

# TITLE 4 CHILDREN AND FAMILY RELATIONS CODE

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As Amended by Comanche Nation Resolution 241-2025 on 12/6/2025; As amended by Comanche Nation Resolution 40-18, 3/8/18; As amended by Comanche Nation Resolution 17-18 1/6/18; Comanche Resolution No. 54-08 April 7, 2008; As amended by Comanche Tribe Resolution 18-87, April 9, 1987; As amended by Comanche Indian Tribe Resolution 80-86, December 12, 1986; Comanche Tribe of Oklahoma Resolution 82-52, July 3, 1982.

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## **The COMANCHE CHILDREN AND FAMILY RELATIONS CODE**

### **STATEMENT OF HISTORY**

**The Comanche Nation Tribal Court was created on April 9, 1987, under the authority of Article VI, Section 7, Subsection (J) of the Constitution of the Comanche Tribe (later known as Comanche Nation). The Court's powers and duties are set forth in this Code, pursuant to the inherent sovereignty of the Comanche Nation and in accordance with the Indian Child Welfare Act.**

### **CHAPTER ONE**

#### **TITLE; PURPOSE AND CONSTRUCTION; COMANCHE NATION TRIBAL COURT; PROSECUTOR; COURT CLERK/COURT ADMINISTRATOR; GENERAL DEFINITIONS**

**Section 101. Title.** This Code shall be cited as the "Comanche Children and Family Relations Code" or "Children's Code."

#### **Section 102. Purpose and Construction.**

(a) **Purpose.** The purpose of this Code is to establish a division of the Comanche Tribal Court to:

(1) Secure for each child subject to this Code such care and guidance, preferably in his own home, as will best serve his welfare and the interests of the Nation and society in general;

(2) Protect and preserve Comanche tribal custom and heritage and the cultural identity of each child, and preserve and strengthen the ties between the child and the Comanche Nation whenever possible;

(3) Preserve and strengthen family ties whenever possible, and strengthen and improve the home and its environment when necessary;

(4) Remove a child from the custody of his parents and Indian custodians only when his welfare and safety or the protection of the public would otherwise be endangered;

(5) Secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of his Nation and society in general;

(6) Resolve, whenever possible, Comanche Nation child welfare matters by preventative and non-judicial means before resorting to the Comanche Nation Tribal Court for adjudication;

(7) To provide standards and procedures to guide the Comanche Nation Tribal Court when hearing matters involving Comanche children; and

(8) Guarantee to persons under the jurisdiction of the Comanche Nation Tribal Court the protection of rights accorded them under the Indian Civil Rights Act of 1968, 25 U.S.C. §§

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1301-1303.

Construction. The provisions and terms of this Code shall be liberally construed so as not to limit the jurisdiction of the Comanche Nation Tribal Court over children, and to facilitate the authority of the Comanche Nation Tribal Court to act to protect the interests of children and their families. When interpreting terms not defined by this Law, the Comanche Nation Tribal Court shall take into consideration Comanche laws, customs, and traditional child-rearing practices. Unless in conflict with applicable Comanche law, terms not specifically defined in this Law shall be defined according to their normal usage, or as defined in the Indian Child Welfare Act (25 U.S.C. § 1901-1963); Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 et seq. and 42 U.S.C. §670 et seq. respectively); the Adoption and Safe Families Act (ASFA) (P.L. 105-89); and the Bureau of Indian Affairs Guidelines to the federal law; and any applicable federal law.

### **Section 103. Comanche Nation Children and Family Relations Division of the Comanche Nation Court.**

- (a) The Comanche Children and Family Relation Code is established and is to be administered as a division of the Comanche Nation Court pursuant to Title 1 of the Comanche Nation Tribal Courts Code. The provisions of Title 1 will be specifically applicable to the Children and Family Relation Division.
- (b) Any one Comanche Nation Tribal Court Judge acting separately or any two or more Comanche Nation Tribal Court Judges acting jointly, are authorized to: (1) take official judicial action in child custody proceedings as defined in **section 107(d)** of this Code; (2) take official judicial action in judicial proceedings for name changes for children and adults, guardianships involving adult wards and adult adoptions; and (3) conduct marriage ceremonies in accordance with all requirements of this Code, including the limitations set forth in **subsection f** of this section. In carrying out the duties and powers especially enumerated under this Code, the Judges of the Comanche Nation Tribal Court shall have the powers commensurate with similar Judges of courts of similar jurisdiction, including, but not limited to, the contempt power, the power to issue custody warrants, and the power to issue search warrants and writs of habeas corpus and mandamus.
- (c) Limitations of Authority. A Court order signed by one Judge may be vacated or rescinded only when executed by: (1) the Judge who issued the order or (2) at least two Judges, regardless of whether either was the Judge who originally issued the order. A Court order signed by two or more Judges may be vacated or rescinded only when executed by at least two Judges, and if possible, by all three Judges. Notwithstanding the foregoing, no child (or children) shall be returned to the parent or the home from which the child was originally removed without a specific Court Order signed by at least two Judges following hearing in regular or special session.

### **(1) Section 104. Court Clerk/Court Administrator; Duties; Deputy Court Clerk.**

- (a) Court Clerk/Court Administrator and Deputy Court Clerk; General Functions. The Court

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Clerk/Court Administrator of the Comanche Nation Tribal Court performs all functions of a Court Clerk for the Children and Family Relations Division of Comanche Nation Tribal Court has set forth in Title 1 of the Comanche Nation Code.

(b) Filing and Preservation of Documents; Requests for Documents. It is the duty of the Court Clerk/Court Administrator to file together and carefully preserve in his office, all papers delivered to him for that purpose in every proceeding in the Comanche Nation Tribal Court. The Court Clerk/Court Administrator shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office. Any request for production of court documents, whether by subpoena or otherwise, shall be done by submission of a petition to the Nation Tribal Court setting forth the document required and the reasons for the request. The Nation Tribal Court shall make a determination of the relevancy of the request and may grant or deny the petition by written order.

(c) Numbering and Maintenance of Casefiles. Related to the operation of the Comanche Nation Children and Family Relations Division. The Clerk/Court Administrator shall keep the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court in a separate case file for each child custody proceeding, which shall be marked with the title and number of the case. The Court Clerk/Court Administrator shall maintain any documentary or physical evidence admitted into evidence by the Court during hearings at a secure location separate and apart from the case files. Case files shall be numbered in accordance with a numbering system. Each case number shall contain a prefix, followed by a hyphen and the last two digits of the calendar year in which the case was filed followed by a hyphen and the consecutive number of the case. Beginning January 1 of each calendar year, the last two digits of the calendar year designation shall be changed and the consecutive case number for each type of prefix shall begin again with number The types of prefixes shall be as follows:

- (1) Deprived, child abuse, child in need of treatment and child in need of supervision cases: JFJ;
- (2) Guardianship cases: PG;
- (3) Adoption cases, including relinquishments or consents to adoption: PA;
- (4) Paternity proceeding: JFP.
- (5) Emancipation proceedings; actions for judicial consent to the marriage of a child; and actions for writ of habeas corpus related to custody of a child: JFM; and
- (6) Name change case: NC.

(d) Filing of Documents. The Court Clerk/Court Administrator shall date stamp each document filed in the case file. The Court Clerk/Court Administrator shall accept legible facsimile transmissions of documents for filing in the casefile; provided that such documents are sent directly to a facsimile machine in the Court Clerk/Court Administrator's office designated for that purpose and not accessible to the public; and provided further that the original pleading shall be mailed or otherwise delivered to the Court Clerk/Court Administrator within ten business days of the date of filing of the facsimile copy. If the Court Clerk/Court

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Administrator discovers a pleading or other paper which has been filed or submitted for filing that bears an incorrect case number or other incorrect identifying data, the Court Clerk/Court Administrator shall correct the case number or other incorrect identifying data and enter a notation on the docket sheet of both cases recording the correction. The corrected pleading or other paper shall be placed in the court file bearing the corrected case number. .

- (e) Seal of Court Clerk/Court Administrator; Certification. The Court Clerk/Court Administrator shall keep a seal, to be furnished by the Comanche Nation Tribal Court, which shall reference the "Comanche Nation Tribal Court." The seal may be either metallic or nonmetallic. Every instrument, document, record, paper or other thing required to be certified by the court or by the Court Clerk/Court Administrator shall contain the seal of the Court Clerk/Court Administrator. The Court Clerk/Court Administrator is authorized to certify the authenticity of copies of the journal record and copies of the original instruments that are part of the court file. Such certified copies may be received in evidence with the same effect as the original would have had and without further identification by the party desiring to offer it.
- (f) Dockets and Journals. In addition to any other records required by this Code or the rules of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator shall keep the following records:
  - (1) Case Docket. On the case docket the Court Clerk/Court Administrator shall enter the case style of each action in the order in which it is brought. The docket sheets for each action shall include the title and date for every document filed in the case, including all judgments and orders of the court. Either a Judge or the clerk shall prepare a court minute during or immediately following each hearing in a case, for placement in the case docket in order to record all actions taken by the Court. The Court Clerk shall issue a copy of the court minute to the Prosecutor, the ICWD Director and the parties or their counsel of record no later than the next business day following the date of the hearing. The case docket may be kept entirely on computer or other appropriate medium. Paper copies of case dockets in the custody of the Court Clerk/Court Administrator may be destroyed after being stored on at least two electronic disks or other appropriate medium. One electronic copy of the case docket shall be maintained in the Court Clerk/Court Administrator's office and one electronic copy shall be updated monthly and stored by the Court Clerk/Court Administrator in a bank or other appropriate local depository for reproduction in the event that the copy in the Court Clerk/Court Administrator's office is destroyed or becomes unusable. Any notes, excluding court minutes, taken by the Judges during proceedings shall not be included in the court file or official records, but may be maintained by the Court Clerk/Court Administrator in separate administrative files or notebooks under the name of each Judge, arranged chronologically in order of case file numbers, which shall be for the use of the Judge who took the notes contained therein and for the use of the Court Clerk/Court Administrator for preparation of orders at the direction and subject to approval of the Chief Judge.
  - (2) Trial Docket. The Court Clerk/Court Administrator shall maintain a Trial Docket, listing the dates scheduled for all hearings and trials in all judicial proceedings filed in the Comanche Nation Tribal Court, including references to continuances of hearings granted, if any.
- (g) Process; Writs and Provisional Remedies. The Court Clerk/Court Administrator shall sign, date, seal, certify and issue process of every kind, including summons and subpoenas. The

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Court Clerk/Court Administrator shall also sign, date, seal, certify and issue all writs and orders for provisional remedies, including habeas corpus proceedings seeking custody of a child; provided that said documents shall first be prepared by the party or his attorney who is seeking the issuance of such process, writ or order. The Court Clerk/Court Administrator shall, upon the return of every summons, subpoena, writ or order pertaining to writs, enter upon the case docket whether or not service has been made; and, if the document has been served, the name of the person upon whom the document was served and the day and manner of the service upon such person. The entry shall be evidence in case of the loss of the document. The style of all documents issued in accordance with this section shall be "Comanche Nation Tribal Court"

- (h) Development of Legal Forms. The Court Clerk/Court Administrator shall develop legal forms with the assistance of the Prosecutor and shall maintain said forms at the Court Clerk/Court Administrator's Office. The Court Clerk/Court Administrator shall assist parties not represented by legal counsel in completing the forms; provided that a notice shall be posted in the Court Clerk/Court Administrator's Office stating: "The Court Clerk/Court Administrator is not authorized to provide legal advice or assistance to any person, but may answer general questions concerning the completion of legal forms available to the public by the Court Clerk/Court Administrator's Office."
- (i) Case Statistics. The Court Clerk/Court Administrator of record shall furnish without cost to the ICWD such statistical and other information related to cases filed with the Comanche Nation Tribal Court as the ICWD may request for purposes of applying for or meeting grant requirements and for preparation of the ICWD's reports pursuant to **sections 303 and 304** of this Code, including without limitation quarterly reports containing the number and classification of cases filed during the quarter, the number and classification of court cases dismissed during the quarter, and the number and classification of cases pending before the Comanche Nation Tribal Court as of the end of each quarter of the calendar year.
- (j) Acceptance of Payments on Behalf of Children. The Court Clerk/Court Administrator is authorized to accept monies paid in accordance with any judgment, order, settlement, distribution or decree for the use and benefit of, and to the credit of, any child who is the subject of a child custody proceeding before the Comanche Nation Tribal Court, and to pay out such money as specified by order of the Nation Tribal Court; provided that the Court Clerk/Court Administrator shall maintain a separate bank account for this purpose and shall account separately for the funds of each child who is the beneficiary of the funds. Such order may be made by the Court in the original cause in which the funds were credited, and the Court may direct the Court Clerk/Court Administrator to make payment of the same in installments or in one lump sum as may seem for the best interests of the child.

### **Section 105. Comanche Nation Tribal Court Budget and Financial Account.**

(a) Annual Budget. The Comanche Nation Tribal Court shall prepare an annual budget to be submitted for approval of the General Council in accordance with the Constitution and laws of the Comanche Nation.

(b) Establishment of Comanche Nation Tribal Court Account. Beginning on October 1, 2008, there shall be established a separate account entitled "Comanche Nation Tribal Court

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Account," which shall consist of all approved annual budget funding from the Comanche Nation, all monies which may be received as court costs or fines, any grant funding from the federal government and any other monies designated by Comanche law for deposit into the account; provided that nothing herein shall be construed to authorize or require the payment of any filing fees in proceedings filed in the Comanche Nation Tribal Court. All monies accruing to the credit of the Comanche Nation Tribal Court Account shall be expended by the Court Clerk/Court Administrator, upon the approval of the Chief Judge, for the lawful operation and expenses of the Comanche Nation Tribal Court, the Court Clerk/Court Administrator's office or for such other purposes required by specific grants or contracts received by the Comanche Nation Tribal Court.

Separate Accounts. The Comanche Nation Tribal Court Account shall be divided into separate accounts as deemed necessary by the Court or as required by any accounting policies, procedures or law of the Comanche Nation, which shall include without limitation a separate account for payments to the Comanche Nation Tribal Court for the benefit of third parties.

(c) Administration of Comanche Nation Tribal Court Account. Payments from the Comanche Nation Tribal Court Account shall be made only upon approval by the Court Clerk/Court Administrator and Chief Judge. In its administration of the Comanche Nation Tribal Court Account, the Nation Tribal Court and Court Clerk/Court Administrator shall comply with the accounting policies and procedures established in accordance with law of the Comanche Nation. The Comanche Nation Tribal Court shall furnish to the Comanche Business Committee quarterly and annual financial statements of all funds within the Comanche Nation Tribal Court's control, which shall disclose cumulative receipts and disbursements, cash balances, and such other fiscal information as the Comanche Business Committee may require.

(d) Banking. The Comanche Nation Tribal Court shall be authorized to maintain separate bank accounts in interest-bearing accounts of one or more banking facilities, investment and/or other commercial financial institutions selected and approved by at least two Judges of the Comanche Nation Tribal Court and to cause all disbursements from said accounts to be made in accordance with the law of the Comanche Nation

### **Section 106. Prosecutor.**

The Prosecutor of the Comanche Nation Children and Family Relations Division shall be the Prosecutor as set forth in Section 5.01 of Title 1 of the Comanche Nation Courts Code.

**Section 107. Definitions: General** Unless the context otherwise requires, as used in this Code the following terms shall be defined as follows:

(a) Adjudicatory Hearing. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition alleging a child to be deprived, abused, in need of supervision, or in need of treatment filed pursuant to this Code are supported by the evidence.

(b) Adult. "Adult" means (1) a person eighteen years of age or over, or (2) a married person less than eighteen years of age.

(c) Child or Comanche Child. "Child" or "Comanche child" means any unmarried person who is under age eighteen and is either: (1) a member of the Comanche Nation; or (2) eligible for membership in the Comanche Nation and either the biological child of a member of

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the Comanche Nation or the biological child of a person who is eligible for membership in the Comanche Nation.

(d) Child Custody Proceedings. "Child custody proceedings" means all voluntary or involuntary proceedings involving children, including without limitation cases in which the child has been made a ward of the Comanche Nation Tribal Court; foster care placements; adjudications; termination of parental rights; relinquishments or consents to adoption; permanency plans; pre-adoptive and adoptive placements; adoptions; guardianship proceedings; transfer proceedings to or from a court of another sovereign; paternity actions; actions for judicial consent to the marriage, employment or enlistment of a child, when such consent is required by law; emancipations, actions for writ of habeas corpus; and actions concerning children in need of treatment and children in need of supervision. For purposes of this Code, the following types of child custody proceedings shall have the following meanings:

(1) "Foster care placement" which shall mean any action removing a child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a legal guardian where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "Termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship, as more specifically defined in **subsection (u)** of this section;

(3) "Pre-adoptive placement" which shall mean the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "Adoptive placement" which shall mean the permanent placement of a child for adoption, including any action resulting in a final decree of adoption.

The term "child custody proceeding" shall not include a placement based on an award in a divorce proceeding of custody to one of the parents.

(e) Comanche Nation Tribal Court. "Comanche Nation Tribal Court" or "Court" means the Children and Family Relations Division of the Comanche Nation Tribal Court established pursuant to **section 103** of this Code.

(f) Comanche Household. A "Comanche Household" is a home in which at least one head of the household is a member of the Comanche Nation, or eligible for membership in the Nation.

(g) Court of Indian Offenses. "Court of Indian Offenses" means a court established pursuant to 25 C.F.R. Part 11.

(h) Commit. "Commit" means to transfer custody.

(i) Detention. "Detention" means the temporary care of a child who requires secure custody in a physically restrictive placement or facility pending Court disposition or a Court order for placement or commitment.

(j) Developmentally Disabled Child. "Developmentally disabled child" means any child who has a physical or mental impairment or a combination of physical and mental impairments lasting indefinitely, for an extended period of time, or permanently, which

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substantially limits one or more of the major life activities of the child, such as self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency, or who is regarded as having such an impairment by a competent medical professional.

(k) Dispositional Hearing. "Dispositional hearing" means a hearing, held after an adjudicatory hearing has found a child to be deprived, abused, in need of supervision, or in need of treatment in which the Court shall determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(l) Expert Witness. An "expert witness" means one of the following persons providing expert testimony on a topic related to his field of expertise:

(1) A member of the Comanche Nation who is knowledgeable about the Comanche Nation's family values, practices and customs, provided that such qualifications shall be established by consideration of the following factors: the age of the expert witness, whether he is fluent in the language of the Comanche Nation, whether he has resided within the territorial jurisdiction of the Comanche Nation for a significant period of time, the extent of his involvement in Indian church activities, ceremonies, dances and other cultural activities within the Nation, testimony by other members of the Comanche Nation that he is recognized as being knowledgeable about the Nation's family values, practices and customs, and other similar factors;

(2) A lay expert witness having substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Comanche Nation;

(3) A licensed physician;

(4) A qualified mental health professional; or

(5) A professional person having substantial education and experience in the area of his specialty.

(m) He and His. "He" and "his" is used in a non-gender specific manner and includes both males and females.

(n) Indian Country. "Indian country" shall be defined for purposes of this Code as all the territory over which the Comanche Nation may exercise civil or criminal jurisdiction, including but not limited to formal and informal reservation land, land held in trust for the Nation, land held in trust for individual tribal members, dependent Indian communities, and other lands set aside for use by the Nation. This definition is meant to be as broad and as inclusive as possible and shall be interpreted to include all lands and waters over which the Nation may exercise jurisdiction pursuant to applicable law. The jurisdiction of the Comanche Nation is concurrent with the Kiowa Indian Tribe and the Apache Indian Tribe with respect to the commonly-held lands referred to as the KCA lands, and the term "Indian country" shall include said lands.

(o) Law Enforcement Agency. "Law enforcement agency" means a law enforcement agency of the Nation, the Bureau of Indian Affairs or other federal agency, a municipality, a county sheriff or a state agency.

(p) Nation. "Nation" means the Comanche Nation.

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(q) Protective Supervision. "Protective supervision" means a legal status created by court order at any dispositional phase of involuntary child custody proceedings, where the child has been made a ward of the Comanche Nation Tribal Court but has not been placed in ICWD custody, and has instead been permitted by the Court to remain in his own home or the home of an extended family member or legal custodian under the supervision of the Comanche Nation Tribal Court through the ICWD during the period during which treatment is being provided to the family by the agency designated by the Court.

(r) Qualified Mental Health Professional. "Qualified mental health professional" means a person having specific training and current experience in the mental health testing, examination, evaluation and diagnosis of children and adolescents and who either: holds at least a master's degree in a mental health field and is employed under the classification of a psychological assistant or social worker II or above by the state as a provider of mental health services or possesses a current, valid Oklahoma license in a mental health field or permission to practice by a licensure board in a mental health field.

(s) Residual Parental Rights and Responsibilities. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody or guardianship of the person of said child has been vested in another person, agency, or institution, but where parental rights have not been terminated, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to inherit from the child, the right to determine the child's religious affiliation, and the right to reasonable visitation with the child unless restricted by the Court.

(t) Telephone Conference Communication. "Telephone conference communication" means use of a telephone device that allows all parties, which may include the child, to hear and be heard by the other parties at the hearing.

(u) Termination of Parental Rights or Termination of Parent-Child Legal Relationship. "Termination of parental rights" or "termination of the parent-child legal relationship" means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated, subject to the effects described in **section 720** of this Code.

(v) Transfer Proceeding. "Transfer proceeding" means any proceeding in the Court to grant, accept, or decline transfer of any children's case from or to the courts of any Indian Nation or state whenever such transfer is authorized by tribal, federal, or state law.

(w) Tribal Administrator. "Tribal Administrator" means the person selected to serve as tribal administrator in accordance with the Constitution of the Comanche Nation, Art. 5, § 9.

(x) Ward of Court. "Ward of Court" means an abused or deprived child or a child in need of supervision or in need of treatment who is the subject of proceedings pending before the Comanche Nation Tribal Court, where the Court has granted ICWD custody of the child or authority to determine the placement or custody of the child or has ordered ICWD to supervise the Court's direct placement of the child with a parent or legal custodian.

## CHAPTER TWO

### JURISDICTION; PROCEDURAL AND EVIDENTIARY REQUIREMENTS; APPEALS; FULL FAITH AND CREDIT

#### **Section 201. Jurisdiction Over Comanche Children Domiciled on Indian Country.**

Except as otherwise provided by this Code or other applicable law, the Comanche Nation Tribal Court shall have exclusive jurisdiction in child custody proceedings as defined in **section 107(d)** of this Code and investigations of child abuse and neglect, addressed in **sections 501 and 502 of this Code**, involving a Comanche child domiciled in Indian country. The Comanche Nation Tribal Court shall also have concurrent jurisdiction over Comanche children and adults domiciled in Indian country in judicial proceedings for adult adoptions in accordance with **section 917** of this Code, guardianships involving adult wards in accordance with **chapter 10** of this Code, name changes in accordance with **chapter 13** of this Code, and for the conduct of marriage ceremonies in accordance with **chapter 14** of this Code. The Comanche Nation Tribal Court shall have such other jurisdiction as expressly provided in this Code, including the jurisdictional provisions in **chapter 12**, governing paternity determinations, and **chapter 15**, governing child support matters.

#### **Section 202. Jurisdiction Over Comanche Children Domiciled Outside Indian Country.**

(a) Concurrent Jurisdiction. The Comanche Nation Tribal Court shall have concurrent jurisdiction with a state or tribe in child custody proceedings as defined in **section 107(d)** of this Code and investigations of child abuse and neglect, addressed in **sections 501 and 502** of this Code, involving a Comanche child who is not domiciled in Indian country. The Comanche Nation Tribal Court shall also have concurrent jurisdiction over Comanche children and adults domiciled outside Indian country in judicial proceedings for adult adoptions in accordance with **section 917** of this Code, guardianships involving adult wards in accordance with **chapter 10** of this Code, name changes in accordance with **chapter 13** of this Code, and for the conduct of marriage ceremonies in accordance with **chapter 14** of this Code. The Comanche Nation Tribal Court shall have such other jurisdiction as expressly provided in this Code, including the jurisdictional provisions in **chapter 12**, governing paternity determinations, and **chapter 15**, governing child support matters.

(b) Manner in Which Concurrent Jurisdiction May be Exercised. Concurrent jurisdiction shall be exercised by the Comanche Nation Tribal Court in the following circumstances, provided that the child shall be made a ward of the court in such cases:

(1) When a child custody proceeding has been filed in Comanche Nation Tribal Court, and no other child custody proceedings has been held in the court of another jurisdiction;

(2) When a child custody proceeding involving a Comanche child has been filed in the court of another sovereign and the Comanche Nation Tribal Court determines that the exercise of concurrent jurisdiction is necessary for the protection of the child's best interests; or

(3) When a child custody proceeding involving a Comanche child has been filed in the court of another sovereign and the case has been transferred to the Comanche Nation Tribal

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Court pursuant to **section 203** of this Code.

### **Section 203. Indian Child Welfare Act Transfers from State and Tribal Courts.**

(a) Transfers from State Courts. Pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911 (b), any state court may transfer to the Comanche Nation Tribal Court any child custody proceedings subject to exclusive or concurrent tribal jurisdiction involving any Comanche child, if the Comanche Nation Tribal Court accepts jurisdiction over the case.

(b) Transfers from Tribal Courts. Any tribal court or Court of Indian Offenses may transfer to the Comanche Nation Tribal Court any child custody proceedings subject to exclusive or concurrent tribal jurisdiction involving any Comanche child, if the Comanche Nation Tribal Court accepts jurisdiction over the case.

(c) Hearing on Acceptance of Transfer. The Comanche Nation Tribal Court shall determine whether to accept a transfer of child custody proceedings described in **subsections (a) and (b) of this section** after a tribal, Court of Indian Offenses or state order of transfer is received by the Court Clerk/Court Administrator. The Court shall conduct a hearing regarding acceptance or rejection of the transfer, with notice to all parties in the case and to the Prosecutor and the ICWD. At the hearing, the Court may consider the following:

(1) Whether the child or its family will be in need of special services for physical or mental disease or defect and if so, whether the Nation and its resources would be able to adequately provide such special services; and

(2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court should decline to accept the transfer until after the adjudication is completed;

(3) Any other matters which may adversely affect the Nation's ability to provide treatment or necessary services to the family, including information from the ICWD Director regarding the availability of ICWD resources ; and

(4) The likelihood that the transferring court would encourage tribal participation and follow the Comanche Nation's placement preferences in its proceedings if the transfer is not accepted.

(d) Transfer Procedures. A state or tribal court transferring a case to the Nation's jurisdiction under **subsection (a) or (b)** of this section shall transmit all documents and legal and social records, or certified copies thereof, to the Comanche Nation Tribal Court. Upon acceptance of a transfer, the Comanche Nation Tribal Court shall proceed with the case as if the petition has been originally filed or the adjudication had been originally made in this Court. Transfer cases shall be assigned a Comanche Nation Tribal Court case number as in other cases.

### **Section 204. Indian Child Welfare Transfers to Tribal or State Courts.**

(a) Conditions. The Comanche Nation Tribal Court may assume temporary custody of a non-Comanche minor and may issue any temporary order or grant any interlocutory relief authorized by this Code in any case arising in Indian country, involving an alleged abused child, deprived child, child in need of supervision or child in need of treatment, and filed in the Court on an emergency basis or without accurate information regarding the status of the subject child

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as a Comanche child as defined in this Code, regardless of whether another state or tribal court has jurisdiction of the child or has jurisdiction to determine the custody or support of the child. The Comanche Nation Tribal Court shall transfer any such case to the appropriate social services agency, law enforcement agency or Court of the minor's Indian Nation, or if the minor is a non-Indian to the appropriate social services agency, law enforcement agency or court of the state where the minor is a resident or domiciled, upon the Court's own initiative or upon the petition of the Prosecutor.

(b) Order of Transfer. Upon entering an order transferring a case as provided in this section, the Court shall serve a certified copy of the order of transfer to the Court Clerk/Court Administrator of the receiving jurisdiction by certified mail, return receipt requested. The Comanche Nation Tribal Court shall retain custody of the child pending an order or notice of acceptance from the receiving jurisdiction, and upon receiving such order or notice, shall send a certified copy of the entire case file and any social service or law enforcement reports concerning the child's case to the Court Clerk/Court Administrator of the receiving jurisdiction by certified mail, return receipt requested. The Comanche Nation Tribal Court may then close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer to the receiving jurisdiction.

### **Section 205. Intervention in State and Other Tribal Child Custody Proceedings.**

(a) General. The Prosecutor may intervene on behalf of the Comanche Nation in state and tribal child custody proceedings involving Comanche children. In determining whether to intervene in such cases, the Prosecutor, in consultation with the ICWD, shall consider whether sufficient funds are available for an effective intervention in such proceedings, whether there is sufficient staff time to engage in the time-consuming demands of intervention, including in some cases the necessity of travel outside of the State of Oklahoma, whether intervention is necessary to protect the rights of the Nation, the child or the child's family, and whether the case has the potential to set valuable precedent regarding tribal rights under the federal Indian Child Welfare Act.

(b) Intervention Involving Children Domiciled Within Indian Country. In cases in which the child is domiciled in Indian country, the Prosecutor shall intervene in order to seek dismissal of the state or tribal court action for that Court's lack of jurisdiction under the Indian Child Welfare Act, 25 U.S.C. § 1911(a), and shall refer the case to the CPS Worker for investigation, and if determined to be necessary for the child's protection, for institution of child custody proceedings in the Comanche Nation Tribal Court.

(c) Intervention Involving Children Domiciled Outside Indian Country. In cases in which the child is not domiciled in Indian country, the Prosecutor shall intervene for the following purposes: to attend hearings when necessary for the protection of the interests of the child and the Comanche Nation, which may include hearings by telephone conference communications, to serve as an advocate of the Comanche Nation regarding proper placement of the child, and to move on behalf of the Nation to transfer proceedings to the Comanche Nation Tribal Court if warranted by the special circumstances of each case.

(d) Responsibilities of ICWD. The ICWD shall provide appropriate services in all cases in which the Prosecutor has intervened on behalf of the Comanche Nation, which may

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include the conduct and preparation of home studies, the provision of supervision, the provision of rehabilitative services to the child and family, the preparation of reports and recommendations to the appropriate court, the attendance at Court hearings, advocacy of the Indian Child Welfare Act, which may include testimony as an expert witness, coordination with the Department of Human Services to ensure that children subject to the proceedings receive all available services, including special services available due to the child's status as a Comanche child, and such other duties described in this Code.

**Section 206. Procedural Requirements.** The procedural requirements set forth in this Code and the rules of the Comanche Nation Tribal Court shall apply in all proceedings under this Code. This Code shall supersede any conflicting provisions of general rules of civil procedure established by law of the Nation. To the extent that any procedure is not specifically set forth in this Code, any general rules of civil procedure set forth by law of the Nation shall apply.

### **Section 207. Hearings.**

(a) **Procedure.** All hearings shall be held before the Comanche Nation Tribal Court without a jury and, with the exception of hearings for termination may be conducted in an informal manner. The general public shall be excluded from all hearings in child custody proceedings. The Court shall admit only such persons as have an interest in the case or the work of the Court, including parents, legal custodians and their attorneys; guardian ad litem; court personnel; ICWD personnel; and any other such persons whose presence the Court determines is in the child's best interests. With the exception of parents, legal custodians or their attorneys and guardian ad litem, witnesses may be excluded from hearings on termination of parental rights by the Court upon the Court's own initiative or upon request of persons described in the foregoing sentence. Hearings may be continued from time to time as ordered by the Court.

(b) **Record.** An audio tape record shall be taken of all proceedings which might result in the transfer of legal custody by the Court from a parent or a previous legal custodian to another person, agency, or institution. An audio tape record shall be made in all other hearings, unless waived by the parties in the proceeding and so ordered by the Judge.

(c) **Consolidated Hearings.** When more than one child is named in a petition alleging the child to be in need of supervision, in need of treatment, abused, or deprived, the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.

(d) **Separate Hearings; Record.** Each child custody proceeding shall be heard in closed court proceedings separately and apart from any other child custody proceedings; provided that nothing herein shall preclude consolidation of child custody proceedings involving different children of the same parent or parents. The Court Clerk/Court Administrator shall record, at a minimum, the audio portion of all hearings, but may instead video tape hearings if sufficient resources are available or as otherwise provided by law. The Court Clerk/Court Administrator shall maintain one or more tapes, cassettes or compact diskettes (CDs) for each casefile or consolidated casefile separate and apart from audio or video recordings maintained for other casefiles,

(e) **Child's Testimony in Chambers:** The Comanche Nation Tribal Court, upon its own motion, or upon the motion of any party, may take video-taped testimony in adjudication or

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dispositional phases of child custody proceeding in chambers from a child twelve (12) years of age or younger appearing as a witness and may exclude the child's parents and other persons if the Comanche Nation Tribal Court finds such action would be likely to be in the best interests of the child. The Comanche Nation Tribal Court may in its discretion allow the attorney for each party to be present. Only the Judges and attorneys may question the child.

(f) Admissibility of Prerecorded Statements of a Child Age 12 or under Who is Victim of Abuse: The video-taped recording of an oral statement of a child made to the Federal Bureau of Investigation or other federal, tribal or state law enforcement officer or social services worker before a hearing on child custody proceedings begins is admissible into evidence in any adjudication or termination proceeding affecting or that could affect the parent-child, legal custodian-child or family relationship in which a child twelve (12) years of age or younger is alleged to have been abused, if:

(1) The Comanche Nation Tribal Court determines that the time, content, and circumstances of the statement provide sufficient signs of reliability; no corroboration of the child's statement is necessary for admission;

(2) The recording is both a visual and sound recording and is recorded on film or videotape or by other electronic means;

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

(4) The statement is not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the child's statement and not made solely as a result of a leading or suggestive question(s);

(5) Every voice on the recording is identified;

(6) The person conducting the interview of the child in the recording is present at the proceeding and is available to testify; or be cross-examined by any party; and

(7) Each party to the proceeding is afforded an opportunity to view the recording before it is offered into evidence, and a copy of a written transcript transcribed by a licensed or certified court reporter is provided to the parties.

**Section 208. Burden of Proof.** The burden of proof in the proceedings covered by this Code shall be as follows:

(a) Adjudications. Adjudication of abused children, deprived children, children in need of supervision and children in need of treatment: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other).

(b) Contempt Proceedings. Contempt proceedings: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other).

(c) Termination Proceedings. Termination of parental rights and determinations that

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consent of parent to adoption is unnecessary: clear and convincing evidence (i.e., evidence indicating that the thing to be proved is highly probable or reasonably certain—a greater burden than "preponderance of the evidence," the standard applied in most civil trials, but less than "evidence beyond a reasonable doubt," the standard applied in criminal proceedings).

(d) Other Proceedings. All other proceedings: preponderance of the evidence (i.e., the greater weight of the evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other); provided that any inconsistent provision of this Code identifying a specific burden of proof for a specific type of child custody proceeding shall be controlling.

### **Section 209. Reliance on Adjudication, Disposition or Evidence.**

(a) No Civil Disability. No adjudication or disposition in proceedings under this Code shall impose any civil disability upon a child or disqualify him from participation in any personnel system of the Nation, appointment or election to an office of the Nation, or, to the extent consistent with applicable federal law, service in the military forces of the United States.

(b) Admissibility of Evidence in Other Proceedings. No adjudication, disposition, or evidence given in proceedings brought under this Code shall be admissible in any other action or proceedings, except in subsequent child custody proceedings concerning the same child or children of the same parent.

**Section 210. Habeas Corpus.** A person seeking the presence of a child at the Comanche Nation Tribal Court for the purpose of determining the legality of the physical custody of the child by another person or entity may file a verified petition for writ of habeas corpus, stating the reasons why said custody is unlawful. The petitioner shall attach to his petition any documents necessary to meet his burden of proof that the other person's physical custody of the child is not lawful, including without limitation any relevant court orders. The Court Clerk/Court Administrator shall issue the writ stating a date and time for a hearing on the writ, and directing the presence of the child at the hearing. The Comanche Nation Tribal Court's decision on a petition for writ of habeas corpus shall constitute a final order, and no petition for rehearing shall be allowed.

**Section 211. Mandamus.** Upon application by a real party in interest, the Comanche Nation Appellate Court Appeals or any justice or judge thereof, may issue a writ of mandamus during term, or at chambers, to the Comanche Nation Tribal Court or any corporation, board or person, to compel the performance of any act which the law specially enjoins as a duty resulting from an office, trust or station; but though the order may require the Comanche Nation Tribal Court to exercise its judgment or proceed to the discharge of any of its functions, it cannot control judicial discretion. The petitioner shall have the burden of establishing the following: (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief.

**Section 212. Appeals.** An appeal to the Comanche Nation Appellate Court may be taken

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from any final order, judgment, or decree rendered by the Comanche Nation Tribal Court by any person aggrieved thereby. Appeals shall be commenced within fifteen (15) days from the judgment appealed from by filing a written notice of appeal with the Court Clerk/Court Administrator. An appeal not timely filed shall be dismissed. All appeals shall be taken in the manner provided for appeals as set forth in 25 C.F.R. §§ 11.800 - 806. For purposes of appeals, final orders include the following: adjudicatory order, permanency plan order, order terminating parental rights, order accepting revocation of a relinquishment, an order determining a child eligible for adoption without the consent of a parent and decree of adoption. Appeals shall be advanced on the calendar of the Court of Appeals and shall be decided at the earliest practical time. Whenever an appeal is made concerning termination of parental rights, an indigent parent, upon request, subject to the availability of funds, may be provided a copy of the recording of the trial proceeding for the appeal at the expense of and paid from the court fund; provided that a party may at his own expense obtain a certified transcription of the recording from a licensed or certified court reporter and file it within 20 days of the filing of a notice of appeal, in which event the party ordering the transcript shall instruct the court reporter to send copies to the other parties at the expense of the party ordering the transcript.

### **Section 213. Full Faith and Credit.**

(a) General. Subject to the provisions of this subsection and **subsections (b) and (c)** of this section, as applicable, the Comanche Nation Tribal Court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe or state applicable to child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of the Comanche Nation Tribal Court or any other entity. The Comanche Nation Tribal Court may afford full faith and credit to certified copies of state or tribal court orders in judicial proceedings without further inquiry, or may, upon its own motion or motion of an interested party, conduct an independent review, which may include notice and hearing to interested parties, of tribal or state court documents and other evidence related to the tribal or state court order in order to determine whether any one or more of the factors set forth in **subsections (b) and (c)** of this section are present.

(b) State Court Orders. The Comanche Nation Tribal Court may in its discretion consider any one or more of the following factors prior to giving full faith and credit to a state court order, and may refuse to afford full faith and credit or may withdraw an earlier decision to afford full faith and credit if it determines that any such one or more factor is present:

- (1) Whether the state court possessed subject matter and personal jurisdiction over the child; and/or
- (2) Whether the state court afforded due process, including but not limited to protection of the rights set out in the Indian Child Welfare Act, to all interested persons participating or seeking to participate in the state proceeding; and/or.
- (3) Whether the state court, if requested, allowed intervention by the Comanche Nation.

(c) Other Tribal Court Orders. The Comanche Nation Tribal Court may in its discretion consider any one or more of the following factors prior to giving full faith and credit to an order of another tribal court, and may refuse to afford full faith and credit or may withdraw an earlier decision to afford full faith and credit if it determines that any such one or more factor is present:

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- (1) Whether the other tribal court possessed subject matter and personal jurisdiction over the child;
- (2) Whether the other tribal court afforded due process to all interested parties participating in the other tribal court proceedings; and/or
- (3) Whether the other tribal court, if requested, allowed intervention by the Comanche Nation.

(d) Comanche Laws Controlling. Because of the vital interest of the Comanche Nation in its children and those children who may become members of the tribe, the statutes, regulations, public policies, customs and traditions or common law of the Comanche Nation shall control any proceeding involving a Comanche child.

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## CHAPTER THREE

### INDIAN CHILD WELFARE DEPARTMENT; REPORTS; RECORDS; CONFIDENTIALITY

#### **Section 301. Definitions: Agencies.**

- (a) **BIA-CWO.** "BIA-CWO" means the child welfare office, division or department of the Anadarko Agency, Bureau of Indian Affairs.
- (b) **Child Placement Agency.** "Child placement agency" means an agency designed for the care or placement of children licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located, or both.
- (c) **CNCSP.** "CNCSP" means the Comanche Nation Child Support Program.
- (d) **CPS Worker.** "CPS Worker" means the person employed by the Comanche Nation Social Services Department who is responsible for the investigation of child abuse and neglect for Comanche children domiciled on Indian country and referral of cases to the Prosecutor for filing.
- (e) **ICW or ICWD.** "ICW" or "ICWD" means the Indian Child Welfare Department of the Comanche Nation.
- (f) **Indian Child Welfare Worker or ICW Worker.** "Child welfare worker" or "ICW worker" means the person employed by ICWD who is responsible for providing culturally oriented preventive and treatment services to at-risk Indian families as more fully set forth in this Code.

#### **Section 302. Establishment of Comanche Nation Indian Child Welfare Department.**

The Comanche Nation Indian Child Welfare Department (ICWD) is hereby established as an agency of the Comanche Nation. The ICWD shall be subject to the fiscal and general administrative supervision of the Comanche Nation Tribal Administrator; provided that such supervision shall not include the Tribal Administrator's access to information protected by the confidentiality requirements in **section 313** of this Code. The Comanche Nation Chairman is authorized to approve and execute all federal contracts related to funding of the ICWD, and to execute cooperative agreements with the State of Oklahoma, provided that said cooperative agreements are first approved by the Comanche Business Committee.

#### **Section 303. Duties and Authority of Comanche Nation Indian Child Welfare Department.**

- (a) **General.** The ICWD shall be responsible for the following:
  - (1) Providing culturally oriented preventive and treatment services to at-risk Indian families within the jurisdiction of the Nation, including parenting skills training and education of the Indian community on child protection issues;
  - (2) Maintaining a tribal foster care program, and conduct home studies and prepare

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reports for purposes of foster care licensing and recommendations relating to potential adoptive parents;

- (3) Issuing foster care licenses and supervision of foster care families;
- (4) Negotiating cooperative agreements between the Nation and other states or tribes relating to provision of services to Comanche children and their families, including without limitation cooperative agreements regarding reciprocal enforcement of orders; provided that no such cooperative agreements shall contain a waiver of sovereign immunity absent the express written approval of the Comanche Business Committee by resolution;
- (5) Cooperating with other social services agencies in order to ensure the best possible protection of Comanche children and their families; and
- (6) Maintaining case folders for each child, which shall include narrative histories that contain dates and times of contacts involving the child and lengths of visits.
- (7) Exercising all other duties consistent with this Code.

(b) Proceedings in the Comanche Nation Tribal Court. The ICWD shall be responsible for the protection of Comanche children subject to the jurisdiction of the Comanche Nation Tribal Court, provided that the BIA-CWO may share this responsibility to the extent authorized by a cooperative agreement between the ICWD and the BIA-CWO, if any such agreement is entered into. In performing these duties, the ICWD shall have authority to engage in the following activities:

- (1) Placement and supervision of children placed by the Comanche Nation Tribal Court in the legal custody of the ICWD, including emergency placements;
- (2) Conduct of placement home studies and placement recommendations regarding children in foster care to the Comanche Nation Tribal Court;
- (3) Preparation of reports and recommendations regarding children in foster care to the Comanche Nation Tribal Court; and
- (4) Participation in and attendance of all Comanche Nation Tribal Court proceedings in order to serve as an advocate for the child, including permanency planning for the child.

(c) State Court Proceedings. The ICWD shall provide appropriate services in child custody proceedings in which the Prosecutor has intervened on behalf of the Comanche Nation in accordance with **section 205** of this Code.

### **Section 304. Director and ICWD Staff.**

(a) Qualifications; General Administrative Duties. The Director shall be hired by the Comanche Tribal Administrator. The qualifications of the Director shall be as set forth in the job description for the Director approved in accordance with applicable personnel policies of the Comanche Nation. The Director shall be responsible for the day-to-day operation of the ICWD, shall hire staff pursuant to the personnel policies and procedures of the Nation, assist the Tribal Administrator or his designee in the preparation of staff job descriptions, supervise all staff of the ICWD, and be responsible for seeking funding sources and preparing grant applications. In the event of a vacancy in the Director position, the Tribal Administrator, upon

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approval of the Comanche Business Committee, shall appoint an Interim Director; provided that the Interim Director shall serve until hiring of a Director.

(b) Reports. The Director shall prepare and submit reports to any federal or state agency providing funding for the ICWD to the extent required by the funding agency's grant documents, compact or contract. Upon request, the Director shall submit copies of such reports to the Tribal Administrator and the Comanche Nation Chairman for distribution to the Comanche Business Committee; provided that any information subject to the confidentiality requirements of **section 313** of this Code shall first be removed from said copies.

(c) Provision of Services. The Director may also be a service provider and maintain a caseload to the extent that he has sufficient time for the performance of those duties.

(d) Continuing Education. The Director and ICWD staff shall participate in continuing education for no less than the minimum number of hours of continuing education ordinarily required for their state counterparts in their respective fields or related fields.

(e) Confidentiality Agreements. Upon commencing ICWD employment, the ICWD Director and ICWD staff shall execute confidentiality agreements stating that they will conform to all confidentiality requirements of this Code.

**Section 305. CPS Worker**. The CPS Worker shall be an employee of the Comanche Nation Social Services Department, which is an agency separate from the Indian Child Welfare Department. The duties of the CPS Worker shall include the following:

- (1) Investigate all reports or complaints regarding Comanche children domiciled on Indian country;
- (2) Prepare applications for emergency custody, petitions for child custody proceedings and any other pleadings necessary for the protection of Comanche children;
- (3) Refer petitions to the Prosecutor of the Comanche Nation for action;
- (4) Provide testimony in hearings before the Comanche Nation Tribal Court or other courts as needed; and
- (5) Such other duties as set forth in this Code or as may be required.

**Section 306. Legislative Purpose Related to Reporting Child Abuse**. The Comanche Business Committee hereby declares that the complete reporting of child abuse and neglect is a matter of concern and that in enacting **chapter 3** of this Code it is the intent of the Nation to protect the children within the jurisdiction of the Nation and to offer protective services in order to prevent any further harm to a child suffering from abuse and neglect. It is the further intent of the Nation that the various federal, state and tribal medical, mental health, education and social services agencies impacting on child welfare matters find a common purpose through cooperative interaction.

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### **Section 307. Requirements for Reporting Child Abuse or Neglect.**

(a) **Duty to Report Suspicion of Child Abuse or Neglect; Required Information.** Any person specified in subsection (b) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the CPS Worker and the Comanche Nation Police and/or other appropriate law enforcement agency. If ICWD staff receives an unwritten report of child abuse and/or neglect, such ICWD staff person shall prepare a written report in accordance with policies approved by the ICWD Director, as soon as possible after it is initially made by telephone or otherwise. If the CPS Worker receives an unwritten report of child abuse or neglect, the CPS Worker shall prepare a written report in accordance with policies approved by the Social Services Department Director, as soon as possible after it is initially made by telephone or otherwise. Each such written report shall, if possible, contain the information:

- (1) The names and addresses of the child and the child's parents or other persons responsible for the child's health, safety or welfare;
- (2) The child's age, sex and race;
- (3) The nature and extent of the abuse or neglect, including any evidence of previous injury or known or suspected abuse or neglect to the child or the child's siblings;
- (4) Whether the child has tested positive for alcohol or a controlled dangerous substance;
- (5) The family composition;
- (6) The source of the report and the name, address, and occupation of the person making the report;
- (7) Any action taken by the reporting source;
- (8) Any other information that the person making the report believes may be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

(b) **Persons Required to Report.** Persons required to report such abuse or neglect or circumstances or conditions shall include any of the following:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist;
- (5) Osteopath;
- (6) Optometrist;
- (7) Chiropractor;

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- (8) Chiropracist or podiatrist;
- (9) Registered nurse or licensed practical nurse;
- (10) Hospital personnel engaged in the admission, care, or treatment of patients;
- (11) School official or employee;
- (12) Social worker or worker in a halfway house or child day care center, including a child day care center located in a private residence;
- (13) Mental health professional;
- (14) Any law enforcement personnel and any employee of a jail or juvenile detention center;
- (15) The Prosecutor or his assistants;
- (16) Social Services Department employee, including CPS Worker;
- (17) ICWD employee, including ICW Worker; and
- (18) Any worker in a battered women's shelter, children's shelter, or other children's facility.

(c) Authorization to Report. In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the tribal law enforcement agency and the CPS Worker.

(d) Admissibility of Written Report. A written report from persons or officials required by this chapter to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

(e) Civil Penalties for Failure to Report. Any Indian or non-Indian person subject to the jurisdiction of the Comanche Nation Tribal Court who willfully violates the provisions of this section in addition to any other penalties established by any applicable state or federal law shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) and shall be liable for damages proximately caused thereby.

**Section 308. Required Report of Post-Mortem Investigation.** Any person who is required to report known or suspected child abuse or neglect and who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the appropriate law enforcement agency, the CPS Worker, the Prosecutor, the ICWD, and/or the Oklahoma Child Death Review Board, as required by State and Federal law for each reporting entity.

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### **Section 309. Evidence of Abuse or Neglect.**

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(a) Photographs and X-Rays. Any child health associate, person licensed to practice medicine, registered nurse or licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of patients, medical examiner, coroner, social worker, or local law enforcement officer who has before him a child he reasonably believes is an abused or deprived child may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(b) Transmission to Law Enforcement Agency. Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to the Comanche Nation Police or other appropriate law enforcement agency.

**Section 310. Immunity from Liability.** Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Code, the taking of color photographs or X-rays, or the placing in temporary custody of a child pursuant to this chapter or otherwise performing his duties or acting pursuant to this Code shall be immune from any liability, civil or criminal, that otherwise might result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking color photographs or X-rays, and any person who has legal authority to place a child in protective custody shall be presumed.

**Section 311. Communication Not Privileged.** The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence in any judicial proceedings resulting from a report pursuant to this chapter.

### **Section 312. Home Study and Other Reports.**

(a) Home Study Reports. Unless waived by the Court, the ICWD or other agency designated by the Court shall make a home study and report in writing in all children's cases, except:

(1) If the allegations of a petition filed pursuant to **sections 602 or 603** are denied **by a respondent**, the study shall not be made until the Court has entered an order of adjudication; and

(2) The study and investigation in all adoptions shall be made as provided in the provisions relating to adoptions.

(b) Use of Reports as Evidence. For the purpose of determining proper disposition of a child the general rules of evidence shall not apply, and written reports and other material relating to the child's mental, physical, and social history may be received and considered by the Court along with other evidence. However, the Court, if so requested by the child, his parent or legal custodian, or other party to the proceedings, shall require that the person who wrote the report or prepared the material, if available, appear as a witness and be subject to both direct and cross- examination. In the absence of such request, the Court may order the person who prepared the report or other material to appear if it finds that the interest of the child, his parent or legal custodian, or other party to the proceedings so requires. The Court shall inform the child, his

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parent or legal custodian, or other party to the proceedings of the right of cross-examination concerning any written report or other material as specified in this subsection.

### **Section 313. Confidentiality Requirements.**

(a) General Confidentiality Requirements. The general confidentiality requirements for investigations and child custody proceedings are as follows:

(1) Sealed Court Records. A record of all Comanche Nation Tribal Court proceedings under this Code, including all reports filed with the Court, shall be sealed and preserved in a secure place by the Comanche Nation Tribal Court Clerk/Court Administrator.

(2) Separate Law Enforcement Agency Records. The records of law enforcement agencies concerning all children's cases or children taken into temporary custody or issuance of a summons or subpoena under the provisions of this Code shall be maintained separately from the records of arrest.

(3) Confidentiality; Non-Disclosure. Except as expressly authorized in this Code, all Comanche Nation Tribal Court, ICWD, and law enforcement records, files, documents and other related information associated with a child custody proceeding shall be confidential and shall not be accessible for inspection or copying or otherwise disclosed to the public, including, but not limited to the following: fingerprints, photographs, names, addresses, or other information concerning the identity of a child taken into temporary custody or issuance of a summons or subpoena; all reports of child abuse or neglect; social service reports; medical records; transcripts; depositions; audio or video recordings; and the names of informants reporting child abuse or neglect. The ICWD shall adopt appropriate policies and procedures in order to facilitate the protection of confidential information, such as: (i) use of a separate computer that is not linked to any other computer and that contains no confidential information for any necessary ICWD internet use, and (ii) placement of separate cover sheets containing no confidential information on ICWD reports regarding placements.

(4) Publication Prohibitions. Except as expressly authorized in this Code, no person shall publish any of the following information in a newspaper or other publication or release or discuss such information with any other person who, or entity that, does not have lawful access to such information: identifying information about any child, parent, legal custodian, informant or witness involved in child custody proceedings (i.e., the name, picture, place of residence or identity of any such person), notices of state court proceedings received by the Comanche Nation, or the substance of any notice, hearing, order or Comanche Nation Tribal Court file.

(5) Confidentiality Binding on Persons Receiving or Viewing Confidential Information. Any person who receives or views documents or other information pursuant to this section shall maintain the confidentiality of such information and shall be bound by the relevant provisions of this section.

(b) Exceptions to General Confidentiality Requirements. The requirements in **paragraphs (1), (2), (3) and (4) of subsection (a)** of this section shall be subject to the following exceptions:

(1) The records described in paragraphs (3) and (4) of subsection (a), of this section may be released as appropriate under the following circumstances:

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- (i) When the child has escaped from an institution to which he has been committed;
- (ii) By order of the Court upon submission of a petition setting forth the document required and the reasons for the request; or
- (iii) When the disclosure is to a tribal, federal, or state social services or law enforcement agency in its official capacity needing the information in order to assist in apprehension, to conduct a current investigation, or as otherwise provided by this Code or any other law of the Nation or by any memorandum of understanding or cooperative agreement between the Nation and any tribal, federal or state social services or law enforcement agency.

(2) The following records may be inspected only for good cause determined by written order of the Comanche Nation Tribal Court:

- (i) Counselors' records and all other reports of social and clinical studies involving a child;
- (ii) Records of court proceedings in formal relinquishments; and
- (iii) Records of court proceedings in formal adoptions.

(3) The records described in **paragraphs (1), (2), (3) and (4) of subsection (a)** of this section (except relinquishment records and adoption records, which may be inspected only by court order in accordance with **subsection (b)** of this section), may be accessed and used by the following persons or agencies in the following circumstances, which shall be narrowly construed against access and use in the event of ambiguity:

- (i) Law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect, caring for, supervising or treating a child or family which is the subject of the report or record, including the Comanche Nation Police, the ICWD, and the BIA-CWO, if authorized by cooperative agreement, but excluding administrators and other personnel of the Anadarko Agency, and excluding administrators, personnel and elected officials of the Comanche Nation, may be provided with all information in the written report required by **section 307(a)** of this Code, including information identifying an informant who reported suspected child abuse or neglect; a record of the final disposition of the report including services offered and services accepted; any plan for rehabilitative treatment; the Comanche Nation Tribal Court casenumber, if any; and a brief description of any legal consequences to the parents or legal custodians, including the name of any parent whose rights were terminated and the date of termination;
- (ii) The Prosecutor and the attorneys of record for the child, the attorney of record for the child's parent and/or the child's legal custodian, may review and copy said court records for use in a child custody proceeding involving the child, with protection of the identities of reporters of child abuse and other appropriate persons and subject to the protection of the identities of placements; provided that if the parent or the legal custodian is not represented, the parent or legal custodian shall be afforded an opportunity to inspect the

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report; provided further that no identifying or confidential information regarding the foster parents shall be included in the court records accessed by unrepresented parents or legal custodians;

- (iii) The ICW Program or any agency to which legal custody of the child has been transferred, or its representative or legal counsel may review and copy said court records, for use in a child custody proceeding involving the child;
- (iv) A physician, psychologist, therapist, counselor, or other professional engaged for the purpose of providing examination, care or treatment of a child in a child custody proceeding may review said court records;
- (v) Comanche Nation Tribal Court personnel may review said court records;
- (vi) A person or Indian Tribe authorized by order of the Comanche Nation Tribal Court to intervene in a child custody proceeding involving the child may review and copy said court records;
- (vii) Any person eighteen years of age or older named in the report or record who was alleged as a child to be deprived or abused, or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem may review said court records; and
- (viii) The Comanche Nation Appellate Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, may review said court records, but such access shall be limited to in camera inspection unless the Comanche Nation Tribal Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before the Comanche Nation Appellate Court.

(4) The disclosure of identifying information shall not be prohibited when there is a death of a suspected victim of child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by a law enforcement agency.

(c) Confidentiality Requirements Regarding Access to Records and Information by Elected Officials; No Political Interference. No elected officials of the Comanche Nation and no Comanche Nation employees, except ICWD employees and court personnel, shall have access to any court records, agency records or other records or information regarding any specific child who is or who may be the subject of a child custody proceeding in the Comanche Nation Tribal Court, another tribal court, a Court of Indian Offenses or a state court, unless such person is the parent or legal custodian of the child who is the subject of the child custody proceeding. No elected officials of the Comanche Nation shall attempt to use political influence or otherwise be directly or indirectly involved in any manner in such child custody proceedings. In the event an official or employee of the Comanche Nation receives written notice of the pendency of any such proceeding, said official or employee shall immediately forward said notice in a sealed envelope to the ICWD, without retaining a copy, and shall not discuss the notice or its contents with any person or entity unless directed by written order of the Comanche Nation Tribal Court.

(d) Civil Sanctions for Confidentiality Violations. Any Indian or non-Indian person subject to the jurisdiction of the Comanche Nation Tribal Court who willfully violates the provisions of this section in addition to any other penalties established by any applicable state

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or federal law shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) and shall be liable for damages proximately caused thereby.

### **Section 314. Central Child Abuse Registry. RESERVED**

### **Section 315. Management Information System.**

(a) Implementation. On or before October 1, 2005, the ICWD shall implement management information system for all programs and services of the ICWD related to children, youth and families.

(b) Basic Requirements. The management information system shall:

(1) To the maximum extent possible, be based upon the integration, utilization and modification, as necessary, of existing information systems within the ICWD;

(2) Provide for the security of and limited access to the information;

(3) Include case specific information, including outcomes, and have the ability to monitor the status of children and youth receiving services through the ICWD;

(4) Be capable of providing management reports and information regarding the various children and youth programs of the ICWD, and of providing aggregate information necessary for planning, monitoring and evaluation of said programs and services; and

(5) Be designed so that management and analytical reports can be readily generated for those who require them.

(c) Access. The child welfare information system shall be maintained on a computer protected from access by internet or network users and shall be available for access only by the Director, and such other ICWD personnel authorized in writing by the Director.

## CHAPTER FOUR

### PLACEMENTS; FAMILY RELATIONSHIPS; PLACEMENT PREFERENCES; FOSTER HOMES

#### **Section 401. Placements: Background Checks: Types of Placements.**

(a) Criminal Background and Abuse Registry Check. A home shall not be eligible for a foster home license or other placement of a child pursuant to this Code, including without limitation a non-custodial parent or adoptive parent, if the prospective placement, or any member of said person's household, is named as a perpetrator on any state or tribal child abuse registry or has a record of conviction of a crime that includes any form of violence or action of a sexual nature as an element or is the subject of pending criminal charges alleging commission of such a crime. The ICWD shall, prior to placement, obtain a national criminal history records search by the Oklahoma State Bureau of Investigation or other appropriate source based upon submission of fingerprints for any prospective placement, including placement with a non-custodial biological parent or kinship foster parents, and any adult residing in the home of such person. The ICWD shall also search the Oklahoma Child Abuse Registry and the child abuse registry of any state in which the prospective placement, including a non-custodial biological parent and kinship foster parents, and any adult residing in the home of such person has lived during the preceding ten years. The ICWD shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a foster parent. Any person violating the provisions of the preceding sentence shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

(b) Types of Placements. Children who are the subject of involuntary child custody proceedings shall be placed with the following types of placements in accordance with this chapter and **chapter 7** ("Dispositions") of this Code or any other applicable provisions of this Code, including without limitation the placement preferences set forth in **section 403** of this Code:

(1) Emergency Shelter Home. "Emergency shelter home" means the Comanche Nation Children's Shelter or a private foster home licensed by the ICWD and designated primarily for time-limited emergency placements, usually lasting no longer than thirty (30) days for any child.

(2) Foster Home. "Foster home" means a facility for the care of not more than ten (10) children in a family type setting, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(3) Group Care Facilities. "Group care facilities" means places (other than child day care centers providing part-time care of children) where persons are contracted or employed to provide care for small groups of children, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both. The Comanche Nation may operate a single facility as both a group care facility and a shelter provided that: (1) the agency of the Nation that operates the group care facility and shelter adopts and implements appropriate policies and procedures that address the specific goals of a shelter and a group care facility and (2) the use of a single facility for shelter

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and group care purposes is not inconsistent with any law, regulation or funding requirements applicable to the facility.

(4) Halfway House. "Halfway house" means group care facilities for children who have been placed on probation by virtue of being adjudicated in need of supervision under this Code, licensed or approved in accordance with this Code, or, if outside the Nation's jurisdiction, by the law of the jurisdiction in which such facility is physically located or both.

(5) Kinship Foster Home. "Kinship foster home" means a foster home in which the foster parents are extended family members of the child in accordance with **section 402(a)** of this Code.

(6) Non-Custodial Parent. "Non-Custodial Parent" means a parent of the child as defined in **section 402(b)** of this Code whose conduct has not caused or contributed to the alleged or established status of the child as deprived, abused, in need of supervision or in need of treatment.

(7) Shelter. "Shelter" means a facility licensed and operated by the ICWD for the short-term temporary care of a child in facilities providing the least possible restrictive environment pending execution of a court order for emergency or temporary placement or other court disposition; provided that such placement shall not exceed thirty (30) days unless authorized by court order due to special circumstances. The Comanche Nation may operate a single facility as both a shelter and a group care facility provided that: (1) the agency of the Nation that operates the shelter and group care facility adopts and implements appropriate policies and procedures that address the specific respective goals of a shelter and a group care facility and (2) the use of a single facility for shelter and group care purposes is not inconsistent with any law, regulation or funding requirements applicable to the facility.

(8) Therapeutic home. A "therapeutic home" means a foster home operated or licensed by the ICWD and able to provide extraordinary care or services, by virtue of training, experience, and/or special skills that are designed to remedy the specific social and behavioral problems of a foster child residing in the home.

**Section 402. Definitions: Family and Custodial Relationships.** The following definitions shall be followed in all child custody proceedings in the Comanche Nation Tribal Court, and are also hereby declared as the official law of the Comanche Nation in all state child custody proceedings involving children of members of the Comanche Nation or children who are members of the Comanche Nation and who are subject to the federal Indian Child Welfare Act, 25 U.S.C. §1901 et. seq. and the Oklahoma Indian Child Welfare Act, 10 O.S. § 40.1 et. seq. in such state court proceedings:

(a) Extended Family Member. "Extended family member" shall mean a person who has reached the age of eighteen and who is the Comanche child's:

- (1) Grandparent;
- (2) Aunt or uncle;
- (3) Brother or sister;
- (4) Niece or nephew;

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(5) First or second cousin; or.

(6) a person recognized as a grandparent, aunt, uncle, brother, sister, niece, nephew first cousin or second cousin based on a judicial or traditional adoption accomplished in one of the following ways:

(i) Pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or

(ii) Pursuant to custom of the Comanche Nation regarding family relationships, which extend outside of the biological descendants of the child's family, including customs regarding band memberships, provided that the person claiming to be a traditional extended family member of the child's extended family pursuant to tribal custom shall have the burden of proof of establishing the fact of his traditional extended family relationship with the child's family, and such proof shall include the testimony of at least one Comanche elder who is knowledgeable about said customs.

(b) Parent. "Parent" means:

(1) Any biological parent of a child, including a presumed father, an adjudicated father, an acknowledged father of a child born out of wedlock whose paternity has been established pursuant to **chapter 12** of this Code, and including an alleged father, provided that such alleged father shall seek a paternity determination in accordance with **chapter 12** of this Code as early as possible after receiving notice or otherwise becoming aware of child custody proceedings involving his child; and

(2) Any person who has lawfully adopted a child pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or who has lawfully adopted a child pursuant to custom of the Comanche Nation, provided that the person claiming to be a parent pursuant to tribal custom shall have the burden of proof of establishing the fact of such adoption, and such proof shall include the testimony of at least one Comanche elder who is knowledgeable about said customs.

(c) Mother. "Mother" means the female parent as defined in **subsection (b)** of this section.

(d) Father. "Father" means the male parent as defined in **subsection (b)** of this section.

(e) Grandparent. "Grandparent" means a person who is:

(1) A biological grandparent; or

(2) A biological brother of a biological grandparent and, if married, his spouse, or a sister of a biological grandparent and, if married, her spouse; or

(3) A biological great-grandparent; or

(4) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)** would qualify as a grandparent.

(f) Aunt. "Aunt" means a person who, by blood or marriage, is:

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- (1) A female sibling of the biological parents; or
- (2) A female sibling of a grandparent; or
- (3) Any other person, who, by virtue of a judicial or traditional adoption either of herself or a member of her family pursuant to **section 402(a)(6)** would qualify as an aunt.

(g) Uncle. "Uncle" means a person who, by blood or marriage, is:

- (1) A male sibling of the biological parents; or
- (2) A male sibling of a grandparent; or
- (3) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)** would qualify as an uncle.

(h) Sister. "Sister" means:

- (1) Any female sibling, including a half-sister; or
- (2) Any other person, who, by virtue of a judicial or traditional adoption either of herself or a member of her family pursuant to **section 402(a)(6)** would qualify as a sister.

(i) Brother. "Brother" means a person who is:

- (1) Any male sibling, including a half-brother; or
- (2) Any other person, who, by virtue of a judicial or traditional adoption either of himself or a member of his family pursuant to **section 402(a)(6)**, would qualify as a brother.

(j) Nephew. "Nephew" means the male child of a brother or sister.

(k) Niece. "Niece" means the female child of a brother or sister.

(l) Stepparent. "Stepparent" means a person married to a biological parent, but who is not a biological parent of the child.

(m) First Cousin. "First Cousin" means the child of an aunt or uncle.

(n) Second Cousin. "Second Cousin" means the child of a first cousin.

(o) Indian custodian. An "Indian custodian" means any Indian person who has legal custody of a child pursuant to the following type of authorization:

- (1) Pursuant to order of a state court or of a tribal court, including the Comanche Nation Tribal Court, provided that said court possessed jurisdiction over the child sufficient to issue such order; or
- (2) Pursuant to authorization by a parent who has transferred the temporary physical care, custody, and control over the child to such person, provided that said authorization need not be in writing, and may be established by testimony regarding verbal statements by the parent, habits and practices of the parent and the person claiming to be an Indian custodian regarding custody of the child, and proof of any other factors relevant to the person's status as an Indian custodian; or
- (3) Pursuant to customs of the tribe of which the child is a member, based upon testimony of at least one Comanche tribal member knowledgeable about said customs.

(p) "Legal custodian" means:

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- (1) An Indian custodian as defined in the preceding subsection; or
- (2) Any other person who has legal custody of a child pursuant to order of the Court or other court of competent jurisdiction, including a person appointed as the child's legal guardian in guardianship proceedings.

### **Section 403. Placement Preferences.**

(a) Applicability of Placement Preferences. When a Comanche child has been removed from his or her home, the protection of the child is the first priority, with the goal of reunification of the child with the parents from whom the child was removed or with the non-custodial parents. In making a placement of or committing legal custody of a Comanche child to any person other than the child's parent or legal guardian, the Comanche Nation Tribal Court, any tribal court exercising jurisdiction over a Comanche child, the Comanche Indian Child Welfare Department and, and as required by the Federal Indian Child Welfare Act, 25 U.S.C. §1915(c) and the Oklahoma Indian Welfare Act, 10 O.S. §40.6, any state court or other governmental or private placement agency exercising placement authority over a Comanche child shall place the child in the order of preferences set forth in **subsections (b) and (c)** of this section, subject to all other applicable requirements in this section and other provisions of this Code.

(b) Foster Care or Pre-adoptive Placements: Criteria; Preferences. Any Comanche child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary as described in **subsection (d)** of this section, in the following order of priority, to a placement with:

- (1) a member of the child's extended family who is a member of the Comanche Nation;
- (2) a member of the child's extended family who is not a member of the Comanche Nation;
- (3) a foster home, licensed, approved or specified by the Comanche Nation;
- (4) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (5) an institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the child's needs.

(c) Adoptive Placement Preferences. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary as described in **subsection (d)** of this section, in the following order of priority, to a placement with:

- (1) a member of the child's extended family who is a member of the Comanche Nation;
- (2) a member of the child's extended family who is not a member of the Comanche Nation;
- (3) a member of the Comanche Nation; or
- (4) a member of another tribe.

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(d) **Good Cause Not to Follow Preferences.** The following factors may be considered in determining whether there is good cause not to strictly comply with the placement preferences set forth in **subsections (b) and (c)** of this section:

(1) Where both parents are deceased, and at least one of the parents has stated a placement preference in an affidavit filed of record with the Nation Tribal Court Clerk/Administrator or has stated a placement preference in a will admitted into probate in the state courts, in the Nation's court, in the court of another Indian Nation, or in a proceeding before an administrative law judge;

(2) When the child is already in the custody of a stepparent who is a member of the Nation or an Indian custodian as defined by **section 402(a)** of this Code at the time of commencement of any child custody proceeding, and the Court finds that the continued custody of the child by such person would be in the child's best interests;

(3) When the child is under the age of fourteen and has spent a significant amount of time with a specific extended family member or stepparent, has stated a preference for placement with said extended family member or stepparent, and the court finds that such a placement would be in the child's best interests; or

(4) When the child is fourteen years of age or older and states a preference for placement with a specific extended family member or stepparent, provided that the Court determines that such placement is in the child's best interests.

(e) **Record of Inability to Comply with Preferences.** If custody of a Comanche child cannot be made pursuant to the placement preferences set forth in this section, the reason for such determination shall be specified in the court and/or agency records concerning the child. In addition, such reasons shall be made known to the court exercising jurisdiction over the child by the placement agency.

(f) **Parental Preference and Location of Foster Home.** In foster care placements, the Court may consider the preference of the parents and the proximity of the prospective foster home to the Comanche child's home, taking into account any special needs of the child, in applying the preferences set forth in **subsection (b)** of this section, where appropriate.

(g) **Considerations Regarding Persons Within Placement Categories.** For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(h) **Placement with Agency Which Must Follow Placement Preferences.** The Court may place the Comanche child with the Comanche Nation Indian Child Welfare Department ("ICWD") or with a child placement agency approved by the ICWD for further placement in lieu of a direct placement. When the Court does so, the agency shall place said child in accordance with the preferences described in this section, and any person having a prior preference may petition the Court to review the placement to a lower preference made by that agency.

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### **Section 404. Foster Home License Required; Dual Licenses; Foster Care Payments.**

(a) License Required. A household, including a proposed kinship foster home, shall be licensed by the ICWD to serve as a foster home for the twenty-four-hour care of a Comanche child who is not the biological child of at least one head of the household, with the following exceptions:

(1) A home providing care and supervision for a total period of less than thirty (30) days in any twelve-month period, including temporary respite care;

(2) A home licensed by the State of Oklahoma;

(3) A home providing care and supervision only to a child(ren) placed in that home by an agency for the purpose of legal adoption by that family, unless, the adoption has not been completed within two years of placement; or

(4) The home of the child's legal custodian.

(b) Dual Licensing. A foster home licensed by the Comanche Nation may be licensed by another agency at the same time, and may simultaneously serve as a foster home for one or more child placed by the Comanche Nation and one or more child placed by another agency; provided that the ICWD supervision shall be limited to supervision of the care of the child placed by the ICWD unless otherwise stated by written agreement between the ICWD and another agency.

(c) Out-of-State Foster Homes. The Comanche Nation ICWD is authorized to utilize an out-of-state foster home that has been licensed by a licensing authority of another jurisdiction for placements of Comanche children; provided that the Nation has received a copy of a home study for the foster home and provided further that the licensing standards used to license the home are the same as, or substantially similar to, the Comanche Nation foster home licensing requirements set forth in this chapter.

(d) Foster Care Payments. Foster homes licensed by the ICWD and located within the State of Oklahoma, including kinship foster homes, shall be eligible for foster care payments through the State of Oklahoma.

### **Section 405. Investigation and Issuance of Licenses.**

(a) Application. Any family living within the boundaries of the State of Oklahoma may apply for certification as a foster family for tribal children, including a kinship foster home described in section 401(b)(5) of this Code.

(b) Statement of Procedures. The ICWD shall prepare a written statement regarding procedures in the application and licensing process, which shall be given to every applicant.

(c) Criminal Background and Abuse Registry Check. The ICWD shall obtain a national criminal history records search by the Oklahoma State Bureau of Investigation or other appropriate source based upon submission of fingerprints for any prospective foster parent, including kinship foster parents, and any adult residing in the home of such parent. The ICWD shall also search the Oklahoma Child Abuse Registry and the child abuse registry of any state in which the prospective foster parents, including kinship foster parents, and any adult residing

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in the home of such parent has lived during the preceding ten years. The ICWD shall maintain the confidentiality of the records search results and shall use the results only for purposes of determining a person's eligibility to become a foster parent. Any person violating the provisions of this subsection shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

(d) Evaluation of Foster Home; Home Study. The ICWD shall determine whether a potential foster home is able to effectively care for foster children by reviewing personal and professional references, observing during a visit to the home of the applicant foster care family, and interviewing the foster care parent. The ICWD shall perform or obtain a foster home study in accordance with established procedures of the ICWD to determine if the applicant meets the minimum foster home standards set forth in this chapter.

(e) Issuance of License. The ICWD shall issue a license to a family for the care of foster children:

(1) When it has determined that the family meets tribal licensing standards; and

(2) When the applicant has signed an agreement concerning the rights and duties of a tribal foster home and the rights and duties of the ICWD. Such agreement shall include, but not be limited to, descriptions of the rights and responsibilities of the foster parent, including the duty to refrain from direct contact with the child's parents at any time absent a court order authorizing such communications pursuant to **section 410** of this Code, keep information concerning the child and the child's family confidential, except such information required to be shared for purposes of the child's educational and health needs. Such agreements shall also include, but not be limited to, descriptions of the rights and responsibilities of the ICWD, the rights and responsibilities of the foster child, the rights and responsibilities of the child's parents/custodians, arrangements for financial assistance, if available, and a statement concerning the right of the ICWD to evaluate the foster home.

(f) License Specifications. Every license shall specify the kind of license and the maximum number of foster children to be provided care at any one given time.

(g) Notification by Licensee of Changes. The ICWD shall be notified, in advance, of any changes that would affect the terms of the license, such as a change of address or additional persons in the home.

(h) Provisional License. An applicant who has been determined to be inadequate to provide foster care may be granted a provisional license pending implementation of the recommended changes when optional placements are limited and it has been determined to be in the best interest of the child.

(i) Therapeutic Foster Homes. A provision shall be made for the licensing of foster homes for specific children who require extraordinary care or services or have special needs. This type home may not otherwise be eligible for regular certification according to foster home standards set forth in this chapter. This provision shall not be construed as replacing the regular tribal foster home standards and placement procedures.

(j) Kinship Foster Home. A noncustodial parent may serve as a kinship foster home unless and until the noncustodial parent obtains legal custody of the child by court order in a divorce or other appropriate legal proceeding. Any other person related by blood, marriage, adoption and by tie or bond to a child and/or to whom has been ascribed a family relationship

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role with the child's parents or the child may be eligible for licensing as a kinship foster care parent. A child may be placed in the kinship foster home upon the completion of the records search to ascertain if there is a federal, state or tribal record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective kinship foster parent's home pursuant to **section 401(a)** and subject to any other standards established by the ICWD, pending a determination as to whether the kinship foster home meets all other licensing requirements for foster parents in accordance with this code. A child shall not remain in an unlicensed kinship foster home for more than thirty (30) days, excluding the home of a noncustodial parent; provided that a noncustodial parent who has not received a foster home license shall not be eligible for foster care payments pursuant to **section 404(d)** of this Code. The ICWD and the kinship foster care parent shall develop a plan for the care of the child, which shall be periodically reviewed and updated. The kinship foster parent shall cooperate with any activities specified in the case plan for the child including, but not limited to, counseling, therapy, court sessions, visits with the child's parents or other family members, and training.

### **Section 406. Requirements Related to Personal Qualifications of Foster Family.**

(a) Personal Qualities. In considering an application for a prospective foster parent the primary consideration should be the parents' capacity to provide love and understanding to a child or children in distress. Prospective foster parents shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character. Relationships within the family shall be such that a wholesome atmosphere for the growth of the foster child will be assured. No family member or household member shall have a record of child abuse or other such crime. The foster family shall provide names and addresses of references who can attest to the family's qualifications to become foster parents.

(b) Age. The biological age of a foster parent should be considered in relation to physical condition, flexibility, vitality, maturity, and ability to exercise appropriate authority, supervision, and physical care for specific children. No restriction is placed on upper age level, but all foster parents shall have the physical and emotional stamina to deal with the care, guidance, and protection of children.

(c) Health. Each member of the foster family household, and any person who assists with the care and supervision of the foster children, shall be in good health and have a medical report on file for foster care licensure. The medical report shall be completed and signed by a licensed physician stating that the foster care applicant is in good health and free from any physical or mental illness which might be detrimental to a foster child. A medical statement shall be completed and signed by a licensed physician that the persons have no communicable and contagious diseases and have no health condition which will be detrimental to foster children.

(d) Income. The foster family shall have sufficient income to meet the family's basic needs. The foster care payment shall not be considered as income but as reimbursement for services and shall meet the basic needs of the foster child.

(e) Employment. Employment, education, and/or training pursuits of foster parents are evaluated in regard to the ages and needs of the children for whom they wish to provide care. Both parents in a two-parent home and single parents will be allowed employment out of the

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home provided suitable plans for day care and/or supervision of the child are made and approved by the ICWD. Foster parents may obtain free day care services for foster children if eligible through the Oklahoma Department of Human Services.

(f) Parenting Abilities. Foster parents' motivation for application will be examined. Attitudes of significant members of the foster parents' extended families regarding child placement should also be examined. Foster parents should have the capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of foster care. Where necessary, foster parents should have the ability to care for children with special needs, such as physical handicaps and emotional disturbances. Foster parents should have the ability to administer discipline in a manner appropriate to the age and development of the child. Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior; punishment is, more narrowly, negative reinforcement for unacceptable behavior.

(g) Family Composition. The composition of the foster family will be taken into account in assessing whether the child's needs will be met by such a placement, in accordance with the following standards:

(1) The presence of other children in the home, either the foster parent's own or other foster children, and related adults shall be taken into account as they may be affected by or have an effect upon the foster child(ren).

(2) Two parents shall be selected in most cases; however, single parents shall be selected when they can effectively fulfill the needs of a particular child. It is preferable that foster parents shall care for not more than two children less than two years of age, including the foster parent's own children. Foster families should not have more than a total of six children, including foster children and foster parent's own children, in the foster home. Exceptions shall be made in order to keep siblings together.

(3) All placement situations shall consider the effect of having some children in the foster home whose parents visit them and other children whose parents do not.

(4) A tribal foster home may not have adult roomers or boarders unrelated to the foster parent without special approval of the ICWD.

(5) The foster parent shall keep the ICWD informed of any changes in household membership and of all others having regular contact with the foster child in the foster home.

(h) Commitment to Meet Child's Needs. The foster family shall demonstrate its ability to meet the child's needs in accordance with the following standards:

(1) A daily routine shall be such as to promote good health, rest and play habits and positive growth.

(2) The foster family shall demonstrate a willingness to cooperate with available resources for the foster child.

(3) The foster child shall be allowed to attend the church preference of his choice and in accordance with the preference of his family. Opportunities for satisfying religious and spiritual experience are provided the child through an appropriate religious affiliation. No child

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will be expected to attend any religious service against his wishes.

(4) A balanced and ample diet adjusted to the age, special needs and physical development of the foster child shall be provided.

(5) The foster family shall demonstrate the ability to maintain strict confidentiality as it relates to the foster child and his biological family.

(6) The foster family shall demonstrate a willingness to show respect for the child's individual cultural heritage.

(i) Criminal Background; Child Abuse Registry. A home shall not be eligible for a foster home license if a foster parent, prospective foster parent, or any member of the household is named as an perpetrator on any state or tribal child abuse registry or has a record of conviction of a crime that includes any form of violence or action of a sexual nature as an element or is the subject of pending criminal charges alleging commission of such a crime.

(j) Training. The foster care applicants will be required to attend an eight-hour pre-service foster parent training program and subsequent in-service training as provided by the ICWD.

### **Section 407. Requirements for Foster Home Facilities.**

(a) Safety. The physical facilities of the foster home shall be kept in an orderly manner and reasonably clean to assure a healthy, sanitary environment. The house shall present no hazards to the safety of a foster child. The foster family shall have access to emergency services in case of a crisis.

(b) Location. The location shall be such that the foster parent is able to arrange transportation to school, church, recreational and health facilities, and other community facilities and resources as needed.

(c) Sleeping Arrangements. The foster child shall be provided adequate and appropriate sleeping space, consistent with his needs for privacy or personal safety.

(d) Play Space. Play space, fenced, if necessary, shall be available and free from hazards which might be dangerous to the life and health of the child.

(e) Home. The home shall provide space adequate to meet the physical needs of the family with space provided for the privacy of the foster child.

(f) Cultural Requirements. Nothing in the requirements set forth in this section shall prevent the operation of the foster home in accordance with tribal culture.

**Section 408. Denial of Application or Suspension or Revocation of License.** The ICWD may deny a tribal foster home application if it finds that it does not meet the standards for foster homes set forth in this chapter, and may suspend or revoke a tribal foster home license for good cause, which may include the foster parent's violation of its agreement with the ICWD described in section 405(e)(2) of this Code. The ICWD shall notify in writing the tribal foster home applicant or the foster home of the denial of the application or the suspension or revocation

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of the license. The notification shall state the grounds for the action taken. The ICWD shall send a notice of the closure of any tribal foster home to any entities financially responsible, including, but not limited to, the State of Oklahoma Department of Human Services, Child Welfare Division.

### **Section 409. Supervision of Tribal Foster Homes.**

(a) General Requirement. The ICWD shall be responsible for supervision of foster homes that it has licensed and/or in which a Comanche child has been placed if required by a tribal/state foster care agreement or compact.

(b) Six Month Review. The ICWD shall re-evaluate a tribal foster home at least once every six months to determine continued eligibility to provide foster care services according to foster care standards set forth in this chapter. The evaluation process may include a report of the family's care of children during the past year, a home visit, and a medical report if the evaluation indicates a medical examination is necessary.

(c) Other Visits. The ICWD shall have authority to visit a tribal foster home for evaluation of the home and for monitoring the health and safety of the foster children at any time during normal working hours, and at other times agreed upon by the tribal foster home and the ICWD.

**Section 410. Direct Communications Between Parents, Legal Custodians and Foster Parents.** The Comanche Nation Tribal Court may issue an order authorizing direct communications between the child's parents or legal custodians and the child's foster parents if the Court determines that such communications are in the child's best interests. If such an order is issued, the ICWD shall facilitate such communications through use of a written agreement between such persons prepared by the ICWD that identifies whether the communications shall be by telephone or in-person, the location of any in-person communications, any limitations regarding the purpose of such communications, whether such communications shall occur in the presence of the ICWD and such other details as deemed appropriate by the ICWD.

### **Section 411. Tribal/State Agreements for Foster Care Payments.**

(a) Tribal-State Agreements. The Director of the ICWD is authorized to enter into agreements with the State of Oklahoma concerning state financial assistance and the provision of other state resources on a year-to-year basis or such other intervals as authorized by law or policy.

(b) General Eligibility; Kinship Foster Homes. A licensed foster parent shall be eligible for foster care payments in accordance with a tribal/state foster care payment agreement described in **subsection (a)** of this section; provided that a kinship foster parent shall not be entitled to any payments for providing foster care until such foster parent receives final approval from the ICWD to be a licensed kinship foster parent. When the kinship foster parent is licensed by the ICWD, the kinship foster care family shall be eligible to receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster

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parents, whether monetary or in services. If a child is placed with a kinship foster parent prior to the home's final approval as a foster care home, the ICWD shall immediately refer such child and family for assistance through any available tribal or state family assistance program.

(c) Payments; Uses. Foster care payments shall be made in accordance with the foster care agreement made between the ICWD and the foster family at the time the child is placed in foster care. Foster care payments are not considered income but as reimbursement for the costs incurred in providing foster care. The child's expenses, such as school fees, clothes, shoes, allowance shall be paid from the foster care payments. Medical expenses shall be separately paid pursuant to said agreement.

### **Section 412. Licensing Records.**

(a) Record Contents. The ICWD shall establish and maintain an individual record for each licensed foster home and for each applicant for licensing as a foster home, which shall at a minimum contain the following:

- (1) A copy of the application for license signed by the applicant;
- (2) A physician's statement concerning the physical health of persons in the tribal foster home;
- (3) A pre-licensing home study;
- (4) References from persons who can evaluate the applicant as a potential tribal foster home;
- (5) A biannual evaluation of the tribal foster home;
- (6) Documentation of any waiver of licensing regulations;
- (7) A complete home study;
- (8) A criminal background check on each applicant and any other adult residing in the home;
- (9) A copy of a CDIB for each member of the Indian foster family; and
- (10) Specific information regarding each child placed with the family, including the foster parent agreement for each child placed in the home, signed by the applicant and the Director of the ICWD, case plans and reviews, court orders, case summaries, reports and narratives, medical and dental records, a copy of the child's certificate of degree of Indian blood, and other pertinent information.

(b) Record Availability. This record shall be available only to the following:

- (1) The ICWD;
- (2) The applicant;
- (3) The Licensing Review Board; and
- (4) The Child Welfare Division of the Oklahoma Department of Human Services, if required for purposes of obtaining or coordination of state financial or other assistance.

## CHAPTER FIVE

### CIRCUMSTANCES REQUIRING COURT INTERVENTION; INITIATION OF COURT INVOLVEMENT; EMERGENCY CUSTODY; SHELTER AND DETENTION FACILITIES

#### **Section 501. Definitions: Children's Circumstances Requiring Court Intervention.**

(a) **Abused Child.** "Abused child" means a child who is the subject of an act or omission by a parent or legal custodian which seriously threatens the health or welfare of the child, provided that persons investigating reports of child abuse shall take into account accepted child rearing practices of the culture in which the child participates, in cases involving any one or more of the following situations:

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any kind, subdural hematoma, soft tissue swelling, or death, and such condition or death is at variance with the degree or type of such condition arising from accidental or natural causes, or circumstances indicate that such condition or death may not be the product of an accidental or natural causes; or

(2) Any case in which a child is subject to serious emotional damage, based on findings by a qualified expert witness who is a psychiatrist or psychologist; or

(3) Any case in which a child is subject to sexual assault or molestation; or

(4) Any case in which the child's parents or legal custodians have failed to protect or allowed another to abuse the child without taking lawful means to stop such abuse and prevent it from recurring.

(b) **Child Abuse or Neglect.** "Child abuse or neglect" means circumstances that would qualify a child as an "abused child" as defined in **subsection (a)** of this section or as a "deprived child" subject to "neglect" as defined in **subsection (e)** of this section. "Child abuse or neglect" also encompasses those acts that would qualify as "child abuse," as defined in 25 U.S.C. §3202(3), and "child neglect," as defined in 25 U.S.C. §3202(4), as well as "abuse," as defined in Okla. Stat. tit. 10A, §1-1-105(2), and "neglect," as defined in Okla. Stat. tit. 10A, §1-1-105(47).

(c) **Child in Need of Supervision.** "Child in need of supervision" means any child:

(1) Who has repeatedly disobeyed reasonable and lawful commands or directives of his parent or legal custodian; or

(2) Who is willfully and voluntarily absent from his home without the consent of his parent or legal custodian for a substantial period of time, or without intent to return; or

(3) Who, being subject to compulsory school attendance, is willfully, voluntarily, and habitually absent from school for fifteen (15) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four week period without a valid excuse as defined by the local school boards.

(d) **Child in Need of Treatment.** "Child in Need of Treatment" means a child who has a demonstrable mental illness and as a result of that mental illness:

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- (1) Can be expected within the near future to intentionally or unintentionally inflict serious physical injury to himself or another person and has engaged in one or more recent overt acts or made significant recent threats which substantially support that expectation; or
- (2) Is unable to attend to those of his basic needs that must be attended to in order for him to avoid serious harm in the near future and has demonstrated such inability by failing to attend to those basic needs in the recent past. A determination regarding the ability of the child to attend to his basic needs shall be based upon the age of the child and reasonable and appropriate expectation of the abilities of a child of such age to attend to said needs.

The term "child in need of treatment" shall not mean a child afflicted with epilepsy, developmental disability, organic brain syndrome, physical handicaps, brief periods of intoxication caused by such substances as alcohol or drugs or who is truant or sexually active unless the child also meets the criteria of a child in need of treatment pursuant to the definitions contained in this **subsection**.

(e) Deprived Child. "Deprived child" means a child who is the subject of an act or omission by a parent or legal custodian constituting one or more of the following types of child neglect which threatens the health or welfare of the child, provided that persons investigating reports of child neglect shall take into account accepted child rearing practices of the culture in which the child participates:

- (1) A child who is for any reason destitute or homeless;
- (2) A child who is abandoned due to the failure of the parent, guardian or custodian to provide reasonable support and maintain regular contact with the child; provided that failure to maintain a normal parental relationship with the child without just cause for a period of six months shall constitute *prima facie* evidence (i.e., evidence that will establish the fact absent introduction of contradictory evidence) of abandonment; and provided further that custody with extended family members or voluntary consent to placement does not constitute abandonment; or
- (3) A child who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, cruelty or depravity on the part of his parents, legal custodian or other person in whose care the child may be, including but not limited to an abused child; or
- (4) A child who is a developmentally disabled child deprived of the nutrition necessary to sustain life or of the medical treatment necessary to remedy or relieve a life-threatening medical condition in order to cause or allow the death of said child if such nutrition or medical treatment is generally provided to similarly situated developmentally disabled children or children who are not developmentally disabled, provided that no medical treatment is necessary if, in the reasonable medical judgment of the attending physician, such treatment would be futile in saving the life of the child; or
- (5) A child who is, due to improper parental care and guardianship, absent from school for fifteen (15) or more days or parts of days within a semester or for four (4) or more days or parts of days within a four-week period without a valid excuse as defined by the local school boards if said child is subject to compulsory school attendance.

### **Section 502. Action and Investigation Upon Receipt of Report of Suspected Child Abuse, Neglect, Child in Need of Treatment or Child in Need of Supervision.**

(a) **Coordination Between CPS Worker, Comanche Nation Police and Prosecutor.**

Upon the receipt of a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source, the CPS Worker and the Comanche Nation Police or other appropriate law enforcement agency shall immediately notify the Prosecutor. If the CPS Worker receives a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source other than the Comanche Nation Police, the CPS Worker shall immediately transmit a copy of the report to the Comanche Nation Police or other appropriate law enforcement agency. If the Comanche Nation Police receives a report of suspected child abuse, neglect, child in need of treatment or child in need of supervision from any source other than the CPS Worker, or whenever, in the course of any criminal investigation, the Comanche Nation Police determines that there is cause to believe that a child may be or is alleged to be abused or deprived by reason of the acts or omissions of a person responsible for the health, safety or welfare of the child or the failure on the part of a person responsible for the child's health, safety or welfare to provide protection for the child, the Comanche Nation Police shall immediately notify any other appropriate law enforcement agency and verbally contact the CPS Worker for the purpose of an investigation by that office. The verbal notification to the CPS Worker shall be followed with written notification no later than the close of the next business day.

(b) **Special Requirements for Alleged Abuse or Neglect Related to Potential Criminal Charges.** The CPS Worker and the Comanche Nation Police and/or other appropriate law enforcement agency shall be responsible for the coordination of all initial investigations of all reports of known or suspected child abuse or neglect that might foreseeably result in criminal charges and shall arrange for any such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned. In such cases in which the Comanche Nation Police or the CPS Worker is the agency receiving a report of alleged abuse or neglect that might foreseeably result in criminal charges, such agency shall provide notice by phone to the other immediately and shall provide notice by phone within 12 hours to all other appropriate agencies, including the Federal Bureau of Investigation and the United States Attorney for the Western District of Oklahoma, as required by the Memorandum of Understanding for Reporting and Investigating Child Abuse Criminal Offenses in Indian Country attached to this Code as **Appendix 3**. Such agency shall further provide a written report within 36 hours of the initial report to the agencies provided with the initial telephone report containing the information required by said Memorandum of Understanding. The Comanche Nation Police shall provide for persons to be continuously available to respond to such reports. Nation, state and federal agencies may cooperate to fulfill the requirements of this subsection. As used in this subsection, "continuously available" means the assignment of a person not necessarily located at the Comanche Nation Police headquarters but who is immediately accessible through electronic means or the use of agreements with local law enforcement agencies to assure that law enforcement personnel are immediately available.

(c) **Investigations.** The CPS Worker and/or the law enforcement agency responsible for the investigation shall make a thorough investigation immediately upon receipt of any report of known or suspected child abuse or neglect, or known or suspected circumstances concerning a child in need of treatment or a child in need of supervision. The immediate concern of such

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investigation shall be the protection of the child. The investigation, to the extent that it is reasonably possible, shall include:

- (1) The nature, extent, and cause of the abuse or neglect or of the child's suspected status as a child in need of supervision or a child in need of treatment;
- (2) The identity of the person responsible for such abuse or neglect;
- (3) The names and conditions of any other children living in the same place;
- (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
- (5) All other data deemed pertinent.

(d) On-Site Visits and Interviews. The investigation shall, at a minimum, include a visit to the child's place of residence or place of custody, a visit to the location of the alleged abuse or neglect, and an interview with or observance of the child who is reportedly in need of treatment, in need of supervision, deprived or abused. If admission to the child's place of residence cannot be obtained, the Comanche Nation Tribal Court, upon good cause shown, shall order the responsible person to allow the interview, examination and investigation.

(e) Referral of Investigation Report to CPS Worker. If the investigation was not conducted by the CPS Worker, the agency responsible that conducted the investigation shall refer its investigation report to the CPS Worker.

(f) Emergency Medical Examination and Treatment. Emergency medical examination and treatment shall be secured for a child only as authorized by **section 512** of this Code.

### **Section 503. Search Warrants for the Protection of Children.**

(a) Authority to Issue. A search warrant may be issued by the Comanche Nation Tribal Court to search any place within Indian Country for the recovery of any child believed to be a deprived or abused child, a child in need of supervision, or a child in need of treatment.

(b) Warrant Requirements. Such warrant shall be issued only on the conditions that the application for the warrant shall:

- (1) Be in writing and supported by affidavit sworn to or affirmed before the Court;
- (2) Name or describe with particularity the child sought;
- (3) State that the child is believed to be a child in need of supervision, a child in need of treatment or a deprived or abused child and the reasons upon which such belief is based;
- (4) State the address or legal description of the place to be searched; and
- (5) State the reasons why it is necessary to proceed pursuant to this section instead of proceeding by issuance of a summons.

### **Section 504. Issuance and Return of Search Warrant.**

(a) Issuance. If the Comanche Nation Tribal Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search

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warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.

(b) Service. The search warrant shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located. The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at some other time, in which case the Comanche Nation Tribal Court may so direct. A copy of the warrant, the application therefore, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.

(c) Custody of Child. If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility.

(d) Return. The warrant shall be returned to the Court Clerk/Court Administrator for filing, immediately upon service, and the officer shall subscribe on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Prosecutor. If the child was not found, such information should be subscribed on the warrant.

**Section 505. Expiration of Search Warrant.** A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service subscribed thereon.

### **Section 506. Emergency Order for Children Taken Into Emergency or Protective Custody Prior to Filing of Petition.**

(a) Custody Before Obtaining Emergency Order. Law enforcement may take a child into emergency or protective custody prior to the filing of a petition without a court order if the child is willfully and voluntarily absent from the home of the child without the consent of the parent or legal custodian for a substantial length of time or without intent to return, or if the law enforcement officer has a reasonable suspicion that the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child; provided that the child shall be subject to return to his parents or legal custodian if an emergency order of the Comanche Nation Tribal Court is not obtained pursuant to **subsection (b)** of this section within seventy-two (72) hours of the time that the child was taken into emergency custody.

(b) Emergency Order. If a child is or will be taken into emergency or protective custody prior to the filing of a petition, the CPS Worker or the Prosecutor must seek an emergency order of the Comanche Nation Tribal Court. The application for an emergency order shall be presented by the CPS Worker or Prosecutor and shall be supported by a sworn affidavit which may be based upon information and belief. The Court shall issue the emergency order based solely on the application, provided that the application states facts sufficient to demonstrate to the court that there is reasonable suspicion to believe the child is in need of protection due to abandonment, abuse or neglect, or is in surroundings that are such as to endanger the welfare of the child. The emergency order may specify a specific placement for

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the child and contain such other requirements as described in **subsections (a), (b), (c) and (d) of section 507**, and shall specify the date on which hearing on the emergency custody order shall be held. The emergency order may be transmitted to the Court Clerk/Court Administrator by facsimile, and the facsimile copy file stamped upon receipt, provided that the original order shall be delivered to the Court Clerk/Court Administrator and attached to the file stamped facsimile copy within ten days of the date of filing the facsimile copy.

(c) Notice to Parent or Legal Custodian. The Court Clerk/Court Administrator shall issue notice of a hearing on the emergency custody order, together with a copy of the emergency order, to the parent or legal custodian of a child. If the whereabouts of the parent or legal custodian are known, the notice and order shall be served on such person by a law enforcement officer or ICW worker. If the whereabouts of the parent or legal custodian are not known, the Court Clerk/Court Administrator shall mail the notice and the order to the last known address of the parent or legal custodian. The written notice shall:

(1) Inform the parents, legal guardian, or custodian that the child has been removed from the home,

(2) Inform the parent, legal guardian, or custodian of the child that an emergency custody order has been issued and that hearing to determine custody of the child will on a date specified in the notice, which shall be within five (5) days from the date the child was removed from the home, and

(3) Contain information about the:

- (i) emergency custody hearing process, including, but not limited to, the date, time and place that the child was taken into protective or emergency custody;
- (ii) nature of the allegation that led to placement of the child into protective or emergency custody;
- (iii) address and telephone number of the tribal and federal law enforcement agencies;
- (iv) phone number of the ICWD; and
- (v) right of the parent, legal guardian or custodian to contact an attorney.

(4) Contain the following or substantially similar language: "FAILURE TO RESPOND TO THIS NOTICE OR TO APPEAR AT THE EMERGENCY CUSTODY HEARING MEANS YOUR CHILD WILL STAY OR BE PLACED IN EMERGENCY CUSTODY. YOUR FAILURE TO RESPOND OR COOPERATE MEANS YOU MAY LOSE CUSTODY OF THIS CHILD OR YOUR RIGHTS AS A PARENT MAY BE TERMINATED."

(d) Hearing on Emergency Order. Within the next five (5) days following the child being taken into protective or emergency custody, the Comanche Nation Tribal Court shall conduct an emergency custody hearing to determine whether evidence or facts exist that are sufficient to demonstrate to the Comanche Nation Tribal Court there is reason to believe the child is in need of protection due to abuse or neglect, or is in surroundings that are such as to endanger the health, safety or welfare of the child. At the emergency custody hearing, the Comanche Nation Tribal Court shall advise the parent or legal custodian of the child in writing of the procedure which will be followed with regard to determining custody of the child, including, but not limited to any right of the parent or legal guardian or custodian to testify and

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present evidence at court hearings and the consequences of failure to attend any hearings which may be held. At the emergency custody hearing, the Comanche Nation Tribal Court shall:

(1) Release the child to the child's parent or legal custodian or other responsible adult without conditions or under such conditions as the Comanche Nation Tribal Court finds reasonably necessary to ensure the health, safety or welfare of the child; or

(2) Continue the child in or place the child into emergency custody if continuation of the child in the child's home is contrary to the health, safety or welfare of the child, and

(3) Obtain information from the parent or legal guardian necessary to identify and locate kinship placement resources; provided that if such information indicates that within one (1) year of the emergency custody hearing the child had resided with a grandparent for six (6) months, and that such grandparent was the primary caregiver and provided primary financial support for the child during such time, the Comanche Nation Tribal Court shall provide notice and an opportunity to be heard at future hearings to such grandparent, and

(4) Require the ICWD to provide to any person caring for the child information on programs and services available to the child.

(e) Deadline for Filing Petition; Emergency Order Expiration or Extension. A petition for a child in need of supervision, child in need of treatment, abused child or deprived child proceeding shall be filed and a summons issued following assumption of custody and issuance of an emergency order within the time stated in **section 603** of this Code. If the petition is not filed by said deadline, then the emergency custody order shall expire, custody of the child shall be returned to his parent or legal custodian, and the Prosecutor shall submit for filing in the court record a written record specifying the reasons why the petition was not filed and specifying to whom the child was released. If a petition is filed within the time period specified in section 603, the emergency custody order shall remain in force and effect for not longer than sixty (60) days, except as otherwise provided by this subsection. The emergency custody order shall not be extended beyond sixty (60) days absent a showing that such further extension is necessary to ensure the health, safety or welfare of the child and is in the best interests of the child. The Comanche Nation Tribal Court may hold additional hearings at such intervals as may be determined necessary by the Comanche Nation Tribal Court to provide for the health, safety or welfare of the child.

### **Section 507. Emergency or Protective Custody of Child.**

(a) Emergency or Protective Custody of Alleged Child in Need of Supervision. Whenever a child is taken into emergency or protective custody as a child in need of supervision, the child shall be detained or be released to the custody of his parent, legal custodian or attorney, upon the written promise of such parent, legal custodian or attorney to bring the child to the Comanche Nation Tribal Court at the time fixed. If detained, such child shall be taken to a shelter designated by the Court. The person having the child in custody shall immediately report his detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court. If the Chief Judge cannot be reached, such detention shall be reported immediately to any Judge serving on the Comanche Nation Tribal Court.

(b) Emergency or Protective Custody of Alleged Abused or Deprived Child.

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Whenever a child is taken into emergency or protective custody as an abused or deprived child, he shall be taken to one of the following: (1) a shelter, (2) hospital, (3) foster home or (4) other appropriate place as designated by the Comanche Nation Tribal Court. When a child has been taken into custody as a deprived child without a court order, the law enforcement officer or CPS Worker shall immediately report the fact of the detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court. If the Chief Judge cannot be reached, then the CPS Worker shall immediately report the fact of the child's detention to any Judge regularly serving the Comanche Nation Tribal Court.

(c) Emergency or Protective Custody of Alleged Child in Need of Treatment. Whenever a child is taken into emergency or protective custody as a child in need of treatment, he shall be taken to a shelter, hospital, foster home or other appropriate place as designated by the Comanche Nation Tribal Court or he shall be taken immediately before the Comanche Nation Tribal Court for the purpose of obtaining an order for protective custody. When a child has been taken into custody as a child in need of treatment without a court order, the law enforcement officer or CPS Worker shall immediately report the fact of the detention of the child to the Prosecutor in accordance with **section 508** of this Code and to the Chief Judge of the Comanche Nation Tribal Court, or if the Chief Judge cannot be reached, the CPS Worker shall immediately report the fact of the child's detention to any Judge regularly serving the Comanche Nation Tribal Court.

(d) Mental Health Examination. Any emergency or protective order of the Comanche Nation Tribal Court pursuant to this section may require a mental health examination of the child. After a prescreening examination and a determination that there is reasonable cause to believe that the child may be mentally ill or developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, and/or there exists an imminent danger that the child will intentionally or unintentionally inflict seriously physical injury on himself or another person, the child may be admitted to a hospital or mental health facility approved by the Comanche Nation Tribal Court for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended for a period not exceeding ten days unless the Comanche Nation Tribal Court further extends said time period.

**Section 508. Notification of Comanche Nation Tribal Court Officers.** Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility, and determines not to release said child, the officer or other person who took the child to a detention or shelter facility shall notify the Prosecutor, the ICWD, and any agency or persons so designated by the Comanche Nation Tribal Court at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Prosecutor, the ICWD, and any agency or person so designated by the Comanche Nation Tribal Court stating the facts which led to the child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four hours excluding Saturdays, Sundays, and legal holidays.

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### **Section 509. Temporary Care and Shelter.**

(a) **Temporary Shelter.** A child who must be taken from his home but who does not require physical restriction shall be given temporary care in a shelter facility approved by the ICWD and designated by the Comanche Nation Tribal Court or the ICWD and shall not be placed in detention unless detention is the least restrictive placement for the child.

(b) **Temporary Shelter in Child's Home.** Upon application of the ICWD, in rare instances, the Comanche Nation Tribal Court may find that it is not necessary under the circumstances to remove a child from his home to a temporary shelter facility and may provide temporary shelter in the child's home by authorizing a representative of the ICWD, if emergency caretaker services are available and there is no risk of endangerment to the ICW representative, to remain in the child's home with the child until a parent, legal custodian, or extended family member of the child enters the home and expresses willingness and has the apparent ability, as determined by the ICWD, to resume charge of the child, but in no event shall such period of time exceed twenty-four hours. In the case of an extended family member, the extended family member is to assume charge of the child until a parent or legal custodian enters the home and expresses willingness and has the apparent ability, as determined by the ICWD, to resume charge of the child. The director of the ICWD shall designate in writing the representatives of the ICWD authorized to perform such duties. The court order allowing emergency shelter in the child's home may be written or oral, provided, that if the order is given verbally, the Judge shall reduce the consent given to writing within twenty-four hours.

### **Section 510. Conditions of Detention of Child: Detention or Confinement in Adult Facility.**

(a) **Conditions of Detention.** Except as authorized by **subsection (b)** of this section a child who has been taken into custody as a deprived or abused child, a child in need of supervision or a child in need of treatment, may not be placed in any detention facility pending court proceedings, but shall be placed in shelter care or foster care, or released to the custody of his parents or some other responsible party. When a child is taken into custody as a child in need of supervision as a result of being a runaway, the Comanche Nation Tribal Court may order the child placed in a juvenile detention facility pending court proceedings if it finds said detention to be essential for the safety of the child.

(b) **Detention in Adult Facilities.** Children in need of supervision, including runaways, and children in need of treatment who are seriously assaultive or destructive towards others or themselves such that detention is necessary for the protection of the child or the public may be placed in a secure detention in a jail certified by the Oklahoma Department of Health or appropriate federal or tribal agency, police station or similar law enforcement offices for purposes of identification, processing or arranging for transfer up to seven days, during which time arrangements shall be made for returning the child to his parent, legal custodian or for obtaining a court order directing other custodial arrangements; provided that detention in such facilities may be made only if there is no existing acceptable alternative placement for the child; and the facility meets the requirements for licensure of state juvenile detention facilities, is appropriately licensed, and provides sight and sound separation for juveniles, including total separation between juvenile facility and adult facility areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities, total separation in all juvenile and adult program activities within the facilities, including recreation,

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education, counseling, health care, dining, sleeping and general living activities and 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 juvenile and adults can serve both. The detention of a child in jail, police station or similar law enforcement offices for the purposes of identification, processing or arranging transfer established by this section shall not exceed seven days, not including the actual travel time required for transporting a child from a jail to a juvenile detention facility or other placement.

(c) Contracts for Juvenile Detention Facilities. The ICWD, with approval of the Comanche Business Committee, or the BIA shall contract with any state juvenile detention facility for the providing of detention services pursuant to 10 O.S. § 1107.1(F).

**Section 511. Court Ordered Release.** At any time prior to the filing of a petition and entry of an emergency custody order, the Comanche Nation Tribal Court may order the release of any child from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent or legal custodian to bring the child to the Comanche Nation Tribal Court at a time set or to be set by the Court.

**Section 512. Authorized Medical Examination and Treatment.**

(a) Emergency Medical Examination and Treatment When Necessary. When any child is taken into custody pursuant to this Code and it reasonably appears to the police officers, CPS Worker or person acting pursuant to court order that the child is in need of medical examination and treatment to preserve his health or that there is the need to preserve evidence, such as the preparation of a rape kit or other examination, or that existing conditions make it advisable, any police officer, any CPS Worker or person acting pursuant to Comanche Nation Tribal Court order may obtain and 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 a parent or legal custodian who is competent to authorize medical treatment. If an immediate medical examination and/or treatment are required, the officer or the employee of the Comanche Nation Tribal Court or person acting pursuant to court order shall authorize said medical examination and/or treatment only after exercising due diligence to locate the parent, legal custodian or other person legally competent to authorize said medical treatment. The parent or legal custodian of the child shall be responsible for such medical expenses as ordered by the Comanche Nation Tribal Court. No law enforcement officer, employee of the Comanche Nation Tribal 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.

(b) Medical Examination in Cases Involving Alleged Physical or Sexual Abuse of Child in Cases Where Emergency Medical Examination and Treatment Not Necessary. If an immediate medical examination and/or treatment is not required in cases involving alleged physical or sexual abuse of a child, a medical examination by a physician or health care provider with a background in child physical or sexual abuse previously identified by the United States Attorney's office will be arranged in the normal course of business in accordance with the

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Memorandum of Understanding for Reporting and Investigating Child Abuse Criminal Offenses in Indian Country attached to this Code as **Appendix3**.

(c) Court Order for Medical Treatment Prior to Adjudication At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:

(1) When the Comanche Nation Tribal Court finds that emergency medical, surgical, or dental treatment is required for a child in ICWD custody it may authorize such treatment or care if the parents or legal custodian are not immediately available to give their consent or to show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Comanche Nation Tribal Court to the agency or person having physical custody of the child pursuant to this Code or pursuant to court order.

(2) After making a reasonable effort to obtain the consent of the parent or legal custodian, and after a hearing on notice the Comanche Nation Tribal Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in ICWD custody.

(d) Court Order for Medical Treatment After Adjudication. After a child has been adjudicated a ward of the Comanche Nation Tribal Court, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the ICWD, other agency or legal custodian of the child; provided further that the ICWD may authorize a foster parent to secure preventive and non- surgical general medical or dental treatment or care to a licensed foster parent.

## **CHAPTER SIX**

### **ADJUDICATION**

#### **Section 601. Intake.**

(a) Referrals to CPS Worker. Whenever it appears to a law enforcement officer, ICWD personnel or any other person that a child is or appears to be within the Comanche Nation Tribal Court's jurisdiction, by reason of neglect or abuse, need of supervision, or need of treatment, the law enforcement officer shall refer the matter to the CPS Worker.

(b) Initial Determination. Upon receipt of a referral or whenever it otherwise comes to the attention of the CPS Worker that a child is or appears to be within the Comanche Nation Tribal Court's jurisdiction, by reason of neglect or abuse, need of supervision, or need of treatment, the CPS Worker shall determine whether the interests of the child or of the community requires that further action be taken.

(c) Preventive Services. If the CPS Worker determines that the interests of the child or of the Nation do not require court action, the CPS Worker, in consultation with the Prosecutor and the ICWD, may refer the case to the appropriate program for preventative services, including without limitation the Healthy Families Program, Family Preservation Program or other programs offering services related to prevention of child abuse or neglect.

(d) Additional Investigation and Recommendations. If the CPS Worker is unable to determine whether the interests of the child or of the Nation require that court action be taken from information available to him, he may investigate or refer the matter to the ICWD or other agency designated by the Comanche Nation Tribal Court for additional investigation and recommendations as to filing a petition or as to initiating referrals for preventive services.

#### **Section 602. Referral to Prosecutor; Action by Prosecutor**

(a) Referral to Prosecutor; Review; Petition. If the CPS Worker determines that the interests of the child or of the community require that court action be taken, he shall deliver a copy of the entire case file, including any reports, witness statements and other documents, to the Prosecutor, and may prepare and file a petition in consultation with the Prosecutor. Upon receiving the case file from the CPS Worker, the Prosecutor shall review the case file to determine if there is sufficient evidence which will be admissible under the applicable evidentiary rules to establish the jurisdiction of the Comanche Nation Tribal Court over the child. If the Prosecutor determines that sufficient evidence is available to establish the jurisdiction of the Comanche Nation Tribal Court over the child and no petition has yet been filed, he shall authorize the CPS Worker to prepare and/or file the petition, or shall prepare and/or file the petition himself.

(b) Notification if Insufficient Evidence. If the Prosecutor determines that there is not sufficient evidence available to establish the jurisdiction of the Comanche Nation Tribal Court over the child, he shall so notify the CPS Worker in writing, or, in his discretion, may request the appropriate law enforcement or child welfare agency to conduct a further investigation into the matter.

**Section 603. Deadline for Filing Petition When Child Already in Custody; Petition Prior to Removal of Child.**

(a) Petition When Child Already in Custody. A petition for a child in need of supervision, child in need of treatment, abused child or deprived child proceeding shall be filed and a summons issued within ten (10) days from the date of assumption of custody, or custody of the child shall be returned to his parent or legal custodian; provided, however, such time period may be extended a period of time not to exceed twenty (20) calendar days from the date of assumption of custody of the child if, upon request of the Prosecutor at an emergency custody hearing described in section **506(e)** of this Code, the Comanche Nation Tribal Court determines there are compelling reasons to grant additional time for the filing of such petition. Where a child has been taken into custody and upon allegations of cruelty on the part of the parents, legal custodian or other person having custodial care of the child, the ten-day limitation in this subsection shall not cause the child to be relinquished to such person, legal custodian or other person having custodial care of the child. In all such cases, the Comanche Nation Tribal Court shall determine whether the petition was filed within a reasonable time.

(b) Petition Prior to Removal of Child. When a child has not been taken into custody before a petition has been filed, the Prosecutor shall file a petition seeking adjudication for any alleged deprived or abused child, child in need of supervision, or child in need of treatment. The petition may seek removal of the child from the home. No order of the Comanche Nation Tribal Court providing for the removal of an alleged or adjudicated child from his home shall be entered unless the Court finds that the continuation of the child in his home is contrary to the welfare of the child. Said order shall include either a determination as to whether or not reasonable efforts have been made to prevent the need for the removal of the child from his home and as appropriate, reasonable efforts have been made to provide for the return of the child to his home or a determination as to whether or not an absence of efforts to prevent the removal of the child from his home is reasonable under the circumstances, if such removal of the child from his home is due to an alleged emergency and is for the purpose of providing for the safety of the child.

**Section 604. Petition Heading.** The Prosecutor shall sign and file all child welfare petitions alleging a child to be in need of supervision, in need of treatment, deprived, or abused. Such petitioners and all subsequent court documents in such proceedings shall contain a heading and title in substantially the following form:

IN THE COMANCHE NATION TRIBAL COURT  
LAWTON, OKLAHOMA

## **Section 605. Petition Contents.**

(a) Information. The petition shall set forth plainly the facts which bring the child within the Comanche Nation Tribal Court's jurisdiction. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, legal custodian, and/or nearest known extended family member if no parent or legal custodian is known.

(b) Statement Regarding Termination. All petitions filed alleging the abuse or neglect of a child may include the following statement: "If this petition is sustained, the Nation may seek termination of parental rights at a later time by amending the petition, in which event you will receive notice and an opportunity for a separate hearing on termination of parental rights."

**Section 606. Summons.** Upon filing of a petition, the Court Clerk/Court Administrator shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

IN THE COMANCHE NATION TRIBAL COURT  
LAWTON, OKLAHOMA

## SUMMONS

## THE COMANCHE NATION to:

\_\_\_\_\_,  
Respondents. [NAME] AND  
[ADDRESS]

**YOU ARE HEREBY NOTIFIED**, that a petition has been filed in the Comanche Nation Tribal Court alleging that the above named \_\_\_\_\_ is a (deprived child), (abused child) (child in need of supervision) (child in need of treatment) and that as the (parent) (custodian) of said child you have been named as the Respondent, all as more fully set out in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Comanche Nation Tribal Court at \_\_\_\_\_, on the \_\_\_ day of \_\_\_, 20\_\_\_, at the hour of \_\_\_ o'clock \_\_\_a.m. and to there remain subject to the call of the Court until discharged that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

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YOU ARE FURTHER ORDERED, if the above-named child is in your physical custody or subject to your control, to bring the child to Court with you.

You may seek the advice of an attorney on any matter relating to this proceeding at your own expense.

---

Court Clerk/Court Administrator

[Seal]

(Return as in other civil cases)

**Section 607. When Summons Unnecessary.** A summons need not be issued or be served upon any respondent who appears voluntarily, or who waives service in writing before a notary public or Court Clerk/Court Administrator, or who has promised to appear at the hearing in writing upon the release of a child from emergency custody or otherwise, but any such person shall be entitled to a copy of the petition and summons upon request.

**Section 608. Additional Parties to be Summoned.** The Comanche Nation Tribal Court on its own motion or on the motion of any party may join as a respondent or require the appearance of any person it deems necessary to the action and authorize the issuance of a summons directed to such person.

### **Section 609. Service of Process: Subsequent Notices.**

(a) **Service Required for Adjudication Hearing.** The adjudication hearing shall not be held until at least twenty (20) days after the service of process, including the summons and the petition, except with the consent of the parent, if known; provided that this requirement shall not prevent a court from immediately taking custody of a child and ordering whatever action may be necessary to protect the child's health or welfare.

(b) **Service on Parent or legal Custodian Residing Within Jurisdiction.** Summons shall be served on a parent or legal custodian who resides within the jurisdiction of the Comanche Nation Tribal Court as follows:

(1) Absent the conditions in **paragraph (2)** of this subsection, summons shall be served by personal delivery or certified mail with postage prepaid and delivery restricted to the intended recipient at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon the filing of a return of personal service or upon filing of the return of the requested mail receipt.

(2) If the Comanche Nation Tribal Court finds that said person's place of residence is not known and cannot be determined after due diligence, the Court may order that the summons be published and a copy mailed to the last known address of said person. The summons shall be published once in a newspaper of general circulation in the county in which the parent was last known to reside, and proof of publication and mailing shall be filed with the Court Clerk/Court Administrator.

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(c) Service on Parent or Legal Custodian Residing Outside Jurisdiction. If the parents or legal custodian of the child required to be summoned resides outside the jurisdiction of the Comanche Nation Tribal Court, the fact of the child's presence within the Court's jurisdiction shall confer jurisdiction on the Court as to any absent parents or legal custodian if summons has been served in the following manner:

(1) If the person to be served is temporarily present within the jurisdiction of the Comanche Nation Tribal Court, summons may be served by personal delivery. Service of summons shall be deemed complete upon the filing of a return of personal service.

(2) If the summons is not served by personal delivery in accordance with **paragraph (1)** of this subsection and the residence of the person to be served outside the Comanche Nation Tribal Court's jurisdiction is known, a copy of the summons and petition shall be served by personal delivery or sent by certified mail with postage prepaid and delivery restricted to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon the filing of a return of personal service or upon filing of the return of the requested mail receipt.

(3) If the Comanche Nation Tribal Court finds that the place of residence of the person to be served is not known and cannot be determined after due diligence, the Court may order that the summons be published and a copy mailed to the last known address of the parent or legal custodian. The summons shall be published once in a newspaper of general circulation in the county in which the parent was last known to reside, and proof of publication and mailing shall be filed with the Court Clerk/Court Administrator.

(d) Notice of Hearings Subsequent to Service of Process. After proper service of process in accordance with **subsection (a), (b) or (c)** of this section, the Court Clerk/Court Administrator shall provide notice of each hearing to the parent or legal custodian of the child by mailing the notice by regular mail to the last known address of the parent or legal custodian and to the address of all counsel of record; except that, as required by **section 803** of this Code, notice of hearing of termination of parental rights shall be served in the same manner as a summons, as described in **subsections (a), (b) or (c)** of this section. The parent or legal custodian shall have a duty to provide his address, including any address changes, to the Court Clerk/Court Administrator and, if represented by an attorney, to his attorney.

### **Section 610. Pre-Adjudicatory Procedures and Services.**

(a) Scope of Continued Investigation and Provision of Services by the ICWD. Pending the adjudicatory hearing, the ICWD shall, to the extent necessary, perform appropriate casework and offer appropriate services to the parent or legal custodian and the child, and shall make reasonable efforts to prevent the removal of the child from the care of the parent or legal custodian, and to eliminate the need for continued removal. In the course and scope of the continuing investigation, the ICWD shall, to the extent possible:

(1) Contact and interview all relevant parties, including the parents and children, as well as, if appropriate, caretakers, extended family members, neighbors, teachers, and treatment personnel;

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- (2) Visit the home and/or place where the child was residing and/or is now residing;
- (3) Address the child's past and current circumstances, including home environment, family and parental history, parent's current circumstances, including financial information if relevant, the nature of the reported charges, and the information supporting or contravening those charges;
- (4) Determine if the child can remain safely in parental care with services provided, and assist in providing those services;
- (5) Determine what services are necessary to facilitate return of the child to parental care, with or without continuing supervision; locate and offer, and refer the parent to, those services;
- (6) Seek out extended family members, or others with whom the child is familiar, and with whom the child can be placed if return home is not possible; and
- (7) Draw conclusions as to what is in the best interests of the child, and how best to protect the child's health and safety to prevent removal or make return to parental care possible.

(b) Service Plan Pending Adjudicatory Hearing. After the preliminary inquiry hearing, and prior to the adjudicatory hearing, the ICWD shall hold a conference with the parents or legal custodians, and all attorneys and/or spokespersons, and the child, if appropriate, and any other persons who may provide helpful participation, as approved by the ICWD. For each child and parent or legal custodian, willing to work cooperatively with the ICWD pending the adjudicatory hearing, the ICWD shall develop an appropriate service plan for each parent, legal custodian and child, designed to protect the child's health and safety and to reunify the family, if possible. The plan shall be detailed and specific as to:

- (1) The areas in which the family needs assistance;
- (2) The services required to address those needs;
- (3) Who will provide those services;
- (4) The time lines to which the family and the ICWD will be held for completion of services; and
- (5) How the family's progress, or lack of progress, will be measured.

### **Section 611. Failure to Appear.**

(a) Failure to Appear; Bench Warrant. When a parent or other person was served with a summons or subpoena, or signed a written promise to appear and bring the child to court, or has waived or acknowledged service fails to appear with the child on the date set by the Comanche Nation Tribal Court, a bench warrant may be issued for the parent or other person, the child, or both. Such person may also be proceeded against for contempt of court.

(b) Other Circumstances; Bench Warrant; Search Warrant. If after reasonable effort the summons cannot be served or if the welfare of the child requires that he be brought immediately into the custody of the Comanche Nation Tribal Court, a bench warrant may be issued for the parents, legal custodian, other person having physical custody of the child, or for the child, or the Comanche Nation Tribal Court may issue a search warrant for the child as

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provided by law.

### **Section 612. Appointment of Guardian Ad Litem.**

(a) **Guardian Ad Litem for Child.** Subject to availability of funds, the Comanche Nation Tribal Court may, in its discretion, appoint a guardian ad litem to protect the interest of a child in proceedings pursuant to this Code when:

(1) No parent, legal custodian, or extended family member of the child appears at the first or any subsequent hearing in the case; or

(2) The Comanche Nation Tribal Court finds that there may be a conflict of interest between the child and his parent or legal custodian; The Comanche Nation Tribal Court finds that it is in the child's interest and necessary for his welfare, whether or not a parent or legal custodian is present; or

(3) The Comanche Nation Tribal Court determines that the child has no parent or legal custodian.

(b) **Guardian Ad Litem for Parent.** Subject to availability of funds, the Comanche Nation Tribal Court may, in its discretion, appoint a guardian ad litem for any parent in proceedings pursuant to this Code who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.

(c) **Cases Involving Abuse.** In all proceedings brought for the protection of a child suffering from abuse or non-accidental injury, a guardian ad litem shall be appointed for said child. Said guardian ad litem shall have the power to represent the child in the legal proceedings.

(d) **Visitation of Child's Residence.** All guardian ad litem shall, whenever practical, be required to personally visit the place of residence of the child.

### **Section 613. Notice of Legal Rights.**

(a) **Notice Regarding Legal Rights and Responsibilities.** At his first appearance before the Comanche Nation Tribal Court, the child and his parents or legal custodian shall be fully advised by the Court of their legal rights and the potential consequences of the proceedings, including:

(1) Their right to be represented by an attorney, at their own expense, at every stage of the proceeding;

(2) Their right to see, hear and cross-examine all witnesses against them;

(3) Their right to call witnesses on their own behalf and to have court process compel the attendance of witnesses for them;

(4) The possibility that parental rights may be terminated in accordance with a petition for termination included in the initial petition or a petition for termination that may be added at a later time;

(5) The child's right to confidentiality.

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(b) Court Appointed Counsel. If the child or his parents or legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Comanche Nation Tribal Court in proceedings wherein the Nation is a party, and termination of the parent-child legal relationship is stated as a possible remedy in the summons. The Comanche Nation Tribal Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(c) Notice of Right to Appeal. If the child and his parents or legal custodian were not represented by legal counsel, the Comanche Nation Tribal Court shall inform them at the conclusion of the proceedings that they have the right to appeal in accordance with **section 212** of this Code, provided that lack of counsel alone shall not be grounds for reversal.

### **Section 614. Adjudicatory Hearing.**

(a) Consideration of Evidence. At the adjudicatory hearing, the Comanche Nation Tribal Court shall consider whether the allegations of the petition are supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, except that jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

(b) Amendment of Petition Based on Evidence. When it appears that the evidence presented at the hearing discloses issues not raised in the petition the following action shall be taken:

(1) The Comanche Nation Tribal Court may deem the petition amended and proceed immediately to consider the additional or different matters raised by the evidence; or

(2) If the amendment results in a substantial departure from the original allegations in the petition, the Comanche Nation Tribal Court may, if it finds such action to be in the best interests of the child or otherwise in the interests of justice, order the petition to be amended in writing to conform to the evidence and continue the hearing, either on the motion of any interested party or on its own motion.

### **Section 615. Mentally Ill and Developmentally Disabled Children.**

(a) Order for Examination. If it appears from the evidence presented at an adjudicatory hearing or otherwise that the child may be mentally ill or developmentally disabled, as these terms are defined in this section, the Comanche Nation Tribal Court shall order that the child be examined by a physician, psychiatrist, and/or psychologist and may place the child in a hospital or other suitable facility for the purpose of examination for a period not to exceed thirty days.

(b) Suitable Facility for Examination. A suitable facility for the purpose of examination shall be a facility designated by the Comanche Nation Tribal Court for treatment and evaluation, but neither a tribal, city or county jail, nor a detention facility shall be considered a suitable facility under any circumstances.

(c) Order for Hospitalization. If the report of the examination made pursuant to **subsection (a)** of this section states that the child is mentally ill to the extent that hospitalization or institutional confinement and treatment is required, the Comanche Nation Tribal Court may

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order such hospitalization, institutional confinement, or treatment prior to or after adjudication.

(d) Dismissal of Petition. The Comanche Nation Tribal Court may dismiss the original petition when a child who has been ordered to receive treatment is no longer receiving treatment.

(e) Resumption of Hearing Under Certain Circumstances. The Comanche Nation Tribal Court shall set a time for resuming the hearing on the original petition under the following circumstances:

(1) The report of the examination made pursuant to **subsection (a)** of this section states that the child is not mentally ill to the extent that hospitalization or institutional confinement and treatment are required;

(2) The child is found not to be mentally ill; or

(3) The report of the examination made pursuant to **subsection (a)** of this section states that the child is developmentally disabled but not mentally ill.

(f) Mentally Ill Person Defined. "Mentally ill person" means a person who is of such mental condition that he is in need of supervision, treatment, care, or restraint.

(g) Developmental Disability Defined. "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment or a combination thereof, which may have originated during the first eighteen years of life, which can be expected to continue indefinitely, and which constitutes a substantial handicap.

(h) Mentally Retarded Person Defined. "Mentally retarded person" means a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to such an extent that he lacks sufficient control, judgment, and discretion to manage his property or affairs or who, by reason of this deficiency and for his own welfare or the welfare or safety of others, requires protection, supervision, guidance, training, control, or care.

**Section 616. Dismissal of Petition.** When the Comanche Nation Tribal Court finds that the allegations of the petition are not supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His parents or legal custodian shall also be discharged from any restriction or any other previous temporary order.

**Section 617. Sustaining Petition.** When the Comanche Nation Tribal Court finds that the allegations of the petition are supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is deprived, abused, in need of supervision, or in need of treatment and making the child a ward of the Court. In cases concerning deprived children, evidence that child abuse or non-accidental injury has occurred shall constitute *prima facie* evidence (i.e., evidence that will establish the fact absent introduction of contradictory evidence) that such child is deprived and such evidence shall be sufficient to support an adjudication under this section.

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**Section 618. Temporary Orders.** Upon sustaining a petition, the Comanche Nation Tribal Court shall make such dispositional orders as may be necessary to protect the child prior to the dispositional hearing which shall be held without undue delay.

## CHAPTER SEVEN

### DISPOSITION, REVIEW HEARINGS AND PERMANENCY PLANNING

**Section 701. Dispositional Hearing.** After making an order of adjudication finding the child to be a ward of the Court, the Comanche Nation Tribal Court shall conduct a dispositional hearing, which may be held immediately following the adjudication or at a hearing scheduled on a separate date for that purpose. The purpose of the dispositional hearing is for the Comanche Nation Tribal Court to determine the proper disposition best serving the interests of the child and the Comanche Nation, approve a treatment plan described in **section 703** of this Code, and address any other issues related to the protection of the health, welfare, and safety of the child. The Comanche Nation Tribal Court may order any agency within its jurisdiction or request any other agency to prepare and submit to the Court prior to disposition a proposed treatment plan, social study, home study, family or medical history or other reports which may be helpful in determining proper disposition and treatment. Such proposed treatment plan and reports shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing, including any dispositional hearing held on the same date as the adjudication.

**Section 702. Studies and Reports.** Reports submitted for purposes of disposition and review hearings should include, if applicable, all information required by Title IV-B and Title IV-E of the Social Security Act (42 U.S.C. §620 *et seq.* and 42 U.S.C. §670 *et seq.* respectively); the Adoption and Safe Families Act (ASFA) (P.L. 105-89), the Adoption Assistance and Child Welfare Act of 1980, (known as P.L. 96-272), and any other relevant laws for case plans where the child is receiving foster care maintenance payments from federal or state funds.

#### **Section 703. Treatment Plan.**

(a) **Treatment Plan Required.** In every case the Comanche Nation Tribal Court shall order the ICWD to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.

(b) **Treatment Plan Contents.** The treatment plan shall contain at a minimum:

(1) A brief social and family history;

(2) A brief statement of the causes of the Comanche Nation Tribal Court's exercise of its jurisdiction;

(3) The specific treatment programs the family should be required to complete, their duration, and what is expected to be accomplished;

(4) The specific actions the parents, legal custodian or child should be ordered to do or refrain from doing and the reasons therefore;

(5) The specific treatment or other social services offered by the Nation or other agency which the family should be required to accept; and

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(6) The person or agency to be vested with custody of the child if the child cannot remain in its own home, and a detailed plan describing how and when the child will be retained in its home under supervision and when court supervision should cease.

(c) Filing of Treatment Plan. The treatment plan shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at least five days prior to the dispositional hearing.

**Section 704. Medical Examination.** The Comanche Nation Tribal Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

**Section 705. Hearings Informal.** The dispositional hearing and review hearings shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, when feasible, the Comanche Nation Tribal Court shall order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

### **Section 706. Continuance**

(a) Circumstances. The Comanche Nation Tribal Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party, for a reasonable period to receive reports or other evidence, but the Court shall continue the hearing for good cause on the motion of any interested party in any case where the termination of the parent-child legal relationship is a possible remedy.

(b) Physical Custody. If the hearing is continued, the Comanche Nation Tribal Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, legal custodian or other responsible person or agency under such conditions of supervision as the Court may impose during the continuance.

(c) Scheduling Priorities. In scheduling investigations and hearings, the Comanche Nation Tribal Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

### **Section 707. Order of Protection.**

(a) Conditions. The Comanche Nation Tribal Court may make an order of protection in assistance of, or as a condition of, any decree of disposition authorized by this chapter. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period by the parent, legal custodian, or any other person who is party to the proceeding.

(b) Requirements in Order. The order of protection may require any such person:

- (1) To stay away from a child or his residence;
- (2) To permit a parent to visit a child at stated periods;

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- (3) To abstain from offensive conduct against a child, his parent or parents and/or legal custodian, foster parents or any other person to whom custody of a child has been given;
- (4) To give proper attention to the care of the home;
- (5) To cooperate in good faith with an agency:
  - (i) Which has been given legal custody of a child;
  - (ii) Which is providing protective supervision of a child by court order; or
  - (iii) To which the child has been referred by the Court; or
- (6) To refrain from acts of commission or omission that tend to make a home an improper place for a child.

(c) Requirements for Parent or Legal Custodian. When such an order of protection is made applicable to a parent or legal custodian, it may specifically require his active participation in the rehabilitation process and may impose specific requirements upon such parent or legal custodian, subject to the penalty of contempt for failure to comply with such order without good cause, as provided in **subsection (e)** of this section.

(d) Termination, Modification or Extension. After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Comanche Nation Tribal Court finds that the best interests of the child and the Nation will be served thereby.

(e) Contempt. A person failing to comply with an order of protection without good cause may be found in contempt of court.

### **Section 708. Child in Need of Treatment: Disposition.**

- (a) ICWD Provision for Care. The ICWD may provide for the care of a child adjudicated to be a child in need of treatment who is in the custody of the ICWD as follows:
  - (1) The ICWD shall assist in obtaining the outpatient care and treatment of the child and shall place the child in his home, the home of an extended family member of the child, a foster home, a group home, a transitional living program, an independent living program or in any other community-based child care facility under the jurisdiction or licensure of the State of Oklahoma or the ICWD appropriate for the care of the child and shall provide for the outpatient care and treatment of the child; or
  - (2) The ICWD may place a child in need of treatment and found by a court to be eligible to receive inpatient care and treatment in a treatment center operated by the Comanche Nation, another tribe or the State of Oklahoma, Indian Health Service or other public or private mental health facility. The ICWD shall establish a system for the regular review by a qualified mental health professional, at intervals of not more than sixty (60) days, of the case of each child in need of treatment in the custody of the ICWD and receiving inpatient care and treatment to determine whether or not continued inpatient treatment is required and appropriate for the child. When such child no longer requires inpatient care and treatment in a mental health treatment facility, the ICWD shall place the child as provided in **paragraph 1** of this subsection.
- (b) Utilization of Available Services. In providing for the outpatient care and the

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treatment of children in its custody who have been adjudicated in need of treatment, the ICWD shall utilize to the maximum extent possible and appropriate the services available through state or tribal guidance centers, substance abuse programs and community-based private nonprofit agencies and organizations.

(c) Inpatient Mental Health Treatment. Nothing contained in this section shall be interpreted to require the ICWD to place a child found by a court to be eligible for inpatient mental health treatment in a mental health facility when the ICWD determines that such placement is inappropriate or unnecessary for the treatment needs of the child.

### **Section 709. Abused or Deprived Child; Disposition.**

(a) Placement. When a child has been adjudicated to be abused or deprived the Comanche Nation Tribal Court shall enter a decree of disposition. When the decree does not terminate the parent-child legal relationship pursuant to **chapter 8** of this Code, the Comanche Nation Tribal Court shall order any one or more of the following, provided that placement of the child shall be in accordance with the placement preferences of **section 403** of this Code:

(1) The Court may place the child in the legal custody of one or both parents or the legal custodian, with or without protective supervision, under such conditions as the Court may impose.

(2) The Court may place the child in the legal custody of an extended family member or other suitable person, with or without protective supervision, under such conditions as the Court may impose, in accordance with applicable provisions of this Code.

(3) The Court may place legal custody in the ICWD or a child placement agency for placement in accordance with applicable provisions of this Code.

(4) The Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist or that he receives other special care and may place the child in a hospital or other suitable facility for such purposes.

(b) Termination. The Comanche Nation Tribal Court may enter a decree terminating the parent-child legal relationship of one or both parents pursuant to **chapter 8** of this Code, and disposition of the child shall be made in accordance with **chapter 7** of this Code.

### **Section 710. Child in Need of Supervision; Disposition.**

(a) Placement. When a child has been adjudicated as being in need of supervision, the Comanche Nation Tribal Court may order any one or more of the following, provided that placement of the child shall be in accordance with the placement preferences of **section 403** of this Code:

(1) The Comanche Nation Tribal Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the legal custodian under such conditions as the Court may impose.

(2) The Comanche Nation Tribal Court may place the child in the legal custody of an extended family member or other suitable person under such conditions as the Court may impose, which may include placing the child under protective supervision in accordance with applicable provisions of this Code.

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(3) The Comanche Nation Tribal Court may place legal custody in the ICWD or a child placement agency for placement in accordance with this Code.

(b) The Comanche Nation Tribal Court may require as a condition of probation that the child report for assignment to a supervised work program or place such child in a childcare facility which shall provide a supervised work program, if:

(1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;

(2) The supervised work program is of a constructive nature designed to promote rehabilitation, is appropriate to the age level and physical ability of the child, and is combined with counseling from guidance personnel; and

(3) The supervised work program assignment is made for a period of time consistent with the child's best interest, but not exceeding one hundred eighty days.

(c) Examination. The Comanche Nation Tribal Court may order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receives other special care, and may place the child in a hospital or other suitable facility for such purposes.

(d) Commitment. The Comanche Nation Tribal Court may commit the child to any institution or group care facility designated by the Court.

### **Section 711. Legal Custody: Duties and Authority.**

(a) Duties of Agency Vested with Legal Custody. Any agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child or any legal custodian having physical custody of a child, including any legal custodian, shall have the duty to protect and care for the child, including, but not limited to:

(1) The rights and responsibilities of the physical and legal care, custody, and control of a child when legal custody has not been vested in another person, or agency, or institution; and

(2) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.

(b) Authority of Legal Custodian. The child's legal custodian, if expressly authorized by the Comanche Nation Tribal Court, or any agency or institution vested by the Court with legal custody of a child shall have the following authority affecting the child, including, but not limited to:

(1) The authority to consent to marriage in accordance with **chapter 14** of this Code, enlistment in the armed forces, and to extraordinary medical and surgical treatment;

(2) The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning a child; and

(3) The authority to consent to the adoption of a child when the parent-child relationship has been terminated by judicial decree or the death of the parents, if expressly authorized by the Court.

(c) Provision of Information to Agency or Institution. If legal custody or guardianship

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of the person is vested in an agency or institution, the Comanche Nation Tribal Court shall transmit, with the court order, copies of the social study, any clinical reports, and other information concerning the care and treatment of the child.

(d) Provision of Information to Court. A legal custodian or an agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child shall give the Court any information concerning the child that the Court at any time may require.

(e) Authority of Agency Vested with Legal Custody of Child. An agency or institution vested by the Comanche Nation Tribal Court with legal custody of a child shall have the right, subject to the approval of the Court, to determine where and with whom the child shall live.

(f) Removal of Child from State. No legal custodian shall remove the child from the state for more than thirty days without Comanche Nation Tribal Court approval.

(g) Length of Period of Custody; Review. A decree vesting legal custody of a child in an institution, or agency other than the ICWD may be for an indeterminate period, not to exceed two years from the date it was entered. Such decree shall be reviewed by the Comanche Nation Tribal Court no later than six months after it is entered.

(h) Removal of Legal Custodian. No legal custodian may be removed without his consent until given notice and an opportunity to be heard by the Comanche Nation Tribal Court if he so requests.

### **Section 712. Probation for Children in Need of Supervision.**

(a) Terms and Conditions of Probation. The terms and conditions of probation shall be specified by rules or orders of the Comanche Nation Tribal Court. The Court, as a condition of probation for a child who is fourteen years of age or older but less than eighteen years of age on the date of the dispositional hearing, has the power to impose a commitment or placement whether continuous or at designated intervals, which shall not exceed forty-five days. Each child placed on probation shall be given a written statement of the terms and conditions of his probation and shall have such terms and conditions fully explained to him.

(b) Review. The Comanche Nation Tribal Court shall review the terms and conditions of probation and the progress of each child placed on probation at least once every six months.

(c) Release from Probation. The Comanche Nation Tribal Court may release a child from probation or modify the terms and conditions of his probation at any time, but any child who has complied satisfactorily with the terms and conditions of his probation for a period of two years shall be released from probation, and the jurisdiction of the Court shall be terminated.

(d) Violation of Probation; Hearing. When it is alleged that a child has violated the terms and conditions of his probation, the Comanche Nation Tribal Court shall set a hearing on the alleged violation and shall give notice to the child and his parents or legal custodian, and any other parties to the proceeding. The child, his parents or legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel at the hearing, at his or their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses. The hearing on the alleged violation shall be conducted as soon as possible.

(e) Action Upon Finding of Violation of Probation. If the Comanche Nation Tribal Court finds that the child violated the terms and conditions of probation, it may modify the terms

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and conditions of probation, revoke probation, or take such other action permitted by this chapter which is in the best interest of the child and the Nation.

(f) Action Upon Finding of No Violation of Probation. If the Comanche Nation Tribal Court finds that the child did not violate the terms and conditions of his probation as alleged, it shall dismiss the proceedings and continue the child on probation under the terms and conditions previously described.

### **Section 713. New Hearing Authorized.**

(a) Petition for New Hearing of Adjudication. A parent or legal custodian of any child adjudicated under this Code, or any person affected by a decree in a proceeding under this chapter, may petition the Comanche Nation Tribal Court for a new hearing on the following grounds:

(1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;

(2) That irregularities in the proceedings prevented a fair hearing.

(b) Order for New Hearing. If it appears to the Comanche Nation Tribal Court that the motion should be granted, it shall order a new hearing and shall make such disposition of the case as warranted by all the facts and circumstances and the best interest of the child.

**Section 714. Continuing Jurisdiction.** Except as otherwise provided in this chapter, the jurisdiction of the Comanche Nation Tribal Court over any child adjudicated as deprived or abused, in need of supervision or in need of treatment shall continue until he becomes twenty-one years of age unless terminated by court order.

**Section 715. Orders for Support.** Whenever a child is removed from the custody of its parent or legal custodian, the parent or other person shall be ordered by the Comanche Nation Tribal Court to contribute a reasonable amount within their means, or take other reasonable action to provide support for the child. All child support orders issued to a parent by the Comanche Nation Tribal Court or by the Comanche Nation Child Support Program ("CNCSP") in a CNCSP administrative proceeding shall be issued in accordance with all applicable requirements of chapter 15 of this Code.

**Section 716. Review Hearings.** The Comanche Nation Tribal Court shall conduct review hearings no less than every three months following the disposition hearing. All attorneys, including the Prosecutor, and all parties, including children over twelve (12) years of age, shall be notified of their right to appear and be heard at the review hearing. The review hearing may be conducted in conjunction with a permanency plan hearing described in **section 717** of this Code. At the review hearings the Comanche Nation Tribal Court shall review the child's placement, any progress related to the treatment plan, and any other measures for the protection of the health, welfare, and safety of the child. The agency or individual vested with custody of

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the child shall provide a written report to the Court regarding the child, including a report regarding any change in placement of the child and such other reports as ordered by the Court. The guardian ad litem shall also submit a written report with any recommendations regarding the child's welfare to the Court, based upon an independent investigation. Such reports shall be filed with the Comanche Nation Tribal Court and a copy delivered to the parties or their attorney at or before the review hearing, The Court shall also receive reports regarding the status of the child's parent's compliance with any written plan for reunification of the parent and child at the review hearing.

### **Section 717. Permanency Hearing.**

(a) Permanency Plan Hearing Required. The Comanche Nation Tribal Court shall conduct a permanency plan hearing no less than six months following the disposition hearing. The purpose of the permanency plan hearing is to approve a plan regarding the permanent status of the child. The permanency plan hearing may be conducted in conjunction with a review hearing described in **section 716** of this Code.

(b) Notice. All attorneys, including the Prosecutor, and all parties, including children over twelve (12) years of age, shall be notified of their right to appear and be heard at the permanency plan hearing.

(c) Permanency Planning Reports. The ICWD shall prepare, and any other party or person may prepare, a report to the Comanche Nation Tribal Court for the hearing and the Court's approval. These reports shall be filed, and copies shall be given to all parties or sent to a place calculated to assure receipt, no later than five (5) full days before the hearing, except by order of the Comanche Children's Court. The report shall provide supportive documentation, if appropriate, and shall:

- (1) Summarize the history of the case and efforts made to offer services to the child and family;
- (2) Detail the child's and family's circumstances, including the case management and casework by the ICWD, since the prior Comanche Nation Tribal Court hearing;
- (3) Detail the compliance made or not made by the parent or legal custodian and the ICWD;
- (4) Detail the efforts made to develop a concurrent plan, if necessary, to be implemented in the event the family cannot be reunified, and efforts made to implement that concurrent permanency plan;
- (5) Give specific reasons why the particular recommended permanency plan has been chosen, specifying why that plan meets the child's particular needs and best interests, rather than other permanency plans which have not been chosen; and
- (6) If required by applicable federal or tribal law, detail the compelling reasons why termination of parental rights is not being recommended as the permanency plan.

(d) Permanency Plans. The Comanche Nation Tribal Court's order shall approve or amend the permanency plan which is the result of the permanency hearing, which may include without limitation any of the following:

- (1) Return of Custody: The child will be returned to a parent;

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(2) Termination of Parental Rights; Adoption: A petition for the termination of parental rights will be filed and the permanency plan for the child shall be adoption;

(3) Legal Guardianship: A legal guardian will be appointed for the child;

(4) Permanent Foster Care: The child will be placed in permanent foster care of named custodians;

(5) Long Term Foster Care: The child will be continued in long term foster care while the ICWD continues to identify and effect a permanency plan; or

(6) Long Term Substitute Care: The child, because of his special needs, will be placed in long term substitute care, until such time as the child can accommodate a less restrictive plan.

(e) Parental Rights. In any of the permanency plans identified above, the parent or legal custodian whose parental or custodial rights have not been terminated shall have the following rights, which are to be determined in light of the child's best interests:

(1) Return of Custody: The right to seek return of full legal and physical custody of the child and termination of wardship.

(2) Termination of Parental Rights; Adoption: If parental rights are terminated the parent has no parental rights, except as specified in any termination order or adoption order.

(3) Legal Guardianship: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody in a guardianship, the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is in the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a *prima facie* showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(4) Permanent Foster Care: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a *prima facie* showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(5) Long Term Foster Care: The right to seek visitation and the right to petition the Comanche Nation Tribal Court no more than once a year for return of custody. At any hearing on the petition for return of custody the petitioner shall show by clear and convincing evidence that there has been a substantial change of circumstances and that it is the best interests of the child to be returned to parental care. A hearing on the petition will be set only if the petition states a *prima facie* showing of the foregoing requirements in this paragraph (i.e., statement of facts meeting requirements absent the introduction of contradictory evidence).

(6) Long Term Substitute Care: Depending on the circumstances of the case, the right to seek visitation and/or return of custody.

(f) ICWD Role. The ICWD shall assist in implementation of the permanency plan ordered by the Comanche Nation Tribal Court.

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(g) Further Findings Required. In addition, the Comanche Nation Tribal Court shall enter written findings as follows:

(1) Whether the ICWD has made reasonable efforts to prevent removal of the child from parental care, and if removal could not have been prevented, whether the ICWD has made reasonable efforts to alleviate and eliminate the need for removal of the child from parental care. In support of its determination of whether or not reasonable efforts have been made by the ICWD, the Comanche Nation Tribal Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;

(2) If necessary, whether the ICWD has engaged in concurrent planning to develop an alternative permanency plan for the child in the event that the parent or legal custodian is unable to improve his circumstances sufficiently to retrieve custody of the child. The Comanche Nation Tribal Court shall state specifically what those concurrent planning efforts have been, and, in the event that concurrent planning was not developed, the reasons why such planning is not necessary.

(3) The Comanche Nation Tribal Court shall specify why permanency plans, other than the one selected, are not in the best interests of the child, and that this is the least restrictive placement for the child; and

(4) In all cases in which the Comanche Nation Tribal Court does not direct the filing of a petition to terminate parental rights, the Comanche Nation Tribal Court shall specify compelling reasons (as defined below) why termination of parental rights should not be sought, and would not be in the best interests of the child. Such findings shall be supported by the ICWD case plan and record.

(h) "Compelling Reasons" Defined. In determining whether compelling reasons exist for not terminating parental rights, the Comanche Nation Tribal Court shall consider, but not be limited to, the following:

- (1) Tribal custom and tradition;
- (2) Tribal policy, whether oral or written and whether by custom, resolution, or law, disfavoring or prohibiting termination of parental rights;
- (3) The relationship between the parent and child;
- (4) The relationship between the child and the Nation;
- (5) The best interests of the child, including, but not limited to, the health and safety of the child;
- (6) The special needs of the child;
- (7) The Nation's interest in maintaining the parent-child status, and the child's contact with the Nation; and
- (8) Any other relevant considerations.

(i) Permanency Plan Review Hearings. The Comanche Nation Tribal Court shall review and change as necessary the permanency plan of a child as follows:

(1) No Permanency Plan Review Hearing need be held for any child who has been adopted.

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(2) If the child is a ward of the Court in the custody of a legal custodian appointed by the Court, the legal custodian shall be responsible for submitting a report to the Comanche Nation Tribal Court on a yearly basis. If the Comanche Nation Tribal Court deems a Permanency Plan Review Hearing to be necessary, the said legal custodian is responsible for appearing at, and providing information for, the hearing.

(3) In all other cases in which the child remains a ward of the Court, the Comanche Nation Tribal Court shall hold a hearing at least once every six (6) months to review the Permanency Plan. The ICWD shall be responsible for submitting a report to the Comanche Nation Tribal Court prior to the hearing and is responsible for appearing at, and providing information for a permanency plan review hearing of the child's plan.

(4) The legal custodian shall be responsible for immediately notifying the Comanche Nation Tribal Court of any changes in the child's placement or any substantial changes in the permanency plan.

(j) Findings Required. At the permanency plan review hearing conducted by the Comanche Nation Tribal Court after the establishment of the permanency plan, the Nation Tribal Court shall determine:

- (1) The continued appropriateness of the placement and the permanency plan;
- (2) The extent of compliance with the permanency plan;
- (3) The adequacy of services provided to the child and custodian in the permanent placement; and
- (4) Whether other services are necessary to support the permanency plan, and if such services can be reasonably provided by the Comanche Nation Tribal Court or the ICWD.

### **Section 718. Custody With Authority to Consent to Adoption Following Termination.**

(a) Disposition Following Termination of Rights of One Parent. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Comanche Nation Tribal Court may:

- (1) Leave the child in the legal custody of the other parent and discharge the proceedings; or
- (2) Make any other disposition provided in this **chapter** that the Court finds appropriate.

(b) Placement with Authority to Consent to Adoption When No Parental Rights Remain. After parental rights of both living parents of a child or the sole living parent of a child have been terminated or after such parent or parents have relinquished parental rights, the Comanche Nation Tribal Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but the Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the living parents have been terminated or relinquished in accordance with the provisions of this Code.

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### **Section 719. Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship.**

(a) Review Hearing. The Comanche Nation Tribal Court, at the conclusion of a hearing following which it ordered the termination of a parent-child legal relationship, shall order that a review hearing be held not later than ninety days following the date of the termination. At such hearing, the agency or individual vested with custody of the child shall report to the Court what disposition of the child, if any, has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation, for the best disposition of the child.

(b) Long-term Foster Placement. If no adoption has taken place within a reasonable time and the Comanche Nation Tribal Court determines that adoption is not immediately feasible or appropriate, the Court may order that provision be made immediately for long-term foster placement of the child.

(c) Disposition Following Termination of Rights of One Parent. Upon the entry of a decree terminating the parent-child legal relationship of one parent, the Comanche Nation Tribal Court may:

(1) Leave the child in the legal custody of the other parent and discharge the proceedings; or

(2) Make any other disposition provided in this **chapter** that the Court finds appropriate.

(d) Placement with Authority to Consent to Adoption When No Parental Rights Remain. After parental rights of both living parents of a child or the sole living parent of a child have been terminated or after such parent or parents have relinquished parental rights, the Comanche Nation Tribal Court may award custody of the child to any qualified person or agency with authority to consent to the adoption of the child, or the Court, in its discretion, may reserve the authority to consent to the adoption of the child; but the Court cannot consent to or authorize any person or agency to consent to the adoption of a child unless the rights of the living parents have been terminated or relinquished in accordance with the provisions of this Code.

### **Section 720. Indian Custodian's and Grandparents' Rights.**

(a) Reasonable Visitation. No dispositional order or decree including termination of parental rights and adoption shall divest the child's Indian custodians or grandparents of their right to reasonable visitation with the child and their duty to provide instruction and training to the child regarding tribal customs and traditions.

(b) Enforcement of Rights. The rights and duties of the Indian custodians and grandparents may be enforced by court order whenever it appears in the child's best interest to do so, provided that all interested parties shall be given notice and an opportunity to be heard.

### **Section 721. Review Board. RESERVED.**

## CHAPTER EIGHT

### TERMINATION OF PARENTAL RIGHTS

#### **Section 801. Termination of Parental Rights: General.**

(a) Adjudication Not Grounds for Termination. The finding that a child is deprived or abused, in need of supervision or in need of treatment shall not deprive the parents of the child of their parental rights.

(b) Persons Authorized to Petition for Termination. The Prosecutor is authorized to petition the Comanche Nation Tribal Court to terminate the parental rights of a parent or the parents of the child for any of the grounds listed in **subsections (d) through (m)** of this section. A parent consenting to a step-parent adoption, legal custodian of a child or other person having legal custody of the child to be adopted may petition the Comanche Nation Tribal Court to terminate the parental rights of a parent or the parents of a child for any of the grounds listed in **subsections (c), (d) or (f)** of this section. A prior finding by a court that a child is abused, deprived or in need of supervision shall not be required for the filing of such petition by the parent or legal custodian.

(c) Termination Upon Relinquishment. The Comanche Nation Tribal Court may terminate parental rights upon a written relinquishment by a parent, including a parent who is a minor, given in accordance with **section 905** of this Code, who desires to terminate his parental rights; provided that the Court finds that such termination is in the best interests of the child.

(d) Abandonment as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that a parent who is entitled to custody of the child has abandoned the child as defined in **section 501(e)(2)** of this Code.

(e) Risk of Death or Serious Emotional or Physical Harm as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that:

- (1) The child is deprived or abused as defined in this Code; and
- (2) Such condition is caused by or contributed to by acts or omissions of his parent; and
- (3) The parent has failed to show that the condition which led to the removal of custody of the child from the parent has been corrected although the parent has been given three months to correct the condition; provided, that the parent shall be given notice of any hearing to determine if the condition has been corrected. The Comanche Nation Tribal Court may extend the time in which such parent may show the condition has been corrected, if, in the judgment of the Court, such extension of time would be in the best interest of the child. During the period that the parent has to correct the condition the Court may return the child to the custody of its parent or legal custodian, subject to any conditions which it may wish to impose or the Court may place the child with an individual or an agency; and
- (4) The Comanche Nation Tribal Court determines that continuation of the legal relationship between parent and child is likely to result in grave risk of death or serious emotional or physical injury to the child or that the conduct or condition

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of the parent or parents renders the parent or parents unable or unwilling to give the child reasonable parental care. The Court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The Court shall review and order, if necessary, an evaluation of the child's physical, mental, and emotional conditions. In determining potential risk of death or emotional or physical injury to the child, the Court shall consider, but not be limited to, the following factors:

- (i) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child pursuant to subsection (m) of this section;
- (ii) Conduct towards the child or sibling of the child of a physically or sexually abusive nature pursuant to subsection (i) of this section;
- (iii) History of violent behavior;
- (iv) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
- (v) Excessive use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
- (vi) The evidence of abuse or neglect of the child or siblings of the child by the parent;
- (vii) Reasonable efforts by childcare agencies which have been unable to rehabilitate the parent or parents.

(f) Failure to Contribute to Support as Grounds for Termination. The Comanche Nation Tribal Court may terminate parental rights upon a finding that a parent who does not have custody of the child has willfully failed to contribute to the support of the child as provided in a decree of divorce or in some other judicial or administrative child support order during the preceding year or, in the absence of such order, consistent with the parent's means and earning capacity.

(g) Criminal Convictions Unrelated to Death. The Comanche Nation Tribal Court may terminate parental rights upon a finding of a criminal conviction of lewd or indecent proposals or acts as to a child under the age of sixteen, child abuse, enabling child abuse, child neglect, enabling child neglect, child sexual abuse, enabling child sexual abuse, child exploitation, enabling child exploitation, permitting or consenting to participation of a minor in child pornography, or rape pursuant to state or federal law.

(h) Criminal Convictions Related to Death or Felonious Assault. The Comanche Nation Tribal Court may terminate parental rights upon a finding of a criminal conviction pursuant to state or federal law that the parent:

- (1) caused the death of a child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such child,
- (2) caused the death of a sibling of the child as a result of the physical or sexual abuse or chronic abuse or chronic neglect of such sibling,
- (3) committed the murder of any child or aided or abetted, attempted, conspired or solicited to commit murder of any child,
- (4) committed voluntary manslaughter of another child of the parent, or aided or

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abetted, attempted, conspired or solicited to commit voluntary manslaughter of another child of the parent, or

(5) committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent.

(i) Physical or Sexual Abuse; Failure to Protect. The Comanche Nation Tribal Court may terminate parental rights upon a finding in a child custody proceeding of one or more of the following:

(1) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse that is heinous or shocking to the Court,

(2) The child or sibling of such child has suffered severe harm or injury as a result of such physical or sexual abuse,

(3) The parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse subsequent to a previous finding that such parent has physically or sexually abused the child or a sibling of such child or failed to protect the child or a sibling of such child from physical or sexual abuse,

(4) The child has been adjudicated a deprived child as a result of a single incident of severe sexual abuse, severe neglect or the infliction of serious bodily injury or torture to the child, a sibling of the child, or a child within the household where the child resides, by the parent of the child, or

(5) The parent has inflicted chronic abuse, chronic neglect or torture on the child, a sibling of the child or another child within the household where the child resides.

(k) Child of Rape. The Comanche Nation Tribal Court may terminate parental rights upon a finding in a child custody proceeding that the child was conceived as a result of rape or an act which would constitute rape under the laws of the United States or the State of Oklahoma, no matter where such act was committed. This subsection shall apply only to the parent who committed the rape or act and whose child has been placed out of the home;

(l) Long-Term Incarceration as Grounds for Termination. If in the best interests of the child, the Comanche Nation Tribal Court may terminate parental rights to a child who has been adjudicated as abused, deprived, in need of treatment or in need of supervision and which has been placed outside of the home of a natural or adoptive parent, legal custodian or extended family member, if the parent whose rights are sought to be terminated has been sentenced to a period of incarceration and the continuation of parental rights would result in harm to the child based on consideration of the following factors, among others: the duration of incarceration and its detrimental effect on the parent/child relationship; any previous incarcerations; any history of criminal behavior, including crimes against children; the age of the child; the evidence of abuse or neglect of the child or siblings of the child by the parent; and the current relationship between the parent and the child and the manner in which the parent has exercised parental rights and duties in the past. Incarceration of a parent shall not in and of itself be sufficient to deprive a parent of his parental rights.

(m) Mental Illness or Deficiency as Grounds for Termination. If in the best interests of the child, the Comanche Nation Tribal Court may terminate parental rights to a child who has

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been adjudicated as an abused child, a deprived child, a child in need of treatment or a child in need of supervision and which has been placed outside of the home of a natural or adoptive parent, legal custodian or extended family member, if the parent whose rights are sought to be terminated has a mental illness or mental deficiency which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities; the continuation of parental rights would result in harm or threatened harm to the child; and the mental illness or mental deficiency of the parent is such that will not respond to treatment, therapy or medication and, based upon competent medical opinion, the condition will not substantially improve. A finding that a parent has a mental illness or mental deficiency shall not in and of itself deprive the parent of his parental rights.

### **Section 802. Termination of Parental Rights of Presumed, Acknowledged, Adjudicated, or Alleged Father of Child Born Out of Wedlock.**

(a) Termination of Parental Rights of Presumed, Acknowledged, Adjudicated, and Alleged Father of Child Born out of Wedlock. The Prosecutor, child's mother when relinquishing the child for adoption or consenting to a step-parent adoption or the legal custodian may petition for termination of the parental rights of a presumed, acknowledged, adjudicated or alleged father as defined in **section 15-111** of this Code of a child born out of wedlock, provided that the notice requirements of **section 803** are followed. The Comanche Nation Tribal Court shall terminate parental rights if such action is supported by the evidence pursuant to **subsection (c)** of this section.

(b) Oklahoma Putative Father Registry. The Comanche Nation Tribal Court, as necessary, shall order or request the Oklahoma Department of Human Services to provide the person or agency filing the petition with the name and address of any person on the registry who claims to be the father of the child.

(c) Court Decision. The Comanche Nation Tribal Court may make one of the following decisions after the hearing to terminate parental rights of a presumed, acknowledged, adjudicated or alleged father of a child born out of wedlock in accordance with the standard of proof set forth in **section 208** of this Code:

(1) The Court shall terminate the rights of a presumed, acknowledged, adjudicated or alleged father if he fails to appear at the hearing or has waived notice pursuant to **section 803(b)(2)(iii)** of this Code; or

(2) The Court may, if it is in the best interest of the child, accept a relinquishment or consent to adoption executed by the presumed, acknowledged, adjudicated or alleged father of the child; or

(3) The Court may, if it is in the best interest of the child, determine that the presumed, acknowledged, adjudicated or alleged father has failed to establish parental rights to the child and may terminate any parental rights which such presumed, acknowledged, adjudicated or alleged father may claim if:

(i) Prior to the hearing and having actual knowledge of the birth or impending birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including the failure to contribute

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to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

- (ii) At the hearing he fails to prove that he is the father of the child; or
- (iii) Having established paternity, he fails to prove that he has exercised parental rights and duties toward the child, unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child after having made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child.

(4) The Court may, if it is in the best interest of the child terminate the parental rights of the presumed, acknowledged, adjudicated or alleged father on grounds set forth in **section 801** of this Code; or

(5) The Court may, if it is in the best interest of the child grant custody of the child to the presumed, acknowledged, adjudicated or alleged father, if the court determines such person to be the father of the child.

### **Section 803. Notice of Hearing to Terminate Parental Rights.**

(a) General Requirements. A parent shall be given actual notice of any hearing to terminate his parental rights. The notice shall indicate the relief requested, and the hearing shall not be held until at least twenty (20) days after the receipt of such notice, except with the consent of the parent, if known. The notice shall be served in the same manner as a summons is required to be served pursuant to **section 609** of this Code. The hearing shall not be held for at least ten (10) days after the date of publication of the notice. Except as otherwise provided by **subsection (b)(2)(iii)** of this section, if a parent has not received actual notice of the hearing at which he is deprived of his parental rights, the order depriving him of those rights shall not become final for a period of six (6) months after the hearing. Nothing in this section shall prevent a court from immediately taking custody of a child and ordering whatever action may be necessary to protect his health or welfare.

(b) Special Notice Provisions for Presumed, Acknowledged, Adjudicated or Alleged Father of Child Born Out of Wedlock.

(1) Notice Requirements. The presumed, acknowledged, adjudicated or alleged father shall be entitled to notice and an opportunity to be heard pursuant to **subsection (a)** of this section. The notice shall also apprise the presumed, acknowledged, adjudicated or alleged father of his legal rights and shall include a clear statement that failure to appear at the hearing shall constitute a denial of interest in the child which denial may result, without further notice of this proceeding or any subsequent proceeding, in the termination of his parental rights and the transfer of the child's care, custody or guardianship or in the child's adoption.

(2) Exceptions to Notice Requirements. The following are exceptions to the notice requirements contained in **subsection (b)(1)** of this section:

- (i) The Comanche Nation Tribal Court may waive notice to a father whose identity is unknown to the mother of the child born out of wedlock if the mother of the child signs a sworn statement before the Court that the identity of the father of

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the child is unknown and the Court is satisfied, after inquiry into the matter, that his identity is unknown and with due diligence could not be determined; the willful and deliberate falsification of said sworn statement shall be perjury and shall, upon conviction, be punishable as otherwise provided by law. The waiver of notice by the Court pursuant to this paragraph shall not constitute grounds to challenge an adoption of the child.

- (ii) The Comanche Nation Tribal Court may waive notice when the identity of the presumed, acknowledged, adjudicated or alleged father of a child born out of wedlock is known but his whereabouts is unknown and the Court, after inquiry, is satisfied that after diligent search his whereabouts remains unknown. The Court may order that notice be given by publication as provided in **section 609** of this Code and a copy mailed to the last-known address, if known, of such presumed, acknowledged, adjudicated or alleged father. When notice is given by publication, the order terminating parental rights shall not become final for a period fifteen (15) days from the date of the order.
- (iii) A person may waive his right to notice under this subsection. Such waiver signed by such person shall include a statement affirming that the persons signing such waiver understands that said waiver shall constitute grounds for the termination of his parental rights pursuant to the provisions of this section and **section 801** of this Code.

**Section 804. Burden of Proof in Termination Proceedings.** A finding that the requirements for termination of parental rights have been met must be supported by evidence in accordance with the applicable standard of proof required by **section 208** of this Code.

### **Section 805. Appointment of Counsel.**

(a) **Parent's Right to Counsel; Appointment.** After a petition for termination of a parent-child legal relationship is filed pursuant to this chapter, the parent or parents shall be advised of the right to counsel, at their own expense. If the child or his parents or legal custodian requests an attorney and is found to be without sufficient financial means, counsel, to the extent funds are available or counsel is available at no fee, shall be appointed by the Comanche Nation Tribal Court in proceedings wherein the Nation is a party. The Court may appoint counsel without such request if it deems representation by counsel necessary to protect the interest of the child or other parties.

(b) **Child's Right to Counsel.** An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Additionally, said attorney shall be experienced, whenever possible, in matters involving child custody proceedings. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Comanche Nation Tribal Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

### **Section 806. Effect of Termination of Parental Rights**

(a) Effect of Decree. The termination of parental rights pursuant to this chapter terminates the parent-child relationship, including the parent's right to the custody of the child, the parent's right to visit the child, the parent's right to control the child's training and education, the parent's right to the earnings of the child, and the parent's right to inherit from or through the child. After termination the former parent is not entitled to any notice of proceedings for the adoption of the child by another, nor has he any right to object to the adoption or to otherwise participate in such proceedings, nor has he any standing to appear in any other legal proceeding concerning the child, with the exception of timely appeal; provided that:

(1) No termination of parental rights shall affect a child's enrollment status as a member of a tribe, or a child's degree of blood quantum, or a child's rights of inheritance under applicable law from biological parents who die intestate;

(2) A child's relationship with extended family members may be as allowed by the adoptive parents, or as ordered by the Comanche Nation Tribal Court if such relationship is determined to be in the best interests of the child; and

(3) The Comanche Nation Tribal Court may condition the order to permit continued contact between the child and his biological parents after termination, if the Comanche Nation Tribal Court determines it is in the best interests of the child and according to such terms and conditions as the Court may require.

(b) No Effect on Inheritance. Nothing in this section shall in any way affect the right of the child to inherit from the parent or disentitle a child to any benefit due him from any third person, including, but not limited to, any Indian Nation, any agency, any state, or the United States.

## CHAPTER NINE

### ADOPTIONS

**Section 901. Jurisdiction Over Adoptions.** The Comanche Nation Tribal Court shall possess jurisdiction over adoptions of children pursuant to the provisions of **sections 201 and 202** of this Code. The Comanche Nation Tribal Court may exercise jurisdiction over an adoption between two adults who submit to the jurisdiction of the Court regardless of residence or domicile pursuant to the provisions of **section 917**.

**Section 902. Purpose of Adoptions.** The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions pursuant to this Code shall be so recognized by every agency and level of the government except in eligibility for enrollment determinations which shall continue to be based upon biological parentage.

**Section 903. Types of Adoptions.** There shall be three types of adoptions recognized by the Comanche Nation, namely:

- (a) Statutory adoptions pursuant to **chapter 9** of this Code;
- (b) Statutory adoptions under the laws of some other tribe, State, or nation having jurisdiction over the parties and the subject matter; and
- (c) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Nation's common law.
- (d) Tribal Customary Adoptions pursuant to chapter 9-A of this Code, which do not include a termination of parental rights but do terminate all responsibilities of the biological parent(s), including child support obligations

**Section 904. Persons Eligible to Adopt by Statutory Process.** The following persons are eligible to adopt a child pursuant to statutory law, subject to the placement preferences of **section 403** of this Code:

- (a) A husband and wife jointly;
- (b) Either the husband or wife if the other spouse is a parent of the child;
- (c) An unmarried person who is at least twenty-one (21) years old; or
- (d) A married person who is legally separated from the other spouse and at least twenty-one (21) years old.

**Section 905. Relinquishment or Consent to Statutory Adoption.**

- (a) **Relinquishment.** Any parent or legal custodian may relinquish any rights he may

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have to the care, custody, and control of the child. A relinquishment shall be made by filing a petition in the Comanche Nation Tribal Court with notice to the ICWD, Prosecutor, Indian custodians, and the parents who are not petitioners. The petition may relinquish rights generally, in which case the Court shall assume jurisdiction over the child; or may relinquish rights specially to a particular person for adoption. A relinquishment shall be valid only if it meets the requirements of **subsections (c) and (d)**, and shall be subject to withdrawal only in accordance with **subsections (e) and (f)** of this section.

(b) Relinquishment or Consent Requirement. Adoption of a child may be decreed following relinquishment of parental rights or consent to such adoption only if such relinquishment or consent has been executed and filed in the Comanche Nation Tribal Court in accordance with the following requirements:

(1) Consent or relinquishment shall be given by both parents, if living, or the surviving parent, unless their parental rights have been terminated by judicial decree.

(2) A parent less than sixteen (16) years of age may give his consent or relinquishment only with the written consent of one of the minor parent's parents, legal guardian, or a guardian ad litem of the minor parent appointed by the Court.

(3) If both parents be deceased, or if their parental rights have been terminated by judicial decree, then one of the following may consent to the adoption: the Indian custodian having physical custody of said child for the preceding six (6) month period; the guardian ad litem of the child if authorized to exercise consent by court order; the executive head of an agency having custody of the child by judicial decree with the specific authority granted by the Court to consent to the adoption of the child; or any legal custodian having legal custody of a child by court order, provided that the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the adoption petition.

(c) Requirements Related to Validity of Consent or Relinquishment. Where any parent or Indian custodian voluntarily consents to an adoption or relinquishes parental rights, such consent or relinquishment shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(d) Consent Prior to Ten Days. Any consent or relinquishment given prior to or within ten days after the birth of a child shall not be valid.

(e) Withdrawal of Consent or Relinquishment Prior to Adoption Decree. Any consent given for adoption or relinquishment of parental rights to a child may be withdrawn at any time prior to the entry of a final decree of adoption or termination as the case may be and the child may be returned to the parent by order of the Comanche Nation Tribal Court.

(f) Withdrawal of Consent or Relinquishment Following Adoption Decree. After the entry of a final decree of adoption the parent may withdraw consent thereto or relinquishment of parental rights for purposes of the adoption upon the grounds that consent or relinquishment was obtained through fraud or duress and may petition the Comanche Nation Tribal Court to vacate such decree, provided that the adoption decree was entered no more than two years

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preceding the filing of the petition to vacate. Upon a finding that such consent or relinquishment was obtained through fraud or duress, the Comanche Nation Tribal Court shall vacate such decree and return the child to the parent.

(g) Duty of Support. A parent who consents to adoption or relinquishment of a child shall not be relieved of the duty to support the child until an adoption decree becomes final.

### **Section 906. When Consent or Relinquishment of Parents Unnecessary.**

(a) Termination Prior to Filing Adoption Petition. Adoption of a child may be decreed without parental consent or relinquishment of parental rights if the parent has had his parental or custodial rights terminated by a decree of a court of competent jurisdiction prior to the filing of the adoption petition. A certified copy of the termination order shall be attached to the petition.

(b) Termination Based on Abandonment or Failure to Provide Support. Adoption of a child may be decreed without parental consent or relinquishment if a consenting parent, legal guardian or person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding based on the grounds of abandonment set forth in **section 801(d)** or based on the grounds of failure to contribute to support as set forth in **section 801(f)**.

(c) Termination Based on Failure to Establish Parental Rights. Adoption of a child born out of wedlock may be decreed without consent of the alleged, presumed, acknowledged or adjudicated father when the mother who has custody of the child executes a relinquishment for the purpose of the adoption, and the person or agency to whom such relinquishment was made secures the termination of parental rights by filing a petition for the termination of the parental rights of the alleged, presumed, acknowledged or adjudicated father or father based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to **section 802** of this Code, unless such rights have been previously terminated or relinquished. Adoption of a child born out of wedlock may also be decreed without parental consent if a consenting parent, legal guardian or other person having legal custody of the child to be adopted secures termination of parental rights by filing a separate application for termination of parental rights in the adoption proceeding, based on the grounds of failure to establish parental rights to a child born out of wedlock pursuant to **section 802** of this Code.

(d) Requirements for Application for Termination of Parental Rights for Adoption Purposes. The application shall contain the name of the child to be adopted, the time, date, and place of the hearing, the grounds for the termination of parental rights, and notice that the adoption may be ordered if the parent or legal custodian does not appear at the hearing and show cause why his consent is necessary. The application and notice shall be served on the parent whose termination of rights is sought pursuant to **section 803** of this Code. The application shall be set for hearing at a date and time certain and shall be at least twenty-four hours prior to the hearing on the adoption.

**Section 907. Consent of Child.** Whenever a child is of sufficient maturity and understanding the Comanche Nation Tribal Court may, and in every case of a child over ten years of age the Court shall, require the consent of the child, expressed in such form as the Court

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shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview such child in private concerning the adoption prior to approving the child's consent.

### **Section 908. Petition.**

A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

(a) The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.

(b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.

(c) When and from whom the petitioners acquired or intend to acquire physical custody of the child.

(d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.

(e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.

(f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.

(g) A statement that the petitioners desire that the relationship of parent and child be established between them and the child, and that they agree to maintain ties with the Comanche Nation, and, if applicable, to comply with any signed agreement between them and the biological parents.

(h) A full description and statement of the value of all property owned or possessed by the child.

(i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.

(j) Any required consents to the adoption or termination order may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.

(k) The facts which bring the child within the jurisdiction of the Comanche Nation Tribal Court.

### **Section 909. Investigation.**

(a) Responsible Agency or Investigator. Upon the filing of a petition for adoption, the Comanche Nation Tribal Court shall order an investigation to be made:

(1) By the agency having legal custody of the child; or

(2) In other cases, by the State, Bureau of Indian Affairs, or ICWD; or

(3) By a person qualified by training or experience, designated by the Court.

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(b) Report Deadline. The Comanche Nation Tribal Court shall further order that a report of such investigation shall be filed with the Court by the designated investigator within the time fixed by the Court which shall be no more than sixty (60) days from the issuance of the order for investigation, unless time therefore is extended by the Court.

(c) Required Information. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child, including a background check in accordance with **section 401** of this Code; and any other circumstances and conditions which may have bearing on the adoption and of which the Comanche Nation Tribal Court should have knowledge; and in this entire matter of investigation, the Court is specifically authorized to exercise judicial knowledge.

(d) Separate Investigations. The Comanche Nation Tribal Court may order agencies named in **subsection (a)** of this section located in one or more jurisdictions to make separate investigations on separate parts of the inquiry, as may be appropriate.

(e) Recommendation Required. The report of such investigation shall become a part of the files in the case, and shall contain a definite recommendation for or against the proposed adoption and state reasons therefore.

(f) Investigation Reports Prepared Prior to Filing of Adoption Petition. In the event that a report made within the six months preceding the filing of the petition for adoption is filed with the Comanche Nation Tribal Court and is deemed adequate for the purpose by the Comanche Nation Tribal Court, the Court, in its discretion, may waive the making of an additional investigation and the filing of an additional report.

(g) Notice of Filing of Report; Notice. Upon the filing of the investigation report, the investigator shall serve written notice upon the petitioners that the report has been filed with the Comanche Nation Tribal Court, provided that the report shall remain confidential and the contents of the report shall not be divulged to the petitioners except upon the consent of the investigating officer and the Court, and except to the ICWD and the Prosecutor.

**Section 910. Adoption Hearing.** At any time after the written investigation report has been filed, the Comanche Nation Tribal Court, upon motion or request of the petitioners, or upon its own motion, shall fix a time for hearing the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption and who have not filed their written consents shall be duly notified and may appear or be represented by an attorney or by an unpaid personal representative at their request with the approval of the Court. The Judge shall examine all persons appearing separately, and if satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interest of the child will be promoted by the adoption, may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period of not more than six months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and suitable arrangements for the care of the child shall be made, which may include appointment of a legal custodian if necessary, and the Court may request the ICWD, Federal agencies, or other agencies to provide services to

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assist in the placement and the care of the child, or, in case of need, refer the matter to the ICWD and Prosecutor for the purpose of determining whether a petition seeking appropriate protection of the child should be filed.

**Section 911. Report and Final Decree of Adoption.** If the Comanche Nation Tribal Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child. In any case where the Court finds that the best interest of the child will not be served by the adoption, suitable arrangements for the care of the child shall be made, which may include appointment of a legal custodian if necessary, and the Court may request tribal agencies or federal agencies or other agencies authorized to provide services to assist in the placement and the care of the child.

**Section 912. Contents of Adoption Order.** The final order of adoption shall include such facts as are necessary to establish that the child is within the jurisdiction of the Court and eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings, the new name of the child, if any, a provision for extended family contacts, if appropriate, and for tribal contacts, and a statement that the relationship of parent and child exists between the petitioners and the child. If the adoption includes a signed agreement between the adoptive parents and the biological parents concerning the maintenance of a relationship between the adoptive parents, biological parents and the child as specified in the agreement, the Comanche Nation Tribal Court, upon finding that such agreement is in the child's best interests, shall incorporate the agreement into the adoption decree, and shall enter an order compelling compliance with the agreement and providing judicial review in the event of noncompliance.

### **Section 913. Effect of Final Decree of Statutory Adoption.**

(a) **Relationship Between Adopted Child and Adopted Family.** After a final decree of adoption is entered, the relationship of parent and child, and all the rights, duties, and other legal consequences of the natural relation of a child and parent shall thereafter exist between such adopted child, the adopting parents, and the kindred of the adopting parents. The adopted child shall inherit real and personal property from the adopting family and the adopting family shall inherit from the child in accordance with law as if such child were the natural child of the adopting parents.

(b) **Relationship Between Adopted Child and Parents Whose Rights Have Been Terminated.** After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided, that the child shall remain eligible to inherit from said natural

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parents, and retain all rights to membership in the Nation by virtue of his birth to said natural parents.

(c) Grandparent Visitation. Unless the Indian custodians and grandparents of a child have given their consent to the adoption of the child, or have had their custodial rights terminated in the same manner that a parent consents or has their rights terminated, the Comanche Nation Tribal Court, at any time within two years after the final decree of adoption or refusal of the adoptive parents to allow visitation, whichever is later, may, upon application of a natural Indian custodian or a natural grandparent, order reasonable visitation rights in favor of said person if the Court deems such visitation in the best interest of the child. The Court may enforce such visitation rights and make orders thereto at any time after timely filing of an application therefore. Notice of such application shall be served upon the adoptive parents as a summons is served.

(d) Preservation of Approved Parent/Adoptive Parent Agreements. Nothing in this section shall be interpreted as affecting any provisions of an approved agreement between the adoptive parents and the biological parents pursuant to **section 912** of this Code.

**Section 914. Records and Hearings Confidential**. Unless the Comanche Nation Tribal Court shall otherwise order:

(a) Closed Hearing. All hearings held in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than the interested parties, including Indian custodians, representatives of the ICWD when deemed necessary by the Court, persons whose presence is requested by the parties in private before the Court after the exclusion of all other persons, and the counsel for the parties, Indian custodians, and the ICWD.

(b) Preservation of Adoption Records; Confidentiality. All papers, records, and files pertaining to the adoption shall be kept as a permanent record of the Court and withheld from inspection. No person shall have access to such records except:

(1) Upon order of the Court for good cause shown.

(2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity in which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted prior to allowing the adopted person access to the records.

(3) The Indian custodians and natural grandparents shall have access to the records unless the natural parents have, by affidavit, requested anonymity, in which case, the names and identifying characteristics shall be deleted prior to allowing them access to the records as in the preceding paragraph. If the adopting parents request anonymity by affidavit, the Indian custodians and natural grandparents may have access to the records only by order of the Court for good cause shown, and then only if the Court deems such request in the best interest of the child.

(4) For the purpose of obtaining the enrollment of the child with another Indian Nation, the Court may upon request of an enrollment officer of that Nation, certify to that officer pertinent facts to enable that officer to determine the eligibility of the child for membership in

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that Nation subject to the written guarantee, with an undertaking if deemed necessary by the Court, that such facts will remain confidential and divulged only to those persons who must know the facts to obtain the enrollment of the child. In the alternative, and in cases where the natural or adoptive parents have, by affidavit, requested anonymity, the Court may certify a copy of the record of the case to a Judge of the Court of the other Nation for an in-camera review only, or allow such Judge to review the record in the Comanche Nation Tribal Court, in camera, for the purpose of said Judge certifying to his Nation that the child is eligible for membership in that Nation.

### **Section 915. Certificates of Adoption.**

(a) **Certificate of Adoption Decree.** For each adoption or annulment of adoption, the Comanche Nation Tribal Court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.

(b) **Delivery to Registrar of Vital Statistics.** Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.

**Section 916. Foreign Decree.** When the relationship of parent and child has been created by a decree of adoption of any court of competent jurisdiction of any other nation, or its political subdivisions having authority to enter such decrees, the rights and obligations of the parties as to matters within the jurisdiction of this Nation shall be determined.

### **Section 917. Adoption of Adults.**

(a) **Procedure; Effect.** An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his legal custodian, if the Comanche Nation Tribal Court shall approve, and with the consent of the spouse of the adopting parent, if any, filed in writing with the Court. The consent of the adopted adult's parents shall not be necessary unless said adult has been adjudicated incompetent, nor shall an investigation be made. Such adoption shall follow the procedure otherwise set forth in this chapter. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing in open Court. Unless so requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

(b) **Open Record.** Proceedings and records relating to the adoption of an adult shall be open to the public as are the records of other civil cases.

## CHAPTER 9-A

### TRIBAL CUSTOMARY ADOPTIONS

#### **Section 9A-01. Authority.**

The Comanche Nation, in the exercise of its sovereign authority, hereby establishes the procedures under which the Comanche Nation Tribal Court, as a matter of tribal law, shall have jurisdiction to review and authorize Tribal Customary Adoptions.

#### **Section 9A-02. Purpose.**

This Chapter confirms the authority of the Comanche Nation Tribal Court as the Tribal entity with authority to hear, affirm, and take other necessary actions concerning Tribal Customary Adoptions that may be undertaken by and through child welfare cases subject to state court jurisdiction and to which state Tribal Customary Adoption statutes are applied.

#### **Section 9A-03. Definitions.**

- (a) Unless the context otherwise requires, as used in this Chapter the following terms shall be defined as follows:
  - (1) **Tribal Customary Adoption.** “Tribal Customary Adoptions” are adoptions which do not include a termination of parental rights but do terminate all responsibilities of the biological parent(s), including child support obligations.
  - (2) **Tribal Customary Adoption Order.** “Tribal Customary Adoption Order” means a written order of the Comanche Nation Tribal Court issued pursuant to this chapter which: (i) establishes the adoptive parent-child relationship; (ii) sets forth the rights and responsibilities of the adoptive parent(s) and biological parent(s); and (iii) address the matters required under Section 10 of this Chapter.

#### **Section 9A-04. Power of the Courts.**

The Comanche Nation Tribal Court shall have, in addition to the powers which are inherent to the Court and the powers delegated by and through other tribal resolutions, laws and directives from the Business Committee, the power to review the Record of any and all state court child welfare cases the subject of which is a member of the Comanche Nation and for which a Petition for Tribal Customary Adoption has been filed with the Court. This power shall include but not be limited to the noticing and convening of hearings regarding same, issuance of orders, collecting and weighing evidence, compelling testimony consistent with the Comanche Nation Courts Code, Rules of Civil Procedure, and all applicable powers in this Code.

#### **Section 9A-05. Persons Eligible to Adopt by Tribal Customary Adoption.**

A Petition for Customary Adoption under this Code may be filed persons eligible under **section 908** of this Code.

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### **Section 9A-06. Petition for Customary Adoption.**

A Petition for Customary Adoption shall be filed in duplicate, verified by the petitioners, and shall specifically state:

- (a) The full names, ages, and places of residence of the petitioners, and, if married, the place and date of their marriage.
- (b) Their relationship with the child, if any, and their tribal affiliation by blood and membership, if any.
- (c) When and from whom the petitioners acquired or intend to acquire physical custody of the child.
- (d) The names of the child's biological parents and their tribal affiliation by blood and membership, including tribal roll numbers, if known.
- (e) The date and place of birth of the child including the jurisdiction issuing the birth certificate for said child, the child's sex, race, and tribal affiliation by blood and membership, including tribal roll number, if known.
- (f) The name used for the child in the proceeding, and, if a change in name is desired, the new name.
- (g) A statement that the petitioners desire that the relationship of parent and child be established between them and the child, and that they agree to maintain ties with the Comanche Nation, and, if applicable, to comply with any signed agreement between them and the biological parents.
- (h) A full description and statement of the value of all property owned or possessed by the child.
  - (i) The facts, if any, which excuse the consent of the parents or either of them to the adoption.
  - (j) Any required consents to the adoption or termination order may be attached to the petition, or filed with the Court prior to entry of a decree of adoption.
  - (k) The facts which bring the child within the jurisdiction of the Comanche Nation Tribal Court.
  - (l) A statement or a copy of the final order suspending the parental rights of the biological parent(s), if applicable;
  - (m) A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the Comanche Nation;
  - (n) A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

### **Section 9A-07. Investigation.**

Upon the filing of a Petition for Adoption, the Comanche Nation Tribal Court shall order an

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investigation in accordance with **section 909** of this Code.

### **Section 9A-08. Hearings.**

The presence of the petitioners and the child, if the child is twelve (12) years of age or older, shall be required unless the Court orders otherwise. The Court shall determine from the investigation required by **section 07** of this Code whether the petitioners are suitable adoptive parents. The Court may question the child concerning their feelings about the adoption, and ascertain if the child's consent, when required, is voluntary. If the Court determines that granting the petition is in the child's best interest, it shall so order.

### **Section 9A-09. Issuance of Tribal Customary Adoption Orders.**

The Court shall undertake to review a Petition for Tribal Customary Adoption as expeditiously as possible and to comply with applicable tribal and state statutory timelines for review and finalization of Tribal Customary Adoption Orders. When necessary, the Court shall give priority to hearings and actions required for the finalization of Tribal Customary Adoption Orders prior to statutory deadlines.

### **Section 9A-10. Tribal Customary Adoption Order Requirements.**

- (a) Upon the determination by the Court that a Tribal Customary Adoption is in the best interest of a child, the Court shall enter a Tribal Customary Adoption Order. The Order shall address the following:
  - (1) That the child is eligible and suitable for adoption and that the adoptive parents (or protective parents) are capable of providing proper care for the child;
  - (2) Right and liabilities of the natural parents (including inheritance and enrollment);
  - (3) Visitation, if any, of the parties or others;
  - (4) Cultural and Tribal connections that will be preserved under the adoption;
  - (5) Where the adoption includes a signed agreement between the adoptive parent(s) (or protective parent) and the biological parent(s), the Court shall incorporate the agreement into its Order to provide judicial review in the event of noncompliance;
  - (6) That the Court will facilitate the change of the child's last name to that of the adoptive parent (or the protective parent) if it finds that it is in the best interest of the minor to change the last name. The Court will take into consideration the preference of the minor, if appropriate, in determining whether to change the child's last name;
  - (7) That the child is entitled to the same rights as a biological child of the adoptive parents (or the protective parent);
  - (8) That the adoptive parents (or protective parent(s)) have no authority to relinquish the child's membership in the Comanche Nation;

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- (9) The effective date of the Tribal Customary Adoption Order; and
- (10) That the Tribal Customary Adoption Order will be provided by the Court to the required state agencies.

### **Section 9A-11. Emergency Powers of the Business Committee**

In the event the Court will be unable to timely adopt a Tribal Customary Adoption Order necessary to serve the best interest of a child or children, the Business Committee shall have the power to adopt said Order on an emergency basis. Any such Order shall be transmitted to the Court for filing, and, when appropriate, further judicial action consistent with this Chapter.

### **Section 9A-12. No Prohibition or Amendment to Other Codes**

Nothing herein shall be construed as having the effect of reversing, barring or discouraging other types of permanency planning or permanent plans for a Comanche child, whether tribal or state law or through custom and tradition. This chapter shall apply specifically to those cases where the Nation has identified Tribal Customary Adoption by and through the state courts as the preferred plan for the subject Comanche child.

### **Section 9A-13. Construction and Severability**

(a) This Chapter shall be liberally construed to protect the best interests of Comanche children, preserve tribal cultural connections, and promote Tribal sovereignty in child welfare matters.

If any provision of this Chapter is held invalid by the Comanche Nation Tribal Court, the remaining provisions shall remain in full force and effect.

## CHAPTER TEN

### GUARDIANSHIPS

#### **Section 1001. Purpose**

(a) General Procedure. The Comanche Nation Tribal Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of either children under the Court's jurisdiction or incompetents who have no guardian legally appointed by will or deed. Such appointment may be made on the petitioner, an extended family member or other person on behalf of the child or incompetent, or a petition of a child if at least fourteen (14) years of age. Before making such an appointment, the Comanche Nation Tribal Court shall cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other extended family members of the child as the Court may deem proper, and in cases of adult incompetents, the Court may cause notice to be given to the incompetent at least five (5) working days before hearing the petition.

(b) Nomination of Guardian. If a child is under the age of fourteen (14) years, the Comanche Nation Tribal Court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the Comanche Nation Tribal Court, shall be appointed accordingly. If the guardian nominated by the child is not approved by the Comanche Nation Tribal Court, or if the child resides outside of the reservation, or if, after being duly cited by the Comanche Nation Tribal Court, he neglects for ten (10) days to nominate a suitable person, the Comanche Nation Tribal Court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years. When a guardian has been appointed by the Comanche Nation Tribal Court for a child under the age of fourteen (14) years, the child at any time after he attains that age, may nominate his own guardian, subject to the approval of the Comanche Nation Tribal Court.

(c) Duties and Authority of Guardian. A guardian appointed may as specified by the Comanche Nation Tribal Court have the custody and care of the education of the child and the care and management of his property until such child arrives at the age of eighteen (18), marries, is emancipated by the Comanche Nation Tribal Court under **chapter 11** of this Code, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the Comanche Nation Tribal Court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's Individual Indian Money Account or other similar account. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

(d) Payments. The Comanche Nation Tribal Court may order that the Court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this Code, provided sufficient funds have been appropriated by the Business Committee. Said disbursements shall be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by applicable law or regulation.

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**Section 1002. Types Of Guardianship.** The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary and permanent guardianship.

**Section 1003. Guardianship Of Property.** The Comanche Nation Tribal Court may appoint a guardian of the property of the child or incompetent person under such terms and conditions as the Court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or if adjudged to be delinquent or in need of supervision until the child reaches twenty-one (21) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

**Section 1004. Permanent Guardianship.** The Comanche Nation Tribal Court may appoint a permanent guardian for the child under such terms and conditions as the Court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parent. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

**Section 1005. Temporary or Special Guardianship.** The Comanche Nation Tribal Court may appoint a temporary or special guardian under such terms and conditions as the Court sets forth in the written Order. A temporary or special guardianship may be terminated if the Comanche Nation Tribal Court determines that it is in the best interest of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

**Section 1006. Who May File Guardianship Petition.** Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

### **Section 1007. Contents Of Guardianship Petition.**

(a) **Contents.** The petition for guardianship shall include the following, to the best information and belief of the petitioner.

- (1) The full name, address and tribal affiliation, if any, of the petitioner;
- (2) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;

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- (3) The basis for the Comanche Nation Tribal Court's jurisdiction;
- (4) The relationship of the proposed guardian to the proposed ward;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (6) The type of guardianship requested;
- (7) In the case of alleged incompetent persons, the grounds for incompetency; and
- (8) A full description and statement of value of all property in which the proposed ward has an interest (if guardianship of property is requested).

(b) Execution. All petitions shall be signed and dated by the petitioners, and shall be notarized or witnessed by a notary public or the Court Clerk/Court Administrator.

(c) Form. The Comanche Nation Tribal Court will adopt a form for the guardianship petition but will allow usage of other formats which meet the requirements of this **section**.

### **Section 1008. Guardianship Report.**

(a) Investigation. Upon the filing of a guardianship petition, the Comanche Nation Tribal Court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the Comanche Nation Tribal Court in determining the best interests of the proposed ward, including a background check in accordance with **section 401(a)** of this Code.

(b) Submission. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Comanche Nation Tribal Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports as it deems necessary.

### **Section 1009. Management of Property**

(a) Bond. In the event that any guardian shall receive any money or funds of any child or incompetent person during his term of office as guardian, before taking and receiving into custody such money or funds, the Comanche Nation Tribal Court shall require of such a person a bond with sufficient surety to be approved by the Court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:

(1) To make an inventory of all estate of his ward that comes into his possession or knowledge and to return the same within such time as the Court may order, and;

(2) To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to care, custody and education of the ward, and;

(3) To render an account on oath of the property, estate and money of the ward in his hands and all the proceeds or interests derived therefore, and of the management and disposition

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of the same, within three (3) months after his appointment, and at such other times as the Comanche Nation Tribal Court directs, and at the expiration of his trust, to settle his accounts with the Court or Judge or with the ward if he be of full age, or his legal representative and to pay over and deliver all the estate, monies and effects remaining in his hands, or due from him on such settlement to the person who is legally entitled thereto.

(b) Use of Child's Funds. The funds of any child or incompetent shall be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such a manner as can reasonably be afforded according to the income and estate of said ward. If determined to be appropriate by the Comanche Nation Tribal Court, the written order may set forth that the child's property may not be used for the child's care, but rather to be managed for the child until the child reaches the age of eighteen (18) years, or is emancipated by the Court.

### **Section 1010. Incompetent Persons.**

(a) Requirements for Appointment. In cases of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that any person is incompetent as defined in this Code, it appears to the Comanche Nation Tribal Court that the person in question is not capable of taking care of himself and of managing his property, the Court shall appoint a guardian as before specified within the powers and duties specified in this chapter.

(b) Duties of Guardian; Bond. Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of his ward and the management of his estate until such guardian is legally discharged, he shall give bond to such ward in like manner and with like conditions as before specified with respect to the guardianship of a child.

(c) Restoration to Capacity. A person who has been declared insane or incompetent or the guardian, or any extended family member of such person, may apply by petition to the Comanche Nation Tribal Court in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent. The Comanche Nation Tribal Court shall require notice to be given of a hearing upon said petition at some date after said petition has been filed, and at the hearing upon said petition, witnesses shall be examined and a determination made by the Comanche Nation Tribal Court as to whether the petition should be granted and the insane or incompetent person be declared of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

## CHAPTER ELEVEN

### EMANCIPATION

**Section 1101. Emancipation Requirements.** The Comanche Nation Tribal Court may declare a child emancipated either pursuant to a petition or as a dispositional alternative if the child wishes to be free from parental control and protection and no longer needs that control and protection, and all of the following exist:

- a. The child is sixteen (16) years of age or older;
- b. Is self-supporting;
- c. Understands the consequences of being free from parental control and protection; and
- d. Has an acceptable plan for independent living.

**Section 1102. Procedure for Emancipation.**

(a) **Petition.** A minor may petition the Comanche Nation Tribal Court for a declaration of full or partial emancipation. The petition shall be verified and shall state specific facts which will support a declaration of emancipation.

(b) **Notice.** Before the petition is heard, notice shall be given to the minor's parents or legal custodian as required by this law.

(c) **Findings.** If the Comanche Nation Tribal Court finds that the requirements of **section 901** are met, the Nation Tribal Court may grant all or part of the petition, unless, after having considered all of the evidence, it finds that emancipation would not be in the best interests of the child.

(d) **Declaration.** If the Comanche Nation Tribal Court grants all or part of the petition, it shall immediately issue a declaration of emancipation.

(e) **Purpose for Emancipation.** An emancipated minor shall be considered an adult over the age of eighteen (18) for all purposes. The emancipated minor shall remain subject to Comanche Nation laws and rules governing the disbursement of tribal monetary benefits.

## CHAPTER TWELVE

### PATERNITY ESTABLISHMENT

**Section 1201. Purpose and Guidelines; Judicial and CNCSP Administrative Proceedings.** This chapter governs the establishment of paternity, including the establishment of paternity in judicial proceedings before the Comanche Nation Tribal Court and Comanche Nation Child Support Program ("CNCSP") administrative proceedings conducted in accordance with this chapter and chapter 15 of this Code. This chapter is generally based on the guidelines of the Uniform Parentage Act to establish paternity through a presumption of paternity, voluntary acknowledgment of paternity and genetic tests. If this chapter is silent on an issue before the Comanche Nation Tribal Court or before the CNCSP in CNCSP administrative proceedings, the Court or CNCSP may use, but is not bound to use, the guidelines established by the Uniform Parentage Act, or may consider relevant state law.

#### **Section 1202. Definitions.**

(a) Unless the context otherwise requires, as used in this chapter the following terms shall be defined as set forth below:

(1) **Acknowledged Father.** "Acknowledged Father" means a man who has established paternity by signing and having notarized an acknowledgment of paternity or who has established a father/child relationship for a period of at least two years.

(2) **Adjudicated Father.** "Adjudicated Father" means a man, who has been adjudicated by a court of competent jurisdiction to be the father of a child.

(3) **Administrative Procedure.** "Administrative Procedure" means a method by which support orders are made and enforced by an administrative authority established by tribal or state law, rather than by courts and judges.

(4) **Alleged Father.** "Alleged Father" means any of the following men alleged to be the genetic father or a possible genetic father of a child, but whose paternity has not been determined: a man who alleges himself to be the genetic father, or a man who has been identified as the child's father by the mother in a sworn statement. The term does not include a presumed father, a man whose parental rights have been terminated or declared not to exist, or a male donor.

(5) **Child.** "Child" means an individual of any age whose paternity may be established in accordance with this chapter or who is entitled to child support under chapter 15 of this Code. A minor child means such an individual who is younger than eighteen years of age.

(6) **Child Support.** "Child Support" means the financial support paid by a parent to help support a child or children of whom they do not have custody. Child support can be entered into voluntarily or ordered through Court or administrative action depending on tribal or state laws, including **chapter 15** of this Code.

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(7) Child Support Order and Child Support Obligation. "Child Support Order and Child Support Obligation" means - a judgment, decree or order, whether temporary, final or subject to modification, issued through court or administrative action for the support and maintenance of a child. Support orders can provide for monetary support, medical and dental insurance, moorages, or reimbursement of costs and fees, interest and penalties, income withholding, and other forms of relief

(8) "Child Support and Related Proceedings." "Child support and Related Proceedings," means Nation Tribal Court judicial proceedings or CNCSP administrative proceedings for the establishment of paternity for purposes of child support and/or for the establishment, modification, enforcement, and termination of child support orders, and such other related actions and proceedings as authorized by **chapter 15** of this code and as authorized by this chapter.

(9) CNCSP. "CNCSP" means the Comanche Nation Child Support Program:

(10) CNCSP Administrative Proceedings. "CNCSP administrative proceedings" means administrative child support and related proceedings conducted by the Comanche Nation Child Support Program.

(11) Genetic Testing. "Genetic Testing" means an analysis of genetic markers to exclude or identify a man as a father or a Woman as the mother of the child. The term includes an analysis of one or a combination of the following: deoxyribonucleic acid and blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(12) Mother. "Mother" means a woman who gives birth to a child and is the biological mother of the child, unless otherwise expressly provided by law.

(13) Paternity. "Paternity" means the legal determination of fatherhood.

(14) Presumed Father. "Presumed Father" means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(15) Signatory. "Signatory" means an individual who authenticates a record and is bound by its terms.

### **Section 1203. No Discrimination Based on Marital Status; Liability to Support and**

**Educate Child.** A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other. An individual who is the acknowledged father under § 1205, who is the presumed father under § 1204(a), or who has been otherwise legally, judicially or administratively determined to be the father of a child pursuant to this chapter shall be liable for the support and education of the child to the same extent as the mother and a father of a child born in wedlock.

### **Section 1204. Rebuttable Presumption of Paternity.**

(a) Circumstances Establishing Presumption. A man shall be presumed to be the father of a child if:

(1) He and the mother of the child are married to each other and the child was born during the marriage;

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(2) He and the mother of the child were married to each other and the child was born within three hundred (300) days after the marriage was terminated by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by a court of competent jurisdiction;

(3) Before the child's birth, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage was or could be declared invalid, and the child was born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation entered by a court of competent jurisdiction; and

(4) After the child's birth, he and the mother of the child married each other in apparent compliance with law, and:

(i) he voluntarily asserted his paternity of the child and the assertion is on record filed with the state agency maintaining birth records;

(ii) he consented to have his name as the father on the child's birth certificate or he promised in a record to support the child as his own; or

(iii) for the first two (2) years of the child's life, he resided in the same household with the child and represented to others that the child was his own.

(b) Rebuttal of Presumption. The presumptions of paternity set forth in subsection (a) may be rebutted by the following actions:

(1) The execution and notarization of a denial of paternity affidavit by the presumed father, and the filing of paternity acknowledgment forms by the mother and another alleged father acknowledging that alleged father's identity as the father;

(2) Proof of non-paternity by genetic testing; and/or

(3) Issuance of an order finding non-paternity in a judicial or administrative proceeding.

### **Section 1205. Voluntary Acknowledgement of Paternity: Rescission.**

(a) Joint Acknowledgment. The mother of a child and a man claiming to be the biological father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity. The voluntary acknowledgment of paternity shall be notarized.

(b) Filing with State Agency. A valid acknowledgment of paternity signed and filed with state agency maintaining birth records shall be equivalent to an adjudication of paternity of a child.

(c) Rescission; Timing. A signatory may rescind an acknowledgment of paternity before the earlier of sixty (60) days from the date of the acknowledgment or from the date of the first hearing in a judicial or administrative proceeding to which the signatory is a party and involving an issue relating to the child, including a proceeding that establishes support. Notwithstanding the foregoing, a signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days after reaching the age of eighteen.

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(d) Challenge After Expiration of Period for Rescission. After the period for rescission under this section has expired, a signatory of a valid acknowledgment of paternity may commence a proceeding to challenge the paternity of the acknowledged father within three (3) years after the acknowledgment was filed with the state agency maintaining the birth record, but only on the basis of fraud, duress, or material mistake of fact. Such party shall have the burden of proof to establish non-paternity.

### **Section 1206. Special Provisions Related to Cases in which CNCSP Seeks Determination of Paternity for Purposes of Establishment of Child Support Obligations.**

(a) Applicability of Section. This section shall apply to cases in which CNCSP seeks a judicial or administrative determination of paternity for the sole purpose of establishing obligations for payment of child support; provided that all CNCSP administrative proceedings shall be conducted in accordance with the following requirements:

(1) CNCSP shall conduct such proceedings in accordance with the requirements of this chapter and chapter 15 of this Code;

(2) In the event that a party makes a timely request for transfer of the CNCSP administrative proceedings to the Comanche Nation Tribal Court in accordance with section 15-107 of this Code, the proceedings shall be transferred to the Nation Tribal Court; and

(3) All CNCSP final paternity orders shall be subject to review and approval of the Nation Tribal Court and shall be filed with the Court Clerk/Court Administrator.

(b) Applicability of Tribal Law, Code, and/or Custom. In all cases described in subsection (a), CNCSP shall use the process established under this chapter and chapter 15 of the Comanche Children's Code. The Nation Tribal Court and CNCSP shall also consider Comanche tribal custom governing establishment of paternity if such custom is clearly established by expert witness testimony in judicial or CNCSP administrative proceedings for determination of paternity. (See 45 C.F.C. § 309.100).

(c) Opportunity to Voluntarily Acknowledge Paternity. In all cases described in subsection (a), CNSP shall provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 1205. In all such cases, the CNCSP shall provide the mother and alleged father written materials about paternity establishment, a written notice and oral notice which may be made through the use of video or audio equipment, of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity, and an opportunity to speak with staff, either by telephone or in person, who shall be trained to clarify information and answer questions about paternity establishment. The CNCSP shall also provide the forms for the voluntary acknowledgment of paternity in accordance with federal and Comanche laws.

(d) Genetic Testing. In all cases described in subsection (a) and involving contested paternity (unless otherwise barred by tribal law), the child and all other parties shall be required to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement as described in section 1209(a) of this Code. When genetic testing is used to establish paternity, the CNCSP must identify and use accredited laboratories which perform, at reasonable cost, legally and medically accepted genetic tests which intend to identify the father

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or exclude the alleged father. Such genetic testing shall meet the requirements of § 1210 of this chapter.

(e) Exceptions to Establishment. The CNCSP need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the CNCSP, it would not be in the best interest of the child to establish paternity.

(f) No Effect on Tribal Membership. Establishment of paternity under this section shall have no effect on tribal enrollment or membership.

**Section 1207. Full Faith and Credit.** The Comanche Nation Tribal Court and CNCSP in CNCSP administrative proceedings shall give full faith and credit to a valid acknowledgment of paternity in another tribe or state if the acknowledgment has been signed and is otherwise in compliance with any applicable federal law or any applicable law of the other state or tribe. The Nation Tribal Court shall give full faith and credit to a valid determination of paternity issued by a court or administrative agency of competent jurisdiction in another tribe or state if it is in compliance with any applicable federal law or any applicable law of the other state or tribe.

### **Section 1208. Proceedings to Determine Paternity: Jurisdiction: Procedures: Record.**

(a) Jurisdiction. The Comanche Nation Tribal Court in judicial proceedings and the CNCSP in CNCSP administrative proceedings shall have jurisdiction to determine the paternity of a child involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

(1) The individual is an Indian or a non-Indian who resides within Indian country as defined by section 107(o) of this Code;

(2) The individual is personally served with summons within such Indian country;

(3) The individual resided with the child in such Indian country;

(4) The individual resided in such Indian country and provided prenatal expenses or support for the child;

(5) The child resides in such Indian country as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in such Indian country and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage in the putative father registry maintained in the State of Oklahoma by the appropriate agency;

(8) The individual is a member of the Comanche Nation of Oklahoma or the child is a member or is eligible for membership in the Comanche Nation;

(9) The individual submits to the jurisdiction of the Nation Tribal Court or CNCSP by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or

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(10) There is any other basis consistent with the Constitutions of the Comanche Nation, the United States, or the State of Oklahoma for the exercise of personal jurisdiction.

(b) Personal Jurisdiction Over All Interested Parties Not Required. Lack of personal jurisdiction over a child and the custodial parent does not preclude the Nation Tribal Court or the CNCSP in CNCSP administrative proceedings from making a child support order binding on the noncustodial parent who is subject to the child support order.

(c) Governing Law. The proceeding shall be governed by this Code and by all applicable Comanche Nation Tribal Court Rules.

(d) Persons and Entities Authorized to Seek Paternity. Any one or more of the following persons or entities may file an action to adjudicate paternity:

(1) a child;

(2) the mother of a child;

(3) a man whose paternity of the child is to be adjudicated;

(4) the CNCSP; and/or

(5) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

(e) Notice; Service. After the paternity petition is filed, the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall issue notice of a hearing to all interested parties, including the alleged father. Notice shall be served in accordance with the requirements for service of summons set forth in section 609(b) and (c) of this Code. When a person who is subject to the jurisdiction of the Comanche Nation Tribal Court is outside Indian country, the person may also be served by any method that is authorized by the law of the jurisdiction where he is served.

(f) Joiner of Parties. The mother of the child and the alleged father shall be joined as parties to adjudicate paternity.

(g) Admission of Paternity Authorized. A respondent in a proceeding to establish paternity may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(h) No Jury. The Nation Tribal Court or CNCSP, without a jury, shall adjudicate the paternity of a child.

(i) Genetic Testing. If the alleged father fails to appear, the Comanche Nation Tribal Court or CNCSP may issue an order for genetic testing in accordance with section 1209 and continue the hearing pending such testing. If the alleged father appears and does not admit paternity, then the Comanche Nation Tribal Court or CNCSP may enter an order directing genetic testing to determine paternity. The conduct and use of genetic testing shall be governed by this section and sections 1209 through 1216 of this chapter.

(j) Determination of Paternity. The Comanche Nation Tribal Court or CNCSP shall make a determination consistent with the genetic testing results. If it is not possible to complete genetic testing or the genetic testing results are indeterminate, the Comanche Nation Tribal Court or CNCSP shall make a determination consistent with all relevant evidence before the

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Court or CNCSP, based on a preponderance of the evidence. Any such determination by CNCSP shall be subject to review and approval by the Comanche Nation Tribal Court in accordance with chapter 15 of this Code.

(k) Default Order. If after proper notice and service, an alleged father fails to appear at a court hearing or administrative child support conference to establish paternity, the Nation Tribal Court or CNCSP may hold the alleged father in default and adjudicate him to be the father of the child, based on all relevant evidence before the Court or CNCSP; provided that prior to such adjudication, any other alleged father has been excluded from paternity through genetic testing or other relevant evidence. Any such default order shall describe the manner of service of notice and include a finding that it complied with the requirements of section 609 (b) and (c) of this Code. Any such default order issued by CNCSP shall be subject to review and approval by the Comanche Nation Tribal Court in accordance with chapter 15 of this Code.

(l) Confidential Proceedings. A paternity hearing shall be closed to the public unless all parties agree otherwise.

(m) Timing. A proceeding to adjudicate the paternity of a child having no presumed father, acknowledged father, adjudicated father, or adoptive father may be commenced at any time, even after:

- (1) The child becomes an adult, but only if the child initiates the proceeding; or
- (2) An earlier proceeding to adjudicate paternity has been dismissed based upon the application of a statute of limitation then in effect.

(n) Final Order Public; Other Records Confidential. Only the final order in a paternity proceeding shall be available for public inspection. All other papers and records are private and confidential and available only with the consent of all affected parties or an order of the Nation Tribal Court for good cause.

### **Section 1209. Order for Genetic Testing.**

(a) Sworn Statement Required. Except as otherwise provided, the Nation Tribal Court or CNCSP may order the child and other designated individuals to submit to genetic testing if a party requests a genetic test and/or if an alleged father denies paternity. The request for testing is supported by a sworn statement by a party to the proceeding:

- (1) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or
- (2) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) Limitation. Genetic testing shall not be required to establish paternity of an adjudicated father or adoptive father. Testing shall not be required to establish paternity of a presumed or acknowledged father unless paternity of such person is contested in Nation Tribal Court or CNCSP administrative proceedings by such presumed or acknowledged father, the mother, or another person claiming paternity.

(c) Objections. Any traditional and customary objections to genetic testing shall not be a basis for refusal to undergo such testing to establish paternity.

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(d) Rescheduling Test; Court Hearing. An alleged father may reschedule a genetic test once. If an alleged father misses a second scheduled genetic test, the CNCSP shall schedule a hearing before the Nation Tribal Court.

### **Section 1210. Requirements for Genetic Testing; Report.**

(a) Testing Qualifications. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed by an accredited genetic testing laboratory that performs, at reasonable cost, legally and medically accepted genetic tests which intend to identify the father or exclude the alleged father.

(b) Specimens. A specimen used in genetic testing may consist of one or more samples, or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(c) Signature on Report. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing lab.

(d) Self-Authenticated Report. A report shall be self-authenticating if it has:

- (1) the names and photographs of the individuals whose specimens have been taken;
- (2) the names of the individuals who collected the specimen, and the place and dates the specimens were collected;
- (3) the names of the individuals who received the specimens in the testing laboratory, and
- (4) the date the specimens were received.

### **Section 1211. Genetic Testing Results.**

(a) Probability Percentage; Manner of Rebutting. A man shall be rebuttably identified as the father of a child if the genetic test results disclose that the man has at least a ninety-nine (99%) percent probability of paternity. Such identification of a man as the father of the child may be rebutted only by other genetic testing which excludes the man as the genetic father of the child or identifies another man as the possible father of the child.

(b) Provision of Results to Parties; Additional Test. Within five business days after receiving the test results back from the lab, the CNCSP shall send the results to both parties. If a party contests the genetic tests results, the party shall notify CNCSP in writing no later than fourteen (14) days from said party's receipt of the test results. The Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall order additional genetic testing on the request of the party who contests the result of the original testing provided that said party provides advance payment for the testing within thirty (30) days from the time he/she receives the original test results.

(c) Identification of Multiple Fathers. If more than one man is identified by genetic

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testing as the possible father of the child, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall order them to submit to further genetic testing to identify the genetic father.

### **Section 1212. Genetic Testing When Specimen Not Available.**

(a) Unavailability of Specimen. Subject to subsection (b) of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the Nation Tribal Court or CNCSP in CNCSP administrative proceedings considers to be just, the Nation Tribal Court or CNCSP may order the following individuals to submit specimens for genetic testing:

- (1) the parents of the man;
- (2) brothers and sisters of the man;
- (3) other children of the man and their mothers;
- (4) any relatives of the man necessary to complete genetic testing; and
- (5) any other custodians of genetic material.

(b) Finding Prior to Order. Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

(c) Testing of Deceased Person. For good cause shown, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order genetic testing of a deceased individual.

**Section 1213. Identical Brothers.** The Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child. If each brother satisfies the requirements as the identified father of the child under section 1211 without consideration of another identical brother being identified as the father of the child, the Nation Tribal Court or CNCSP may rely on non-genetic evidence to adjudicate which brother is the father of the child.

### **Section 1214. Admissibility of Results of Genetic Testing.**

(a) Admissibility of Records. Except as otherwise provided in subsection (c) of this section, a record of a genetic testing expert shall be admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report shall not be affected by whether the testing was performed:

- (1) voluntarily or pursuant to an order of the Nation Tribal Court or CNCSP in CNCSP administrative proceedings; or
- (2) before or after the commencement of the proceeding.

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(b) Expert Witnesses. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the Nation Tribal Court or CNCSP. Unless otherwise ordered by the Nation Tribal Court or CNCSP, the party offering the testimony bears the expense for the expert testifying.

(c) Inadmissibility of Test Results. If a child has a presumed father or acknowledged father, the results of genetic testing are inadmissible to adjudicate paternity unless performed pursuant to an order of the Nation Tribal Court or CNCSP.

### **Section 1215. Consequences of Declining Genetic Testing.**

(a) Contempt. An order for genetic testing shall be enforceable by contempt.

(b) Adjudication. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the Nation Tribal Court or CNCSP, the Court or CNCSP may adjudicate paternity contrary to the position of that individual.

(c) Testing of Mother. Genetic testing of the mother of a child shall not be a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Nation Tribal Court or CNCSP in CNCSP administrative proceedings may order the testing of the child and every man whose paternity is being adjudicated.

**Section 1216. Results Excluding Alleged Father.** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall not be adjudicated to be the father of the child.

**Section 1217. Change of Birth Certificate Information.** When the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings makes a determination as to the parentage of any person in any civil proceeding, the Court Clerk/Court Administrator shall transmit to the appropriate State Commissioner of Health, on a form prescribed by the Commissioner, a written notification of such entry together with such other facts as may assist in identifying the birth record of the person whose parentage was in issue. The Court Clerk/Court Administrator shall also transmit a notification of the paternity determination, including the name and address of the person whose parentage was determined and the person who was determined to be the father, to the Oklahoma Department of Human Services or similar agency of another state for recordation in any paternity registry established pursuant to state law on a form prescribed by the receiving agency. The parent or legal custodian of a child may request any State Registrar of Vital Statistics to afford full faith and credit to any order of the Nation Tribal Court or any CNCSP administrative order approved by the Nation Tribal Court and to: (1) remove the name of the person listed as the father from the birth certificate upon notice that such person has been judicially or administratively determined not to be the father; or (2) if paternity is established, to correct its records and amend the birth certificate to reflect the father's name.

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**Section 1218. Changing Child's Name to Paternal Surname.** At any time after a determination of paternity, the Comanche Nation Tribal Court may upon request of a parent order that the surname of the child be changed to the surname of the child's father or changed to a combination of the mother's maiden name and the father's surname. Any such order changing the surname may be issued separately or may be included in the decree of paternity.

## CHAPTER THIRTEEN

### NAME CHANGES

**Section 1301. Right to Petition for Change of Name.** Any natural person, who has been domiciled in Indian country for more than thirty (30) days, and has been an actual resident of Indian country for more than thirty (30) days, preceding the filing of the action, may pay a \$15 filing fee and petition for a change of name in the Comanche Nation Tribal Court. If the person be a child, the action may be brought by guardian or next friend; provided that any such action involving a child shall be subject to all other requirements for name changes of a child set forth in this Code, which shall be controlling over any inconsistent provision of this chapter.

**Section 1302. Petition.** The petition shall be verified and shall state: (a) the name and address of the petitioner; (b) the facts as to domicile and residence; (c) the date and place of birth; (d) the birth certificate number, and place where the birth is registered, if registered; (e) the name desired by petitioner; (f) a clear and concise statement of the reasons for the desired change; (g) a positive statement that the change is not sought for any illegal or fraudulent purpose, or to delay or hinder creditors; and (h) in the case of a non-Indian petitioner, a statement of consent to the jurisdiction of the Comanche Nation Tribal Court.

**Section 1303. Notice; Protest; Hearing Date; Continuance.** Notice of filing of such petition shall be given by publishing the same one time at least ten (10) days prior to the date set for hearing in some newspaper authorized by law to publish legal notices printed in the county where the petitioner resides if there be any printed in such county, and if there be none, then in some such newspaper printed in this state of general circulation in that county. The notice shall contain the style and number of the case, the time, date and place where the same is to be heard, and that any person may file a written protest in the case prior to the date set for the hearing. The hearing date may be any day after completion of the publication. The court or judge, for cause, may continue the matter to a later date.

**Section 1304. Evidence; Determination.** The material allegations of the petition shall be sustained by sworn evidence, and the prayer of the petition shall be granted unless the court or judge finds that the change is sought for an illegal or fraudulent purpose, or that a material allegation in the petition is false.

**Section 1305. Judgment.** The judgment shall recite generally the material facts and the change granted, or if denied, the reasons for the denial. A certified or authenticated copy of such judgment may be filed in any office, where proper to do so, and shall be regarded as a judgment in a civil action.

**Section 1306. Illegal or Fraudulent Purpose.** Any person who obtains a judgment under this chapter willfully intending to use the same for any illegal or fraudulent purpose, or who thereafter willfully and intentionally uses such judgment, or a copy thereof, for any illegal or fraudulent purpose, shall be deemed guilty of a misdemeanor.

**Section 1307. Exclusiveness of Statutory Remedy.** No natural person domiciled and residing in Indian country may change his name in the Comanche Nation Tribal Court except as provided in this chapter and **section 1218** of this Code, other than by marriage or decree of divorce or by adoption.

## CHAPTER FOURTEEN

### MARRIAGE

**Section 1401. Marriage Defined.** Marriage is a personal relation arising out of a civil contract between two legally competent persons. A marriage shall be valid only when commenced or maintained in accordance with any applicable law of the Comanche Nation, any other Indian nation or any state or country. Except as stated in the preceding sentence of this section, the requirements of this chapter shall apply only to persons who apply for and/or obtain a marriage license from the Comanche Nation Tribal Court Clerk/Court Administrator.

**Section 1402. Who May Marry.**

(a) **Incestuous Marriage Prohibited.** No person who has a blood relationship with his father, mother, grandparent, aunt, uncle, brother, sister, child or first cousin shall marry such person.

(b) **Persons Aged Eighteen and Older.** Any unmarried person of the age of eighteen (18) or older and not otherwise disqualified by mental incompetency or disability may consent to marriage with another person of the opposite sex; provided that in the case of a non-Indian petitioner, a statement of consent to the jurisdiction of the Comanche Nation Tribal Court.

(c) **Persons Aged Less than Sixteen Years.** No person aged less than sixteen years may enter into a marriage relation, except in situations involving an unmarried female who is pregnant or who has given birth to a child out of wedlock, in which event the Comanche Nation Tribal Court may approve such marriage subject to the consent of the child's parent or legal custodian given in accordance with **subsection (d), paragraphs (1), (2), (3) and (4)** of this section in all such cases; provided that if such consent is refused, notice of the hearing shall be given to the parent or legal custodian of such minor, and such parent or legal custodian shall be afforded an opportunity to present evidence prior to the Comanche Nation Tribal Court's decision to approve or deny approval of the marriage.

(d) **Persons Under Age Eighteen and Sixteen Years or Older.** No person under the age of eighteen (18) years shall enter into marriage, nor shall the Court Clerk/Court Administrator issue a marriage license pursuant to this chapter unless one of the following requirements is met:

(1) The parent or guardian of such underage applicant expressly gives consent and authority for the marriage in the presence of the Court Clerk; or

(2) The parent or guardian of such underage applicant executes a written consent to the marriage that is acknowledged in person before the Court Clerk; or

(3) The written and verified consent of a parent or guardian is presented to the Court Clerk with an accompanying notarized medical certificate of a duly licensed medical doctor or osteopath, stating that such parent or guardian is unable by reason of health or incapacity to be present in person; or

(4) The written consent of a parent or guardian on active duty with the Armed Forces of the United States is present to the Court Clerk/Court Administrator, acknowledged by military personnel authorized to administer oaths, accompanied by a certificate executed by a commissioned officer in command of said applicant, to the effect that said parent or guardian is

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on active duty in the Armed Forces of the United States; or

(5) The affidavits of three (3) reputable persons are presented to the Court Clerk/Court Administrator, stating that both parents of said minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has been appointed for said minor, in which case the Comanche Nation Tribal Court may in its discretion consent to said marriage in the same manner as in all cases in which consent may be given by a parent or guardian and with the same effect.

### **Section 1403. Marriage License.**

(a) **Marriage License Required.** No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Comanche Nation without a marriage license being first issued by the Court Clerk/Court Administrator or by other licensing authority under the law of any other jurisdiction authorizing the marriage between the persons named in such license.

(b) **Application.** Persons desiring to be married under the laws of the Comanche Nation shall submit an application for a marriage license in writing signed and sworn to in person before the Court Clerk/Court Administrator by both of the parities setting forth the following information:

(1) Each party's place of residence;

(2) Each party's full name and age as it appears on one or more of the following documents, a copy of which shall be provided with the application: the party's Comanche Nation citizenship card, a certified copy of a birth certificate, a current motor vehicle operator's, chauffeur's or commercial license, a current voter's registration certificate, a current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof accepted as proof of identity and age;

(3) A statement that the parties are not disqualified from or incapable of entering into the marriage relation;

(4) A statement that at least one (1) of the persons to be married is a citizen of the Comanche Nation; and

(5) A statement of consent to the jurisdiction of the Comanche Nation Tribal Court for purposes of receiving a marriage license by any person to be married who is not a citizen of the Comanche Nation.

(c) **Additional Information.** If the Court Clerk/Court Administrator is in doubt of the legal capacity of the parties for whose marriage a license is sought to enter into the marriage relation, the Court Clerk/Court Administrator shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, the Court Clerk shall not issue a marriage license.

(d) **Fee.** The Court Clerk/Court Administrator shall charge a fee in the amount of \$50 for issuance of a marriage license

### **Section 1404. Issuance of Marriage License.**

(a) Waiting Period for Certain Licenses. In the event that one or both of the parties are under legal age, the marriage license shall not be issued until the application has been on file in the Court Clerk/Court Administrator's office for a period of not less than seventy-two (72) hours, unless at the time of application for the license, the parent or guardian of such underage applicant or other person authorized by this chapter to give consent has signed a waiver, waiving the seventy-two-hour waiting period.

(b) Issuance of License. Upon application and the payment of the required fee pursuant to this chapter, the Court Clerk shall issue the marriage license if the Court Clerk/Court Administrator is satisfied of the truth and sufficiency of the application and is satisfied that there is no legal impediment to the marriage.

(c) Contents of License. The marriage license shall contain the date of its issuance, the Comanche Nation Tribal Court name, the full names of the persons to be married, their ages and their places of residence. The marriage license shall be directed to any person authorized by law to perform and solemnize the marriage ceremony; shall state the time that the license shall be returned to the Court Clerk/Court Administrator, which shall not be more than thirty (30) days from the date of its issuance; and shall contain a blank certificate to be made out by the person performing the marriage ceremony.

(d) Delivery of License. Any person obtaining a marriage license from the Court Clerk/Court Administrator shall deliver the license within ten (10) days from the date of issuance to a person qualified under **section 1405(c)** of this chapter to officiate the marriage ceremony.

### **Section 1405. Solemnization of Marriage.**

(a) Ceremony. All marriages shall be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses.

(b) Prerequisites to Performance of Ceremony. No person shall perform a marriage ceremony unless (1) the marriage license has been delivered into his possession; and he has good reason to believe the persons presenting themselves before him for marriage are the identical persons named in the license and for whose marriage the license was issued, and that there is no legal objection or impediment to the marriage.

(c) Credentials for Officiating at Marriage Ceremony. The marriage ceremony shall be performed by a person who is at least eighteen (18) years of age and who is a Judge or retired Judge of the Comanche Nation Tribal Court, a Judge or retired Judge of a court of any other jurisdiction authorizing such action, or an ordained or authorized preacher or minister, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the faith to which he belongs. The credentials of the person performing a marriage ceremony shall either be on file with the Court Clerk/Court Administrator or shall be submitted with the completed marriage license when it is returned to the Court Clerk/Court Administrator in accordance with **section 1406** of this chapter.

### **Section 1406. Endorsement and Return of License.**

(a) Endorsement by Person Officiating at Ceremony. The person performing or solemnizing the marriage ceremony shall immediately upon the completion of the ceremony endorse upon the marriage license his name, signature, official or clerical designation and the court of which he is a Judge or retired Judge or the congregation or body of which he is a pastor, preacher, minister or dignitary.

(b) Endorsement by Witnesses. The witnesses to the ceremony shall endorse the marriage license with their names and addresses.

(c) Return to the Court Clerk/Court Administrator. The completed marriage license shall be returned to the Court Clerk/Court Administrator within five (5) days succeeding the date of the performance of the marriage.

### **Section 1407. Records; Return; Inspections.**

(a) Records. The Court Clerk/Court Administrator shall make a complete record of the application, license and certificate thereon in a book kept by the Clerk for that purpose, properly indexed, which, subject to availability of funds, shall also be maintained electronically and/or on an optical disc, microfilm, microfiche. The record of the marriage license shall be made before it is delivered to the persons who are the subjects of the marriage license, and the record of the certificate shall be made upon the return of the license.

(b) Return of Original License. After recording of the original license and completed certificate, it shall be returned to the persons who are the subjects of the license with the issuing officer's certificate on the back showing the book and page where it is recorded.

(c) Inspections. All records pertaining to the issuance of marriage licenses shall be open to public inspection during regular office hours of the Court Clerk/Court Administrator.

**Section 1408. Copy of Marriage Record; Admission as Evidence.** Any copy of any marriage record required to be kept under **section 1407** of this chapter that is certified by the Court Clerk/Court Administrator under his official signature and seal shall be admissible into evidence in the Comanche Nation Tribal Court and in any other court of competent jurisdiction.

## CHAPTER FIFTEEN

### CHILD SUPPORT

#### ARTICLE 1

##### **GENERAL, JURISDICTION, CNCSP ADMINISTRATIVE PROCEEDINGS, NOTICE, HEARING, APPEALS, AND DEFINITIONS**

**Section 15-101. Title.** This chapter may be referred to as the "Comanche Nation Child Support Enforcement Code" or "Child Support Code."

**Section 15-102. Authority.** Article VI Section 7 (j) of the Constitution of the Comanche Nation authorizes the Comanche Nation Business Committee to "promulgate and enforce ordinances and codes governing law and order to protect the peace, health, safety and general welfare on land determined to be within the Comanche tribal jurisdiction."

**Section 15-103. Purpose.** The purpose of this chapter is to:

- (a) establish a tribal child support enforcement program as authorized under section 455 (f) of the Social Security Act;
- (b) designate the Comanche Nation Child Support Program (CNCSP) as the tribal child support enforcement agency for the Comanche Nation of Oklahoma with the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. §651 et. seq., as amended, and Title IV-D rules and regulations;
- (c) provide for the establishment of paternity in accordance with chapter 12 of the Children's Code, through either Nation Tribal Court or CNCSP administrative proceedings;
- (d) provide for the establishment, modification, and termination of child support orders through either Nation Tribal Court or CNCSP administrative proceedings;
- (e) provide for the enforcement of child support orders through either Nation Tribal Court or CNCSP administrative proceedings;
- (f) provide for the collection and distribution of child support payments;
- (g) provide for the location of parents and assets; and
- (h) provide for the administrative and judicial procedures for the establishment, modification, termination, and enforcement of child support.

##### **Section 15-104. Construction, Uniformity and Interpretation; Severability.**

- (a) Interpretation. This chapter shall be liberally construed to provide child support for minor children under the jurisdiction of the Comanche Nation.
- (b) Consistency with Other Laws. This Chapter and Chapters 12 of this Code

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establishes Comanche Nation child support laws as mandated under Title IV-D of the Social Security Act and in a form generally consistent with Oklahoma statutes concerning child support, in order to provide uniformity in the child support laws applied by the Nation, other tribes and the State of Oklahoma, unless otherwise expressly provided.

(c) Other Laws. If there is a child support issue that this chapter and chapter 12 do not address, the Nation Tribal Court or CNCSP shall apply any other applicable law of the Comanche Nation and any federal law concerning such child support issue to the extent mandated by Title IV-D of the Social Security Act. If a child support issue is still not addressed by the Nation's law or federal law, the Nation Tribal Court or CNCSP may consider any state law concerning such child support issue as a guideline to make a determination in a child support action.

(d) Severability. If any provision of this chapter is determined by a court of competent jurisdiction to be invalid for any reason, the remainder of the provisions shall remain in full force and effect and shall not be affected.

### **Section 15-105. Jurisdiction.**

(a) General. The Comanche Nation Tribal Court in judicial proceedings and CNCSP in CNCSP administrative proceedings shall have jurisdiction over child support and related proceedings as defined in section 15-107(ii) of this chapter involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

- (1) The individual is an Indian or a non-Indian who resides within Indian country as defined by section 107(o) of this Code;
- (2) The individual is personally served with summons within such Indian country;
- (3) The individual resided with the child in such Indian country;
- (4) The individual resided in such Indian country and provided prenatal expenses or support for the child;
- (5) The child resides in such Indian country as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in such Indian country and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in the putative father registry maintained in the State of Oklahoma by the appropriate agency;
- (8) The individual is a member of the Comanche Nation of Oklahoma or the child is a member or is eligible for membership in the Comanche Nation;
- (9) The individual submits to the jurisdiction of the Nation Tribal Court or CNCSP by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or
- (10) There is any other basis consistent with the Constitutions of the Comanche Nation, the United States, or the State of Oklahoma for the exercise of personal jurisdiction.

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(b) Personal Jurisdiction Over All Interested Parties Not Required. Lack of personal jurisdiction over a child and the custodial parent does not preclude the Nation Tribal Court or the CNCSP in CNCSP administrative proceedings from making a child support order binding on the noncustodial parent who is subject to the child support order.

**Section 15-106. Venue.** Venue shall be the seat of the Comanche Nation Tribal Court.

**Section 15-107. CNCSP Administrative Proceedings; Basic Requirements.**

(a) CNCSP Authority to Conduct Child Support and Related Proceedings. CNCSP shall be authorized to conduct administrative child support and related proceedings CNCSP shall conduct such proceedings in accordance with the general authorizations and requirements of this section, section 15-108 of this chapter, and such other authorizations and requirements as expressly stated in chapter 12 and this chapter.

(b) CNCSP Subpoena. CNCSP may issue a subpoena to a person or entity that has financial or other information needed for purposes of child support and related proceedings. A person or entity receiving an administrative subpoena shall comply with the subpoena. If a person or entity does not comply with the administrative subpoena, the CNCSP may seek an order from the Nation Tribal Court for compliance with the subpoena.

(c) CNCSP Conferences. CNCSP conferences conducted in accordance with chapter 12 and this chapter shall serve as hearings for the purpose of resolving issues related to child support and related proceedings involving an individual who is the subject of such proceedings. The CNCSP Director, or the Director's designee, shall serve as the hearing officer at all CNCSP conferences. Such conferences shall be held to discuss issues involving child support and related proceedings only, and shall not address or decide issues of custody, visitation, alimony, or property settlements. The parties shall be entitled to notice of the conferences in accordance with section 15-108(a) of this chapter. The notice shall contain sufficient information to inform the parties of the purpose, procedures, and consequences of the conference in accordance with chapter 12 and this chapter and the written policies and procedures of CNCSP, as applicable. The CNCSP hearing officer may continue or reschedule a conference on his or her own motion or upon request of a party or parties. The parties shall be afforded a reasonable opportunity to attend the CNCSP conference and present their positions, including evidence, at the CNCSP conference.

(d) CNCSP Conference Records. Records related to the CNCSP conferences shall be maintained by CNCSP in accordance with written policies and procedures of CNCSP.

(e) Transfers to Nation Tribal Court. The CNCSP hearing officer shall transfer CNCSP child support and related proceedings to the Nation Tribal Court if a party requests such transfer in writing at or prior to the first scheduled CNCSP conference for which notice has been provided to the party, or by such other deadline as specified in chapter 12 or this chapter.

(f) Vacation of CNCSP Order. The CNCSP hearing officer may vacate a CNCSP order at any time before the order is approved by the Nation Tribal Court. If the CNCSP vacates a CNCSP order, another administrative child support conference may be scheduled or a Children's

Court hearing may be scheduled with notice issued to all parties through one of the following

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methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(g) Appeal of CNCSP Order to Nation Tribal Court. A party may appeal a CNCSP final order to the Nation Tribal Court, and request an evidentiary hearing before the Nation Tribal Court by submitting an appeal notice to CNCSP. Such appeal notice shall be submitted to CNCSP in writing no later than seven (7) days from the date of issuance of the CNCSP order. No later than seven (7) days from receipt of such appeal notice, the CNCSP shall file the appeal notice with the Nation Tribal Court Clerk and shall schedule a hearing and provide notice to each party through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. An appeal of a CNCSP order shall stay any Comanche Nation Tribal Court approval of such order. When an appeal has been filed, the Nation Tribal Court shall hold a hearing no later than thirty (30) days after the date the appeal was submitted to CNCSP, unless the hearing is rescheduled in the Court's discretion.

(h) Appeal Hearing; Final Order; Failure to Appear; Default Order. After an appeal hearing regarding a CNCSP order, the Nation Tribal Court shall approve the child support order and enter the order as an order of the Nation Tribal Court if the Court determines that the order meets the requirements of this chapter or chapter 12, as applicable. If the Nation Tribal Court finds that the order does not meet the requirements of this chapter and chapter 12, as applicable, the Nation Tribal Court may remand the matter to CNCSP for a supplemental CNCSP conference upon agreement of the parties, or issue a final order regarding the issue or issues before it and replacing the CNCSP order, based on all relevant evidence and applicable portions of the record before the Court. If the party who requested the hearing fails to appear at the hearing, the Nation Tribal Court may conduct the hearing and take such action as authorized by this subsection. Nothing herein shall prevent the Nation Tribal Court from continuing an appeal hearing in its discretion.

(i) Nation Tribal Court Approval of Final CNCSP Orders. If a notice of appeal of a final CNCSP order was not filed by a party, the CNCSP final order shall be subject to review and approval of the Nation Tribal Court in accordance with the following procedure:

(1) Within three (3) days after issuance of the CNCSP order, the CNCSP shall submit the order and all other relevant documents to the Comanche Nation child support attorney for review and signature. The CNCSP shall present sufficient information to the Comanche Nation child support attorney demonstrating that the parties have been afforded due process and that the CNCSP order was issued in compliance with chapter 12 if applicable, with this chapter, and/or with applicable CNCSP policies and procedures when seeking Nation Tribal Court approval of a CNCSP order.

(2) The Comanche Nation child support attorney shall review the order and other relevant documents to determine compliance with all applicable requirements of this chapter and/or chapter 12 of this Code, and/or with applicable CNCSP policies and procedures, no later than four (4) days from date of receipt of a CNCSP order. If the attorney approves the order for submission to the Nation Tribal Court, the attorney shall sign both the order and any other supporting documents, such as a child support computation form, and return it to

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the CNCSP. If the attorney does not approve the order, the attorney shall return it to the CNCSP with a description of any deficiencies, in which case the CNCSP shall take appropriate action, including a new conference and a new order, as necessary.

(3) On approval of the order by the Comanche Nation child support attorney, the CNCSP shall submit the order, and other relevant documents to the Nation Tribal Court for Court approval no later than three (3) days after the attorney delivers the approved and signed order to CNCSP. The CNCSP shall not be required to record or provide a transcript of CNCSP conferences to the Nation Tribal Court for purposes of obtaining Nation Tribal Court approval of a CNCSP order. The CNCSP shall present sufficient information to the Nation Tribal Court demonstrating that the parties have been afforded due process and that the CNCSP order was issued in compliance with chapter 12 if applicable, with this chapter, and with applicable CNCSP policies and procedures when seeking Nation Tribal Court approval of a CNCSP order.

(4) The Nation Tribal Court shall have ten (10) days from date of receipt of the CNCSP administrative order to approve or disapprove the order. Upon approval by the Nation Tribal Court, the CNCSP shall file the order with the Nation Tribal Court Clerk. Once the documents are filed with the Court Clerk, the CNCSP shall send each party a copy of the order by first-class mail to the party's last known address with a certificate of mailing.

(j) CNCSP Orders as Valid Nation Tribal Court Orders. A final CNCSP order that is confirmed by the Comanche Nation Tribal Court shall be a valid order of the Nation Tribal Court and shall have the same full force and effect as an order of the Court and may be enforced through the CNCSP or by any other tribe or state court or administrative court with the authority to enforce the order under applicable tribal or state law.

(k) Establishment of Paternity and Child Support without CNCSP Conference. Notwithstanding any other provision of this chapter, if paternity has been acknowledged and the parties have agreed to the terms of a proposed administrative paternity establishment and child support order, and each party has signed the order, computation form, and a waiver of right to service of process, the CNCSP may present the order, computation form, and waiver to the Nation Tribal Court for approval without conducting a CNCSP administrative conference.

### **Section 15-108. Notice; Hearing; Other Procedures.**

(a) Notice; Service. When child support and related proceedings are initiated, the Comanche Nation Tribal Court or CNCSP in CNCSP administrative proceedings shall issue notice of a Nation Tribal Court hearing or a CNCSP conference to all interested parties. Notice of the first hearing or conference shall be served in accordance with the requirements for service of summons set forth in section 609(b) and (c) of this Code, unless otherwise expressly provided in this chapter or chapter 12, as applicable. Thereafter, notice of any subsequent conference or subsequent enforcement proceeding may be served by any of the following methods, unless otherwise expressly provided in this chapter: (i) first-class mail to the party's last known address with a certificate of mailing; (ii) certified mail with return receipt, restricted delivery; or (iii) personal delivery with a proof of service certificate. When a person who is subject to the jurisdiction of the Comanche Nation Tribal Court is outside Indian country, the person may also be served by any method that is authorized by the law of the jurisdiction where he is served. The notice shall contain statements of purpose of the hearing or conference, the consequences of failure to appear at the hearing, and such other information as required by this chapter and by

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CNCSP written policies and procedures. Upon receipt of notice of the initiation of child support and related proceedings, each party shall be responsible for ensuring that CNCSP has a current address for such person.

(b) Hearing. The Comanche Nation Tribal Court or CNCSP in a CNCSP administrative proceeding shall conduct a hearing without a jury. At said hearing, a determination shall be made whether proper notice has been given to the parties. If paternity is an issue related to the determination of child support obligations, the Nation Tribal Court or CNCSP shall conduct the proceedings and issue orders in accordance with the requirements of chapter 12 of this Code. The parties may provide evidence related to the determination of child support obligations and amounts at the initial hearing voluntarily or if so directed in the notice of hearing, the hearing may be continued in order to afford the parties an opportunity to provide such evidence. The CNCSP shall assist the Nation Tribal Court and the parties in all child support and related proceedings before the Nation Tribal Court and shall provide a computation of the child support obligation amount based upon the child support schedules and worksheets attached to this Code as Appendix 4.

(c) Other Applicable Procedures. All other applicable procedures established by the Comanche Children and Family Relations Code for proceedings of the Comanche Nation Tribal Court and administrative actions of the CNCSP, as well as rules of the Comanche Nation Tribal Court, shall be followed in all child support and related proceedings before the Comanche Nation Tribal Court. Such procedures shall also be applicable in all CNCSP administrative proceedings, unless otherwise expressly provided in this chapter or in chapter 12 of this Code.

**Section 15-109. Appeals.** Until such time as the Comanche Nation establishes a Comanche appeals court with authority to review final judgments of the Comanche Nation Tribal Court, the forum for all appeals by a party of a final judgment of the Nation Tribal Court, including any order of the CNCSP approved by the Nation Tribal Court, shall be the Court of Indian Appeals established in accordance with 25 C.F.R. Part 11, consisting of a three-judge tribunal. All such appeals shall be conducted in accordance with the applicable appeal procedures contained in Part 11 of the Code of Federal Regulations and the Rules of the Court of Indian Appeals.

**Section 15-110. Filing Fees.** The Court Clerk shall not charge filing fees for pleadings filed by and for the Comanche Nation Child Support Program.

### **Section 15-111. Definitions.**

Unless the context otherwise requires, as used in this chapter the following terms shall be defined only for purposes of this chapter as follows:

(1) IV-D Services. "IV-D Services" means the services that are authorized or required for the establishment of paternity, and establishment, modification, termination, and enforcement of support orders, and location of noncustodial parents under Title IV-D of the Social Security Act.

(2) Account. "Account" means a demand deposit account, checking or negotiable

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withdrawal order account, savings account, time deposit or money market mutual fund account or brokerage account.

(3) Administrative Procedure. "Administrative Procedure" means a method by which support orders are made and enforced by an administrative authority established by tribal or state law, rather than by courts and judges.

(4) Arrearage. "Arrearage" means past due unpaid child support owed by a noncustodial parent. If the parent has arrearages, she or he is said to be "in arrears." The term may be used interchangeably with past due support.

(5) Assignment. "Assignment" means any transfer of rights to child support by a custodial parent to a tribal, state or federal agency.

(6) Basic Visitation. "Basic Visitation" means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than thirty-five percent of the time.

(7) Child and Minor Child. "Child" means an individual of any age whose paternity may be established in accordance with chapter 12 of this Code or entitled to child support under this chapter. "Minor Child" means such an unemancipated individual who is younger than eighteen years of age or who otherwise qualifies for the payment of child support under section 15-302 of this chapter.

(8) Children of the Parties. "Children of the parties" means the natural or adopted child or children of the parties to the action before the court, but shall not include the natural or adopted child or children of only one of the parties.

(9) Child Support. "Child Support" means the financial support paid by a parent to help support a child or children of whom the parent does not have custody. Child support can be entered into voluntarily or ordered through court or administrative action depending on tribal or state laws.

(10) Child Support Order and Child Support Obligation. "Child Support Order and Child Support Obligation" means a judgment, decree or order, whether temporary, final or subject to modification, issued through court or administrative action for the support and maintenance of a child. Support orders can provide for monetary support, medical and dental insurance, arrearages, or reimbursement of costs and fees, interest and penalties, income withholding, and other forms of relief.

(11) "Child Support and Related Proceedings." "Child support and related proceedings" means Nation Tribal Court judicial proceedings or CNCSP administrative proceedings for the establishment of paternity for purposes of child support and/or for the establishment, modification, enforcement, and termination of child support orders, and such other related actions and proceedings as authorized by chapter 12 of this code and as authorized by this chapter.

(12) CNCSP. "CNCSP" means the Comanche Nation Child Support Program.

(13) CNCSP Administrative Proceedings. "CNCSP administrative proceedings" means administrative child support and related proceedings conducted by the Comanche Nation Child Support Program.

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(14) Consumer Credit Protection Act (CCPA). "Consumer Credit Protection Act (CCPA)" means the federal law that limits the amount that may be withheld from earnings to satisfy child support obligations under §303(b) of the CCPA, 15 USC §1673(b).

(15) Consumer Reporting Agency. "Consumer Reporting Agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports under 15 USC §1681a (f).

(16) Comanche Children's Court or Children's Court. "Comanche Nation Tribal Court" or "Nation Tribal Court" means the Comanche Nation Tribal Court as described in the Comanche Children's and Family Relations Code.

(17) Custodial Parent. "Custodial Parent" means the parent with legal custody of the child(ren) or who exercises physical custody of the child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.

(18) Delinquency. "Delinquency" means any payment under an order for support which becomes due and remains unpaid. See arrearage.

(19) Enforcement. "Enforcement" means the application of remedies to obtain payment of child support or obligations contained in a child support order. Examples of remedies include income withholding, liens, revocation of license (e.g., drivers, business, medical, and other types of licenses), and denial or revocation of United States passports.

(20) Income Assignment. "Income Assignment" means an assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning of the noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both.

(21) Income Withholding. "Income Withholding" means the procedure by which automatic deductions are made from wages or income to pay a debt such as child support. Income withholding usually is incorporated into the child support order and may be voluntary or involuntary. An employer shall withhold support from a noncustodial parent's wages and transfer that withholding to the appropriate agency. Sometimes referred to as wage withholding.

(22) Indian Tribe. "Indian Tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

(23) Intercept. "Intercept" means a method of securing child support by taking a portion of non-wage payments, such as federal tax refunds, state tax refunds, unemployment benefits, disability benefits, or federal retirement benefits that are made to a noncustodial parent.

(24) Joint Custody. "Joint Custody" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least thirty-five percent of the year in one home and the parents significantly share the duties, responsibilities and expenses of parenting.

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(25) Location. "Location" means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(26) Lien. "Lien" means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.

(27) Medical Support. "Medical Support" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

(28) Noncustodial Parent. "Noncustodial Parent" means a parent who does not have legal or physical custody of the child(ren) and has an obligation to pay child support.

(29) Non-Cash Support. "Non-Cash Support" means support provided to a family in the nature of goods and/or services, rather than in cash, that has a certain and specific dollar value.

(30) Obligation. "Obligation" means amount of money to be paid as support by an obligor.

(31) Obligee. "Obligee" means a person or entity to whom child support is owed.

(32) Obligor. "Obligor" means the means the person who is obligated to pay child support.

(33) Offset. "Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund or from an administrative payment, such as federal retirement benefits, to satisfy a child support debt.

(34) Past-due support. "Past-due support" means the amount of support determined under a court order for support of a child which has not been paid. (See definition of "Arrearage.")

(35) Paternity. "Paternity" means the legal determination of fatherhood.

(36) Public Assistance. "Public Assistance" means benefits granted from tribal, federal or state programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of public assistance (e.g. Temporary Assistance for Needy Families) are automatically referred to their tribal or state IV-D agency for child support services.

(37) Presumed Father. "Presumed Father" means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

(38) State. "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) Title IV-D. "Title IV-D" means Title IV-D of the Social Security Act, U.S.C  
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§651 et seq., as amended, that establishes the federal government's Child Support Enforcement Program, including the federal government's Tribal Child Support Enforcement Program.

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(40) Tribal Title IV-D agency. "Tribal Title IV-D agency" means the organizational unit in the tribe or Tribal organization that has the authority for administering or supervising the Tribal IV-D program under section 455(f) of the Social Security Act.

(41) Temporary Assistance for Needy Families. "Temporary Assistance for Needy Families" means assistance payments made pursuant the Temporary Assistance for Needy Families program as found at section 401 et seq. of the Social Security Act (42 U.S.C. 601 et seq.).

(42) Written Payment Plan. "Written Payment Plan" means a plan approved through a judicial or administrative process or a child support enforcement agency to make periodic payments of past due support. A payment plan usually consists of a monthly payment plan that includes current support and past due support.

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## ARTICLE 2

### COMANCHE NATION CHILD SUPPORT PROGRAM; RECORDS; CHILD SUPPORT ATTORNEY

**Section 15-201. Designation of Comanche Nation Child Support Program as a Title IV-D Agency.** The Comanche Nation Child Support Program (CNCSP) shall be the designated Title IV-D agency for the Comanche Nation with all the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. §651 et seq., Title IV-D rules and regulations, and applicable laws of the Comanche Nation, including this Code.

**Section 15-202. Powers and Duties of the CNCSP.** The CNCSP shall be authorized to provide Title IV-D child support services that include, but are not limited to:

- (a) administer and manage the plan and services of its tribal Title IV-D program;
- (b) establish administrative procedures for paternity establishment consistent with chapter 12 of the Children's Code, and the establishment, modification, termination, and enforcement of child support orders consistent with chapters 12 and 15 of this Code;
- (c) establish paternity through court or administrative action in accordance with chapter 12 of the Children's Code;
- (d) establish, modify, and terminate child support orders through court or administrative action;
- (e) enforce child support orders through court or administrative action;
- (f) initiate legal action to provide child support services, including appeals;
- (g) adopt policies and procedures for the CNCSP for child support services;
- (h) adopt rules and regulations for child support services, subject to approval of the Comanche Nation Business Committee;
- (i) negotiate agreements and or contracts as necessary for child support services under tribal and federal law, subject to approval of the Comanche Nation Business Committee;
- (j) establish and maintain CNCSP records, files and accounting;
- (k) provide location services for parents and assets; and
- (l) collect and distribute child support payments.

#### **Section 15-203. Services.**

(a) **Services Provided by CNSP.** The CNCSP may provide the following Title IV-D services that include, but are not limited to:

- (1) the location of parents and their assets through local, state and federal agencies and private sources;
- (2) the establishment of paternity through court or administrative action in

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accordance with chapter 12 of the Children's Code;

(3) the establishment and modification of child support obligations through court or administrative action;

(4) the enforcement of child support orders through court or administrative action;

(5) a review of child support orders for modification; and

(6) the collection and distribution of child support payments.

(b) Services Not Provided by CNCSP. The CNCSP shall not provide services for the following:

(1) the establishment or modification of visitation rights or custody;

(2) the establishment or modification of spousal support;

(3) dissolution of a marriage;

(4) enforce marital property settlements, or

(5) provide legal advice to custodial and noncustodial parties.

(c) Termination of Services. The CNCSP may terminate child support services under the following circumstances:

(1) when the CNCSP receives a written request for termination of services from the person to whom services are being provided;

(2) when the minor child is no longer eligible for child support or entitled to child support, or

(3) when an applicant receiving services has violated any term or condition set by the CNCSP.

### **Section 15-204. Eligibility, Assignment.**

(a) Eligibility and Application. Child support services are available to an applicant who qualifies under Title IV-D laws and regulations. To apply for CNCSP services, an applicant shall submit a completed and signed application provided by the CNCSP.

(b) Assignment. An applicant for child support services shall assign her or his child support rights to the CNCSP, which shall distribute the payment to the appropriate agency or individual.

(c) CNCSP Priority. An assignment of child support to the CNCSP shall have first priority over any prior or subsequent assignments.

**Section 15-205. Application Fee**. The CNCSP may charge an application fee not to exceed twenty-five (\$25.00) dollars to an applicant whose family does not receive public assistance from any tribal, state, or federal agency. An application fee shall not be charged to an individual who receives public assistance from any tribe, state or federal agency. A fee may not be charged in an intergovernmental case referred to the CNCSP for services.

### **Section 15-206. Confidentiality of Records and Release of Information.**

(a) Confidentiality. Except as otherwise provided, all files, reports, and records

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received and maintained by the CNCSP shall be private and confidential. This includes all information concerning any person in regard to any proceedings or actions to establish paternity; or to establish, modify or enforce child support orders.

(b) Release of Information. Except as otherwise provided, the CNCSP may use or release information for purposes directly connected with the administration of the child support program and child support services, including the disclosure of information to other tribal and state agencies pursuant to Title IV-D laws and regulations.

(c) Prohibited Release of Information. The CNCSP shall not release information on the location of a person if:

(1) a protective order has been entered with respect to the person or the child; or

(2) there is reason to believe that the release of information may result in physical or emotional harm to the person or child.

(d) Fines. The release of an unauthorized disclosure of information is a misdemeanor punishable by a \$500 fine. An employee who discloses unauthorized release of information shall be subject to disciplinary action by the CNCSP pursuant to Comanche Nation employment policies and procedures.

(e) Orders as Public Records. Child support orders are public records.

**Section 15-207. Maintenance of Records**. The CNCSP shall maintain records necessary for the proper and efficient operation of the program, and shall retain them for a minimum of three years, including records regarding:

- (a) Applications for child support services;
- (b) Efforts to locate noncustodial parents;
- (c) Action taken to establish paternity and obtain and enforce support;
- (d) Amounts owed, arrearages, amounts and source of support collections, and the distribution of such collections;
- (e) IV-D program expenditures;
- (f) Any fees charged and collected, if applicable; and
- (g) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

### **Section 15-208. Attorneys**

(a) CNCSP Attorneys. An attorney employed by or under contract with the CNCSP shall represent and act on behalf of the Comanche Nation when providing child support services. An attorney-client relationship shall not exist between the attorney and any other party other than the Comanche Nation, regardless of the name in which the action is brought.

(b) No Representation of Parties by CNCSP Attorneys. An attorney employed to represent CNCSP in child support and related proceedings shall not provide any form of

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legal representation to any person who is a party, an interested party, or a beneficiary in a matter in which the CNCSP is providing services. Such attorney shall not represent any party, an interested party, or a beneficiary in any other legal matters or proceedings unless such representation is permissible under the Oklahoma Rules of Professional Conduct.

(c) Information to be Provided to Applicants and Recipients Regarding Legal Representation. The CNCSP shall inform each applicant or recipient of services for child support services that no attorney-client relationship exists between the attorney and the applicant or recipient and that the attorney does not provide legal representation to the applicant.

**Section 15-209. Process Service.** The CNCSP may contract with a private process server to serve a notice, petition, summons, subpoena, order, or any other document required or appropriate under law to be served on a party.

### **Section 15-210. Locating Parents.**

(a) Parent Locator Service. The CNCSP parent locator service may be used to obtain information for paternity establishment in accordance with chapter 12 of the Children's Code, and for child support and related proceedings.

(b) Attempts to Locate. Attempts to locate custodial or noncustodial parents and/or sources of income and assets shall be made when location is required to take necessary action in a case. Reasonably available sources of information and records shall be used to locate custodial or noncustodial parents and their sources of income and assets.

**Section 15-211. Financial Disclosure.** The parents shall provide a complete disclosure of assets on a financial affidavit for purposes of child support and related proceedings, except as otherwise provided.

**Section 15-212. Applicant Cooperation.** An applicant shall cooperate with the CNCSP in child support and related proceedings. Non-cooperation may result in the closure of the applicant's case for failure to cooperate. If notification is required for non-cooperation by other state, tribal or federal agencies, the CNCSP shall notify the appropriate agency of the non-cooperation of the applicant.

**Section 15-213. Intergovernmental Procedures.** The CNCSP shall extend its services available under its Title IV-D plan to respond to requests from other tribal and state Title IV-D agencies.

**Section 15-214. Full Faith and Credit.** The CNCSP shall recognize child support orders issued by other tribal and state IV-D agencies pursuant to the Full Faith and Credit

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for Child Support Orders Act, 28 U.S.C. 1738B.

**Section 15-215. Reimbursement of Costs.** The CNCSP may seek reasonable costs against a party in child support and related proceedings. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and genetic tests performed in accordance with chapter 12 of this Code.

**Section 15-216. Case Closure.** The CNCSP may close a child support case pursuant to Title IV-D laws and regulations.

**Section 15-217. Transfer of Cases.** The CNCSP may accept transfer cases from another tribal and/or state Title IV-D agency. The CNCSP may transfer cases to another tribal and/or state Title IV-D agency.

**Section 15-218. Informational Materials.** The CNCSP may disseminate informational materials to the public which explains the program's eligibility and child support services.

**Section 15-219. Overpayment.** When an obligor has overpaid a child support obligation and there are no arrearages, the CNCSP shall refund the amount from the obligee.

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## ARTICLE 3

### ESTABLISHMENT OF A CHILD SUPPORT OBLIGATION; INCOME ASSIGNMENTS

#### **Section 15-301. General.**

- (a) **Applicability.** This article governs the establishment of child support for a minor child as defined in section 15-111(7) of this chapter.
- (b) **Orders.** In all child support cases, the Nation Tribal Court or CNCSP shall order the payment of child support pursuant to the child support guidelines established in this chapter and the child support schedule attached as Appendix 4 to this Code.
- (c) **Initiation of Action.** The CNCSP, mother, father, guardian, custodian, child, or other agency responsible for the support of the child may initiate an action for child support.
- (d) **Age Requirement.** An action to establish child support shall be initiated before the minor child reaches the age of eighteen (18) years of age.
- (e) **Parent Requirement.** Child support shall only be established for a biological or legally adopted child of the parents.
- (f) **No Support of Stepchildren Required.** A parent shall not be responsible or liable for the support of a stepchild(ren).
- (g) **Adopted Children.** Parents have the same legal duty of support for an adopted child as for a biological child.
- (h) **Obligors and Obligees.** In the payment and receipt of child support, the noncustodial parent or the person responsible for the payment of child support shall be designated the "obligor" and the custodial parent or the person who receives the child support shall be designated the "obligee."

#### **Section 15-302. Child Support, Age of Majority, Minor Parents, Emancipation.**

- (a) **Age Limitation.** A child shall be entitled to support by his/her parents until such child reaches eighteen (18) years of age or is emancipated. If a child is regularly enrolled and attending high school or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school, is emancipated, or reaches the age of twenty (20) years, whichever occurs first. Full time attendance shall include regularly scheduled breaks from the school year. No hearing or further order shall be required to extend support pursuant to this subsection after the child reaches the age of eighteen (18).
- (b) **Minor Parents.** Minor parents are responsible for the financial support of their child.
- (c) **Emancipation.** A child shall be considered emancipated when said child either reaches the age of eighteen (18) or is regularly enrolled and attending high school until the age of twenty (20) whichever occurs first pursuant to subsection (a) of this section; or when the child enlists in the military, or marries, or is emancipated by an order from a court.

### **Section 15-303. Child Support Obligations and Guidelines.**

(a) Purpose. The purposes of the child support guidelines are to:

(1) Establish as policy an adequate standard of support for minor children, subject to the ability of parents to pay;

(2) Make support payments more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) Improve the efficiency of the court process by promoting settlements and giving guidance in establishing levels of child support to the Nation Tribal Court, the CNCSP in CNCSP administrative proceedings, and the parties.

(b) Shared Income Model. Both parents have a duty and responsibility to provide financial support for a minor child(ren), based on their respective financial resources. The child support guidelines are based on a Shared Income Model, which is predicated on the concept that children should receive the same proportion of parental income that they would have received if the parents lived together. The guidelines establish a child support obligation that includes a base monthly child support amount, medical and dental insurance, unreimbursed medical expenses, childcare, and travel expenses. The amount of the child support obligation shall be calculated in compliance with all provisions of this section, using the Instructions, Worksheets, and Child Support Guideline Schedule included as Appendix 4 to this Code. For basic visitation situations, the basic child support obligation shall be calculated using the Basic Child Support Schedule Worksheet A and instructions contained in Appendix 4 of this Code; provided that the child support order may provide for a partial abatement of child support for visitation of 30 days or longer. For joint custody arrangements, the basic child support obligation shall be calculated using the Basic Child Support Schedule Worksheet B and instructions contained in Appendix 4 of this Code.

(c) Use of Child Support Guidelines. In any action to establish or modify child support, the child support guidelines as set forth in this section shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. The child support guidelines shall be used for temporary and permanent orders, separations, dissolutions, and support decrees arising despite non-marriage of the parties. The child support guidelines shall be used as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested hearings. A specific amount of child support should always be ordered, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child.

(d) Base Monthly Child Support Amount. A child support obligation shall provide for a base monthly child support amount, which shall be calculated using the Shared Income Model, including the child support computation schedule, the computation formula, and income guidelines for employed and self-employed parents, as well as for parents who have joint custody, shared parenting, or sole custody. The computation formula computes the base monthly child support amount based on the adjusted gross income of both parents, which shall be calculated in accordance with subsections (e) and (f) of this section. The percentage share of

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each parent for the purpose of establishing the base monthly child support amount shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base monthly child support amount of each parent, in accordance with the schedule in Appendix 4 of this Code. In joint custody situations, each parent retains the percentage of the basic support obligation equal to the number of twenty-four-hour days of responsibility spent by each child with each respective parent divided by three hundred sixty-five.

(e) Sources for Determination of Gross Income Amounts. Gross income shall be derived, but shall not be limited, to the following sources: salaries, wages, tips, commissions, bonuses, severance pay, dividends, pensions, interest income, trust income, annuities, capital gains, alimony or maintenance received, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, Individual Indian Money accounts, and per capita payments. For income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income; provided that ordinary and necessary expenses do not include expenses determined by the Nation Tribal Court or by CNCSP in administrative proceedings to be inappropriate for purposes of calculating child support. If the parent is unemployed, the minimum wage rate shall be used to compute the income of that parent, if the parent is physically capable of working, unless otherwise provided under these guidelines.

(f) Excluded Sources for Determination of Gross Income Amounts. Gross income shall not be derived from the following sources: actual child support received for children not before the Nation Tribal Court or CNCSP; Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI); food stamps; general assistance, and state supplemental payments for the aged, blind and disabled.

(g) Computation of Adjusted Gross Income. The adjusted gross income to be used for the purpose of determining the base monthly child support amount described in subsection (b) of this section shall be calculated as follows:

(1) In computing gross income for a child support obligation from sources such as those described in subsection (e) of this section, the one of the following types of income may be used, whichever is most equitable: (i) all earned and passive income; (ii) all passive income and earned income equivalent to a forty-hour week plus such overtime and supplemental income as the Nation Tribal Court or CNCSP in administrative proceedings deems equitable; (iii) the average of the gross monthly income for the time actually employed during the previous three years; or, (iv) the minimum wage paid for a forty-hour work week. If a party is unemployed, the CNCSP may impute a minimum wage for income. If a parent is permanently, physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

(2) The amount of any preexisting court order for current child support for children not before the Nation Tribal Court or CNCSP in administrative proceedings shall be deducted from gross income, if actually paid. The amount of reasonable expenses of debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income, if actually paid.

(h) Basic Child Care Obligation. A child support order shall provide for child care

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expenses reasonably necessary to enable both parents to be employed, seek employment, or attend school or training to enhance employment income. The actual child care costs incurred shall be allocated and paid monthly in the same proportionate share as the child support. Upon reasonable request by the obligor, the obligee shall provide the obligor with timely documentation of any change in the amount of the child care costs. If the Nation Tribal Court or CNCSP in administrative proceedings finds that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time.

(i) **Basic Medical Support Obligation.** A child support obligation shall provide for medical and dental insurance and unreimbursed medical and dental expenses. Medical support may be provided through employer insurance or group insurance or through an alternative private source or through the Indian Health Service. The actual medical and dental premiums are to be allocated between the parents in the same proportion as their adjusted gross income and added to the base child support obligation. An Indian Health Service facility, including such facility operated by an Indian tribe, and/or services may be used for both medical and/or dental services, if agreed by both the obligor and obligee.

(j) **Other Expenses Not Covered by Basic Child Support Obligations.**

(1) *Medical Expenses Not Covered by Insurance.* Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance shall be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. The parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense. If a clinic, hospital, or program provides health services as described in this subsection utilizing direct or contract health care funding provided through the Indian Health Service, both parties shall be liable for any medical and dental expenses resulting from, but not covered by, such services, or otherwise unreimbursed with funding through the Indian Health Service, in the same proportionate share as the child support.

(2) *Travel Expenses.* A child support obligation may provide for transportation and communication expenses necessary for long distance visitation or time divided in proportion to each parent's adjusted gross income.

(3) *Extraordinary Educational Expenses.* A child support order may provide for any extraordinary educational expenses for children of the parties

(k) **Deviations.** The Comanche Nation Tribal Court or CNCSP in administrative proceedings may order child support in an amount different from that which is provided in these guidelines, if:

(1) (i) There is a presumption of hardship because application of the child support guidelines would require the non-custodial parent to pay the custodial parent more than forty percent of his gross income for a single child support obligation for current support; (ii) a minor custodial and noncustodial parent are regularly attending high school; (iii) the court makes a finding that the parents of the minor parents are responsible for the financial support of the child; or (iv) application of the guidelines would be inappropriate or unjust in the particular case due to other circumstances; and

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- (2) Deviation is in the best interest of the children for whom the child support obligation is being established; and
- (3) The award order states the amount the award would be if it were calculated by application of the guidelines; and
- (4) The award order states the amount of child support which is actually awarded after the deviation; and
- (5) The award order contains written findings regarding items (1) through (4) above.

### **Section 15-304. Address Requirement, Service.**

- (a) Address Information. All child support orders shall require the parties to keep the CNCSP informed of their current addresses and an address of record for service. An address of record for service may be different from a party's physical address.
- (b) Change of Address. Any change of address shall be provided to the CNCSP within thirty (30) days of the change. The address of record shall be subject to disclosure to a party or custodian upon request pursuant to this chapter and CNCSP procedures. The CNCSP may refuse to disclose the address of record if evidence of domestic violence or child abuse is found or the CNCSP determines that disclosure could be harmful to a party or child.
- (c) Service. The address of record may be used for service of notices and orders in accordance with § 15-108(a) of this chapter.

**Section 15-305. Disclosure of Social Security Numbers.** A person who is a party to an action to establish paternity or to establish or modify a child support order shall disclose his or her social security number to the Nation Tribal Court and/or to the CNCSP. The social security number shall be placed in the records relating to child support. The person's social security number shall be confidential and shall not be open to the public, except the social security number may be disclosed in accordance with Title IV-D laws and regulations for child support services.

### **Section 15-306. Child Support Order.**

- (a) Contents of Child Support Order. A child support order, whether issued through the Nation Tribal Court or through the CNCSP administrative proceedings shall provide the following:
  - (1) the names of the obligor and obligee;
  - (2) the name or names of the child or children before the Nation Tribal Court or before CNCSP in administrative proceedings;
  - (3) a provision for the monthly child support amount;
  - (4) a provision for the amount of any past due support and a payment plan for the past due support, if applicable;

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- (5) a provision for a judgment for past due support and a payment plan for the past due support, if applicable;
- (6) a provision for medical and dental insurance;
- (7) a provision for unreimbursed medical expenses;
- (8) a provision for immediate income withholding;
- (9) a provision for child care costs, if applicable;
- (10) a provision for a current address and an address for service; and
- (11) such other information or requirements within the Nation Tribal Court's jurisdiction as additionally required by this chapter or as determined pertinent by the Court or by CNCSP in administrative proceedings.

(b) Commencement of Obligation. The obligations shall commence, unless otherwise ordered, on the first day of the month immediately following the month in which the child support order was issued.

(c) Statement of Amount. The amount of a child support order shall not be construed to be an amount per child unless specified by the Nation Tribal Court or by CNCSP in administrative proceedings. If there is more than one child in the child support order and one of the children has attained the age of majority or is no longer entitled to support, the child support order may be modified.

(d) Support of the Child. The child support order may include a provision, if the Nation Tribal Court or CNCSP in administrative proceedings deems it appropriate, to assure that the child support payment shall be used for the support of the child.

**Section 15-307. Arrearage.** A judgment for arrearage may be included in each child support order if there is past due child support owed as well as a payment schedule for the judgment. Failure to state a past due amount in the order does not bar collection of the amount.

### **Section 15-308. Non-cash Support.**

(a) Non-cash Support. The Nation Tribal Court or CNCSP in administrative proceedings may allow part of the child support obligation to be paid with non-cash support, if the obligee agrees to the use of a noncash payment being used, and the child support order states:

(1) the specific dollar amount of the support obligation; and

(2) the type and amount of non-cash support that will be permitted to satisfy the child support obligation.

(b) Satisfaction of Public Assistance Monies. Non-cash payments shall not be permitted to satisfy any tribal, state or federal public assistance monies.

**Section 15-309. Payments.** Child support payments shall be made to the CNCSP, except as otherwise provided. When payments are made to CNCSP, CNCSP shall distribute the

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payment to the appropriate agency or individual.

**Section 15-310. Judge's Signature.** The judge shall sign the child support order and the child support computation form which establishes or modifies child support.

**Section 15-311. Voluntary Agreement.** Parents may establish child support through a voluntary agreement in accordance with the child support guidelines through either Nation Tribal Court action or through CNCSP administrative proceedings. In the event of such agreement, the parties shall sign and date the child support order, the child support computation form, and a waiver of right to service of process before submission to the court. Once signed, the CNCSP may present the order, computation form, and waiver to the Nation Tribal Court for approval and signature, including any evidence, for approval without the parties being present at a court hearing.

**Section 15-312. Rebuttable Presumption.** There shall be a rebuttable presumption in any proceeding for child support that the amount of the award is the correct amount of child support to be awarded.

**Section 15-313. Liability For Past Support.** In an establishment case for child support, the liability for child support provided for the child shall be imposed for a period commencing on the date that is five years preceding the filing of the action, unless the child is less than five years old, in which case the liability shall be imposed from the date of the birth of the child.

### **Section 15-314. Termination of Parental Rights, Adoption.**

(a) **Termination of Parental Rights.** When a parent terminates his or her parental rights, the termination does not end the duty of either parent to support his or her child. The duty ends when a court terminates the parent's duty to support his or her child, or if there is a signed written agreement between the parties to terminate the duty to support and approved by a court. If there is a child support arrearage, the arrearage shall be due until paid in full unless waived by a court or by a signed written agreement between the parties that waives the past arrearage and that is approved by a court.

(b) **Adoption.** If an adoption of a child is pending, a child support order shall remain in effect until notice is received that the final decree of adoption has been entered by the applicable court. If there is a child support arrearage, the arrearage shall be due until paid in full, unless waived by the court or by a signed written agreement between the parties that waives the arrearage and approved by the court.

### **Section 15-315. Modification.**

(a) **Petition to Modify.** The Nation Tribal Court may modify a child support order

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previously issued by that Court or CNCSP administrative action, upon petition of an obligor, an obligee or CNCSP. CNCSP may modify a child support order previously issued by the Nation Tribal Court or CNCSP, upon petition of an obligor or obligee, provided that said order is approved by the Nation Tribal Court.

(b) Modification Upon Material Change in Circumstances. Child support orders may be modified upon a material change in circumstances that includes, but is not limited to:

- (1) a 15% increase or decrease in either parent's income;
- (2) when a child in the child support order reaches the age of majority or no longer qualifies for child support under section 15-302 of this chapter;
- (3) when there is a change in medical and dental insurance; or
- (4) the child is no longer entitled to support.

(c) Effective Date of Modification. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to another date or the Nation Tribal Court or CNCSP finds that the material change of circumstance did not occur until a later date.

(d) Voluntary Modification. The parents may voluntarily agree on the modification based on child support guidelines, subject to approval of the Nation Tribal Court or approval of CNCSP in CNCSP administrative proceedings.

**Section 15-316. No Retroactive Modification.** A child support order shall not be modified retroactively.

### **Section 15-317. Temporary Orders.**

(a) Temporary Order. Upon proper application by a party, the Nation Tribal Court may establish temporary orders for child support based on child support guidelines.

(b) Termination of Temporary Order. Temporary orders terminate when the final judgment is ordered or when the action is dismissed.

### **Section 15-318. Redirection of Child Support Upon Change in Physical Custody.**

Whenever physical custody of the child is changed, the child support payments shall be redirected to the new custodian, except for the amount of unpaid support still owed to the previous custodian or to the CNCSP or other tribal or state child support agency.

**Section 15-319. No Statute of Limitations.** Court ordered child support shall be owed until paid in full and it shall not be subject to a statute of limitation.

**Section 15-320. TANF Money Owed to a State Or Tribe.** When a state or tribe expends TANF money for the benefit of a dependent child, the payment of the TANF money creates a support debt owed to a state or tribe by the person(s) responsible for the support of the

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dependent child. The amount of the support debt shall be equal to the amount of TANF money expended for the benefit of the dependent child, unless otherwise provided through a court or administrative order.

### **Section 15-321. Review of Child Support Orders.**

(a) **Review.** The CNCSP shall conduct a review of child support orders at least once every four (4) years to ensure that the child support obligation is in accordance with the current child support guidelines.

(b) **CNCSP Request to Modify.** If the CNCSP determines that a child support obligation is not in accordance with current child support guidelines, the CNCSP may initiate action to modify the child support order either through court action, or through CNCSP administrative proceedings.

(c) **Obligor or Obligee Request to Modify.** An obligor or obligee may request a review of the child support order, not to exceed more than one request every eighteen (18) months.

**Section 15-322. Review of Guidelines.** The CNCSP shall conduct a review of the child support guidelines at least once every four (4) years to insure that the guidelines provide an appropriate award for child support and are in accordance with Title IV-D laws and regulations.

### **Section 15-323. Income Assignment and Withholding.**

(a) **Immediate Income Assignment.** All child support orders and orders for modification shall provide for an immediate income assignment that withholds the current monthly child support obligation and any past due amount, regardless of whether support payments are in arrears.

(b) **Income Exempt from Withholding.** Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the Nation Tribal Court or CNCSP in administrative proceedings finds, that there is good cause not to require income withholding; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, subject to Nation Tribal Court review and approval or subject to or CNCSP review and approval in administrative proceedings.

(c) **No Need for Amendment of Order.** Except as provided, all child support orders are subject to an immediate income assignment without the need for any amendment to the support order or a need for a hearing by the Nation Tribal Court or CNCSP in administrative proceedings.

(d) **Maximum Amount.** The total amount to be withheld under this section shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b).

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(e) Multiple Income Withholding. In cases where an obligor has multiple income withholding orders, the CNCSP shall allocate income withheld across all withholding orders to ensure that each order is implemented and an amount paid. In no case shall an allocation result in a withholding order not being implemented for a child support obligation.

(f) Termination. An income withholding order shall be terminated when there is no longer a current order for support and all arrearages have been satisfied.

(g) Processing. Upon request from other Title IV-D agencies, the CNCSP shall receive and promptly process income withholding orders from other tribes and states providing Title IV-D services.

(h) Refund. In a case where income withholding has been overpaid, the CNCSP shall promptly refund the amount from the obligee.

(i) Voluntary Income Assignment. An obligor may initiate a voluntary income assignment at any time. The voluntary assignment shall be filed with the Nation Tribal Court Clerk and the CNCSP and shall take effect after service on the employer.

### **Section 15-324. Registration of Foreign Income Withholding Order.**

(a) Registration. A foreign income withholding order shall be registered with the Comanche Nation Tribal Court to enforce the income withholding with regard to Comanche Nation employees and employees of other persons or entities located or providing services in Indian country. The registration shall contain all information necessary to carry out the withholding that includes a certified copy of the support order and certified statement of the amount to be withheld.

(b) Burden of Proof. An obligor who challenges a foreign income withholding order has the burden of proof to establish it is not a valid order from an issuing tribe or state.

### **Section 15-325. Income Withholding by Employer.**

(a) Notice. Notice of the income withholding shall be sent to the employer using the standard federal form prescribed by United States Secretary of Department of Health and Human Services. Service of the notice may be by first-class mail with a certificate of mailing or by certified mail, return receipt. For income withholding notices or orders for the Comanche Nation, the CNCSP may hand deliver the notice/orders to the Comanche Nation Personnel Office.

(b) Effective Date. The income withholding shall take effect on the next pay period of the obligor after the employer receives notice. The employer shall withhold each pay period the amounts specified in the notice. The amounts withheld shall be sent to the CNCSP within seven

(7) business days after the date upon the obligor is paid. The employer shall include with each payment a report that states the date the child support amount was withheld from the obligor's income.

(c) Amount. The amount withheld, including any fee under this section, by the employer shall not exceed the limits permitted under §303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673 (b).

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(d) Notice. The employer shall notify the CNCSP within ten (10) days of the date when the obligor terminates employment and shall provide the obligor's last known address and the name and address of the obligor's new employer, if known.

(e) Liability. If the employer fails to withhold in accordance with the provisions of the income withholding order, the employer shall be liable for the accumulated amount the employer should have withheld and paid from the obligor's income.

(f) No Discipline. The employer may not discipline, suspend, discharge or refuse to employ an obligor because of an income assignment executed pursuant to this section. Any employer who violates this section shall be subject to a fine of \$200 per offense for the unlawful discipline, suspension, discharge, or refusal to employ an obligor.

(g) Combination of Amounts. The employer may combine withheld amounts from two or more obligors' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual obligor.

(h) Release. The income assignment shall be binding on the employer until released by the CNCSP or by order of the court that approved the child support order.

(i) Priority. An income assignment executed pursuant to this section shall have priority over any other subsequent garnishments against the same income.

(j) Costs. The employer may deduct from an income of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the employer in complying with the income assignment.

(k) Application. The income withholding executed pursuant to this section applies to any current or subsequent employer who is provided notice in accordance with this section.

(l) No Civil Liability. An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(m) Concurrent Assignments. Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any arrearages or support debt payment.

(n) Verification. The employer shall verify the obligor's address, employment, earnings, income, benefits and dependent health insurance information upon request of the CNCSP or designated Title IV-D agency.

(o) Recipient of Payments. All payments under this section shall be made to the CNCSP or its designee. CNCSP shall distribute the payment to the appropriate agency or individual.

### **Section 15-326. Initiation of Income Withholding, Notice, Hearing.**

(a) Initiation. In a case where income withholding has not been ordered, the CNCSP shall initiate an income assignment when the obligor has failed to make a child support payment at least equal to the support payable for one month, without regard to whether there

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is an arrearage.

(b) Contesting Income Assignment. The only basis for contesting an income assignment under this section shall be a mistake of fact which means an error in the amount of current or overdue support or in the identity of the alleged obligor.

(c) Notice. In a case where the CNCSP initiates an income assignment, the CNCSP shall send the obligor notice that the initiated income withholding has begun. Notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall inform the obligor:

- (1) the withholding has commenced;
- (2) the amount of wages that will be withheld for current child support and any overdue support;
- (3) the provision for withholding applies to any current or subsequent employer or period of employment;
- (4) the procedures available for contesting the withholding, and the only basis for contest of such withholding shall be a mistake of fact;
- (5) the information that will be provided to the employer;
- (6) the withholding shall remain as long as the order is in effect;
- (7) the payment of any support monies will not prevent an income assignment from taking effect; and
- (8) The obligor shall be required to keep the CNCSP informed of the name and address of his or her current employer.

(d) Hearing Request. If the obligor challenges the income assignment, the obligor may request a hearing by sending a signed written request to the CNCSP. The obligor has fifteen

(15) calendar days from the date of service of the notice to request a hearing. On receipt of the request for a hearing, the CNCSP shall schedule the request on the next available court date.

(e) Hearing. The Comanche Nation Tribal Court or CNCSP in administrative proceedings shall hear the matter and unless the obligor proves there is a mistake of fact, the Court or CNCSP shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(f) Final Judgment. The order shall be a final judgment for purposes of appeal.

(g) Failure to Request Hearing. If within fifteen (15) calendar days of date of service of the notice, the obligor fails to request a hearing, pursuant to this section, or after having requested a hearing fails to appear at the hearing, the Nation Tribal Court or CNCSP in administrative proceedings shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(h) Notice of Order. A copy of the order shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a

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certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(i) Voluntary Request. The obligor may voluntarily request an income assignment be initiated for the next due date, or earlier.

## ARTICLE 4

### ENFORCEMENT

#### **Section 15-401. General.**

- (a) Applicability of Chapter. This chapter governs the enforcement of a child support order
- (b) Initiation of Action. The CNCSP has the authority to initiate enforcement of a child support order issued by the Nation Tribal Court or issued by CNCSP in CNCSP administrative proceedings, or by any other tribal or state court or administrative agency pursuant to Title IV-D laws and regulations.
- (c) Enforcement Actions. An enforcement proceeding or action may include, but is not limited to: revocation or suspension of a license (drivers, professional, or occupational); the use of state and federal income tax refund intercept programs; reporting the obligor for passport denial, use of lien or levy, initiation of contempt proceedings, and any other civil remedy available by law for the enforcement of a child support order or judgment.
- (d) Type of Action. An action or proceeding for the enforcement of a child support order may be initiated by the CNCSP, obligee or guardian through either court or administrative action.

**Section 15-402. Judgment For Arrearage.** When an obligor fails to pay current child support and an arrearage accumulates, a party or CNCSP may initiate action to obtain a judgment for the arrearage through Nation Tribal Court proceedings, or through CNCSP administrative proceedings.

#### **Section 15-403. Voluntary and Involuntary Written Payment Plans.**

- (a) Voluntary Plan. An obligor who is in arrears for child support may enter into a voluntary written payment plan to pay the past due amount through the Nation Tribal Court or CNCSP administrative proceedings.
- (b) Agreement. The parties may submit a stipulated payment plan for the arrearage, subject to approval by the Nation Tribal Court or CNCSP in administrative proceedings.
- (c) Involuntary Written Payment Plan. When an obligor fails to pay current child support and an arrearage accumulates in an amount greater than three times the obligor's total monthly support payments, the CNCSP shall establish a written payment plan for the arrearage to submit for approval by the Nation Tribal Court. Once the CNCSP has established the payment plan, the CNCSP shall send the obligor notice through one of the following methods: (i) first- class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following:
  - (1) the name of the obligor;
  - (2) the name of the obligee and the child or children for whom support is owed;
  - (3) the telephone number and contact name for the CNCSP;

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(4) statements that:

- (i) the obligor is in noncompliance with a court or administrative child support order and the amount of the past due support;
- (ii) the CNCSP has prepared a written payment plan that includes the amount of the current monthly child support payment, the judgment amount to be paid, and the due date has been established;
- (iii) the written payment plan is attached and will be submitted to the Nation Tribal Court for approval unless timely contested by the obligor;
- (iv) a contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor; and
- (v) the obligor has the right to appeal a CNCSP payment plan to the Nation Tribal Court within the time set forth in section 15-107(g) of this chapter.

(d) Considerations; Contents. A payment plan may take into consideration the amount of the arrearages, the amount of the current support due, and the earnings of the obligor. The proposed payment plan shall set a reasonable payment amount that considers the financial circumstances of the obligor, and shall specify the current support due, the amount of the judgment for the arrearage, and a payment schedule for both the current support and the judgment or arrearage.

(e) Failure to Comply. Failure to comply with a written payment plan shall be grounds for enforcement proceedings.

### **Section 15-404. Waiver of Arrearage.**

(a) Past Due Support Waiver. The obligee may waive all or some of the past due child support of an obligor by signing a written statement that waives a specific dollar amount of the arrearage.

(b) No Waiver as to Public Assistance Funds. An obligee and the CNCSP shall not waive any public assistance monies provided by a tribal, federal or state agency.

(c) Gifts Not Child Support. If an obligor gives money to his or her child instead of to the obligee or guardian responsible for the support of the minor child, the money shall be considered a gift to the child and not child support. A gift shall not be credited toward child support, unless the obligee or guardian gives credit for the gift or waives a specific dollar amount for the gift.

**Section 15-405. No Interest.** No interest shall be charged to the obligor for a past due child support amount.

### **Section 15-406. Judgment By Operation of Law.**

- (a) Payment Not Made. Any payment or installment of support under any child support order that is not made on or before the date it is due shall become a judgment by operation of law with the full force and effect of a judgment of the Nation Tribal Court and shall be enforceable until paid in full.
- (b) Full Faith and Credit. A judgment by operation of law shall be entitled to full faith and credit as a judgment of the Nation Tribal Court and with other tribal or state courts.
- (c) No Retroactive Modification. A judgment by operation of law shall not be subject to retroactive modification by the Nation Tribal Court or by any other tribal or state court except that the Nation Tribal Court may permit a modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given to the obligee or (where the obligee is the petitioner) to the obligor.
- (d) No Dormancy. A child support judgment shall not become dormant for any purpose. The recording of a judgment and extension of a judgment shall comply with applicable tribal, state or federal statutes.
- (e) Annual Notice. The CNCSP may send an annual notice to obligors who have an arrearage, including such information as required by the policies and procedures of CNCSP. Any such notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. To schedule a child support conference to review or contest the arrears, the obligor shall notify the CNCSP in writing no later than twenty (20) days after the date the notice was delivered. The obligor shall be responsible for the documentation to support his or her contest.

### **Section 15-407. Liens.**

- (a) General. Past due child support amounts become a lien by operation of law upon the real and personal property of the obligor at the time they become past due.
- (b) Full Faith and Credit. A lien shall be accorded full faith and credit.
- (c) Recording and Service. The recording and service of a lien or extension of a lien on personal and real property shall comply with applicable tribal, state or federal statutes, except such rules may not require judicial notice or hearing prior to the enforcement of such a lien.
- (d) Release. When the lien for the past due child support is paid in full, the lien shall be released.
- (e) Enforcement. An obligee or CNCSP may enforce the liens created pursuant to this section and execute releases or partial releases of the liens.
- (f) No Sale of Exempt Property. The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by tribal, federal or state statutes.
- (g) Workers Compensation Liens. A judgment for a child support arrearage or the

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accrual of past due child support becomes a lien upon the benefits payable as a lump sum from a workers' compensation claim of the obligor. The filing for a workers' compensation claim for child support shall follow applicable state or tribal workers' compensation statutes.

**Section 15-408. Exempted Property.** Individual or tribal religious and ceremonial property, trust lands or property, and Individual Indian Money (IIM) accounts are exempted from liens.

### **Section 15-409. Levy.**

(a) **General.** If there is a court-ordered judgment or if the obligor is in arrears equal to three months of child support, the Nation Tribal Court or CNCSP may levy an account or accounts of the delinquent obligor pursuant to tribal, state and federal laws and regulations.

(b) **Notice to Obligor.** Notice shall be sent to the obligor of the levy within three days after the levy notice is sent to the financial institution. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following information:

- (1) the name of the obligor;
- (2) the amount of the arrearage;
- (3) the telephone number and contact name for the CNCSP; and
- (4) a statement that the Nation Tribal Court or CNCSP has initiated a levy on his/her account for a certain amount at his/her financial institution; and a statement of the deadline for requesting a contest, the grounds for a contest, avoidance of levy by payment, and the consequences of failure to pay or to contest a levy, all as described in subsections (c), (d), (e) and (f) of this section.

(c) **Deadline.** The obligor shall have ten (10) days after the date the notice was delivered to request in writing a CNCSP conference or Nation Tribal Court hearing to review or contest the levy.

(d) **Grounds for Contest.** A contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor.

(e) **Payment.** The obligor may avoid the levy by making a payment equal to the amount that could be obtained from the account of the financial institution.

(f) **Notice to Remit Funds.** If the obligor does not request a review or contest the levy within ten (10) days after the date of delivery, or pay the amount of the arrearage that would have been taken from the account, the CNCSP may send notice to the financial institution to remit funds.

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**Section 15-410. Bond.** The Nation Tribal Court or CNCSP in administrative proceedings may require that an obligor post a bond, security or give some other guarantee to secure payment of past due child support.

### **Section 15-411. Revocation or Suspension of Licenses.**

(a) Circumstances. The CNCSP may seek the suspension or revocation of a professional license, hunting and fishing license, or driver's license of an obligor who is in noncompliance of a child support order or a written payment plan with the appropriate state or tribal court. The CNCSP shall comply with applicable state or tribal law, rules and procedures for the revocation or suspension of a license.

(b) Notice. Before the CNCSP initiates an action or proceeding for a license revocation or suspension, the CNCSP shall notify the obligor that the CNCSP intends to seek the revocation or suspension of his or her license(s). The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) Contents of Notice. The notice shall, at a minimum, include:

- (1) the name of the obligor and the amount of past due support;
- (2) a description of the type of license(s) (i.e. driver's license, fishing license) the CNCSP is seeking to revoke or suspend;
- (3) a statement that action for the suspension or revocation of a license will be made within thirty (30) days after the date of service of the notice unless the obligor enters into a written payment plan or pays the entire past-due support and/or complies with all subpoenas and orders regarding child support and/or paternity;

(4) a statement that he/she may enter a written payment plan for the past due support; and

(5) a statement that if the obligor elects not to enter a written payment plan with the CNCSP, he or she shall request a court hearing within twenty (20) days after the date of service of the notice.

(d) Scheduling of Hearing. Upon receipt of the request for a hearing, the CNCSP shall schedule a hearing to be conducted within (30) day from the receipt of the request.

(e) Failure to Respond. If the CNCSP does not receive a request for a hearing or the obligor does not enter into a written payment plan within twenty (20) days after the date of service of the notice, the CNCSP may seek the suspension or revocation of a license.

### **Section 15-412. Hearing For Revocation or Suspension of Licenses.**

(a) Hearing. At the hearing requested by the obligor, upon finding that the obligor is in arrears in court-ordered child support in an amount equal to or greater than three times the obligor's total monthly support, the Nation Tribal Court or CNCSP in administrative proceedings shall order the revocation or suspension of the license at issue unless the Nation Tribal Court or CNCSP determines the obligor is in compliance with a written payment plan with the Court or CNCSP.

(b) Failure to Contact. If an obligor fails to contact the CNCSP to enter into a written payment plan or fails to request a hearing or fails to appear at a scheduled hearing, the Nation Tribal Court or CNCSP shall enter an order of suspension or revocation of the license(s) at issue.

### **Section 15-413. License Reinstatement, Termination of Orders.**

(a) Request for Reinstatement. An obligor whose license is suspended or revoked may request in writing to the CNCSP that his/ her license be reinstated. The CNCSP may initiate action to reinstate the license upon proof the obligor is in full compliance with other provisions of the support order or any subpoenas, and has paid either:

(1) the current child support and monthly past due payment for the current month and two months immediately preceding, or

(2) an amount equivalent to three months of child support and past due payments.

(b) Notice. If the CNCSP initiates an order to terminate the revocation or suspension of a license, the obligor and obligee shall be served notice of the pending action. The notice shall be served on the obligor and obligee through one of the following methods: (i) first-class mail to the parties' last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) Order. If the license is reinstated by the Nation Tribal Court or CNCSP, a copy of the order shall be sent to the obligee and obligor.

(d) Submission of Order. The obligor shall be responsible for submitting the order to the appropriate state or tribal licensing boards.

(e) Additional Actions. If the obligor's license is reinstated and he/she fails to make child support payments, the CNCSP may again initiate action to revoke or suspend the obligor's license.

(f) Termination of Suspension Order. The CNCSP shall proceed to terminate an order for suspension or revocation when the obligor has paid his child support debt in full.

**Section 15-414. Passport Denial.** The CNCSP may refer an obligor's judgment for past due child support in excess of the amount set forth in 42 U.S.C. 654(31) to appropriate state and/or federal agencies for passport denial, revocation or restriction pursuant to federal law and regulations.

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**Section 15-415. Unemployment Compensation.** The CNCSP may proceed through Nation Tribal Court or through CNCSP administrative proceedings to have child support **withheld** from the obligor's unemployment compensation. Applicable tribal, state and federal laws and regulations shall be followed for unemployment compensation withholding.

### **Section 15-416. Reporting to Consumer Reporting Agency.**

(a) **Report.** The CNCSP may report to a consumer reporting agency the name of the obligor who is in arrears of his or her child support payment.

(b) **Notice.** Notice shall be sent to the obligor of the intent to report his or her name to a consumer reporting agency. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) **Request for Review.** The obligor has fifteen (15) days after the date the notice was delivered to request a review of the reporting or to contest the reporting.

(d) **Grounds for Contest.** A contest shall be limited to a mistake in the amount of the arrears or a mistake in the identity of the obligor.

(e) **No Release Pending Final Determination.** If the obligor contests the reporting, the CNCSP shall not release the report to the consumer reporting agency pending a final determination at the review.

(f) **Failure to Request Review.** If the obligor fails to request a review or to contest the release of information within fifteen (15) days after the date of delivery, the information may be released to the consumer reporting agency thirty (30) days from the date of mailing of the notice.

(g) **Fee.** The CNCSP may charge a consumer reporting agency a reasonable fee for making information available under this section.

(h) **Evidence of Status of Agency.** Before releasing information to a consumer reporting agency, that agency shall furnish evidence it is a consumer reporting agency as so defined in 15 U.S.C. §1681a(f).

### **Section 15-417. Tax Intercepts, Administrative Offset.**

(a) **General.** The CNCSP may use any state or federal tax intercept or administrative offset program to collect child support debts.

(b) **Notice.** Notice shall be sent to the obligor of the arrearage being referred for any tax intercept or administrative offset. The notice shall be served on the obligor through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(c) **Deadline.** The obligor has ten (10) days after the date of notice was delivered to request a review of an intercept, or to contest an intercept.

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(d) Contest. A contest shall be limited to a mistake in the amount of the arrears or a mistake in identity of the obligor.

(e) Initiation of Action. If the obligor does not request a review or does not contest the action within ten (10) days after the date of delivery, the CNCSP may initiate action for the intercept or offset.

### **Section 15-418. Indirect Contempt.**

(a) General. If a person obligated to provide support fails to pay court ordered child support, the CNCSP or the obligee may petition the Nation Tribal Court to find the obligor in contempt of the court order. An obligor may be cited for indirect contempt if his or her arrears on court-ordered child support in an amount greater than three times the obligor's total monthly support payments. Service on the obligor shall be made through one of the following methods:

(i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(b) Evidence. In a proceeding for indirect civil contempt, *prima facie* evidence of an indirect civil contempt of court shall be held when there is:

(1) Proof that:

- (a) The child support order was made, filed and served on the obligor; or
- (b) The obligor had actual knowledge of the existence of the order; or
- (c) The order was granted by default after proper notice to the obligor; or
- (d) The obligor was present in court at the time the order was announced; and

(2) Proof of noncompliance with the order.

(c) Sanctions. Unless otherwise provided by law, sanctions for direct or indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the Nation Tribal Court.

(d) Jail. If a contemnor is released to the custody of the sheriff to serve the jail sentence, the contemnor may be released from the custody of the sheriff:

(1) Upon full payment of the arrearage;

(2) Upon serving the full sentence; or

(3) Upon a written agreement by the parties for payment of the arrearages with the balance of the sentence to be conditionally suspended subject to performance of the agreement and court order for release. Persons incarcerated pursuant to this section shall serve flat time in all cases.

### **Section 15-419. Purge Requirements.**

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(a) General. When a person is found guilty of indirect contempt of court for failure to pay child support, that person may purge the contempt by:

- (1) making all future payments for child support, and
- (2) making a written payment plan for the arrearage or making a lump sum payment to pay the arrearage.

(b) Payment Schedule. The Nation Tribal Court or CNCSP in administrative proceedings shall set a reasonable payment schedule for the current and past due support.

(c) Compliance. When all the arrearage has been paid, the contempt shall be deemed purged.

(d) Failure to Comply. If the obligated person fails to comply with conditions for purging contempt, the Nation Tribal Court or CNCSP in administrative proceedings shall find the obligated person in contempt under this section and impose punishment.

### **Section 15-420. Employment, Find-Job Order.**

(a) Employment Requirement. By law a person who is ordered to pay child support through either court or administrative action shall be required to maintain employment to meet his or her child support obligation.

(b) Action for Order for Employment. If an obligor is in arrears for child support in an amount greater than three times the obligor's total monthly support payments and is not in compliance with a written payment plan, and the obligor claims inability to pay court-ordered child support because of unemployment or underemployment, the CNCSP in Nation Tribal Court proceedings or in administrative proceedings may initiate action to obtain an order to require an unemployed or underemployed obligor to find employment through job search programs or job- training programs. To initiate such action, the CNCSP must schedule an administrative child support conference with the obligor or a Nation Tribal Court hearing to determine if he or she is in noncompliance because of unemployment or underemployment.

(c) Notice to Obligor. Notice of the administrative conference or Nation Tribal Court hearing shall be sent to the obligor in noncompliance with a child support order because of unemployment or underemployment through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate. The notice shall include the following information:

- (1) the name of the obligor;
- (2) the name of the obligee and the child or children for whom support is owed;
- (3) the telephone number and contact name for the CNCSP;

(4) statements that the obligor is in noncompliance with a court or administrative child support order and the amount of the past due support; the time, date and place of a Nation Tribal Court hearing or CNCSP administrative conference set in said matter, the consequences of the obligor's failure to appear at the said hearing or conference, the obligor's burden of proof at the hearing or conference, and a description of the order that may be issued following the

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hearing or conference, all as set forth in sub-sections (d) and (e) of this section; and

(5) a statement that if a CNCSP administrative conference has been set, the obligor has the right to request transfer of the proceedings to the Nation Tribal Court prior to the conference, or to appeal a CNCSP administrative find-job order to the Nation Tribal Court following a CNCSP conference within the time set forth in section 15-107(e) of this chapter.

(d) Hearing; Order. The obligor shall be responsible for providing documentation for good cause not to participate in an employment search or job training program. If the obligor fails to appear at the hearing or appears and is determined to be unemployed or underemployed, the Nation Tribal Court or CNCSP in administrative proceedings shall enter a find-job order setting forth such findings and directing the obligor to participate in job-finding or job-training programs and accept available employment. Such order may require the obligor to register with a state and/or tribal employment agency for employment or job training. The order shall require the obligor to file a weekly report with the CNCSP showing at least five (5) attempts to find employment, including the name, address and phone number of a contact person with whom the obligor sought employment. The CNCSP shall submit the order to the Nation Tribal Court for approval. A copy of the order will be mailed to the obligor by first-class mail with a certificate of mailing.

(e) Failure to Comply. If an obligor fails to report or otherwise comply with a find-job order without good cause, enforcement proceedings may be initiated against the obligor. The obligor shall be responsible for the verification of any reason for noncompliance with a find-job order.

(f) Order Duration. The duration of the order shall not exceed three (3) months.

### **Section 15-421. Publication Of Delinquent Obligors.**

(a) Publication. The CNCSP may publish a list of names and other information of obligors who cannot be located by the CNCSP to enforce a child support order and who have not made a voluntary child support payment in the last twelve (12) months and have a bench warrant issued for his or her arrest. For this section to apply, the amount of the delinquent child support must be in excess of five thousand (\$5,000) dollars.

(b) Release of Information. Information that may be released include the obligor's name, last known address, amount owed, date of birth, photograph, and the number of children for whom support is owed. The CNCSP may not disclose information that is by law required to remain confidential. Information may be disseminated on posters, the Internet, the Comanche tribal newspaper, or other cost effective media.

(c) Notice. Notice shall be sent to the obligor of the intent to publish his or her name through one of the following methods: (i) first-class mail to the obligor's last known address with a certificate of mailing; (ii) certified mail, return receipt, restricted delivery; or (iii) personal service with proof of service certificate.

(d) Deadline for Request for Review. The obligor has ten (10) days after the date the notice was delivered to request a review of the intent to publish his or her name or to contest the publication.

(e) Grounds for Contest. A contest shall be limited to a mistake in the amount of the

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arrears or a mistake in identity of the obligor.

(f) Removal of Name from List. The obligor may remove his or her name from a list of names to be published by entering into a written payment agreement and keeping payments current or by paying the arrearage in full.

(g) Failure to Request Review or Contest. If the obligor does not request a review or does not contest the action within ten (10) days after the date of delivery, the CNCSP may publish the information that may be released under subsection (b) of this section.

### **Section 15-422. Exceptions to Enforcement Proceedings.**

(a) Obligors Receiving TANF Payments. The CNCSP may not initiate enforcement proceedings against an obligor who is currently receiving TANF payments.

(b) Physical or Mental Health Problems. The CNCSP may not initiate enforcement proceedings against an obligor who is not able to work because of a physical or mental health problem. The obligor shall provide documentation of participation in an active treatment plan which includes an estimate of the duration of the mental or physical health problem. Treatment plans may include, but are not limited to, care provided by state licensed physicians, mental health professionals, or substance abuse professionals.

(c) Physical or Mental Disability. The CNCSP may not initiate enforcement proceedings against an obligor who is not able to work because of a physical or mental disability. The obligor shall provide documentation that he or she has obtained a disability determination from the federal Social Security Administration and has filed an application with the state department of rehabilitation services for assistance in becoming employable. In the event that such obligor provides documentation to CNCSP of an application for a disability determination from the federal Social Security Administration and other evidence that no determination has been made on such application, the CNCSP shall postpone enforcement proceedings for a reasonable period of time, based upon the information timely provided by the obligor and any other relevant information obtained by the CNCSP.

### **Section 15-423. Foreign Orders, Full Faith and Credit.**

(a) Enforcement of Foreign Order. Upon request by another tribe or state, the CNCSP shall enforce a valid state or tribal child support order pursuant to the Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B).

(b) Registration of Foreign Order. Before enforcement begins, the foreign order shall be registered with the Comanche Nation Tribal Court. A certified copy of the support order and a certified statement of the amount of past due child support shall be submitted with the pleadings.

(c) Modification of Foreign Order. A modification to a foreign child support order shall be made pursuant to the Full Faith and Credit for Child Support Orders Act.