alcohol education or treatment, vocational training or any other legal activity which would be beneficial to the child and the family of the child;
2. Require the child to undergo a behavioral health evaluation and, if warranted by the mental condition of the child, undergo appropriate care or treatment;
3. Restitution providing for monetary payment by the parents or child, or both, to the victim who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged;
4. An alternative diversion program; or
5. Any other programs and services that may be provided through public or private agencies and as approved by the court.

C. The court shall dismiss the case with prejudice at the conclusion of the deferral period if the child presents satisfactory evidence that the requirements of the court have been successfully completed. The court may order a one hundred eighty-day extension of the deferral period if the court determines that the child has made satisfactory progress and that such extension is necessary to accomplish treatment goals and objectives.

D. As used in this section, “alternative diversion program” means a program for juveniles who have been identified by law enforcement personnel, the Attorney General, or the court as having

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committed acts which are not serious enough to warrant adjudication through the juvenile court process, but which do indicate a need for intervention to prevent further development toward juvenile delinquency. The program shall be administered, pursuant to contract with the Department of Juvenile Justice, by organizations designated as youth services agencies by law.

### **§ 2-2-501. Dispositional hearings**

A. No later than forty (40) days after making an order of adjudication, the court shall hold a dispositional hearing, at which all evidence helpful in determining the proper disposition best serving the interest of the child and the public, including but not limited to oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing.

B. Before making an order of disposition, the court shall advise the Attorney General, the attorney of the child, the parents, guardian, custodian or responsible relative, and their counsel, of the factual contents and the conclusion of reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. An order of disposition shall include a specific finding and order of the court relative to the liability and accountability of the parents for the care and maintenance of the child as authorized by Section 2-2-703 of this title, unless custody is placed with the parent or parents of the child.

C. On its own motion or that of the Attorney General, the attorney of the child or of the parent, guardian, custodian, responsible relative or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for detention of the child, or release of the child from detention subject to supervision by the court, during the period of the continuance.

D. In scheduling investigations and hearings, the court shall give priority to proceedings in which a child is in detention, or has otherwise been removed from his or her home, before an order of disposition has been made.

### **§ 2-2-502. Recommendation for disposition--Probation--Risk and needs assessment tools**

A. Within thirty (30) days after adjudication, the person, department or agency responsible for the supervision of the case shall provide a recommendation, based upon the comprehensive assessment and evaluation process, for disposition to the court and counsel. The recommendation shall include, but not be limited to, the child's eligibility for probation, placement in community residential treatment, or commitment with the Department of Juvenile Justice.

B. If the recommendation is for probation, an individual treatment and service plan shall be provided to the court and counsel for the parties at the same time as the recommendation provided for in subsection A of this section. If the recommendation is for custody with the Department of Juvenile Justice or is court-ordered placement in other residential treatment, the individual treatment and service plan shall be provided to the court and counsel for the parties within thirty (30) days after disposition. The plan shall be prepared by the person, department or agency responsible for the supervision of the case or by the legal custodian if the child has been removed

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from the custody of his or her lawful parent or parents. The treatment and service plan shall be based on a comprehensive assessment and evaluation of the child and family that identifies the priority needs of the child for rehabilitation and treatment and identifies any needs of the parent or legal guardian of the child for services that would improve their ability to provide adequate support, guidance, and supervision of the child. This process should take into account the detention risk assessment decision, the intake preliminary assessment, any comprehensive assessment for substance abuse treatment services, behavioral health services, intellectual disabilities, literary services, and other educational and treatment services as components. The completed assessment process shall result in an individual treatment and service plan which shall include, but not be limited to:

1. A history of the child and family, including identification of the problems leading to the adjudication;
2. The eligibility of the child for disposition of probation, placement in community residential treatment, commitment with the Department of Juvenile Justice and, if appropriate, assignment of a residential commitment level;
3. Identification of the specific services available to the child to remediate or alleviate the conditions that led to the adjudication, including but not limited to educational, vocational-educational, medical, drug or alcohol abuse treatment or counseling or other treatment services;
4. Identification of the services to be provided to the parent, legal guardian, legal custodian, stepparent, other adult person living in the home or other family members, to remediate or alleviate the conditions that led to the adjudication, including services needed to assist the family to provide proper care and supervision of the child;
5. Performance criteria that will measure the progress of the child and family toward completion of the treatment and service plan;
6. A projected date for the completion of the treatment and service plan; and
7. The name and business address of the attorney representing the child, if any.

C. The Department of Juvenile Justice shall identify the appropriate risk and needs assessment instruments used to develop the recommendations of the individualized treatment and service plan. The juvenile probation counselor shall be responsible for making informed decisions and recommendations to other agencies, the Attorney General, and the courts so that the child and family of the child may receive the least restrictive service alternative throughout the court process.

D. The individual treatment and service plan shall be amended as necessary and appropriate to reflect the disposition of the court. The amended plan shall be filed with the court within thirty (30) days of the order of disposition removing the child from the home and shall state:

1. The reasons for such placement and a statement as to the unavailability or inappropriateness of local placement, or other good cause, for any placement more than fifty (50) miles from the home

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2. The services to be provided to the child while in such placement and the projected date of discharge;
3. The services necessary to assist the child to reintegrate with the family of the child or other community-based placement; and
4. If the child is age sixteen (16) or older, the services necessary to make the transition from community placement to independent living.

E. Whenever a child who is subject to the provisions of this section is committed for inpatient mental health or substance abuse treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act,<sup>1</sup> the individual treatment and service plan shall be amended as necessary and appropriate, including but not limited to identification of the treatment and services to be provided to the child and his family upon discharge of the child from inpatient mental health or substance abuse treatment.

### **§ 2-2-503. Disposition orders--Revocation, modification and redistribution**

A. The following kinds of orders of disposition may be made in respect to children adjudicated in need of supervision or delinquent:

1. The court may place the child on probation with or without supervision in the home of the child, or in the custody of a suitable person, upon such conditions as the court shall determine. If the child is placed on probation, the court may impose a probation fee of not more than Twenty-five Dollars (\$25.00) per month, if the court finds that the child or parent or legal guardian of the child has the ability to pay the fee. In counties having a juvenile bureau, the fee shall be paid to the juvenile bureau; in all other counties, the fee shall be paid to the Department of Juvenile Justice;
2. If it is consistent with the welfare of the child, the child shall be placed with the parent or legal guardian of the child, but if it appears to the court that the conduct of such parent, guardian, legal guardian, stepparent or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may issue a written order specifying conduct to be followed by such parent, guardian, legal custodian, stepparent or other adult person living in the home with respect to such child. The conduct specified shall be such as would reasonably prevent the child from continuing to be delinquent or in need of supervision.
  - a. If it is consistent with the welfare of the child, in cases where the child has been adjudicated to be in need of supervision due to repeated absence from school, the court may order counseling and treatment for the child and the parents of the child to be provided by the local school district, the county, the Office or a private individual or entity. Prior to final disposition, the court shall require that it be shown by the appropriate school district that a child found to be truant has been evaluated for learning disabilities, hearing and visual impairments and other impediments which could constitute an educational handicap or has been evaluated to determine whether the child has a disability if it is suspected that the child may require special education services in accordance with

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the Individuals with Disabilities Education Act (IDEA). The results of such tests shall be made available to the court for use by the court in determining the disposition of the case.

b. In issuing orders to a parent, guardian, legal guardian, stepparent or other adult person living in the home of a child adjudicated to be a delinquent child or in making other disposition of said delinquent child, the court may consider the testimony of said parent, guardian, legal guardian, stepparent or other adult person concerning the behavior of the juvenile and the ability of such person to exercise parental control over the behavior of the juvenile.

c. In any dispositional order involving a child age sixteen (16) or older, the court shall make a determination, where appropriate, of the services needed to assist the child to make the transition to independent living.

d. No child who has been adjudicated in need of supervision only upon the basis of truancy or noncompliance with the mandatory school attendance law shall be placed in a public or private institutional facility or be removed from the custody of the lawful parent, guardian or custodian of the child.

e. Nothing in the Cherokee Nation Juvenile Code or the Cherokee Nation Children's Code may be construed to prevent a child from being adjudicated both deprived and delinquent if there exists a factual basis for such a finding;

3. The court may commit the child to the custody of a private institution or agency, including any institution established and operated by the county, authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is licensed by any state department supervising or licensing private institutions and agencies; or, if such institution or agency is in another state, by the analogous department of that state. Whenever the court shall commit a child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning the child as the court may at any time require;

4. The court may order the child to receive counseling or other community-based services as necessary;

5. The court may commit the child to the custody of the Department of Juvenile Justice. Any order adjudicating the child to be delinquent and committing the child to the Department of Juvenile Justice shall be for an indeterminate period of time;

6. If the child has been placed outside the home, and it appears to the court that the parent, guardian, legal custodian, or stepparent, or other adult person living in the home has contributed to the child becoming delinquent or in need of supervision, the court may order that the parent, guardian, legal custodian, stepparent, or other adult living in the home be made subject to any treatment or placement plan prescribed by the Office or other person or agency receiving custody of the child;

7. With respect to a child adjudicated a delinquent child, the court may:

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- a. require assessments or contributions from the juvenile in the discretion of the court,
- b. order the child to engage in a term of community service without compensation. The state or any political subdivision shall not be liable if a loss or claim results from any acts or omission of a child ordered to engage in a term of community service pursuant to the provisions of this paragraph,
- c. order the child, the parent or parents of the child, legal guardian of the child, or both the child and the parent or parents of the child or legal guardian at the time of the delinquent act of the child to make full or partial restitution to the victim of the offense which resulted in property damage or personal injury.

(1) The court shall notify the victim of the dispositional hearing. The court may consider a verified statement from the victim concerning damages for injury or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering. If contested, a restitution hearing to determine the liability of the child, the parent or parents of the child, or legal guardian shall be held not later than thirty (30) days after the disposition hearing and may be extended by the court for good cause. The parent or parents of the child or legal guardian may be represented by an attorney in the matter of the order for remittance of the restitution by the parent or parents of the child or legal guardian. The burden of proving that the amount indicated on the verified statement is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(2) Restitution may consist of monetary reimbursement for the damage or injury in the form of a lump sum or installment payments after the consideration of the court of the nature of the offense, the age, physical and mental condition of the child, the earning capacity of the child, the parent or parents of the child, or legal guardian, or the ability to pay, as the case may be. The payments shall be made to such official designated by the court for distribution to the victim. The court may also consider any other hardship on the child, the parent or parents of the child, or legal guardian and, if consistent with the welfare of the child, require community service in lieu of restitution or require both community service and full or partial restitution for the acts of delinquency by the child.

(3) A child who is required to pay restitution and who is not in willful default of the payment of restitution may at any time request the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the child, the parent or parents of the child, or legal guardian, the court may modify the method of payment.

(4) If the restitution is not being paid as ordered, the official designated by the court to collect and disburse the restitution ordered shall file a written report of the violation with the court. The report shall include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the official. A copy of the report shall be provided to all parties and the court shall promptly take any action necessary to compel compliance.

(5) Upon the juvenile attaining eighteen (18) years of age, the court shall determine whether the restitution order has been satisfied. If the restitution order has not been satisfied, the court shall

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enter a judgment of restitution in favor of each person entitled to restitution for the unpaid balance of any restitution ordered pursuant to this subparagraph. The clerk of the court shall send a copy of the judgment of restitution to each person who is entitled to restitution. The judgment shall be a lien against all property of the individual or individuals ordered to pay restitution and may be enforced by the victim or any other person or entity named in the judgment to receive restitution in the same manner as enforcing monetary judgments. The restitution judgment does not expire until paid in full and is deemed to be a criminal penalty for the purposes of a federal bankruptcy involving the child,

d. order the cancellation or denial of driving privileges,

e. sanction detention in the residence of the child or facility designated by the Department of Juvenile Justice or the juvenile bureau for such purpose for up to five (5) days, order weekend detention in a place other than a juvenile detention facility or shelter, tracking, or house arrest with electronic monitoring, and

f. impose consequences, including detention as provided for in subparagraph f of this paragraph, for post-adjudicatory violations of probation;

8. The court may order the child to participate in specialty court programs;

9. The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown; and

10. In any dispositional order removing a child from the home of the child, the court shall, in addition to the findings required by Section 2-2-105 of this title, make a determination that, in accordance with the best interests of the child and the protection of the public, reasonable efforts have been made to provide for the return of the child to the home of the child, or that efforts to reunite the family are not required as provided in Section 2-2-105 of this title, and reasonable efforts are being made to finalize an alternate permanent placement for the child.

B. Prior to adjudication or as directed by a law enforcement subpoena or court order, a school district may disclose educational records to the court or juvenile justice system for purposes of determining the ability of the juvenile justice system to effectively serve a child. Any disclosure of educational records shall be in accordance with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA). If the parent, guardian, or custodian of a child adjudicated a delinquent child asserts that the child has approval not to attend school pursuant to Section 10-105 of Title 70 of the Cherokee Nation Statutes, the court or the Department of Juvenile Justice may require the parent to provide a copy of the written, joint agreement to that effect between the school administrator of the school district where the child attends school and the parent, guardian, or custodian of the child.

C. With respect to a child adjudicated a delinquent child for a violent offense, within thirty (30) days of the date of the adjudication the Department of Juvenile Justice shall notify the superintendent of the school district in which the child is enrolled or intends to enroll of the delinquency adjudication and the offense for which the child was adjudicated.

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D. No child who has been adjudicated in need of supervision may be placed in a secure facility.

E. No child charged in a state or municipal court with a violation of state or municipal traffic laws or ordinances, or convicted therefor, may be incarcerated in jail for the violation unless the charge for which the arrest was made would constitute a felony if the child were an adult. Nothing contained in this subsection shall prohibit the detention of a juvenile for traffic-related offenses prior to the filing of a petition in the district court alleging delinquency as a result of the acts and nothing contained in this section shall prohibit detaining a juvenile pursuant to Section 2-2-102 of this title.

F. The court may revoke or modify a disposition order and may order redispotion. The child whose disposition is being considered for revocation or modification at said hearing shall be afforded the following rights:

1. Notice by the filing of a motion for redispotion by the Attorney General. The motion shall be served on the child and the parent or legal guardian of the child at least five (5) business days prior to the hearing;

2. The proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence;

3. During the proceeding, the child shall have the right to be represented by counsel, to present evidence, and to confront any witness testifying against the child;

4. Any modification, revocation or redispotion removing the child from the physical custody of a parent or guardian shall be subject to review on appeal, as in other appeals of delinquent cases;

5. If the child is placed in secure detention, bail may be allowed pending appeal; and

6. The court shall not enter an order removing the child from the custody of a parent or legal guardian pursuant to this section unless the court first finds that reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the home of the child or that an emergency exists which threatens the safety of the child and that:

a. such removal is necessary to protect the public,

b. the child is likely to sustain harm if not immediately removed from the home,

c. allowing the child to remain in the home is contrary to the welfare of the child, or

d. immediate placement of the child is in the best interests of the child.

The court shall state in the record that such considerations have been made. Nothing in this section shall be interpreted to limit the authority or discretion of the agency providing probation supervision services to modify the terms of probation including, but not limited to, curfews,

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G. A willful violation of any provision of an order of the court issued under the provisions of the Cherokee Nation Juvenile Code shall constitute indirect contempt of court and shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00) or, as to a delinquent child, placement in a juvenile detention center for not more than ten (10) days, or by both such fine and detention.

#### **§ 2-2-504. Periodic review of disposition orders**

A. 1. Every disposition order regarding a child adjudicated to be delinquent or in need of supervision shall be reviewed by the court at least once every six (6) months until such time as the conditions which caused the child to be adjudicated have been corrected or the parental rights of the parent or parents are terminated pursuant to the Cherokee Nation Children's Code.

2. A dispositional order removing a child from the custody of the parents of the child shall be reviewed at a hearing by the court at least once every six (6) months until such time as the child is returned to the custody of the parents of the child. No later than twelve (12) months after placing a child in out-of-home care and every twelve (12) months thereafter, the court making the original order of adjudication shall conduct a permanency hearing to determine whether or not reasonable efforts have been made to finalize one of the following permanent placement plans:

a. the child should be returned to the parents of the child or other family member,

b. the child should be continued in out-of-home care for a specified period,

c. the rights of the parents of the child should be terminated and the child placed for adoption or legal guardianship pursuant to the Cherokee Nation Children's Code, or

d. the child, because of exceptional circumstances, should remain in out-of-home care on a long-term basis as a permanent plan or with a goal of independent living.

3. The provisions of this section also shall apply to a child who has been removed from the home of the lawful parent or parents of the child after the child has been returned to that home until such time as the court orders the case closed.

4. If authorized by the court, review hearings held pursuant to this section may be conducted via teleconference communication; provided, the attorney representing the child shall be present at the hearing. For purposes of this paragraph, "teleconference communication" means participation by the child and facility staff in the hearing by interactive telecommunication among the necessary participants, the court and the child. The permanency hearing provided for in this section shall not be conducted via teleconference communication.

B. 1. The agency having supervision of the case or, if the child has been removed from the custody of its parents, the legal custodian of such child shall cause to be prepared for each review hearing required herein a written report concerning each child who is the subject of such review.

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2. The report shall include, but not be limited to, a summary of the physical, mental, and emotional condition of the child, the conditions existing in the home or institution where the child has been placed, and the adjustment of the child thereto, a report on the progress of the child in school and, if the child has been placed outside the home of the child, the visitation exercised by the parents of such child or other persons authorized by the court, and services being provided to a child sixteen (16) years of age or older to assist in the transition from out-of-home care or other community placement to independent living.

3. If the Department of Juvenile Justice is the legal custodian of the child, the report also shall include any efforts on the part of the parent or parents to correct the conditions which caused the child to be adjudicated. The report shall specifically recommend, giving reasons therefor, whether or not the parental rights of the parent or parents of the child should be terminated and the child placed for adoption, whether or not the child should remain in the home or if placed outside the home of the lawful parents of the child, whether or not the child should remain outside the home or be returned to the home from which the child was removed.

C. At each such review hearing, the court shall specifically inquire as to the nature and extent of services being provided the child and parent or parents of the child and shall direct additional services be provided if necessary to protect the child from further physical, mental, or emotional harm or to correct the conditions that led to the adjudication.

In any review order, the court shall further make a determination:

1. As to whether reasonable efforts have been made to provide for the return of the child to the home of the child. If reasonable efforts have failed or are not feasible, the court shall make a finding that the efforts to reunite the family have failed, or are not feasible, and reasonable efforts are being made to secure an alternate permanent placement for the child; and

2. Where appropriate, when the child is age sixteen (16) or older, that services are being provided that will assist the child in making the transition from out-of-home care to independent living.

D. The attorney representing a child whose case is being reviewed may submit a report to the court for presentation at the review hearing to assist the court in reviewing the placement or status of the child. The legal custodian shall not deny to a child the right of access to counsel and shall facilitate such access.

E. The Department of Juvenile Justice shall notify the court having jurisdiction, the appropriate review board and the Attorney General whenever the placement of a child in the custody of the Office is changed and shall inform said court and attorney regarding the location of the child unless placement modification results from an emergency situation, in which case the notification required by this subsection shall be within one (1) business day after the change of placement. As used in this subsection, "emergency situation" means a placement change requested by a person having actual custody of a child, if the request is made at a time when the business offices of the parties to be notified are closed, or a placement for emergency medical treatment.

F. The Department of Juvenile Justice shall provide the foster parent of a child and any preadoptive

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parent or relative providing care for the child with timely notice of and an opportunity to be heard in six-month review hearings and twelve-month permanency hearings held with respect to the child during the time the child is in foster care of such foster parent, preadoptive parent or relative caregiver. Notice of hearings and an opportunity to be heard does not include the right to standing as a party to the case.

### **§ 2-2-505. Juvenile drug court program**

The court is hereby authorized to establish a juvenile drug court for the purpose of treating adjudicated juveniles who have a substance abuse disorder.

### **§ 2-2-506-509. Reserved**

### **§ 2-2-601. Appeals**

A. Any interested party aggrieved by any order or decree may appeal to the Cherokee Nation Supreme Court in the same manner as other appeals are taken to the Court.

B. The record on appeal of an order of adjudication or of an order certifying or denying certification of a juvenile to stand trial as an adult shall be completed and the appeal perfected within sixty (60) days after the date of the order.

C. The pendency of an appeal thus taken shall not suspend the order of the district court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child has been committed, unless the Supreme Court shall so order. The pendency of an appeal from an order of adjudication shall not prevent the district court from holding a dispositional hearing unless the appellate court shall so order. The pendency of an appeal from an order certifying a juvenile to stand trial as an adult shall not prevent the commencement of criminal proceedings against the juvenile unless stayed by the judge who issued the order of certification or by the appellate court. If the Supreme Court does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the district court and remand the child to the jurisdiction of that court for supervision and care; and thereafter the child shall be and remain under the jurisdiction of the district court in the same manner as if such court had made such order without an appeal having been taken.

D. In the opinions of the Supreme Court of this Nation in juvenile proceedings under the Cherokee Nation Juvenile Code, the initial of the surname of the child shall be used rather than the surname of the child.

### **§ 2-2-701. Summons--Bench warrants--Obligations of parent, legal guardian, or custodian**

A. When it is determined to be in the best interests of the child, the court may order a parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title to be present at or bring the child to any proceeding under the provisions of the Cherokee Nation Juvenile Code. The court may issue a bench warrant for any parent, legal guardian or custodian of the child, or any

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other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title who, without good cause, fails to appear at any proceeding.

B. In any proceeding under the Cherokee Nation Juvenile Code, the court shall enter an order specifically requiring a parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title to participate in the rehabilitation process of a child including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program unless the court determines that such an order is not in the best interests of the child.

1. Any parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title willfully failing to comply with an order issued under this section without good cause may be found in indirect contempt of court.

2. The court may issue a bench warrant for any parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title who, without good cause, fails to appear at any juvenile proceeding or court-ordered program.

3. For purposes of this section, “good cause” shall include, but not be limited to, a situation where a parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title:

a. has employment obligations that would result in the loss of employment,

b. does not have physical custody of the child and resides outside the county of residence of the child, and

c. resides in the county of the residence of the child but is outside that county at the time of the juvenile proceeding or court-ordered program for reasons other than avoiding participation or appearance before the court and participating or appearing in the court will result in undue hardship to the parent or guardian.

4. Nothing in this section shall be construed to create a right for any child to have his or her parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title present at any juvenile proceeding or court-ordered program at which such child is present.

C. A parent, legal guardian or custodian of the child, and any other person living in the home of such child who has been properly served with a summons pursuant to Section 2-2-107 of this title may be ordered by the court to:

1. Report any probation, parole or conditional release violations; or

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2. Aid in enforcing terms and conditions of probation, parole or conditional release or other orders of the court.

Any person placed under an order to report any probation, parole or conditional release violations or aid in enforcing terms and conditions of probation, parole or conditional release or other orders of the court and who fails to do as ordered may be found in indirect contempt of court. Punishment for any such act of contempt shall not exceed a fine of Three Hundred Dollars (\$300.00), or imprisonment for not more than thirty (30) days in the county jail if the violator is an adult, or both such fine and imprisonment. The pursuit and prosecution of an indirect contempt of court judgment shall be initiated by the Attorney General.

D. As used in this section, “guardian” or “custodian” shall not include any private or public agency having temporary or permanent custody of the child. Provided, nothing in this subsection shall allow the agency to fail to comply with a writ of habeas corpus issued by the court.

### **§ 2-2-702. Reserved**

### **§ 2-2-703. Expenses for care and maintenance of child**

A. If, after notice to the parent or parents of the child or other persons legally obligated to care for and support the child, and after affording said person or persons an opportunity to be heard, the court finds that the parent or parents of the child or other person is able to pay all or part of the costs and expenses set forth in paragraphs 1 through 4 of this subsection, the court may order the person or persons to pay the same and prescribe the method of payment, as follows:

1. Reimburse the court fund, in whole or in part, for any disbursements made from the court fund in conjunction with the case, including, but not limited to, court-appointed attorney fees, expert witness fees, sheriff’s fees, witness fees, transcripts and postage;
2. Pay for the care and maintenance of the child, including, but not limited to, all or some part of placement services, medical care, behavioral health services, outcome incentive payments for providers and reasonable monthly expenses, as authorized by law;
3. Reimburse the Department of Juvenile Justice, in whole or in part, for any costs and expenses incurred by the Office in providing any services or authorized actions taken pursuant to the Cherokee Nation Juvenile Code for the child; and
4. Reimburse any law enforcement agency, in whole or in part, for any costs or expenses incurred by the law enforcement agency for custodial services or other authorized actions taken pursuant to the Cherokee Nation Juvenile Code.

The court may also order the assignment of benefits of medical insurance coverage for the child to the Department of Juvenile Justice for the period of time the child is in the custody of the Department of Juvenile Justice.

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B. The court shall use the child support guidelines provided for in Section 118 of Title 43 of the Cherokee Nation Statutes in determining the amount a parent is to pay for care and maintenance of a child. If any parent is financially able but has willfully failed to pay any costs or reimbursements as ordered by the court pursuant to this section, the parent may be held in indirect civil contempt of court and, upon conviction, shall be punished pursuant to Section 566 of Title 21 of the Cherokee Nation Statutes.

C. The court shall have the right, upon conducting an evidentiary hearing, to modify its orders for care and maintenance, as the conditions or needs of the child or children may require and the ability of the person or persons held to pay may afford.

### **§ 2-2-801. Procedures and requirements for placement of adjudicated children**

A. 1. Whenever the court transfers custody of a child as provided in this article, the person, institution, agency, or department receiving custody shall have the right to, and shall be responsible for, the care and control of the child, and shall have the duty and authority to provide food, clothing, shelter, medical care, education, and discipline for the child, and to authorize and consent to medical care for the child provided by a qualified health care professional. The person, institution, agency or department may provide or arrange for the provision of inpatient treatment of such minor only as provided by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.<sup>1</sup> Nothing in this subsection shall be interpreted to prohibit or preclude the provision of outpatient services, including an outpatient examination, counseling, educational, rehabilitative or other similar services to said minor, as necessary and appropriate, in the absence of a specific court order for such services.

2. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the child qualifies for the care under law, rule or administrative order or decision.

3. Nothing in this subsection shall be interpreted to:

a. relieve a parent of the obligation to provide for the support of the child as otherwise provided by law, or

b. limit the authority of the court to order a parent to make support payments or to make payments or reimbursements for medical care or treatment, including behavioral health care or treatment, to the person, institution, agency or Department having custody of the child, or

c. abrogate the right of the child to any benefits provided through public funds for which the child is otherwise eligible.

4. No person, agency or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority. No state employee shall be liable for the costs of any medical care or behavioral health services provided to any child in the custody of the Department of Juvenile Justice.

B. The person, institution, agency, or department having legal custody of a child pursuant to an

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order of the court shall receive notice of court proceedings regarding the child as provided in Sections 2-2-107 and 2-2-501 of this title and shall be allowed to intervene upon application as a party to all court proceedings pertaining to the care and custody of the child including, but not limited to: adjudication, disposition, review of disposition, termination of parental rights and proceedings pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

#### **§ 2-2-802. Termination of parental rights**

A. The finding that a child is delinquent or in need of supervision shall not deprive the parents of the child of their parental rights, but a court may terminate the rights of a parent to a child for any reason authorized in the Cherokee Nation Children's Code.<sup>1</sup> The provision of the Cherokee Nation Children's Code shall govern termination of parental rights.

B. Whenever parental rights of the parents of a child have been terminated and the child is committed to the Department of Juvenile Justice, the Director of the Department of Juvenile Justice shall serve as the legal guardian of the estate of the child, until another guardian is legally appointed, for the purpose of preserving the child's property rights, securing for the child any benefits to which he may be entitled under social security programs, insurance, claims against third parties, and otherwise, and receiving and administering such funds or property for the care and education of the child.

#### **§ 2-2-803. Review and assessment of children committed to Department of Juvenile Justice**

A. The Department of Juvenile Justice shall review and assess each child committed to the Office to determine the type of placement consistent with the treatment needs of the child in the nearest geographic proximity to the home of the child and, in the case of delinquent children, the protection of the public. Such review and assessment shall include an investigation of the personal and family history of the child, and his environment, and any physical or mental examinations considered necessary.

B. In making such review, the Office may use any facilities, public or private, which offer aid to it in the determination of the correct placement of the child.

#### **§ 2-2-804. Child in need of behavioral health treatment**

A. The Department of Juvenile Justice may provide for the care of a child who is in the custody of the Department of Juvenile Justice and found by a court to be a minor in need of treatment pursuant to the Inpatient Mental Health and Substance Abuse Treatment of Minors Act.

B. In providing for the outpatient behavioral health care and the treatment of children in its custody, the Department of Juvenile Justice shall utilize to the maximum extent possible and appropriate the services available through tribal health care facilities and community-based private agencies and organizations.

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## CHAPTER 3

### DETENTION

#### **§ 2-3-101. Conditions of detention of child--Detention or confinement in adult facility-- Access to facilities and data**

A. When a child is taken into custody pursuant to the provisions of the Cherokee Nation Juvenile Code, the child shall be detained only if it is necessary to assure the appearance of the child in court or for the protection of the child or the public.

1. a. No child twelve (12) years of age or younger shall be placed in a juvenile detention facility unless all alternatives have been exhausted and the child is currently charged with a criminal offense that would constitute a felony if committed by an adult and it has been indicated by a risk-assessment screening that the child requires detention. The detention of any child twelve (12) years of age or younger shall be judicially reviewed pursuant to subparagraph c of this paragraph.

b. Any child who is thirteen (13) or fourteen (14) years of age may be admitted to a juvenile detention facility only after all alternatives have been exhausted and the child is currently charged with a criminal offense that would constitute a felony if committed by an adult and it has been indicated by a risk-assessment screening that the child requires detention.

c. No pre-adjudicatory or predisposition detention or custody order shall remain in force and effect for more than thirty (30) days. The court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed sixty (60) days. If the child is being detained for the commission of a murder, the court may, if it is in the best interests of justice, extend the effective period of such an order an additional sixty (60) days.

d. Whenever the court orders a child to be held in a juvenile detention facility, an order for secure detention shall remain in force and effect for not more than fifteen (15) days after such order. Upon an application of the Attorney General and after a hearing on such application, the court, for good and sufficient cause shown, may extend the effective period of such an order for an additional period not to exceed fifteen (15) days after such hearing. The total period of pre-adjudicatory or predisposition shall not exceed the ninety-day limitation as specified in subparagraph a of this paragraph. The child shall be present at the hearing on the application for extension unless, as authorized and approved by the court, the attorney for the child is present at the hearing and the child is available to participate in the hearing via telephone conference communication. For the purpose of this paragraph, "telephone conference communication" means use of a telephone device that allows all parties, including the child, to hear and be heard by the other parties at the hearing. After the hearing, the court may order continued detention in a juvenile detention center, may order the child detained in an alternative to secure detention or may order the release of the child from detention.

2. No child alleged or adjudicated to be deprived or in need of supervision or who is or appears to

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be a minor in need of treatment as defined by the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, shall be confined in any jail, adult lockup, or adult detention facility. No child shall be transported or detained in association with criminal, vicious, or dissolute persons.

3. Except as otherwise authorized by this section a child who has been taken into custody as a deprived child, a child in need of supervision, or who appears to be a minor in need of treatment, may not be placed in any detention facility pending court proceedings, but must be placed in shelter care or foster care or, with regard to a child who appears to be a minor in need of treatment, a behavioral health treatment facility in accordance with the provisions of the Inpatient Mental Health and Substance Abuse Treatment of Minors Act, or released to the custody of the parents of the child or some other responsible party. Provided, this shall not preclude runaway juveniles from other states, with or without delinquent status, to be held in a detention facility in accordance with the Interstate Compact for Juveniles in Sections 2-9-101 through 2-9-116 of this title and rules promulgated by the Interstate Commission.

B. No child shall be placed in secure detention unless:

1. The child is an escapee from any delinquent placement;
2. The child is a fugitive from another jurisdiction with a warrant on a delinquency charge or confirmation of delinquency charges by the home jurisdiction;
3. The child is seriously assaultive or destructive towards others or self;
4. The child is currently charged with any criminal offense that would constitute a felony if committed by an adult or a misdemeanor and:
  - a. is on probation or parole on a prior delinquent offense,
  - b. is on preadjudicatory community supervision, or
  - c. is currently on release status on a prior delinquent offense;
5. The child has willfully failed or there is reason to believe that the child will willfully fail to appear for juvenile court proceedings;
6. A warrant for the child has been issued on the basis that:
  - a. the child is absent from court-ordered placement without approval by the court,
  - b. the child is absent from designated placement by the Department of Juvenile Justice without approval by the Department of Juvenile Justice,
  - c. there is reason to believe the child will not remain at said placement, or
  - d. the child is subject to an administrative transfer or parole revocation proceeding.

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C. A child who has violated a court order and has had the order revoked or modified pursuant to Section 2-2-503 of this title may be placed into a Department of Juvenile Justice designated sanction detention bed or an Department of Juvenile Justice approved sanction program.

D. Priority shall be given to the use of juvenile detention facilities for the detention of juvenile offenders through provisions requiring the removal from detention of a juvenile with a lower priority status if an empty detention bed is not available at the time of referral of a juvenile with a higher priority status and if the juvenile with a higher priority status would be more of a danger to the public than the juvenile with the lower priority status.

E. 1. Except as otherwise provided in this section, no child shall be placed in secure detention in a jail, adult lockup, or other adult detention facility unless:

a. the child is detained for the commission of a crime that would constitute a felony if committed by an adult, and

b. the child is awaiting an initial court appearance, and

c. the initial court appearance of the child is scheduled within twenty-four (24) hours after being taken into custody, excluding weekends and holidays, and

d. there is no existing acceptable alternative placement for the child, and

e. the jail, adult lockup or adult detention facility provides sight and sound separation for juveniles, pursuant to standards required by subsection E of Section 2-3-103 of this title, or

f. the jail, adult lockup or adult detention facility meets the requirements for licensure of juvenile detention facilities, as adopted by the Department of Juvenile Justice, is appropriately licensed, and provides sight and sound separation for juveniles, which includes:

(1) total separation between juveniles and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities,

(2) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities, and

(3) separate juvenile and adult staff, specifically direct care staff such as recreation, education and counseling.

Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both.

2. Nothing in this section shall preclude a child who is detained for the commission of a crime that

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would constitute a felony if committed by an adult, or a child who is an escapee from a juvenile secure facility or from an Department of Juvenile Justice group home from being held in any jail certified by the State Department of Health, police station or similar law enforcement offices for up to six (6) hours for purposes of identification, processing or arranging for transfer to a secure detention or alternative to secure detention. Such holding shall be limited to the absolute minimum time necessary to complete these actions.

a. The time limitations for holding a child in a jail for the purposes of identification, processing or arranging transfer established by this section shall not include the actual travel time required for transporting a child from a jail to a juvenile detention facility or alternative to secure detention.

b. Whenever the time limitations established by this subsection are exceeded, this circumstance shall not constitute a defense in a subsequent delinquency or criminal proceeding.

3. Nothing in this section shall preclude detaining in a county jail or other adult detention facility an eighteen-year-old charged in a juvenile petition for whom certification to stand trial as an adult is prayed. However, if no certification motion is filed, the eighteen-year-old may remain in a juvenile detention facility as long as secure detention is required.

4. Nothing in this section shall preclude detaining in a county jail or other adult detention facility a person provided for in Section 2-3-102 of this title if written or electronically transmitted confirmation is received from the state seeking return of the individual that the person is a person provided for in Section 2-3-102 of this title and if, during the time of detention, the person is detained in a facility meeting the requirements of Section 2-3-103 of this title.

5. Nothing in this section shall preclude detaining a person, whose age is not immediately ascertainable and who is being detained for the commission of a felony, in a jail certified by the State Department of Health, a police station or similar law enforcement office for up to twenty-four (24) hours for the purpose of determining whether or not the person is a child, if:

a. there is a reasonable belief that the person is eighteen (18) years of age or older,

b. there is a reasonable belief that a felony has been committed by the person,

c. a court order for such detention is obtained from a judge of the district court within six (6) hours of initially detaining the person,

d. there is no juvenile detention facility that has space available for the person and that is within thirty (30) miles of the jail, police station, or law enforcement office in which the person is to be detained, and

e. during the time of detention the person is detained in a facility meeting the requirements of subparagraph g of paragraph 1 of this subsection.

The time limitation provided for in this paragraph shall include the time the person is detained prior to the issuance of the court order.

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The time limitation provided for in this paragraph shall not include the actual travel time required for transporting the person to the jail, police station, or similar law enforcement office. If the time limitation established by this paragraph is exceeded, this circumstance shall not constitute a defense in any subsequent delinquency or criminal proceeding.

F. Nothing contained in this section shall in any way reduce or eliminate the liability of a county as otherwise provided by law for injury or damages resulting from the placement of a child in a jail, adult lockup, or other adult detention facility.

G. Each member of the staff of a juvenile detention facility shall satisfactorily complete a training program provided or approved by the Department of Juvenile Justice.

**§ 2-3-102. Persons under 18 years of age who have fled from another state considered adults for purposes of detention only in certain cases**

Whenever a person under eighteen (18) years of age, who has fled from another state, is taken into custody, that person shall be considered an adult only for the purposes of detention if:

1. The person has been charged with commission of an offense in the other state which is considered a felony in that state; and
2. The person is certified as an adult in that state for the purpose of criminal prosecution for said felony or has reached the statutory age of majority in that state; and
3. The other state is seeking the return of the individual to its jurisdiction and provides written or electronically transmitted confirmation, which is received within forty-eight (48) hours after the person is taken into custody.

**§ 2-3-103. Temporary detention--Transportation--Certification of juvenile detention facilities**

A. Provision shall be made for the temporary detention of children in a juvenile detention facility or the court may arrange for the care and custody of such children temporarily in private homes, subject to the supervision of the court, or the court may provide shelter or may enter into a contract with any institution or agency to receive, for temporary care and custody, children within the jurisdiction of the court. The Department of Juvenile Justice shall not be ordered to provide detention unless said Department has designated detention services or facilities.

B. The Cherokee Nation Marshal Service, their designee, private contractors under contract with the Department of Juvenile Justice for transportation services, or juvenile court officers shall provide for the transportation of juveniles to and from secure detention for purposes of admission, interfacility transfer, discharge, medical or dental attention, court appearance, or placement designated by the Office. No private contract for transportation services shall be entered into by the Department unless the private contractor demonstrates to the satisfaction of the Department that such contractor is able to obtain insurance or provide self-insurance to indemnify the

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Department against possible lawsuits and meets the requirements of subparagraphs a, b and d of paragraph 4 of subsection C of this section. The Department of Juvenile Justice shall not be ordered to provide transportation for a juvenile who is detained in or is destined for secure detention.

## CHAPTER 4

## RESERVED

## CHAPTER 5

### TREATMENT OF SERIOUS ACTS

#### § 2-5-201. Short title--Youthful Offender Act

Sections 2-5-201 through 2-5-213 of this title shall be known and may be cited as the “Youthful Offender Act”.

#### § 2-5-202. Definitions--Purpose

A. For the purposes of the Youthful Offender Act:

1. “Youthful offender” means a person:

a. thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree and certified as a youthful offender as provided by Section 2-5-205 of this title,

b. fifteen (15), sixteen (16), or seventeen (17) years of age and charged with a crime listed in subsection A of Section 2-5-206 of this title, and

c. sixteen (16) or seventeen (17) years of age and charged with a crime listed in subsection B of Section 2-5-206 of this title,

2. “Sentenced as a youthful offender” means the imposition of a court order making disposition of a youthful offender as provided by Section 2-5-209 of this title which shall constitute an adult criminal sentence if the youthful offender is transferred to the custody or supervision of the contracted detention facility; and

3. “Next friend” means an individual or executive of an organization who has assumed a parental role without formal legal proceedings, but to all objective observers is readily identified as custodian or guardian in fact.

B. It is the purpose of the Youthful Offender Act to better ensure the public safety by holding youths accountable for the commission of serious crimes, while affording courts methods of rehabilitation for those youths the courts determine, at their discretion, may be amenable to such methods. It is the further purpose of the Youthful Offender Act to allow those youthful offenders whom the courts find to be amenable to rehabilitation by the methods prescribed in the Youthful

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Offender Act to be placed in the custody or under the supervision of the Department of Juvenile Justice for the purpose of accessing the rehabilitative programs provided by that Office.

### **§ 2-5-203. Court proceedings--Jurisdiction**

A. 1. A child who is charged with having violated any state statute or municipal ordinance other than as provided in Sections 2-5-205 and 2-5-206 of this title shall not be tried in a criminal action as an adult or a youthful offender, but in a juvenile proceeding, unless certified as an adult pursuant to Section 2-2-403 of this title.

2. However, when multiple offenses occur within the same course of conduct within the same county and the person is prosecuted for at least one offense as a youthful offender pursuant to Section 2-5-205 or 2-5-206 of this title, then all the charges may be prosecuted under the same action pursuant to the provisions of the Youthful Offender Act, if so ordered by the court. The decision to join the cases shall not be appealable as a final order. If the offense listed in Section 2-5-205 or Section 2-5-206 of this title is subsequently dismissed for any reason, then any remaining pending charges shall be transferred to the juvenile court.

B. If, during the pendency of a criminal or quasi-criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court or municipal court shall transfer the case, together with all the papers, documents and testimony connected therewith, to the juvenile division of the district court. The division making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile division, to that division itself, or release such child to the custody of some suitable person to be brought before the juvenile division.

C. Nothing in this section shall be construed to prevent the exercise of concurrent jurisdiction by another division of the district court or by municipal courts in cases involving children wherein the child is charged with the violation of a state or municipal traffic law or ordinance.

### **§ 2-5-204. Treatment of a child certified as an adult or youthful offender in criminal proceedings**

A. A child who is arrested for an offense pursuant to subsection A or B of Section 2-5-206 of this title, or who is certified as a youthful offender pursuant to Section 2-5-205 of this title, shall be charged by information in the same manner as provided for adults.

B. If the child is not otherwise represented by counsel and requests an attorney prior to or during interrogation, or whenever charged by information, as provided in subsection A of this section, the court shall appoint an attorney, who shall not be the Attorney General, for the child regardless of any attempted waiver by the parent, legal guardian, or other legal custodian of the child of the right of the child to be represented by counsel. Counsel shall be appointed by the court only upon determination by the court that the parent, legal guardian or legal custodian is found to be indigent.

C. When a person is certified to stand trial as an adult or a youthful offender as provided by the Youthful Offender Act, the accused person shall have all the statutory and constitutional rights and

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protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Cherokee Nation Statutes shall apply, except as provided for in the Youthful Offender Act.

D. All youthful offender court records for a person who is certified to stand trial as an adult or youthful offender shall be considered adult records and shall not be subject to the provisions of Chapter 6 of the Cherokee Nation Juvenile Code;<sup>1</sup> provided, however, all reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification as a youthful offender to the juvenile system or motion for imposition of an adult sentence shall be confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime.

E. Proceedings against a youthful offender shall be heard by any judge of the district court.

F. Upon arrest and detention of a person subject to the provisions of Section 2-5-205 or 2-5-206 of this title, the person has the same right to be released on bail as would an adult in the same circumstances and, if detained, may be detained in a county jail if separated by sight and sound from the adult population as otherwise authorized by law. If no such county jail is available, then such person may be detained at a juvenile detention facility. The sheriff, chief of police, or juvenile or adult detention facility operator shall forthwith notify the Department of Juvenile Justice of any such arrest and detention.

G. Upon certification for the imposition of an adult sentence, a verdict of guilty or entry of a plea of guilty or nolo contendere by a youthful offender who has been certified for the imposition of an adult sentence as provided by Section 2-5-208 of this title, the person may be detained as an adult and, if incarcerated, may be incarcerated with the adult population.

H. A child or youthful offender shall be tried as an adult in all subsequent criminal prosecutions, and shall not be subject to the jurisdiction of the juvenile court as a juvenile delinquent or youthful offender processes in any further proceedings if:

1. The child or youthful offender has been certified to stand trial as an adult pursuant to any certification procedure provided by law and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentence has been deferred; or

2. The youthful offender has been certified for the imposition of an adult sentence as provided by

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Section 2-5-208 of this title and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred.

I. Except as otherwise provided in the Youthful Offender Act, a person who has been certified as a youthful offender shall be prosecuted as a youthful offender in all subsequent criminal proceedings until the youthful offender has attained eighteen (18) years of age.

All proceedings for the commission of a crime committed after a youthful offender has reached eighteen (18) years of age shall be adult proceedings.

### **§ 2-5-205. Certification as youthful offender or juvenile**

A. Any person thirteen (13) or fourteen (14) years of age who is charged with murder in the first degree shall be held accountable for the act as if the person were an adult; provided, the person may be certified as a youthful offender or a juvenile as provided by this section, unless the person is subject to the provisions of subsection H of Section 2-5-204 of this title.

B. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with murder in the first degree at that time shall be held accountable for his or her act as if the person was an adult and shall not be subject to the provisions of the Youthful Offender Act or the provisions of the Juvenile Code for certification as a juvenile. The person shall have all the statutory rights and protections of an adult accused of a crime. All proceedings shall be as for a criminal action and the provisions of Title 22 of the Cherokee Nation Statutes shall apply. A person having been convicted as an adult pursuant to this paragraph shall be tried as an adult for every subsequent offense.

C. 1. Upon the filing of an adult criminal information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a youthful offender to the district court for the purpose of prosecution as a youthful offender.

2. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person. The court may inquire of the accused as to the whereabouts of his or her parents, guardian, or next friend in order to avoid unnecessary delay in the proceedings.

3. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a thorough search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the

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court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

D. 1. The accused person shall file any motions for certification as a youthful offender or a juvenile before the start of the criminal preliminary hearing. If both a motion for certification as a youthful offender and a motion for certification as a juvenile are filed, they shall both be heard at the same time. No motion for certification as a youthful offender or certification as a juvenile may be filed after the time specified in this subsection. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the Attorney General and the accused person. All reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification as a youthful offender to the juvenile system or motion for imposition of an adult sentence are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime.

2. The court shall commence a preliminary hearing within ninety (90) days of the filing of the information, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed a crime. If the preliminary hearing is not commenced within ninety (90) days of the date the accused person is charged, the district court shall hold a hearing to determine the reasons for delay utilizing the procedure set out in Section 812.2 of Title 22 of the Cherokee Nation Statutes, to ensure the preliminary hearing is expedited. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Cherokee Nation shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. An accused who fails to cooperate with providing information in locating the parents of the accused, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information. If the preliminary hearing did not commence within ninety (90) days from the filing of the information due to the absence or inability to locate the accused, the preliminary hearing shall commence within ninety (90) days after the Nation has actual notice of the in-reservation location of the accused. If the accused is found out of the

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reservation, the court shall set the hearing within ninety (90) days after the accused has been returned to the Cherokee Nation.

3. At the conclusion of the Nation's case at the criminal preliminary hearing, the Nation and the accused person may offer evidence to support or oppose the motions for certification as a youthful offender or an alleged juvenile delinquent.

E. The court shall rule on any motions for certification as a youthful offender or an alleged juvenile delinquent before ruling on whether to bind the accused over for trial. When ruling on a motion for certification as a youthful offender or juvenile, the court shall give consideration to the following guidelines with greatest weight to be given to paragraphs 1, 2 and 3:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons, and, if personal injury resulted, the degree of personal injury;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions;

4. The sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living;

5. The prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system;

6. The reasonable likelihood of rehabilitation of the accused person if such person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court; and

7. Whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

The court, in its decision on a motion for certification as a youthful offender or juvenile, shall detail findings of fact and conclusions of law to each of the above considerations, and shall state that the court has considered each of the guidelines in reaching its decision.

F. The order certifying a person as a youthful offender or an alleged juvenile delinquent or denying the request for certification as either a youthful offender or an alleged juvenile delinquent shall be a final order, appealable to the Cherokee Nation Supreme Court when entered.

G. An order certifying the accused person as a youthful offender or an alleged juvenile delinquent shall not be reviewable by the trial court.

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H. If the accused person is prosecuted as an adult and is subsequently convicted of the alleged offense or against whom the imposition of judgment and sentencing has been deferred, the person may be incarcerated with the adult population and shall be prosecuted as an adult in all subsequent criminal proceedings.

**§ 2-5-206. Certain acts mandating youthful offender status--Filing of delinquency petition or youthful offender information--Warrant, certification process--Guidelines**

A. Any person fifteen (15), sixteen (16) or seventeen (17) years of age who is charged with:

1. Murder in the second degree;
  2. Kidnapping;
  3. Manslaughter in the first degree;
  4. Robbery with a dangerous weapon or a firearm or attempt thereof;
  5. Robbery in the first degree or attempt thereof;
  6. Rape in the first degree or attempt thereof;
  7. Rape by instrumentation or attempt thereof;
  8. Forcible sodomy;
  9. Lewd molestation;
  10. Arson in the first degree or attempt thereof; or
  11. Any offense in violation of Section 652 of Title 21 of the Cherokee Nation Statutes,
- shall be held accountable for such acts as a youthful offender.

B. Any person sixteen (16) or seventeen (17) years of age who is charged with:

1. Burglary in the first degree or attempted burglary in the first degree;
2. Battery or assault and battery on a state employee or contractor while in the custody or supervision of the Department of Juvenile Justice;
3. Aggravated assault and battery of a police officer;
4. Intimidating a witness;

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5. Trafficking in or manufacturing illegal drugs;
6. Assault or assault and battery with a deadly weapon;
7. Maiming;
8. Residential burglary in the second degree after two or more adjudications that are separated in time for delinquency for committing burglary in the first degree or residential burglary in the second degree;
9. Rape in the second degree; or
10. Use of a firearm while in commission of a felony, shall be held accountable for such acts as a youthful offender.

C. The Attorney General may file a petition alleging the person to be a delinquent or may file an information against the accused person charging the person as a youthful offender. The Attorney General shall notify the Department of Juvenile Justice upon the filing of youthful offender charges.

D. 1. Upon the filing of the information against such alleged youthful offender, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, and to have an attorney present.

2. The warrant shall be personally served together with a certified copy of the information on the alleged youthful offender and on a custodial parent, guardian or next friend of the accused person.

3. When personal service of a custodial parent, guardian or next friend of the alleged youthful offender cannot be effected, service may be made by certified mail to the last-known address of the person, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first-class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

4. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a thorough search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

E. The court shall commence a preliminary hearing within ninety (90) days of the filing of the

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information, to determine whether the crime was committed and whether there is probable cause to believe the accused person committed the crime. If the preliminary hearing is not commenced within ninety (90) days, the state shall be prohibited from seeking an adult sentence unless the ninety-day requirement is waived by the defendant. If the whereabouts of the accused are unknown at the time of the filing of the information or if the accused is a fugitive, the State of Cherokee Nation shall make reasonable efforts to locate the accused in order to commence the proceedings. An accused who flees the jurisdiction of the court or purposely avoids apprehension for the charges, waives the right to have the preliminary hearing commenced within ninety (90) days of the filing of the information. If the preliminary hearing did not commence within ninety (90) days from the filing of the information due to the absence or inability to locate the accused, the preliminary hearing shall commence within ninety (90) days after the state has actual notice of the in-state location of the accused. If the accused is found out of state, the court shall set the hearing within ninety (90) days after the accused has been returned to the State of Cherokee Nation. An accused who fails to cooperate with providing information in locating the accused parent, guardian, or next friend for purpose of notice waives the right to have the preliminary hearing commence within ninety (90) days of the filing of the information.

F. 1. The accused person may file a motion for certification to the juvenile justice system before the start of the criminal preliminary hearing:

a. upon the filing of such motion, the complete juvenile record of the accused shall be made available to the Attorney General and the accused person,

b. at the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

2. If no motion to certify the accused person to the juvenile justice system has been filed, at the conclusion of the criminal preliminary hearing the court may on its own motion hold a hearing on the matter of the certification of the accused youthful offender to the juvenile system.

3. All reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification of the accused youthful offender to the juvenile system or motion for imposition of an adult sentence are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged

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4. The court shall rule on the certification motion before ruling on whether to bind the accused over for trial. When ruling on the certification motion, the court shall give consideration to the following guidelines with the greatest weight given to subparagraphs a, b and c:

a. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,

b. whether the offense was against persons, and if personal injury resulted, the degree of personal injury,

c. the record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,

d. the sophistication and maturity of the accused person and the accused person's capability of distinguishing right from wrong as determined by consideration of the accused person's psychological evaluation, home, environmental situation, emotional attitude and pattern of living,

e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,

f. the reasonable likelihood of rehabilitation of the accused person if the accused is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and

g. whether the offense occurred while the accused person was escaping or in an escape status from an institution for youthful offenders or juvenile delinquents.

5. In its decision on the motion for certification as an alleged juvenile delinquent, the court shall detail findings of fact and conclusions of law to each of the above considerations and shall state that the court has considered each of the guidelines in reaching its decision.

6. An order certifying a person or denying such certification to the juvenile justice system shall be a final order, appealable when entered.

G. Upon conviction, sentence may be imposed as a sentence for a youthful offender as provided by Section 2-5-209 of this title. If the youthful offender sentence is imposed as an adult sentence as provided by Section 2-5-208 of this title, the convicted person may be incarcerated with the adult population.

### **§ 2-5-207. Applicability to youths aged seventeen**

It is the intent of the Tribal Council to fully utilize the Youthful Offender Act as a means to protect

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the public while rehabilitating and holding youth accountable for serious crimes. The Tribal Council finds that eligible seventeen-year-olds should have the opportunity to be processed as youthful offenders as provided by law and held accountable through the various provisions of the Youthful Offender Act for custody, institutional placement, supervision, extended jurisdiction within the Department of Juvenile Justice, and the ability to transfer youthful offenders to the contracted detention facility when incarceration or additional supervision is required beyond the maximum age allowed in the Department of Juvenile Justice. No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the age of the youth being seventeen (17) years, but it is the intent of the Legislature that such youthful offender shall not remain in the custody or under the supervision of the Department of Juvenile Justice beyond the youthful offender's maximum age of eighteen (18) years and six (6) months or until nineteen (19) years of age if jurisdiction has been extended as provided in subsection B of Section 2-5-209 of this title. To deny access to an otherwise eligible older youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.

**§ 2-5-208. Motion by Attorney General to sentence child as an adult--Considerations--Standard of proof--Sentencing**

A. Whenever the Attorney General believes that there is good cause to believe that a person charged as a youthful offender would not reasonably complete a plan of rehabilitation or the public would not be adequately protected if the person were to be sentenced as a youthful offender, and should receive an adult sentence, the Attorney General shall file a motion for consideration of the imposition of the sentence as for an adult if the person is convicted:

1. Not more than thirty (30) days following formal arraignment and such motion will be ruled upon by the trial court; or the Attorney General may file the motion to impose adult sentence fourteen (14) days prior to the start of the preliminary hearing and the preliminary hearing magistrate will rule on that motion. The Attorney General must elect when to file the motion for adult sentence and if the motion is filed and argued to the magistrate, it cannot again be filed and argued to the trial court after arraignment; or

2. If, prior to that time, the accused person indicates to the court that the accused person wishes to plead guilty or nolo contendere, the court shall grant the state ten (10) days from that date to file the motion required by this subsection, if requested by the state.

B. Upon the filing of such motion and prior to the trial or before the entry of the plea of guilty or nolo contendere the court shall hold a hearing to determine the matter.

C. 1. The court shall order an investigation to be conducted unless waived by the accused person with approval of the court. Any such investigation required shall be conducted by the Department of Juvenile Justice. All reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification as a youthful offender to the juvenile system or the motion for imposition of an adult sentence are confidential and shall be filed or admitted under seal, except that such records shall be provided to

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the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to either paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime.

2. At the hearing the court shall consider, with the greatest weight given to subparagraphs a, b and c:

a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,

b. whether the offense was against persons and, if personal injury resulted, the degree of injury,

c. the record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,

d. the sophistication and maturity of the accused person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the accused person,

e. the prospects for adequate protection of the public if the accused person is processed through the youthful offender system or the juvenile system,

f. the reasonable likelihood of rehabilitation of the accused person if the accused person is found to have committed the alleged offense, by the use of procedures and facilities currently available to the juvenile court, and

g. whether the offense occurred while the accused person was escaping or on escape status from an institution for youthful offenders or delinquent children.

D. After the hearing and consideration of the report of the investigation, the court shall certify the person as eligible for the imposition of an adult sentence only if it finds by clear and convincing evidence that there is good cause to believe that the accused person would not reasonably complete a plan of rehabilitation or that the public would not be adequately protected if the person were to be sentenced as a youthful offender.

In its decision on the motion of the state for imposition of an adult sentence, the court shall detail findings of fact and conclusions of law to each of the considerations in subsection C of this section and shall state that the court has considered each of its guidelines in reaching its decision.

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E. An order certifying or denying certification for imposition of an adult sentence shall be a final order, appealable when entered.

F. If the person has been certified as eligible to be sentenced as an adult, the court shall, upon a verdict of guilty or the entry of a plea of guilty or nolo contendere, impose sentence as provided by law for an adult for punishment of the offense committed, subject to the power and authority of the court to suspend or delay sentence, defer judgment, or otherwise structure, limit, or modify sentence as provided in Title 22 of the Cherokee Nation Statutes or the Youthful Offender Act. When sentence is imposed pursuant to this subsection, the person shall be treated as an adult for purposes of supervision, incarceration and in all subsequent criminal proceedings.

G. Upon a verdict of guilty or a plea of guilty or nolo contendere, the court may order the person to pay a fee to the Department of Juvenile Justice of not less than Twenty-five Dollars (\$25.00), nor more than Five Hundred Dollars (\$500.00), for the presentence or certification investigation. In hardship cases, the court may waive the fee or set the amount of the fee and establish a payment schedule.

#### **§ 2-5-209. Presentence investigation--Hearing--Factors and considerations--Imposition of sentence--Confinement**

A. Upon a verdict of guilty or a plea of guilty or nolo contendere of a youthful offender and prior to the imposition of a youthful offender sentence by the court:

1. A youthful offender presentence investigation shall be conducted unless waived by the youthful offender with approval of the court or unless an investigation is conducted pursuant to subsection C of Section 2-5-208 of this title. All reports, evaluations, motions, records, exhibits or documents regarding the educational history, mental health or medical treatment or condition of the offender that are submitted to the court or admitted into evidence during the hearing on the motion for certification of the accused youthful offender to the juvenile system or motion for imposition of an adult sentence are confidential and shall be filed or admitted under seal, except that such records shall be provided to the Department of Juvenile Justice. Any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given in camera and shall not be open to the general public; provided, all persons having a direct interest in the case as provided in paragraph 1 of subsection A of Section 2-2-402 of this title shall be allowed to be present during the testimony but shall be admonished not to discuss the testimony following the hearing. All reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to the custody or supervision of the contracted detention facility by the court pursuant to paragraph 1 of subsection B of Section 2-5-209 or paragraph 5 of subsection B of Section 2-5-210 of this title or if the juvenile or youthful offender is later charged as an adult with a felony crime. Any presentence investigation required by this section shall be conducted by the Department of Juvenile Justice; and

2. The court shall conduct a hearing and shall consider, with the greatest weight given to subparagraphs a, b and c:

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- a. whether the offense was committed in an aggressive, violent, premeditated or willful manner,
- b. whether the offense was against persons and, if personal injury resulted, the degree of personal injury,
- c. the record and past history of the person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions,
- d. the sophistication and maturity of the person and the capability of distinguishing right from wrong as determined by consideration of the psychological evaluation, home, environmental situation, emotional attitude and pattern of living of the person,
- e. the prospects for adequate protection of the public if the person is processed through the youthful offender system or the juvenile system,
- f. the reasonable likelihood of rehabilitation of the person if found to have committed the offense, by the use of procedures and facilities currently available to the juvenile, and
- g. whether the offense occurred while the person was escaping or on escape status from an institution for youthful offenders or delinquent children.

B. 1. After the hearing and consideration of the report of the presentence investigation, the court shall impose sentence as a youthful offender, and such youthful offender shall be subject to the same type of sentencing procedures and duration of sentence, except for capital offenses, including suspension or deferment, as an adult convicted of a felony offense, except that any sentence imposed upon the youthful offender shall be served in the custody or under the supervision of the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is discharged, or the youthful offender reaches eighteen (18) years of age, whichever first occurs. If an individual sentenced as a youthful offender attains eighteen (18) years of age prior to the expiration of the sentence, such individual shall be returned to the sentencing court. At that time, the sentencing court shall make one of the following determinations:

- a. whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, provided that the treatment program shall not exceed the youthful offender's attainment of eighteen (18) years and six (6) months of age. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under subparagraph b, c or d of this paragraph,
- b. whether the youthful offender shall be placed in the custody of the contracted detention facility,
- c. whether the youthful offender shall be placed on probation with the contracted detention facility, or
- d. whether the youthful offender shall be discharged from custody.

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2. The sentence imposed shall not exceed the maximum sentence already imposed in the originating sentence.

3. Upon the youthful offender attaining the age of eighteen (18) years and six (6) months, the Department of Juvenile Justice may recommend that the youthful offender be returned to the custody or supervision of the Department of Juvenile Justice until the age of nineteen (19) years to complete the reintegration phase of the treatment program or community supervision as determined by the Department of Juvenile Justice. During any period of extension, a youthful offender may be transferred to the contracted detention facility as provided in paragraph 5 of subsection B of Section 2-5-210 of this title, whether the youthful offender is placed in an out-of-home placement or in the community.

4. If the court has extended jurisdiction of the youthful offender until nineteen (19) years of age, the youthful offender shall remain in custody or under the supervision of the Department of Juvenile Justice until the youthful offender has been discharged or sentenced by the court or until the youthful offender's nineteenth birthday, at which time the youthful offender shall be returned to the court for final disposition of the youthful offender's case. The court shall have the same dispositional options as provided in subparagraphs b, c and d of paragraph 1 of this subsection.

5. Any period of probation required by the sentencing court to be served shall be supervised by:

a. the Department of Juvenile Justice or designated representative, if the youthful offender is under eighteen (18) years of age, or

b. the contracted detention facility or designated representative, upon the youthful offender attaining eighteen (18) years of age.

6. In addition to or in lieu of the placement of the youthful offender in the custody of or under the supervision of the Department of Juvenile Justice, the court may issue orders with regard to the youthful offender as provided by law for the disposition of an adjudicated juvenile delinquent as long as the age of the youthful offender does not exceed nineteen (19) years.

7. It is the intent of the Cherokee Nation Legislature that youthful offenders be held insofar as is practical separate from the juvenile delinquent population.

8. The Department of Juvenile Justice may make recommendations to the court concerning the disposition of the youthful offender.

9. Any order issued by the sentencing court under this subsection shall be a final order, appealable when entered.

C. A youthful offender who is seventeen (17) or eighteen (18) years of age or older and who has been sentenced to the custody of the Department of Juvenile Justice may be detained in a county jail pending placement in an Department of Juvenile Justice facility, provided the county jail meets the jail standards promulgated by the State Department of Health for juvenile offenders. The

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youthful offender who is eighteen (18) years of age or older may be held in the general population of the county jail.

**§ 2-5-210. Rehabilitation plan--Annual review hearing--Transfer to Contracted detention facility--Time-served credits**

A. Whenever a youthful offender is placed in the custody of or under the supervision of the Department of Juvenile Justice, the Office shall within thirty (30) days prepare and file with the court a written rehabilitation plan for the youthful offender. The rehabilitation plan shall be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the Department of Juvenile Justice. The rehabilitation plan shall include, but not be limited to:

1. Clearly stated and measurable objectives which the youthful offender is expected to achieve; and
2. Identification of the specific services and programs that will be provided to the youthful offender by the Department of Juvenile Justice to assist the youthful offender in achieving the measurable objectives to be reached, including, but not limited to, diagnostic testing consistent with the current standards of medical practice.

B. The court shall schedule an annual review hearing in open court for every youthful offender in the custody of the Department of Juvenile Justice. Such hearing may be scheduled either upon the court's own motion or upon a motion filed by the Department of Juvenile Justice. Each annual review hearing shall be scheduled and completed within the thirty-day period immediately preceding the date the sentence was imposed upon the youthful offender. Notice shall be given to the youthful offender, the counsel, parent or guardian of the youthful offender, the Attorney General, and the Department of Juvenile Justice at the time the motion for review is made or filed. The court, at its discretion, may schedule other review hearings as the court deems necessary, after notice to the parties. The court shall hold a review hearing for good cause shown, upon any motion filed by the Attorney General, the Department of Juvenile Justice, or the youthful offender for the purpose of making a determination to:

1. Order the youthful offender discharged from the custody of the Department of Juvenile Justice without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Cherokee Nation Statutes and dismiss the charge with prejudice to any further action, if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety.

If a youthful offender has been discharged without a court judgment of guilt and the charge has been dismissed with prejudice as provided in this paragraph, upon the motion of the youthful offender and the passage of three (3) years after the date of such discharge and dismissal, the court may, in addition, order any law enforcement agency over which the court has jurisdiction to expunge all files and records pertaining to the arrest and conviction of the youthful offender, and shall order the clerk of the court to expunge the entire file and record of the case, including docket

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sheets, index entries, court records, summonses, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the youthful offender is mentioned. The court may order probation officers and counselors of the Department of Juvenile Justice to expunge all records, reports, and social and clinical studies relating to the youthful offender that are in the possession of the Department of Juvenile Justice, except when the documents are necessary to maintain state or federal funding.

Members of the judiciary, the Attorney General, the youthful offender, counsel for the youthful offender, and the Department of Juvenile Justice who are assigned juvenile court intake responsibilities, and the contracted detention facility may access records that have been expunged pursuant to this subsection without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition or information, or for purposes of sentencing or placement in a case where the person who is the subject of the sealed record is alleged to have committed a subsequent youthful offender act, a juvenile delinquent act, or any adult criminal offense. Provided, any record sealed pursuant to this section shall be ordered unsealed upon application of the prosecuting agency when said records are requested for use in any subsequent juvenile delinquent, youthful offender, or adult prosecution.

As used in this paragraph, “expunge” shall mean the sealing of criminal records;

2. Revoke an order of probation and place the youthful offender in the custody of the Department of Juvenile Justice if such offender is less than eighteen (18) years of age;
3. Place the youthful offender on probation under the supervision of the age-appropriate agency;
4. Place the youthful offender if less than eighteen (18) years of age in a sanction program operated or contracted for by the Department of Juvenile Justice community placement, if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs; or
5. Transfer the youthful offender to the custody or supervision of the contracted detention facility if the court finds by clear and convincing evidence that the youthful offender has:
  - a. after certification as a youthful offender, seriously injured or endangered the life or health of another person by such person’s violent behavior,
  - b. escaped from the facility from which the youthful offender is being held,
  - c. committed a felony crime while in the custody or under the supervision of the Department of Juvenile Justice as shown by a judgment entered following a verdict of guilty, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence,
  - d. committed battery or assault and battery on a state employee or contractor of a juvenile facility while in the custody of such facility,

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e. caused disruption in the facility, smuggled contraband into the facility, caused contraband to be smuggled into the facility, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility, or

f. established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.

The court, in its decision to transfer custody of the youthful offender to the custody of the contracted detention facility, shall detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state.

C. An order transferring custody of a youthful offender to the contracted detention facility shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered. In addition to a judgment and sentence for an adult conviction, the court shall provide to the contracted detention facility a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred to the contracted detention facility, including the date of the offense, the date of the adjudication as a youthful offender, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and the date of the imposition of the adult sentence.

D. The court shall grant time-served credits against the adult sentence imposed for any youthful offender transferred to the contracted detention facility. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the supervision of the Department of Juvenile Justice, the offender shall receive day-for-day credit for the time spent in the custody or under the supervision of the Department of Juvenile Justice. Upon commitment to the contracted detention facility, a youthful offender shall also receive other credits as provided by law for an adult inmate.

E. If authorized by the court, review hearings, other than those scheduled for determinations as provided in paragraphs 1 through 5 of subsection B of this section, may be conducted via teleconference communications; provided, the attorney representing the youthful offender shall be present at the hearing. For purposes of this subsection, “teleconference communication” means participation by the youthful offender and facility staff in the hearing by interactive telecommunication devices which permit both visual and auditory communication among the necessary participants, the court, and the youthful offender.

#### **§ 2-5-211. Commitment to Contracted detention facility--Judgment and sentence**

When committing a person who is, or has been, certified as a youthful offender and is certified eligible for the imposition as an adult sentence pursuant to Section 2-5-208 of this title, or certified as a youthful offender and is being transferred to the contracted detention facility for custody or supervision pursuant to Section 2-5-210 of this title, or sentenced as an adult after previously being certified as a youthful offender, the judgment and sentence shall clearly identify such person as a youthful offender, or previous youthful offender, and detail the history of the applications of the Youthful Offender Act to such person that resulted in the current commitment to the contracted

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detention facility.

**§ 2-5-212. Delinquent or youthful offender in custody of Department of Juvenile Justice-- Placement options--Office duties and authority--Rights of delinquent or youthful offender**

A. Whenever a youthful offender is committed to the custody of the Department of Juvenile Justice, the Department of Juvenile Justice may:

1. Place the youthful offender in a secure facility or other institution or facility maintained by the state for delinquents or youthful offenders;
2. Place the youthful offender in a group home or community residential facility for delinquents or youthful offenders;
3. Place the youthful offender under community supervision prior to or after a period of placement in one or more of the facilities referred to in paragraphs 1 and 2 of this subsection. The Department of Juvenile Justice may place a youthful offender in his or her own home, or an independent living or other similar living arrangement within the community of the residence of the youthful offender only upon the approval of the court; provided, the court shall not prohibit the reintegration of the youthful offender into the community except upon finding that the youthful offender has not reasonably completed the rehabilitation plan objectives established as preconditions for reintegration into the community or that the public would not be adequately protected if the youthful offender is reintegrated into the community; or
4. Place the youthful offender in a sanction program if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs.

B. Placement of the youthful offender pursuant to this section or any other provision of law shall be the responsibility of the Department of Juvenile Justice and shall occur as soon as reasonably possible but not more than forty-five (45) days following the filing and adoption of the written rehabilitation plan as provided in Section 2-5-210 of this title. This placement time period may be extended upon the declaration of an emergency by the Board of Juvenile Affairs. For the purposes of this section, "emergency" means any situation that places the health, safety and well-being of the residents or staff in imminent peril. The court shall not have authority to require specific placement of a youthful offender in a time frame which would require the removal of any other juvenile or youthful offender from such placement.

C. The Department of Juvenile Justice shall be responsible for the care and control of a youthful offender placed in the custody of the Department of Juvenile Justice, and shall have the duty and the authority to provide food, clothing, shelter, ordinary medical care, education, discipline and in an emergency to authorize surgery or other extraordinary care. The medical care, surgery and extraordinary care shall be charged to the appropriate agency where the youthful offender qualifies for the care under law, rule, regulation or administrative order or decision. Nothing in this section shall abrogate the right of a youthful offender to any benefits provided through public funds nor the parent's statutory duty or responsibility to provide said necessities; further, no person, agency

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or institution shall be liable in a civil suit for damages for authorizing or not authorizing surgery or extraordinary care in an emergency, as determined by competent medical authority. A youthful offender placed in the custody of the Department of Juvenile Justice who has attained eighteen (18) years of age or older may authorize and consent to the medical care sought on behalf of the youthful offender by the Department of Juvenile Justice and to be provided to the youthful offender by a qualified health care professional. No state employee shall be liable for the costs of any medical care or behavioral health services provided to any child in the custody of the Department of Juvenile Justice.

D. A youthful offender in the custody of the Department of Juvenile Justice shall:

1. Be entitled to the rights afforded juvenile delinquents pertaining to any due process afforded delinquents in regard to movement from a nonsecure to a secure placement; and
2. As appropriate to the age and circumstances of the youthful offender, be provided education, employment, and employment skills and vocational and technical or higher education services, apprenticeship programs and similar opportunities.

E. The Department of Juvenile Justice shall have standing to seek review, including appellate review, of any order directing the Department of Juvenile Justice to take any action with regard to a youthful offender placed in the custody or under the supervision of the Department of Juvenile Justice.

#### **§ 2-5-213. Reserved**

#### **§ 2-5-301. Educational needs during confinement or incarceration**

Any child under eighteen (18) years of age who is a legal resident or the child of legal residents of the State of Cherokee Nation who is detained, held or arrested for any offense pursuant to any provision of the Juvenile Code or Criminal Code of this state, including such persons subject to adult prosecution, youthful offender proceedings, certification as an adult, reverse certification or juvenile proceedings, shall be identified within seventy-two (72) hours of such detention or arrest for educational needs and shall be afforded such educational opportunities without delay while in such facility or jail, including city, county and state jails, holding facilities and juvenile or correctional institutions.

## **CHAPTER 6**

### **RECORDS**

#### **§ 2-6-101. Court to keep records--Definitions**

A. The court shall make and keep records of all cases brought before the court pursuant to the Cherokee Nation Juvenile Code. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

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B. As used in the Cherokee Nation Juvenile Code:

1. “Records” or “record” shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, psychological evaluations, certification studies, presentence investigations, audio or visual tape recordings pertaining to a juvenile proceeding or a child, and shall include information entered into and maintained in an automated or computerized information system;

2. “Juvenile court record” means legal and social records other than adoption records, including but not limited to agency, law enforcement and Attorney General’s records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the Cherokee Nation Juvenile Code;

3. “Agency record” means records prepared, obtained or maintained by a public or private agency with regard to a child who is or has been under its care, custody or supervision or with regard to a family member or other person living in the home of such child and shall include but not be limited to:

a. any study, plan, recommendation, assessment or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care or treatment of such child, or

b. any records made in the course of any investigation or inquiry conducted by an agency to determine whether a child is a delinquent child or a child in need of supervision;

4. “Attorney General’s records” means any records prepared or obtained by an office of a Attorney General relating to a juvenile case and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child;

5. “Law enforcement records” means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this chapter as a delinquent child or a child in need of supervision. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. “Nondirectory education records” means any records maintained by a public or private school,

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including a technology center school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to the federal Family Educational Rights and Privacy Act of 1974<sup>1</sup> and any rules promulgated pursuant to the act;

7. “Legal record” means any petition, docket, motion, finding, order, judgment, pleading, certification study, paper or other document, other than social records, filed with the court;

8. “Social record” means family social histories, medical reports, psychological and psychiatric evaluations or assessments, clinical or other treatment reports, educational records, or home studies, even if attached to court reports prepared by the agency; and

9. “Participating agency” means any public or private agency that has entered into a contract or an interagency agreement under the Interlocal Cooperation Act in accordance with the rules and guidelines adopted pursuant to Section 620.6 of Title 10 of the Cherokee Nation Statutes or the Juvenile Offender Tracking Program for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth.

#### **§ 2-6-102. Confidential juvenile records**

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

1. Juvenile court records;
2. Agency records;
3. Attorney General’s records;
4. Law enforcement records;
5. Nondirectory education records; and
6. Social records.

B. The confidentiality limitation of subsection A of this section shall not apply to statistical information or information of a general nature obtained pursuant to the provisions of the Cherokee Nation Juvenile Code.

C. The confidentiality requirements of subsection A of this section for juvenile court records and law enforcement records shall not apply:

1. Upon the charging or certification of a juvenile as an adult or youthful offender;

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2. Upon the charging of an individual pursuant to Section 2-5-101 of this title;
3. To a violation of any traffic regulation or motor vehicle regulation of Title 47 of the Cherokee Nation Statutes, or to a violation of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets, or to the operation of self-propelled or non-self-propelled vehicles of any kind in this state;
4. To a juvenile who is fourteen (14) years of age or older and who has been adjudicated delinquent and who subsequently comes before the juvenile court on a new delinquency matter after July 1, 1995;
5. To a juvenile adjudicated a delinquent for committing a delinquent act which, if committed by an adult, would be a felony offense that is a crime against the person or a felony offense involving a dangerous weapon;
6. To arrest records of a juvenile arrested for committing an act, which if committed by an adult, would be a felony offense;
7. To a violation of the Prevention of Youth Access to Tobacco Act; or
8. Whenever a juvenile is accepted for placement or treatment in a facility or private treatment facility within this state as a result of or following a conviction or adjudication for an out-of-state offense that would qualify the juvenile as a youthful offender, as defined in Section 2-5-202 of this title, had the crime occurred within this state. The facility shall provide any law enforcement agency or peace officer all prior criminal offense, conviction, and adjudication information. If a juvenile flees or is otherwise absent from the facility without permission, the facility shall provide any law enforcement agency or peace officer all prior criminal offense, conviction, and adjudication information. Any law enforcement agency or peace officer shall have the authority to review or copy any records concerning the juvenile, including prior criminal offense, conviction, or adjudication information.

D. Following the first adjudication as a delinquent, the court having jurisdiction shall note on the juvenile court record of the person that any subsequent juvenile court records shall not be confidential; provided, the child is at least fourteen (14) years of age or older. Any juvenile court record which becomes an open juvenile record as provided in this subsection may be expunged as provided in Section 2-6-109 of this title.

The provisions of this subsection shall only apply to the juvenile court records and law enforcement records of juvenile offenders certified, charged or adjudicated on and after July 1, 1995.

E. When a delinquent child has escaped or run away from a secure facility or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the delinquent child whether or not the juvenile record is confidential or

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F. Except as otherwise required by tribal, state or federal law, the confidential records listed in subsection A of this section may only be inspected, released, disclosed, corrected or expunged pursuant to an order of the court. No subpoena or subpoena duces tecum purporting to compel disclosure of confidential information or any confidential juvenile record shall be valid.

G. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

Except for Attorney General records, any court order authorizing the disclosure, release or inspection of a confidential juvenile record may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

H. Upon receiving a written request for inspection, release, disclosure, or correction of a juvenile record, the court shall determine whether the record of a juvenile falls under one of the exceptions listed in subsection C of this section. If the record falls under one of the exceptions in subsection C of this section, the court shall issue an order authorizing inspection, release, disclosure or correction of the juvenile record. If the release of a juvenile record is authorized by the court, the Department of Juvenile Justice shall provide information to the requestor regarding the location of the juvenile record to be released.

I. Any agency or person may seek an order from the juvenile court prohibiting the release of confidential information subject to disclosure without an order of the court pursuant to Section 620.6 of Title 10 of the Cherokee Nation Statutes or any provision of this chapter. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

J. In accordance with the provisions, upon creation, of the Juvenile Offender Tracking Program:

1. Information included in the records listed in subsection A of this section may be entered in and maintained in automated information systems related to services to children and youth whether or not the record is confidential or open; and

2. The information systems may be accessed by participating agencies as defined by this chapter or as otherwise provided by law.

K. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information for research purposes. Such authorization shall be in writing and shall state specifically the type of information which may be reviewed and reported.

Each person granted permission to inspect confidential reports and records for research purposes

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shall present a notarized statement to the court stating that the names of juveniles, parents and other persons as may be required by the court to be confidential will remain confidential.

L. Nothing contained in the provisions, upon creation, of the Juvenile Offender Tracking Program or any provision of this chapter shall be construed as:

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

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

4. Limiting or otherwise affecting access of parties to a juvenile proceeding to any records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;

6. Prohibiting the Department of Juvenile Justice from summarizing the outcome of an investigation to the person who reported a known or suspected instance of child abuse or neglect; or

7. Prohibiting the person or agency conducting a preliminary inquiry relating to an alleged delinquent act from providing information, as to the disposition of the matter by the Attorney General, to the person or agency which referred the matter, including but not limited to whether a petition was filed or an alternative action taken, and the basis for such action and the terms of any agreement entered into by the child for payment of restitution, and including but not limited to provisions for community services.

M. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to the Oklahoma School for the Blind, Oklahoma School for the Deaf, or a school district in which the child who is the subject of the record is currently enrolled or has been presented for enrollment. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the Oklahoma School for the Blind, Oklahoma School for the Deaf, or a school district, the agency in possession of the records shall provide in writing, digitally, or by delivery to a secure facsimile line, the requested information to the school district within five (5) business days upon receipt of the request. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

N. The records of a case for which a petition is not filed shall be subject to the provisions of Chapter 6 of the Cherokee Nation Juvenile Code.

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### **§ 2-6-103. Confidentiality of social records**

A. 1. Social records, as defined by Section 93 of this act, shall not be filed in the court record unless so ordered by the court. If filed in the court record, the records shall be placed in confidential envelopes in the court file and may only be accessed by the person who is the subject of the record, or the attorney for such person.

2. The person or the attorney for the person may obtain a copy of any social record used during the pendency of the delinquent proceedings that has been distributed to any of the parties during the proceedings.

B. Nothing in this section shall prohibit the disclosure of confidential records as permitted by the provisions of Chapter 6 of this Code or any other applicable law.

### **§ 2-6-104. Inspection and disclosure of confidential records without court order**

A. The confidential records listed in subsection A of Section 2-6-102 of this title may be inspected and their contents disclosed without a court order to:

1. Participating agencies;

2. The following, provided that the inspection of records and disclosure authorized by this paragraph may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure:

a. pursuant to the provisions of this title, a person, agency, hospital or clinic authorized or directed by the court or by the Department of Juvenile Justice to care for, treat, examine, evaluate or supervise a child or to treat, examine or evaluate the parent, legal guardian or other adult person living in the home of the child,

b. a legally recognized school that is not a participating agency in which the child who is the subject of the record is currently enrolled, and

c. individuals or agencies engaged in legitimate research for educational, scientific or public purposes or for the purpose of an audit authorized by law. No information identifying the subjects of the records shall be made available or disclosed unless it is essential to the research or audit purpose.

B. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor.

### **§ 2-6-105. Inspection and disclosure of juvenile court records without court order**

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A. Juvenile court records which are confidential may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to lawful duties:

1. The judge of the district court having the child currently before the court in any proceeding pursuant to the Cherokee Nation Juvenile Code;
2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court;
3. The Attorney General and the employees of the office of the Attorney General in the course of their official duties;
4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this chapter. The attorney representing a child or considering representing a child in a juvenile proceeding may also access other records listed in subsection A of Section 2-6-102 of this title for use in the legal representation of the child;
5. Employees of the Department of Juvenile Justice in the course of their official duties;
6. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;
7. The Department of Juvenile Justice or other public or private agency or any individual having court-ordered custody or custody pursuant to Department of Juvenile Justice placement of the child who is the subject of the record;
9. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child;
13. Any federal official of the United States Department of Health and Human Services;
14. Employees of a contract detention facility in the course of their official duties;
15. Cherokee Nation Probation and Parole employees in the course of their official duties; and

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

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C. Juvenile records shall be exempt from disclosure from FOIA [insert cite]

**§ 2-6-106. Inspection and disclosure of Department of Juvenile Justice records without court order**

A. The Department of Juvenile Justice agency records pertaining to a child which are confidential may be inspected and their contents disclosed without a court order to the following persons upon showing of proper credentials:

1. The judge having the child currently before the court in any proceeding pursuant to this title, any judge of the district court or tribal court to which any proceedings may be transferred;
2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and members of review boards established pursuant to the Cherokee Nation Children's Code;
3. The Attorney General and the employees of an office of the Attorney General in the course of their official duties pursuant to this title or the prosecution of crimes against children, including providing summary dispositional and placement information to the victim of the delinquent acts of the child;
4. The attorney representing a child who is the subject of a juvenile proceeding pursuant to the provisions of this title. The attorney representing a child or an attorney considering representing a child in a juvenile proceeding may access other confidential records listed in subsection A of Section 2-6-102 of this title for use in the legal representation of the child;
5. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or any federally recognized Indian tribe member in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;
6. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation;
8. Any public or private agency or person authorized by the Department of Juvenile Justice to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the Office may limit the disclosure to summaries or to information directly necessary for the purpose of the disclosure;
9. Any federally recognized Indian tribe or state or county child protective services or child welfare

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agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child;

10. The parents of the child who is the subject of any records;

11. The child upon attaining eighteen (18) years of age or upon the termination of court jurisdiction of the case, whichever occurs later;

12. Any person or agency for research purposes, if all of the following conditions are met:

a. the person or agency conducting the research is employed by the Cherokee Nation or is under contract with this state and is authorized by the Department of Juvenile Justice to conduct the research, and

b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to any documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

13. Any federal official of the United States Department of Health and Human Services, the United States Social Security Administration, the United States Department of Justice, the United States Department of Homeland Security, or any employee of the United States Probation Office;

14. Employees of a contracted detention facility in the course of their official duties; and

B. Records and their contents disclosed without an order of the court as provided by the provisions of this section shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful for any person to furnish any confidential record or disclose any confidential information contained in any juvenile record for commercial, political or any other unauthorized purpose. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

### **§ 2-6-107. Fingerprinting of persons under 18**

The fingerprinting of persons under eighteen (18) years of age shall be as prescribed by law for the fingerprinting of adults, except as specified by the provisions of this section.

1. When a child is detained or arrested in the course of an investigation of a criminal offense and:

a. a comparison of the fingerprints of the child with fingerprints found during the investigation of the offense is negative, or

b. a court finds that the child did not commit the alleged offense,

all law enforcement records of the arrest and, if applicable, juvenile court and agency records shall

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be amended to reflect said facts immediately after the comparison or court finding;

2. Fingerprints obtained pursuant to this section shall be retained in a central state depository and in a local depository maintained by a duly constituted law enforcement agency;

3. Fingerprints obtained and maintained pursuant to this section may be used only by law enforcement officers for comparison purposes in connection with the investigation of a crime or to establish identity in instances of death, serious illness, runaways, or emergency; and

**§ 2-6-108. Effect of adjudication--Sealing of records--Order unsealing sealed records--  
Destruction of records**

A. No adjudication by the court upon the status of a child in a juvenile proceeding shall operate to impose any of the civil disabilities ordinarily resulting from conviction of a crime, nor shall a child be deemed a criminal by reason of a juvenile adjudication.

B. The court may sua sponte, upon motion by the state or upon motion by the alleged delinquent, order the records of a person alleged to be delinquent to be sealed as follows:

1. When the person has been alleged to be delinquent and:

a. one (1) year has elapsed from the later of:

(1) dismissal or closure of the case by the court, or

(2) notice to the court by the Department of Juvenile Justice, and

b. the person has not been found guilty of or admitted to the commission of a subsequent criminal offense in either a juvenile or adult proceeding, and

c. no juvenile or adult proceeding for a criminal offense is pending;

2. When a juvenile court intake has been completed and:

a. the case has been dismissed, or

b. no petition has been filed pending fulfillment of conditions of a voluntary probation, or

c. a petition has been filed but no adjudication has occurred pending the fulfillment of conditions of a preadjudicatory probation;

3. When a juvenile participates in a court-approved alternative diversion program for first-time offenders and:

a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and

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b. the court dismisses the case at the conclusion of the deferral period; or

4. When a juvenile participates in a court-approved military mentor program and:

a. the juvenile presents satisfactory evidence to the court that the juvenile has successfully completed the program, and

b. the court dismisses the case at the conclusion of the deferral period.

The records may be sealed one (1) year after such dismissal or completion of the conditions of a voluntary or pre-adjudicatory probation, alternative diversion program for first-time offenders, or military mentor program or upon the person attaining the age of eighteen (18) years in the discretion of the court. Upon the sealing of any record of a person alleged to be delinquent pursuant to this title, the record and official actions subject to the order shall be deemed never to have occurred, and the person who is the subject of the record and all juvenile justice agencies may properly reply upon any inquiry in the matter that no such action ever occurred and no such record exists with respect to such person.

C. The Cherokee Courts shall establish a system for sealing records as required by subsection B of this section and records shall be sealed in accordance with the procedures established pursuant to said system.

D. 1. The court clerk shall seal the juvenile court record indicated in the court's order, except that a confidential index shall be maintained for the purpose of locating records subject to inspection or release pursuant to subsection F of this section.

2. When notified by the court clerk of a court order sealing a juvenile court record, the law enforcement agency having records pertaining to the person shall seal the records as ordered, except basic identification information shall be maintained.

3. Except where such documents are necessary to maintain state or federal funding, the juvenile court personnel records pertaining to the person shall be sealed.

E. Members of the judiciary, the Attorney General, the defendant, the defendant's counsel, the Department of Juvenile Justice assigned juvenile court intake responsibilities, and the contracted detention facility may access records that have been sealed pursuant to this section without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition, or for purposes of sentencing or placement in a case where the person who is the subject of the sealed record is alleged to have committed a subsequent juvenile delinquent act or any adult criminal offense. Provided, any record sealed pursuant to this section may be used in a subsequent juvenile delinquent or adult prosecution only after the issuance of a court order unsealing the record.

F. The court may issue an order unsealing sealed juvenile court records, for use for the following purposes:

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1. In subsequent cases against the same child pursuant to this title;
2. In an adult criminal proceeding pursuant to Section 2-2-403 or 2-5-101 of this title;
3. Upon conviction of a criminal offense in an adult proceeding, in connection with the sentencing of such person;
4. If the person is placed in the custody or under the supervision of the contracted detention facility;
5. For the purpose of a criminal investigation; or
6. When the court finds that there is a compelling reason and it is in the interest of justice to order the record unsealed.

G. Any person or agency having a legitimate interest in a delinquency case or proceeding may petition the court for an order unsealing a juvenile court record. Upon the filing of a petition to unseal any juvenile court record, the court shall set a date for a hearing and shall provide thirty (30) days of notice to all interested parties. The hearing may be closed at the discretion of the court. If, after a hearing, the court determines that there is any reason enumerated in subsection F of this section and it is necessary for the protection of a legitimate public or private interest to unseal the record, the court shall order the record unsealed.

H. Any record ordered to be sealed pursuant to this section, if not unsealed within ten (10) years of the order, shall be obliterated or destroyed at the end of the ten-year period.

### **§ 2-6-109. Expungement of open juvenile court record**

A. A person who is the subject of a juvenile court record, that is not confidential as provided by law, may petition the district court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to the person, except basic identification information; provided:

1. The person has attained twenty-one (21) years of age or older;
2. The person has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person at the time of the petition for an expungement;
3. The person has not been subject to any deferred prosecution or deferred sentence, and has not been convicted of any criminal offense; and
4. All court costs, restitution, fines and other court-ordered requirements have been completed for all juvenile proceedings.

B. Upon the filing of a petition for expungement of a juvenile court record, the court shall set a

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date for a hearing, which hearing may be closed at the court's discretion, and shall provide a thirty (30) days' notice of the hearing to the Attorney General, the Department of Juvenile Justice, the Cherokee Nation Marshal Service, and any other person or agency whom the court has reason to believe may have relevant information related to the expungement of any record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order the records, or any part thereof except basic identification information, to be expunged. If the court finds that neither expungement of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to the records. Any order entered pursuant to the provisions of this subsection shall specify those agencies to which the court order shall apply.

D. Upon the entry of an order to expunge any juvenile court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all juvenile and criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the person.

E. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of the records, the Attorney General, or by the Attorney General and only to those persons and for such purposes named in the petition.

F. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in any expunged juvenile records. An applicant need not, in answer to any question concerning arrest, juvenile and criminal records, provide information that has been expunged, including any reference to or information concerning expungement and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose information that has been expunged.

G. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

H. For the purposes of this section, expunged materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

I. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

J. Any record ordered to be expunged pursuant to this section shall be sealed and, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

K. Subsequent to records being sealed as provided herein, the Attorney General, the Department of Juvenile Justice, the Cherokee Nation Marshal Service, or other interested person or agency

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may petition the court for an order unsealing any records. Upon filing of a petition, the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

L. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to the Federal Rules of Evidence.

M. A person who has attained eighteen (18) years of age or older may petition the district or municipal court in which the juvenile court record is located for an order to expunge all or any part of the record pertaining to matters involving truancy provided the person has met the criteria set forth in paragraphs 2 through 4 of subsection A of this section. The petition shall be reviewed by the district or municipal judge with primary responsibility over the juvenile court docket.

#### **§ 2-6-110. Procedures for providing certain records to law enforcement--Confidentiality**

The Department of Juvenile Justice shall, in cooperation with law enforcement in this Nation, develop procedures for providing timely and relevant information to the Cherokee Nation Marshal concerning juvenile court records and agency records of persons who have met the criteria specified in paragraph 5 of subsection C of Section 2-6-102 of this title. The procedures shall be designed to provide the type of information useful and relevant to establishing security level requirements for persons in the custody of a Marshal. The provisions of this section shall not require the disclosure of any records or information which is required by law to be kept confidential.

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force upon its passage and approval.

Enacted by the Council of the Cherokee Nation on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Joe Byrd , Speaker  
Council of the Cherokee Nation

**ATTEST:**

\_\_\_\_\_  
Janees Taylor, Secretary

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Council of the Cherokee Nation

Approved and signed by the Principal Chief this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chuck Hoskin Jr., Principal Chief  
Cherokee Nation

**ATTEST:**

\_\_\_\_\_  
Bryan Warner, Deputy Principal Chief  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Rex Jordan	_____	Harley Buzzard	_____
Joe Byrd	_____	Victoria Vazquez	_____
Wes Nofire	_____	Dora Smith Patzkowski	_____
Mike Dobbins	_____	Joe Deere	_____
E.O. Smith "Jr." Smith	_____	Keith Austin	_____
Darryl Legg	_____	Janees Taylor	_____
Canaan Duncan	_____	Julia Coates	_____
Shawn Crittenden	_____	Mary Baker Shaw	_____
Mike Shambaugh	_____		