

Chapter 11

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ARTICLE I. IN GENERAL

Sec. 11-1. Purpose.

This chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To ensure the welfare, care and protection, and rehabilitation of children within the Community;
- (2) To preserve unity of the family by separating the child from the child's parents only when necessary;
- (3) To take such actions as may be necessary to prevent the abuse, neglect or abandonment of children;
- (4) To ensure a continuum of services for children and their families from prevention to residential treatment, with emphasis on prevention, early intervention and Community-based alternatives;
- (5) To secure the rights of, and ensure fairness to, the children, parents, guardians, custodians or other parties who come before the juvenile court under the provisions of this chapter;
- (6) To ensure that off-reservation courts return Community children to the Community;
- (7) To recognize and acknowledge customs and traditions of the Community with regard to child-rearing.

(Code 1981, § 11-1(a); Code 2012, § 11-1(a); Ord. No. SRO-210-96, § 1(a), 11-15-1995; Ord. No. SRO-341-09, 11-12-2008; Ord. No. SRO-385-2011, § 11-1(a), 9-28-2011; Ord. No. SRO-402-2012, § 11-1(a), 5-30-2012; Ord. No. SRO-409-2013, 12-1-2012)

Sec. 11-2. Definitions.

Unless otherwise indicated, the following terms shall have the meanings herein ascribed to them, for the purposes of this chapter:

Abandon means when a parent, guardian or custodian leaves a child and fails to provide reasonable support and to maintain regular contact with the child. Failure to maintain a

normal parental relationship with the child without just cause for a period of six months shall constitute prima facie evidence of abandonment.

Abuse means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or aggressive behavior and which emotional damage is caused by the acts or omissions of an individual having care, custody and control of a child. The term "abuse" shall include inflicting or allowing sexual abuse, or sexual conduct or contact with a child, as provided in chapter 6 article IV, division 2, sexual contact with children.

Adjudication means a finding by the court on the facts alleged in the petition, complaint or citation.

Adult means a person 18 years of age or older or otherwise emancipated by order of a court of competent jurisdiction.

Agent of notice means a person or agency designated by the Community to receive notice from a state in child protection cases.

Child means a person who is less than 18 years of age and has not been emancipated by order of a court of competent jurisdiction. The terms "juvenile" and "child" shall have the same meaning under this chapter.

Child placement agency means an agency receiving children for placement or adoption, which agency is licensed or approved when such license or approval is required by law.

Constructive removal means a child has not been physically removed from the home but is in the Community's legal custody pursuant to a court order or is in placement pursuant to a voluntary placement agreement with Community social services.

Court means the juvenile division of the Community court.

Cultural connectedness means the efforts directed at fostering and maintaining relation-

ships between a dependent child of the Community court with the Community and with the child's family members, including extended family members, provided that such efforts are in the best interest of the child.

Custodian.

- (1) The term "custodian" means a person who has physical custody of a child by arrangement with the child's parent, guardian, or by order of the juvenile court.
- (2) The term "custodian" does not include any person who has the child in violation of any court order or who has obtained physical custody through illegal means.

Dependent child means:

- (1) A child who is adjudicated to be in need of proper and effective parental care and control and has no parent, guardian or custodian, or one who has no parent, guardian or custodian willing to exercise or capable of exercising such care and control.
- (2) A child who is adjudicated to be destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care, or whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, guardian, custodian, or any other person having custody or care of the child.
- (3) Under the age of eight years who is found to have committed an act that would result in adjudication as a juvenile offender or incorrigible child if committed by an older child.

Detention means the temporary pre- or post-judgment care of a child who requires secure custody in a physically restricting facility.

Extended family means those family members recognized by the customs and traditions of the Community as being of sufficient relation to care for a child within the jurisdiction of the court.

Guardian means a person assigned by a court of law, other than a parent, having the duty and

authority to provide care and control of a child and to make decisions in matters having a permanent effect on the life and development of the child. It includes, among other things, the authority to consent to marriage, enlistment in the armed forces, and major medical, surgical or psychiatric treatment.

Guardian ad litem means an officer of the court, either an attorney or an advocate, appointed to protect and advocate for the best interests of the individual they are appointed to represent. A guardian ad litem functions independently, in the same manner as an attorney and/or advocate for a party to the action, and considers, but shall not be determinative, the wishes of the individual they are appointed to represent or the positions of others as to the best interests of the individual they are appointed to represent.

He or she/his or her means he or she, his or her and the singular includes plural.

Incorrigible child means a child adjudicated as one who refuses to obey the reasonable and proper orders or directions of his or her parent, guardian or custodian, and who is beyond the control of such person; or any child who:

- (1) Is habitually truant from school as provided in section 11-309;
- (2) Is a runaway from home or parent, guardian or custodian;
- (3) Habitually behaves in such a manner as to injure or endanger the morals or health of self or others;
- (4) Habitually commits any act constituting an offense which can only be committed by a minor and which is not designated as a juvenile offense; or
- (5) Fails to obey any lawful order of a court of competent jurisdiction given in a noncriminal action.

Juvenile means a person who is less than 18 years of age and has not been emancipated by order of a court of competent jurisdiction. The terms "juvenile" and "child" shall have the meaning under this chapter.

Juvenile offender means a juvenile who is adjudicated to have committed an act, which, if committed by an adult, would be a criminal offense.

Juvenile offense means an act by a juvenile, which, if committed by an adult, would be a criminal offense.

Legal custody means a relationship embodying the following rights and duties of an adult with respect to a minor the right to:

- (1) Physical custody of a child; the right and duty to protect, train and discipline the child;
- (2) Provide the child with food, clothing, shelter, education and ordinary medical care;
- (3) Determine where and with whom the child shall live; and
- (4) In an emergency, authorize surgery or other extraordinary care.

Legal custody is subject to residual parental rights and responsibilities of the guardian of the child.

Neglect means the refusal or failure of a parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision necessary for the health and well-being of the child. The term "neglect" includes abandoned children.

Out-of-home placement means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody.

Parent.

- (1) The term "parent" means and includes a natural or adoptive parent.
- (2) The term "parent" does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

Probation means a legal status created by court order following an adjudication involving violations of law by the juvenile under supervi-

sion by a probation officer designated by the court, subject to return to the court for further proceedings due to violation of any of the conditions prescribed.

Protective supervision means a legal status created by court order in proceedings involving incorrigible and dependent children, whereby the child is permitted to remain in his or her home, and supervision and assistance to correct the incorrigibility or dependency is provided by a court officer or other agency designated by the court.

Residual parental rights and duties means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, enlistment in the armed forces, and major medical, surgical or psychiatric treatment.

Restitution.

- (1) The term "restitution" means financial or other reimbursement to the victim that is limited to easily ascertainable damages for injury to or loss of property; actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons; and lost wages resulting from injury, which are a direct and proximate result of the delinquent act.
- (2) The term "restitution" does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible loss.

Shelter care means the temporary care of a child in any facility or environment, except a jail or other facility used for the detention of children alleged to be juvenile offenders, pending court disposition or transfer to another jurisdiction.

Termination of parent / child relationship means the permanent elimination by court order of all parental rights and duties, including residual parental rights and duties.

(Code 1981, § 11-1(b); Code 2012, § 11-1(b); Ord. No. SRO-210-96, § 1(b), 11-15-1995; Ord. No. SRO-341-09, 11-12-2008; Ord. No. SRO-385-2011, § 11-1(b), 9-28-2011; Ord. No. SRO-402-2012, § 11-1(b), 5-30-2012; Ord. No. SRO-409-2013, 12-1-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Secs. 11-3—11-22. Reserved.

ARTICLE II. JUVENILE COURT

Sec. 11-23. Established.

There is established for the Community, as a division of the Community court, a court to be known as the "Salt River Juvenile Court." The jurisdiction of the juvenile court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety and rehabilitation of children within the boundaries of the Community, as well as other children not within the boundaries of the Community, who have been declared wards of the juvenile court. The juvenile court is authorized to enforce subpoenas and orders of restriction, to impose fines, contempt, confinement and to order any other reasonable conditions to be complied with by the child, parent, custodian, or any other person made a party to the proceedings.

(Code 1981, § 11-2; Code 2012, § 11-2; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-2, 5-30-2012)

Sec. 11-24. Procedures and authorizations.

(a) *Rules of procedure.* The procedures in the juvenile court shall be governed by the rules of procedure for the Community court which are not in conflict with this chapter.

(b) *Exclusion of public.* The general public shall be excluded from all juvenile court proceedings under this chapter. Only the parties, their counsel, witnesses, the child's family and other persons determined to be appropriate by the court shall be admitted.

(c) *Cooperation.* The juvenile court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training programs and to receive grants-in-aid to carry out the purposes of this chapter.

(d) *Social services.* The juvenile court, in the exercise of its duties, shall utilize such social services as may be furnished by the Community or any federal or state agency to the end that it may be economically administered without unnecessary duplication or expense.

(e) *Burdens of proof.* The juvenile court shall apply three separate standards or burdens of proofs, as provided by subsequent provisions of this chapter. These burdens of proof relate to the quantum or degree of evidence required to meet the burden applied, and are listed and defined as follows:

- (1) *Preponderance of evidence.* Evidence which is more convincing to the trier of fact as worthy of belief than that which is offered in opposition to it.
- (2) *Clear and convincing.* A preponderance of the evidence which is also definite, clear, and convincing so as to enable the trier of fact to come to a conviction, without hesitancy, of the truth of the facts at issue.
- (3) *Beyond a reasonable doubt.* Evidence that precludes any doubt arising from a candid and impartial investigation of that evidence which might, under ordinary circumstances, cause a reasonable person to hesitate and pause in deciding the truth of that evidence.

(Code 1981, § 11-3; Code 2012, § 11-3; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-3, 5-30-2012)

Sec. 11-25. Jurisdiction.

(a) *Generally.* The juvenile court shall have authority to determine all issues and controversies concerning jurisdiction, and shall exercise original

jurisdiction over all persons within the territorial jurisdiction of the Community court as follows:

- (1) Concerning any child who is alleged to have violated any Community, federal, state or local law or municipal ordinance, which violation if committed by an adult would be a crime.
- (2) A child who is alleged to be dependent or incorrigible as these terms are defined in section 11-2.
- (3) To determine the custody of any child or appoint a guardian of any child who comes within the purview of the court's jurisdiction under other provisions of this section.

- (4) To determine the legal parent-child relationship, including termination of the parent-child relationship and residual parental rights and duties, as to a child who comes within the purview of the court's jurisdiction under other provisions of this section.
- (5) For judicial consent to the emancipation, marriage, employment or enlistment of a child in the armed forces, and to emergency medical or surgical treatment of a child who comes within the purview of the court's jurisdiction under other provisions of this section.
- (6) For the treatment or commitment of a mentally handicapped child who comes within the purview of the court's jurisdiction under other provisions of this section.
- (7) For children who are enrolled as members of the Community or who are eligible for enrollment and who are subject to proceedings in any other court under the Indian Child Welfare Act.
- (8) Over truancy matters pursuant to article XI of this chapter.

(b) *Jurisdiction over extended family.* Where the juvenile court asserts jurisdiction over a child under subsection (a) of this section, the court may also exercise, in addition to jurisdiction over the child's parent, guardian or custodian, jurisdiction over the child's extended family whenever the court deems it appropriate.

(c) *Required attendance of parent, guardian or custodian.* The parent, guardian, or custodian of a child against whom a petition or citation has been filed alleging the commission of a juvenile offense or incorrigible act shall be served with summons pursuant to section 11-132 and shall appear with the child at the juvenile court at the time set by the court. The court may waive the requirement that the parent, guardian or custodian appear. Failure of a parent to appear shall not bar further proceedings by the court. The juvenile court may cite for contempt a parent, guardian or custodian who fails to appear with the child in juvenile court.

(d) *Continuing jurisdiction.* Where the juvenile court deems it appropriate, the court may retain jurisdiction over children and their extended families, and such other persons who are subject to the orders of the court pursuant to section 11-31, who leave the exterior boundaries of the Community.

(e) *Termination.* Jurisdiction obtained by the juvenile court under subsections (a) and (b) of this section is retained by the court until terminated by court order. The juvenile court shall not have jurisdiction under this chapter over an emancipated child or when the child reaches 18 years of age, unless the court has ordered jurisdiction thereafter to continue until some other time not to exceed the child's 19th birthday.

(f) *Transfer to Community court.* The juvenile court may transfer jurisdiction over a child to the Community court for prosecution as an adult if the child is 16 years of age or older, and is alleged to have committed an act which, if committed by an adult, would be a crime.

- (1) *Petition.* The Community prosecutor or the child may file a petition requesting the juvenile court to transfer the child's case to the Community court.
- (2) *Hearing.* The juvenile court shall conduct a hearing to determine whether jurisdiction over the child should be transferred to the Community court. The transfer hearing shall be held not more than ten days after the petition to transfer is filed. Written notice of the transfer hearing shall be given to the child and the child's parents, guardian, or custodian at least 48 hours prior to the hearing.
- (3) *Deciding factors for transfer.* The following factors shall be considered when determining whether to transfer jurisdiction of the child to the Community court: The nature and seriousness of the offense with which the child is charged; the nature and condition of the child, as evidenced by the child's age, mental and physical condition; past record of offenses, and past court efforts at rehabilitation and the likelihood of rehabilitation.

- (4) *Standard of proof.* The court may transfer jurisdiction of the child to Community court if the court finds clear and convincing evidence that there are no reasonable prospects for rehabilitating the child through resources available to the court, and the offense allegedly committed by the child evidences a pattern of conduct which constitutes a substantial danger to the public.
- (5) *Written court order.* When a petition to transfer a juvenile to the Community court is filed, the juvenile court shall issue a written order granting the petition or denying the petition to transfer which order shall contain the reasons for its order. The order granting the petition or denying the petition constitutes a final order for purposes of appeal.

(Code 1981, § 11-4; Code 2012, § 11-4; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-402-2012, § 11-4, 5-30-2012; Ord. No. SRO-414-2013, § 11-4(f), 3-1-2013)

Sec. 11-26. Application of the Indian Child Welfare Act.

The juvenile court may apply the policies of the Indian Child Welfare Act, 25 USC 1901 et seq., where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the juvenile court unless specifically provided for in this chapter.

- (1) *Transfer from state court.*
 - a. *Agent of notice.* The Community agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the office of the staff attorney and Community director of social services.
 - b. *Receipt of notice; investigation and report on eligible children.* The Community social service division shall conduct an investigation and file a written report on eligible children with the staff trial attorney within

ten days of receipt of notice from the state court, or may recommend that the tribal attorney request a time extension of 20 days.

- c. *Recommendations for transfer or intervention.* The Community social service department shall make the determination and instruct the tribal attorney on whether or not the Community should petition for transfer from, or intervene in, state court child custody proceedings.
- d. *Petition for transfer.* Upon receipt of the pre-transfer report and recommendations from the Community social service division, the Community petition for transfer or intervention shall be filed in state court by the staff tribal attorney.
- e. *Acceptance of transfer.* The court shall not accept transfer from state court unless a parent or Indian custodian's petition, or the Community's petition, to state court for transfer is granted.
- f. *Temporary guardianship.* Upon acceptance of transfer from state court, the court shall appoint a guardian for the child or otherwise order that the child be placed in Community-based shelter care authorized by section 11-158 until final disposition of the matter.
- g. *Hearing(s).* Upon receipt of transfer jurisdiction from state court, the Community prosecutor shall file a dependency petition in the juvenile court, and appropriate hearing(s) shall be held in accordance with this chapter no sooner than 20 days following receipt of transfer.

- (2) *Transfer to state court or other tribal court.* The juvenile court may transfer a proceeding before the court to an appropriate state court or other tribal court where the state or other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child.

(3) *Transfer from other tribal court.* The juvenile court may consider accepting a request for transfer of a proceeding from an appropriate tribal court where the Community has a significant interest in the child and the transfer would be in the best interests of the child.

(4) *Court orders; Community interests.*

a. *State court orders.* State child custody orders involving children over whom the juvenile court could take jurisdiction may be recognized by the juvenile court only after a full independent review of such state proceedings has determined that:

1. The state court had jurisdiction over the child;
2. The provisions of the Indian Child Welfare Act, 25 USC 1901 through 1963, were properly followed;
3. Due process was afforded to all interested persons participating in the state proceedings; and
4. The state court proceeding does not violate the public policies, customs, or common law of the Community.

b. *Court orders of other tribal courts.* Court orders of other tribal courts involving children over whom the juvenile court could take jurisdiction may be recognized by the juvenile court after the court has determined:

1. The other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
2. Due process was afforded to all interested parties participating in the other tribal court proceeding.

c. *Community interests.* Because of the vital interest of the Community in its children and those children who

may become members of the Community, the statutes, regulations, public policies, customs and common law of the Community shall control in any proceeding involving such children.

(Code 1981, § 11-5; Code 2012, § 11-5; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-293-2003, 2-5-2003; Ord. No. SRO-356-2010, 9-12-2009; Ord. No. SRO-402-2012, § 11-5, 5-30-2012)

Sec. 11-27. Personnel.

(a) *Intentionally left blank.*

(b) *Referee.*

(1) The court may appoint, in any matter civil and not criminal in nature, an associate Community court judge, probation officer, or other qualified person as referee to serve during the pleasure of the court, except that no employee of the Bureau of Indian Affairs, United States Department of Interior, shall be eligible to serve as referee. No probation officer who has had any previous connection with the child involved in any particular case, by investigation, protective supervision, probation or otherwise, shall act as referee in any hearing involving such child.

(2) A judge may refer any case to a referee, or he or she may direct that all cases of a certain nature or within a certain geographical area shall, in the first instance, be heard by a referee, and in the same manner as cases are initiated and hearings are held by the court. At the conclusion of the hearing, the referee shall transmit to the judge all papers relating to the case, together with his or her written findings and recommendations.

(c) *Juvenile probation officers' powers and duties.*

(1) Juvenile probation officers shall have the authority to temporarily detain juveniles, but shall, whenever possible, refrain from exercising such power except in urgent

situations in which a regular law enforcement officer is not immediately available.

(2) The juvenile probation officer(s) shall:

- a. Make preliminary inquiries, social studies and such other investigations as the juvenile court may direct, keep written records of such investigations or studies, and make reports to the juvenile court as directed.
- b. Explain to the child and his or her parent, guardian or custodian the meaning and conditions of probation or protective supervision.
- c. Keep informed of the conduct and condition of each child on probation and report thereon to the court; use all suitable methods to improve the conduct or condition of children on probation or under protective supervision.
- d. Perform such other duties in connection with the care and custody of children as the court may require.

(Code 1981, § 11-6; Code 2012, § 11-6; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-6, 5-30-2012; Ord. No. SRO-516-2020, 3-4-2020)

Sec. 11-28. Juvenile records.

(a) *Preservation; inspection.* A record of all juvenile court hearings shall be made and preserved. All juvenile court records shall be confidential and shall not be inspected by anyone but the following, provided that the persons requesting inspection have no interests adverse to the child:

- (1) The child;
- (2) The child's parent, guardian or custodian;
- (3) The child's legal counsel or guardian ad litem;
- (4) The juvenile court personnel directly involved in the handling of the case;

- (5) Any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

(b) *Confidentiality of law enforcement / social services records.* Law enforcement records and social services files concerning a child shall be kept separate from the records and files of adults. Such juvenile records shall be confidential and shall not be disclosed except by order of the court. A court order may require conditions of disclosure including, without limitation, sanitization of records and in camera inspection.

(Code 1981, § 11-12; Code 2012, § 11-12; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-12, 5-30-2012)

Sec. 11-29. Juvenile court appeals.

Unless otherwise provided by this chapter, the right to appeal, grounds for appeal and procedures for appeal, as set forth in chapter 5, shall apply to this chapter. Where the order, decree or judgment appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

(Code 1981, § 11-13; Code 2012, § 11-13; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-13, 5-30-2012; Ord. No. SRO-414-2013, § 11-13, 3-1-2013)

Sec. 11-30. Fees.

There shall be no fee for filing a petition under the provisions of this chapter, nor shall any fees be charged by any Community officer for the service of process or for the attendance in court in any such proceedings. Witness fees shall be payable in accordance with the provisions for witnesses in the Community courts.

(Code 1981, § 11-14; Code 2012, § 11-14; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-14, 5-30-2012)

Sec. 11-31. Alternative method for resolution of cases.

(a) *Purpose.* The purpose of this section is to utilize the unique resource of the extended families of the Community to assist the juvenile court in

resolving problems relating to the youth of the Community. The use of this alternative resource is based upon the belief that juvenile offender, incorrigibility and dependency problems associated with juveniles are best resolved within the context and with the support of each juvenile's family structure, and by application of the customs and traditions of the Pima and Maricopa peoples.

(b) *Preliminary procedure.* All definitions and all procedures prescribed by this chapter prior and up to adjudication of issues, including, but not limited to, pleading, notice, fees, and service of process as set forth in this section and sections 11-131, 11-132, 11-159 and 11-164, shall apply to this section.

(c) *Motion.* Prior to a hearing on the merits of juvenile cases, the court, upon its own motion or upon motion by a parent or guardian of the child or by the Community, may order that the case be heard pursuant to the procedure set forth in this section.

(d) *Applicability.* The court shall, upon motion by a party as provided in subsection (c) of this section, or prior to its own motion, make inquiry in order to determine both the applicability and suitability of hearing the case pursuant to this section. The court shall inquire into and seek to ascertain:

- (1) The number of extended family members who are or should be interested in participating in resolving the issue regarding the child;
- (2) The degree of involvement which the extended family members exhibit toward the welfare of the child;
- (3) The gravity of the delinquency, incorrigibility or dependency issue associated with the child; and
- (4) The views and wishes of the child subject of the delinquency, incorrigibility or dependency issues before the court.

(e) *Hearing.* The hearing shall be conducted informally and in such a way as to give maximum discretion to the court and full effect to the

customs and traditions of the Community and of the extended family; provided, however, that the following minimum requirements are met:

- (1) All participating members of the extended family are given an opportunity to be heard in open court;
- (2) Any family member or party, including the Community, may present evidence and call witnesses to testify;
- (3) The child who is the subject of the proceedings, if able, be given an opportunity to be heard in open court; and
- (4) The general public shall be excluded, and only such persons as the court determines have a direct and legitimate interest in the case shall be admitted.

The court shall have the authority to order the attendance of extended family members. The court may appoint a member of the Community who is qualified by experience and temperament to act as a tribal elder and conduct the hearing provided for in this section and make written recommendations of disposition of the case to the court.

(f) *Entry of judgment; appeal.*

- (1) Upon reaching a decision pursuant to the procedures set forth in this section, the court shall enter judgment as provided by sections 11-135 and 11-165.
- (2) In its order or judgment, the court shall indicate that its decision was reached by use of the procedure provided by this section.
- (3) The court shall make all reasonable attempts to fashion its remedy or relief in its judgment or order so as to incorporate the extended family, and not simply isolate the juvenile. The court may require members of the extended family to perform specific acts or services for the juvenile.
- (4) Any extended family member or party adversely affected by a final disposition shall be informed of his or her right to appeal.

(5) All appeals under this section shall be made pursuant to section 11-29.
(Code 1981, § 11-15; Code 2012, § 11-15; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-15, 5-30-2012)

Secs. 11-32—11-50. Reserved.

ARTICLE III. COMMUNITY PROSECUTOR

Sec. 11-51. Duties.

The Community prosecutor shall, in addition to the duties set forth in section 4.5-25, carry out the following duties and responsibilities:

- (1) Attend and represent the Community in all juvenile proceedings involving allegations of child dependency, incorrigibility and juvenile offenses;
- (2) Direct such investigation the prosecutor deems necessary of acts of alleged child dependency, incorrigibility and delinquent behavior;
- (3) Process, file and present petitions, subpoenas, affidavits, motions and papers of any kind to the juvenile court on behalf of the Community and in the best interests of the child;
- (4) Promote cooperation, communication, and consistency among all relevant agencies, including, but not limited to, Community social services, law enforcement and child protective services.

(Code 1981, § 11-7; Code 2012, § 11-7; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-7, 5-30-2012)

Secs. 11-52—11-75. Reserved.

ARTICLE IV. CHILD PROTECTIVE SERVICES

Sec. 11-76. Duties and responsibilities of the Community social services department.

(a) Child protective services workers shall be employed by the Community social services department.

(b) The department may cooperate with such state, federal and Community agencies as are necessary to achieve the purposes of this chapter. The department may negotiate working agreements with other jurisdictions subject to review by the Community prosecutor and final approval of the Community Council.

(c) The department is authorized to obtain fingerprint background checks from tribal, state, and federal law enforcement agencies for any person seeking to serve as a placement for children, any adult member of a household seeking to serve as a placement for children, and any person who seeks to serve as a volunteer for a program serving children.

(Code 1981, § 11-8(a), (b); Code 2012, § 11-8(a), (b); Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-8(a), (b), 5-30-2012; Ord. No. SRO-498-2018, 1-3-2018)

Sec. 11-77. Child protective services.

Child protective services shall:

- (1) Receive reports of dependent children and be prepared to provide temporary shelter care for such children on a 24-hour basis;
- (2) Upon receipt of any report or information under subsection (1) of this section:
 - a. Make prompt investigation, which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home; and
 - b. Where criminal conduct is suspected, notify the appropriate law enforcement agency;
- (3) Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his or her surroundings and that his or her removal is necessary. Law enforcement officials shall cooperate with social services

personnel to remove a child from the custody of his or her parents, guardian or custodian when necessary;

- (4) Evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent;
 - (5) Prepare and submit a written report of the investigation and evaluation to the Community prosecutor.
- (Code 1981, § 11-8(c); Code 2012, § 11-8(c); Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-8(c), 5-30-2012)

Sec. 11-78. Voluntary placement agreements.

Upon the request of the Community social services department or upon its own motion, the court may issue an order ratifying a voluntary placement agreement.

- (1) A voluntary placement agreement will include:
 - a. A description of the type of home or institution in which a child is to be placed;
 - b. Information regarding the safety and appropriateness of the placement; and
 - c. The Community social services department plan for carrying out the agreement.
 - (2) If the court does not ratify the voluntary placement agreement, Community social services and the family may continue to operate pursuant to the agreement unless or until a dependency petition is filed.
- (Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Secs. 11-79—11-97. Reserved.

ARTICLE V. RIGHTS AND RESPONSIBILITIES

Sec. 11-98. Support of children.

(a) *Responsibility of parents or legal guardians.* For any child deemed dependent pursuant to this chapter in juvenile court, the parents and/or legal guardians of such child shall be responsible for the financial care, support and maintenance of such child consistent with chapter 10, article II, division 2.

(b) *Notice of hearing.* Child support hearings may be addressed by the court in conjunction with any other dependency hearing, so long as the parties had notice that the child support hearing would be heard. When such hearing is not held in conjunction with another dependency hearing, notice for child support hearings shall be achieved consistent with chapter 10, article II, division 2.

(Code 1981, § 11-9; Code 2012, § 11-9; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-391-2012, 1-25-2012; Ord. No. SRO-402-2012, § 11-9, 5-30-2012)

Sec. 11-99. Emancipation.

The parents or legal guardian of a child 16 years of age or older may petition the juvenile court on behalf of the child for emancipation or, in such situations where there is no parent or legal guardian available or willing to petition for emancipation, the child may petition for emancipation. The court shall not grant such status unless the parties prove to the court by clear and convincing evidence that the child is capable of functioning as an independent and responsible member of the Community. Where the petitioner is the child, the child must further show that the petition was not filed primarily in response to restrictions and limitations imposed by his or her parent, guardian or custodian.

(Code 1981, § 11-10; Code 2012, § 11-10; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-10, 5-30-2012)

Sec. 11-100. Basic rights.

(a) *Right to be represented by counsel.* All parties have a right to be represented at their own expense as provided in section 4-4 in all

proceedings under this chapter, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court.

(b) *Appointment of counsel.*

- (1) **Dependency proceedings.** A parent, guardian, or custodian shall be entitled to be represented by counsel, who may be either an attorney or an advocate admitted to practice in the Community court, in any dependency proceeding, beginning at the first hearing and throughout all stages of the proceedings. A parent, guardian, or custodian may request the appointment of counsel at any stage of a dependency proceeding. Counsel shall be appointed immediately upon the filing of a petition alleging child abuse and neglect. A parent, guardian or custodian may knowingly, intelligently, and voluntarily waive appointed counsel at any stage of the proceedings and inform the court of the intention to proceed without representation or to retain counsel at their own expense.
- (2) **Delinquency proceedings.** A juvenile shall be entitled to be represented by counsel, who may be either an attorney or an advocate admitted to practice in the Community court, in any delinquency proceeding, beginning at the first hearing and throughout all stages of the proceedings. A juvenile or his or her parent or guardian may request the appointment of counsel to the juvenile at any stage of a delinquency proceeding. Counsel shall be appointed immediately upon the filing of a juvenile delinquency petition or complaint, petition to revoke probation, or citation in any delinquency matter. A juvenile may knowingly, intelligently, and voluntarily waive appointed counsel at any stage of the proceedings and inform

the court of the intention to proceed without representation or to retain counsel at their own expense.

- (3) The right to be represented by counsel shall include the right to consult with counsel as soon as practicable. This right shall also include the right to obtain and inspect, through counsel and/or counsel's staff, any juvenile court records related to the case.
- (4) Failure of a parent, guardian, or custodian to appear at any dependency hearing, or failure of a juvenile to appear at a delinquency hearing, does not waive the person's right to counsel or the right of counsel to appear on their behalf.

(Code 1981, § 11-11; Code 2012, § 11-11; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-11, 5-30-2012; Ord. No. SRO-549-2022, 9-28-2022)

Secs. 11-101—11-128. Reserved.

ARTICLE VI. JUVENILE JUSTICE

Sec. 11-129. Procedure for arrest and detention of juveniles.

(a) *By warrant or court order.* A juvenile shall be arrested by a police officer or a probation officer pursuant to:

- (1) An order of the juvenile court;
- (2) A warrant.

(b) *Without warrant or court order.* A juvenile may be arrested or taken into custodial detention by a police officer or a probation officer without a warrant or order of the court when:

- (1) The juvenile has committed an offense in the presence of the officer;
- (2) There are reasonable grounds to believe that the juvenile has committed an offense under this Community Code of Ordinances or applicable federal law, or has violated the terms of any probation grant from the tribal court;

- (3) There are reasonable grounds to believe the juvenile has run away from his or her parents, guardian or custodian.

(c) *Warning of rights prior to questioning.* When an officer takes a juvenile into custodial detention the officer shall warn the juvenile prior to any questioning that the juvenile has a right to remain silent, that anything the juvenile says can be used against the juvenile in court, that the juvenile has the right, at his or her own expense, to have the assistance of legal counsel, and to have his or her parent, guardian or custodian, and/or counsel present during questioning. A juvenile may request a voluntariness hearing in any criminal matter to determine if any statements made by the juvenile were voluntary and admissible.

(d) *Release from custody.* A juvenile shall not be detained any longer than is reasonably necessary under the circumstances to obtain his or her name, age, residence and other information, and to contact and obtain the appearance of his or her parent, guardian or custodian. Where the parent, guardian, or custodian of a juvenile taken into custody without a warrant or court order can be located and is able to take the juvenile under his or her care, the juvenile shall be released to his or her care pending any proceeding in the juvenile court, unless detention is necessary or required, as provided in subsection (g) of this section.

(e) *Review by juvenile intake officer.* When a police officer or probation officer arrests a juvenile, the officer shall immediately notify the juvenile intake officer. The juvenile intake officer shall, after a preliminary evaluation of the circumstances, prepare a written recommendation for the court as to the continued detention of the juvenile. Copies of that recommendation shall be provided to the parties.

(f) *Notification of family.* If a juvenile is arrested and not released, the officer taking the juvenile into custody shall immediately attempt to notify the juvenile's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the juvenile into custody and the place of continued custody. If the parent,

guardian or custodian cannot be contacted, the duty of notification shall transfer to the juvenile intake officer. Should contact with the parent, guardian or custodian not be achieved through reasonable efforts, the department of corrections shall notify child protective services within 24 hours.

(g) *Criteria for placing juvenile in detention.* Unless ordered by the court pursuant to the provisions of this chapter, an arrested juvenile shall not be placed in detention prior to court disposition unless detention is required:

- (1) To protect the person or property of others;
- (2) If it appears to the arresting officer that the welfare of the juvenile or of the public requires that the child be placed in detention; or
- (3) If there is reasonable cause to believe that the child will not otherwise be present at any hearing.

(h) *Place of detention.* A juvenile alleged to have committed a juvenile offense or an incorrigible act may be detained pending court hearing in the following places:

- (1) The Community department of corrections;
- (2) A facility operated by a juvenile welfare agency approved by the court;
- (3) Any other suitable place designated by the court.

(i) *Citation or written report and complaint.* The officer or other person who takes a juvenile into custody shall immediately prepare and submit to the juvenile intake officer and to the prosecutor, a copy of any citation, or written report, which may include a petition to revoke probation, stating the facts that bring the juvenile within the jurisdiction of the juvenile court and giving the reasons why the juvenile was not released if the juvenile continues to be held in detention.

(j) *Recommendation for informal adjustment.*

Upon receipt of the written report for any new offense, the juvenile intake officer shall review the circumstances to determine whether an informal

adjustment of any complaint or requested complaint is appropriate, consistent with section 11-130. If so, the juvenile intake officer will timely provide such recommendation to the prosecutor. The recommendation shall include the recommended conditions of any informal adjustment. A lack of recommendation from the juvenile intake officer shall have no prejudicial effect on prosecution of any complaint filed.

(k) *Time limitation; detention hearing.* No juvenile shall be held in detention for more than 24 hours, unless a complaint, petition to revoke probation or citation alleging juvenile offender conduct has been filed. In the event that such a complaint, petition to revoke probation or citation has been filed, the juvenile shall be held no longer than 24 hours after the filing of such complaint, petition to revoke probation or citation, unless so ordered by the court after a hearing. If a complaint, petition to revoke probation or citation is not filed within the allotted time, the juvenile shall be released to the parent, guardian, or custodian. Provided the parent, guardian or custodian has notification, the juvenile court shall hold a hearing within one working day following the filing of a complaint, petition to revoke probation or citation to determine whether continued detention is required.

(l) *Review of detention status.* Any detained juvenile may move for review of detention status whenever the motion alleges the existence of material facts not previously presented to the court, and when those facts were not known at the time of the original detention hearing. A hearing on a motion for review of detention status shall be held within five days of the filing of the motion.

(m) *Procedure for release from custody.* When a juvenile is ordered released from the department of corrections, the parents, guardians or custodians shall immediately take custody of the juvenile. Where a juvenile is ordered released from the department of corrections, but no parent, guardian or custodian takes custody of the juvenile, the department of corrections shall make a report to child protective services within 24 hours. It shall be unlawful for a parent, guardian, or

custodian to fail to take custody of a juvenile when the court has ordered the juvenile released. (Code 1981, § 11-16; Code 2012, § 11-16; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-16, 5-30-2012)

Sec. 11-130. Informal adjustment of complaint or citation.

(a) *Authority.* The Community prosecutor, juvenile intake officer, and other relevant parties may hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss alternatives to prosecution of any juvenile offense. The parties may agree to informal adjustment of a complaint or citation, at any time prior to adjudication under the following conditions:

- (1) The facts are admitted and bring the case within the jurisdiction of the juvenile court;
- (2) A disposition by informal adjustment of the matter would be in the best interests of the juvenile and the Community; and
- (3) The juvenile and a parent, guardian or custodian voluntarily consent to disposition of the matter by informal adjustment.

(b) *Voluntary participation.* This section does not authorize the juvenile intake officer or the Community prosecutor to compel any person to appear at any such conference, to produce any papers, or to visit any place.

(c) *Post-filing adjustment.* When the parties agree to an informal adjustment of any complaint or citation, the parties shall file a stipulation that agrees to toll the case. The court shall vacate any settings and release any juvenile who may be detained for the case.

(d) *Written agreement.* The Community prosecutor shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by the parties for remedying the situation. Copies of the agreement will be provided to the parties, and shall not be provided to the court.

(e) *Monitoring.* The juvenile intake officer shall review the juvenile's progress at least once every 30 days. If the juvenile fails to comply with the conditions agreed upon by the parties, or if, at any time before the end of the agreed-upon adjustment period, the juvenile intake officer determines that satisfactory progress is not being achieved, the juvenile intake officer shall request that a complaint or citation be filed pursuant to section 11-131. The commission of any new juvenile offense, including truancy, shall be grounds for automatic termination of any informal adjustment agreement. If the complaint or citation is refiled after an unsatisfactory completion of an informal adjustment that was entered after the complaint or citation was filed with the court, the court shall set the adjudication within 30 days of the refile. There shall be no right of the juvenile to challenge the termination of any informal adjustment agreement.

(f) *Tolling.* If a complaint or citation is being adjusted, the time limit for filing a complaint or citation shall be tolled during the period required to comply with the terms of adjustment. If the juvenile does not comply, a complaint or citation shall be filed not later than 30 days after the matter is referred to the Community prosecutor by the juvenile intake officer to file the petition.

(g) *Case closure.* Upon satisfactory completion of the disposition agreed to by the parties, the Community prosecutor shall not file a complaint or citation and the case shall be closed. If the matter was informally adjusted after a complaint or citation was filed, the court shall dismiss the matter with prejudice upon motion by the prosecutor that the juvenile satisfactorily completed the terms of any adjustment agreement.

(h) *Interagency cooperation and coordination.* It shall be the responsibility of all involved agencies to coordinate and cooperate to ensure that informal adjustment is used only in cases where such agreements are viewed as effective tools for the resolution and rehabilitation of juveniles. (Code 1981, § 11-17; Code 2012, § 11-17; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-17, 5-30-2012)

Sec. 11-131. Commencement of formal proceedings.

(a) *Complaint, petition to revoke probation or citation required.* Formal proceedings in juvenile cases shall be commenced by a complaint, petition to revoke probation or citation filed by the Community prosecutor on behalf of the Community, and may be based upon probable cause from any peace officer or reasonable grounds from a probation officer, that the juvenile appears to come within the jurisdiction of the court.

(b) *Issuance of citation.* In the case of traffic violations, a complaint shall not be required, and the issuance of a citation shall be sufficient to invoke the jurisdiction of the court.

(c) *Time limitations.* If the juvenile is in custody, the complaint, petition to revoke probation or citation shall be filed with the court within 24 hours from the time the juvenile was placed in detention. If a complaint, petition to revoke probation or citation is not filed within the allotted time, the juvenile shall be released to the parent, guardian, custodian, extended family member, or other responsible adult. If the juvenile has been previously released to a parent, guardian, custodian, extended family member, or other responsible adult, the complaint, petition to revoke probation or citation shall be filed within 90 days of the juvenile's release, except that if the complaint is returned by the Community prosecutor to the law enforcement department for further investigation, the time limit is extended for an additional 60 days. In matters in which the juvenile was not arrested, any complaint or citation shall be filed within 120 days from the time when probable cause existed for the offense.

(d) *Contents of complaint, petition to revoke probation or citation.* The complaint, petition to revoke probation or citation shall clearly specify the following information:

- (1) The name, age, place of residence, and address of the juvenile;
- (2) A citation of the jurisdictional statute;
- (3) A citation to the provision(s) of the Community law which the child is alleged to have violated;

- (4) A plain and concise statement of the facts upon which the allegations are based, including the approximate time and location at which the alleged facts occurred;
- (5) The names, place of residence, and addresses of the juvenile's parent, guardian or custodian, or nearest relative if the parent, guardian, or custodian is unknown; and
- (6) If the juvenile is in custody, the location of his or her detention, the facts necessitating the detention, and the date and time of the detention.

If any of the facts herein required to be stated are not known, the complaint, petition to revoke probation or citation shall so state.

(e) *Court-ordered custody and detention.* If it appears to the court that the welfare of the juvenile or the public requires that the juvenile be taken into temporary custody, the court may, at any time after a complaint, petition to revoke probation or citation is filed, make an order providing for custody and detention.

(f) *Subsequent immunity of the juvenile.* When a complaint or citation has been filed under this section, a juvenile shall not thereafter be subject to criminal prosecution as an adult based on the facts giving rise to the complaint or citation, except as otherwise provided in this chapter. (Code 1981, § 11-18; Code 2012, § 11-18; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-18, 5-30-2012)

Sec. 11-132. Notice of initial appearance.

(a) *Issuance of summons.* When a juvenile is not in custody, and a complaint, citation or petition to revoke probation has been filed, the court shall issue a summons to the juvenile, and to a parent, guardian or custodian, and to such other persons as the court deems necessary and proper to the proceedings, unless good cause exists for the issuance of a warrant for the juvenile, in which case a warrant shall issue. The summons shall require them to appear personally before the court at the time set for initial appearance. No summons is required as to any person who ap-

pears voluntarily or who files a written waiver of service with the clerk of the court at or prior to the hearing.

(b) *In custody notice.* When a juvenile is in custody, notice for the initial appearance will be provided at the detention hearing.

(c) *Attachments to summons.* A copy of the complaint, citation or petition to revoke probation and notice of basic rights, as provided under section 11-100, shall be attached to the summons.

(d) *Service of summons.* Service of summons shall be made under the direction of the court by a Community process server or other suitable person appointed by the court, or upon request of the court, by a Community law enforcement officer or any other police officer.

(e) *Personal service.* If the parties to be served with summons can be found within the exterior boundaries of the Community, service shall be made by delivering a copy of the summons and complaint, citation or petition to revoke probation to them personally, or by leaving copies thereof at their dwelling house or usual place of abode with some person of suitable age and discretion residing at such place, no less than two days before the hearing.

(f) *Mail service.* If the parties cannot be personally served, and if their address is known, the summons, complaint, citation or petition to revoke probation and notice of rights may be served within or outside the Community's exterior boundaries by certified mail, return receipt requested, at least five calendar days before the hearing.

(g) *Publication.* Where it appears that the parent, guardian or custodian is a nonresident of the Community, or that their name, place of residence or whereabouts is unknown, or in cases of unsuccessful personal service or service by certified mail, the court shall direct the clerk to publish a legal notice in the next available issue of the Community's newspaper. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown, "a person to whom it may concern," may be used. The name of the court, the title and purpose of the proceed-

ing, the date the complaint, citation or petition to revoke probation was filed, and the hearing date shall be set forth in general terms.

(h) *Contempt warning.* The summons issued by the court shall display the following words:

"Notice, Violation of this Order is Subject to Proceedings for Contempt of Court Pursuant to Salt River Community Code Section 6-42. The Court May Find the Parent, Guardian or Custodian in Contempt For Failure to Appear at a Court Hearing or For Failure to Follow Court Orders."

(i) *Warrant for arrest.* If the summons cannot be served after due diligence, or if it appears to the court that the person served will not obey the summons, that serving the summons will be ineffectual, or that the welfare of the juvenile requires that he or she be brought immediately within the court's protection, a warrant may be issued for the arrest of the parent, guardian, custodian, or the juvenile, and such warrant may be served anywhere within the jurisdiction of the court.

(Code 1981, § 11-19; Code 2012, § 11-19; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-19, 5-30-2012)

Sec. 11-133. Initial appearance.

(a) *Time and purpose.* The court shall set an initial appearance date for the juvenile and a parent, guardian or custodian within 30 days following the filing of the complaint or citation. When a juvenile is in custody, the initial appearance shall be set within two business days of the detention hearing; however, the initial appearance may be held in conjunction with the detention hearing if the parties consent. At the initial appearance of the juvenile, the court shall inform the juvenile and the parent, guardian or custodian of the contents of the complaint, citation or petition to revoke probation and allow the juvenile the opportunity to admit or deny the allegations of the complaint, citation or petition to revoke probation.

(b) *Advising of rights.* The court shall advise the party(s) of their basic rights as provided for in section 11-100.

(Code 1981, § 11-20; Code 2012, § 11-20; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-20, 5-30-2012)

Sec. 11-134. Adjudication hearing.

(a) *Formal trial on issues for new offenses.* The formal trial on the issues shall be set for no later than 60 days following the initial appearance of the juvenile on the complaint or citation unless a rehearing has been ordered.

(b) *Hearing for probation violations.* The hearing on the issues alleged in a petition to revoke probation shall be set no later than 20 days following the initial appearance on the petition to revoke probation.

(c) *Notice of hearing.* Notice of the adjudication hearing shall be given to the juvenile, the parent, guardian or custodian, and/or legal counsel no less than 48 hours before the hearing.

(d) *Witnesses and evidence necessary.* Unless the juvenile admits to committing the acts or offense(s) charged, witnesses must be called and evidence presented to substantiate the allegations of the complaint, citation or petition to revoke probation.

(e) *Admissibility.* Statements made during the informal conference shall not be admitted into evidence at the adjudication hearing or at the time of sentencing. This shall not be construed to prevent the admissibility of any evidence which would otherwise be admissible under the court's rules of evidence.

(f) *Burden of proof.* The burden of proof lies with the Community prosecutor. The prosecutor must prove beyond a reasonable doubt the allegations of juvenile offenses in complaints or citations, and the allegations of incorrigible acts or petitions to revoke probation shall be proven by a preponderance of the evidence.

(g) *Consolidation of hearing.* When more than one juvenile is alleged to be involved in the same violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

(h) *Amendment of complaint, citation or petition to revoke probation.* The complaint, citation or petition to revoke probation may be amended to conform to evidence presented which supports material facts not alleged. A continuance shall be granted to ensure justice and fairness to all

parties if the amended complaint, citation or petition to revoke probation results in a substantial departure from the original complaint, citation or petition to revoke probation.

(i) *Petition for new hearing.* A parent, guardian, custodian or advocate of any juvenile whose status has been adjudicated under this chapter, or any adult affected by a proceeding hereunder, may, at any time, petition the court for a new hearing on the grounds that new evidence, which was not known and could not, with due diligence, have been made available at the original hearing and which might affect the judgment, has been discovered. If it appears to the court that there is such new evidence that might affect its judgment, it shall order a new hearing and enter such decree and make disposition of the case as is warranted by all the facts and circumstances and the best interests of the juvenile.

(Code 1981, § 11-21; Code 2012, § 11-21; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-21, 5-30-2012)

Sec. 11-135. Disposition proceedings.

After the adjudication hearing, the court shall enter findings of fact and conclusions of law that the allegations are true and proceed to disposition, or not true and dismiss the complaint, citation or petition to revoke probation.

- (1) *Investigation and predisposition report.* When a juvenile is found to be a juvenile offender or an incorrigible juvenile, the court may require that the juvenile probation officer conduct an investigation and prepare a written report describing reasonable and appropriate disposition alternatives. The investigation may include the juvenile's home environment, history and associations, the present conditions of the juvenile and family, and make recommendations for assistance to the juvenile calculated to resolve the problems established at the adjudication hearing and those problems reasonably related.
- (2) *Hearing.* The court may order a hearing to determine the proper disposition of the case. At such hearing, the court shall consider the juvenile probation officer's

predisposition report and recommendations and afford the parties an opportunity to object. The court shall also consider alternative reports and recommendations of the juvenile, if any. Any relevant and material information shall be admissible at the hearing.

- (3) *Notice of hearing.* Notice of the disposition hearing shall be given to the juvenile and his or her parent, guardian or custodian no less than 48 hours before the hearing.
- (4) *Options.* The court shall give due regard to the customs and traditions of the Community and the family on the discipline of juveniles, and may, after considering the nature of the offense and the age, physical and mental condition, and earning capacity of the juvenile, order any of the following dispositions:
 - a. Order the juvenile to attend a traffic school, or a counseling or education program approved by the presiding judge of the juvenile court.
 - b. Place the juvenile on probation in his or her own home upon conditions determined by the court.
 - c. Place the juvenile in the legal custody of a relative or other suitable person, with or without probation.
 - d. Order the juvenile to pay the monetary penalty that is applicable to the offense; plus lawful costs.
 - e. Order that the juvenile or the juvenile's parent, guardian or custodian make restitution for damage or loss caused by the wrongful acts of the juvenile.
 - f. Order that the juvenile be committed to a juvenile detention facility or other facility as provided for in section 11-129(h).
 - g. In lieu of or in addition to a monetary penalty, order the juvenile to perform a program of work, which does not conflict with the juvenile's regular schooling and employment, or to provide Community service.

- h. Suspend the driving privileges of the juvenile and take physical possession of the juvenile's driving license and return it to the issuing agency, or restrict such driving privileges.
- i. Order that the juvenile be examined or treated by a physician, surgeon, psychiatrist or psychologist, or receive other special care, and for such purpose may place the juvenile in a hospital or other suitable facility. However, the juvenile shall not be held in such hospital or facility longer than 48 hours, excluding weekends and holidays, unless necessary for treatment of physical injuries, without a court hearing.
- j. Order, after due notice and a hearing set for that specific purpose, a medical examination of a parent or person with custody whose ability to care for the juvenile is at issue, if the court finds from the evidence presented at the hearing that the person's physical, mental or emotional condition may be a contributing factor in the juvenile's delinquent behavior.
- k. Order hospitalization of the juvenile in an authorized hospital if the court finds, upon due notice to the parent or guardian and a special hearing conducted in accordance with the applicable laws and regulations, that the juvenile is:
 - 1. Mentally ill, and because of illness is a threat to self or others if allowed to remain at liberty;
 - 2. In need of custody, care or treatment in such hospital; or
 - 3. Gravely disabled.
- l. Order reasonable conditions to be complied with by the juvenile, parent, custodian or any other person who has been made a party to the proceedings, which are in the best interests of the juvenile or required for the protection of the public; ex-

cept that no juvenile under 12 years of age may be committed to jail upon adjudication under this chapter. The court may combine several alternatives of disposition where they are compatible.

- (5) *Mandatory review of order.* Disposition orders shall be reviewed at the court's discretion at least once every six months. Monthly written progress reports shall be filed with the juvenile court by the person or agency charged with supervising the care and custody of the juvenile, or alternatively by a person or agency so directed by the court.

(Code 1981, § 11-22; Code 2012, § 11-22; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-22, 5-30-2012)

Sec. 11-136. Modification or revocation of court order.

(a) The court may modify or set aside any order or decree made by it, but no modification of an order placing a juvenile on probation shall be made upon an alleged violation of the terms of probation until there has been a hearing after due notice to all persons concerned. Notice of an order terminating probation shall be given to the juvenile and a parent, guardian, or custodian and to the prosecution.

(b) Notice and a hearing shall also be required in any case in which the effect of modifying or setting aside an order may be to deprive a parent of the legal custody of a juvenile or to place the juvenile in an institution or agency. The hearing shall be held within ten days of the request for a court order to transfer the juvenile to an institution or from one institution to another; however, if the juvenile is transferred in good faith and in the juvenile's best interest without a hearing, the party transferring the juvenile shall incur no liability for such transfer. Transfer from one foster home to another may be effected without notice and hearing.

(Code 1981, § 11-23; Code 2012, § 11-23; Ord. No. SRO-342-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-23, 5-30-2012)

Sec. 11-137. Petition for incorrigibility.

(a) *Generally.* This article shall apply to a minor who is alleged to be incorrigible as defined in section 11-2.

(b) *Diversion services requirement.* Prior to the filing of any petition for incorrigibility, the parent(s) or legal guardian(s) and minor shall participate in diversion services offered through the Salt River Community Probation Department. The diversion services requirement shall not apply to petitions and/or complaints filed by the Community prosecutor. If the family has already participated in diversion services, the probation department will be responsible for determining whether diversion services would be appropriate.

(c) *Time limitations.* If diversion services through the probation department are unsuccessful, then the parent(s) or legal guardian(s) may file a petition for incorrigibility. However, the petition must be filed within three months from the date that the probation department notifies the parent(s) or legal guardian(s) that there is no substantial likelihood that further diversion services will benefit the family.

(d) *Who may file a petition for incorrigibility.*

- (1) The parent(s);
- (2) The legal guardian(s); or
- (3) The Community prosecutor.

(e) *Contents of incorrigibility petition.* The petition shall include the following information:

- (1) The name, age, place of residence and address of the minor;
- (2) The petitioner's relationship to the minor;
- (3) The basis of the court's jurisdiction pursuant to section 11-25;
- (4) A plain and concise statement of the facts upon which the allegations are based, including the approximate date, time and location at which the alleged facts occurred;
- (5) A summary of all services and efforts applied to remedy the behaviors of the minor, whether by court order or otherwise;

(6) The names, place of residence, and addresses of all of the minor's parents and legal guardians; and

(7) When a parent or legal guardian is the petitioner, a notice from the probation department shall be attached to the petition stating that diversion services has been terminated because a determination has been made that there is no substantial likelihood that the minor and his or her family will benefit from further diversion services, and that the case has not been successfully diverted.

(8) If any of the above required facts are unknown, the petition shall clearly state what information is unknown.

(Ord. No. SRO-455-2015, § 11-137, 1-7-2015)

Sec. 11-138. Incorrigibility proceedings and procedures.

(a) [*Commencement.*] Court proceedings in an incorrigible case shall be commenced by the filing of a petition for incorrigibility of a minor.

(b) [*Legal counsel.*] The court shall appoint legal counsel for the minor in all cases.

(c) *Court-ordered custody and detention.* If good cause appears to the court that the welfare of the minor or the public requires that the minor be taken into temporary custody pending the determination of incorrigibility, the court may, at any time after a petition is filed, make an order providing for custody and detention.

(1) *By court order.* A minor shall be taken into custodial detention by a police officer pursuant to an order of the juvenile court.

(2) *Without court order.* A minor may be taken into custodial detention by a police officer without an order of the court when there are reasonable grounds to believe the minor has run away from his parent(s) or legal guardian(s).

(3) *Release from custodial detention.* A minor shall not be detained any longer than is reasonably necessary under the circumstances to obtain his name, age, residence and other information, and to contact and

obtain the appearance of his parent or legal guardian. Where the parent or legal guardian of a minor taken into custody without a court order can be located and is able to take the minor under his or her care, the minor shall be released to his or her care pending any proceeding in the juvenile court, unless custodial detention is reasonably necessary as provided in subsection (c)(6) below.

- (4) *Review by juvenile intake officer.* When a police officer or probation officer takes a minor into custodial detention, the officer shall immediately notify the juvenile intake officer. The juvenile intake officer shall, after a preliminary evaluation of the circumstances, prepare a written recommendation to the court as to the continued custodial detention of the minor. Copies of that recommendation shall be provided to the court and the parties.
- (5) *Notification of family.* If a minor is taken into custodial detention and not released, the officer taking the minor into custody shall immediately attempt to notify the minor's parent or legal guardian. All reasonable efforts shall be made to advise the parent or legal guardian of the reason for taking the minor into custody and the place of continued custody. If the parent or legal guardian cannot be contacted, the duty of notification shall transfer to the juvenile intake officer. Should contact with the parent or legal guardian not be achieved through reasonable efforts, the department of corrections shall notify child protective services within 24 hours.
- (6) *Criteria for placing minor in detention.* Unless ordered by the court pursuant to the provisions of this chapter, a minor shall not be placed in detention prior to court disposition unless detention is required:
 - a. To protect the person or property of others;
 - b. If it appears to the officer that the welfare of the minor or of the public requires that the minor be placed in detention; or

- c. If there is reasonable cause to believe that the minor will not otherwise be present at any hearing.

- (7) *Place of detention.* A minor, alleged to be an incorrigible minor or alleged to have committed an incorrigible act, may be detained pending a court hearing in the following places:

- a. The Salt River Department of Corrections;
- b. Any other suitable place designated by the court.

- (8) *Written report.* The officer who takes a minor into custodial detention shall immediately prepare and submit to the juvenile intake officer and to the prosecutor a written report stating the facts that bring the minor within the jurisdiction of the juvenile court and giving the reasons why the minor was taken into custodial detention and was not released, if the minor continues to be held in detention.

(d) *Detention hearing.* A minor in custodial detention shall be brought before a judge for a detention hearing no later than 24 hours after being taken into custody. At the detention hearing, the court shall determine whether continued custodial detention is warranted as provided in subsection (f) herein. Based on the court's findings, the court shall:

- (1) Continue the minor in custodial detention;
- (2) Release the minor to his or her parent or legal guardian and set reasonable terms and conditions of release; or
- (3) Detain the minor in any other suitable place designated by the court.

(e) *Initial appearance.* Procedures for providing notice of the initial appearance shall be in accordance with section 11-132. The court shall set an initial appearance date for the minor and the parent(s) or legal guardian(s) within 15 days following the filing of the petition. When a minor is in custody, the initial appearance shall be set within two business days of the detention hearing; however, the initial appearance may be held

in conjunction with the detention hearing if the parties consent. At the initial appearance, the court shall inform the minor and the parent(s) or legal guardian(s) of the contents of the petition and allow the minor the opportunity to admit or deny the allegations of the petition.

- (1) *Advisement of rights.* At the initial hearing the court shall advise the minor that he or she has a right to be represented by legal counsel which may be court appointed or at his or her own expense in all incorrigibility proceedings, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, to have compulsory process for obtaining witnesses in his or her favor, to be informed of possible consequences if the allegations of the petition are found to be true and the right to appeal. The parties and their legal counsel shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court.

(f) *Adjudicatory hearing.* The adjudicatory hearing on the issues shall be set no later than 30 calendar days following the initial appearance of the minor on the petition.

- (1) *Notice of hearing.* Notice of the adjudication hearing shall be given to the minor, the person(s) who filed the petition, Community prosecutor, the parent(s) or legal guardian(s), and their legal counsel no less than ten days before the hearing, but all efforts shall be made to provide notice at the initial hearing.
- (2) *[Presentation of witnesses and evidence.]* Consistent with section 11-51, the Community prosecutor may, after reasonable notice to the parties, present witnesses and evidence in support of a petition filed by a parent(s) or legal guardian(s).
- (3) *Witnesses and evidence necessary.* Unless the minor admits to committing the acts or offense(s) alleged, witnesses must be called and evidence presented to substantiate the allegations of the petition.

- (4) *Burden of proof.* The burden of proof lies with the petitioner. The allegations of incorrigible acts shall be proven by clear and convincing evidence.

- (5) *Amendment of petition.* The petition may be amended to conform to evidence presented at the adjudicatory hearing which supports material facts not alleged. A continuance shall be granted to ensure due process to all parties if the amended petition results in a substantial departure from the original petition. The continuance shall not exceed 15 days.

- (6) *Petition for new hearing.* Any party to the proceeding may, within 60 days, petition the court for a new hearing on the grounds that new evidence, which was not known and could not with due diligence have been made available at the original hearing and which might affect the judgment, has been discovered. If it appears to the court that there is new evidence that might affect its judgment, it shall order a new hearing and enter such order and make dispositions of the case as is warranted by all the facts and circumstances and the best interest of the minor.

- (7) *[Withdrawal of petition.]* The petitioning party shall have the authority to withdraw the petition any time prior to the adjudicatory hearing. Withdrawal of the petition shall be liberally granted and the dismissal shall be without prejudice.

(g) *Issuing court order.* Within five days after the adjudicatory hearing, the court shall enter findings of fact and conclusions of law. If the allegations are substantiated, the court shall proceed to disposition. If no allegations are substantiated, the court shall dismiss the petition.

- (1) *Investigation and predisposition report.* When a minor is found to be an incorrigible minor, the court shall require that the probation officer conduct an investigation and prepare a written report describing reasonable and appropriate disposition alternatives. The probation officer shall file the report with the court and the parties no later than ten days prior to the dispo-

sition hearing. The investigation and predisposition report shall include the minor's:

- a. Home environment;
- b. History such as educational, delinquency, incorrigibility and behavioral background;
- c. Family, social and educational associations, present conditions of the minor and family;
- d. Previous services offered through diversion services; and
- e. Recommendations for assistance to the minor calculated to resolve the problems established at the adjudication hearing and those problems reasonably related.

(h) *Disposition hearing.* The court shall set a hearing to determine the proper disposition of the case within 40 days of the adjudicatory hearing. At such hearing the court shall consider the probation officer's predisposition report and recommendations of all the parties. Any relevant and material information shall be admissible at the hearing.

- (1) *Notice of hearing.* Notice of the disposition hearing shall be given to the minor, the parent(s) or legal guardian(s), and their legal counsel no less than ten days before the hearing, but all efforts shall be made to provide notice at the conclusion of the adjudication hearing.
- (2) *Disposition options.* In all other cases, the court shall give due regard to the customs and traditions of the Community, the family, and the underlying risk factors established at the adjudicatory hearing, and may, after considering the nature of the proven allegations and the age, physical and mental condition of the minor, order any of the following dispositions:
 - a. Order any reasonable conditions to be complied with by the minor, parent(s), legal guardian(s), or any other person who has been made a party to

the proceedings, which are in the best interests of the minor and the family.

- b. An assessment of substance abuse or mental health concerns and require compliance with recommendations of such assessment.
 - c. Placement in outpatient or inpatient treatment center, if needed to address behavioral, mental or substance abuse issues.
 - d. Place the minor under the supervision of the Probation Department to ensure compliance with the dispositional orders.
 - e. Order counseling services not limited to substance abuse, mental health, conflict resolution, anger management, and family counseling.
 - f. Order participation in any class or classes that would address the minor's incorrigible behavior.
 - g. Community work service, Community events or other programs.
 - h. An educational assessment.
 - i. Jail tour done through the probation department or department of corrections.
 - j. Any other appropriate disposition.
- (3) No term of supervision shall exceed one year after disposition.

(i) *Contempt hearing.* If any party fails to comply with the terms and conditions of the dispositional order, the probation department may file a motion for an order to show cause why the minor should not be held in contempt of court for failing to comply with the disposition order.

- (1) The order to show cause hearing shall be set no later than 15 calendar days from the date the motion is filed with the court.
- (2) Notice of hearing. Notice of the order to show cause hearing shall be served on all parties to the action no less than five calendar days before the hearing.

- (3) At the hearing, the court shall consider whether the minor failed to comply with the disposition order and any justifiable reasons for the failure to comply. Any relevant and material information shall be admissible at the hearing.
- (4) If the court finds, by a preponderance of the evidence, that the minor failed to comply with the disposition order, the court may find the minor in contempt of court and may impose any combination of the following sanctions:
 - a. Not to exceed 30 days on house arrest;
 - b. Community work service;
 - c. Not to exceed ten days in a juvenile detention facility for a first instance of contempt and not to exceed 30 days in a juvenile detention facility for each subsequent instance of contempt;
 - d. Any other reasonable sanction that would bring the minor in compliance with the disposition order.
- (5) The court may extend the date of the original disposition order by 90 days from the date the minor was held in contempt of court. There shall be no limit to the number of times the probation department may file a motion for order to show cause or the number of times a minor may be held in contempt of court for noncompliance with the disposition order.

(j) *Referral to child protective services.* When any probation officer, court staff, or other mandatory reporter as defined in section 11-156(b) has reason to believe that the minor alleged or found to be incorrigible is a dependent child as defined in section 11-2, they shall make a written report to child protective services stating the grounds for such belief. A copy of the incorrigibility petition, disposition order and other court orders and reports may be included with the referral. The filing of a diversion or incorrigibility petition under this article will not prevent the filing of a dependency or delinquency petition.

(k) *Review hearing.* Upon written request by any party, or on the court's own motion, the matter shall be set for a review hearing. The hearing shall be set within 15 calendar days from the date the written request or motion is filed with the court.

- (1) Prior to the review hearing, if the child is under the supervision of the probation department, the probation department shall file a written report with the court with copies provided to the parties. The report shall include: what services have been provided or offered to the minor and the parent(s) or legal guardian(s) to help correct the underlying problems, the minor's participation in services, the effectiveness of such services, whether the minor is compliant or not with the disposition order, the status of minor's school attendance and grades, whether additional services should be offered to the minor or parent(s) or legal guardian(s) to help the underlying problems and any other relevant information regarding the minor's rehabilitation. The report shall also include a recommendation whether the case should remain open or closed.

(l) *Closing the case.* When a minor has successfully completed the dispositional orders, the court shall, upon motion by any party to the case, release the minor from the terms and conditions of the disposition orders and close the case. Before closing the case, if the child is under the supervision of the probation department, the probation department shall file a written report in accordance with section 11-138(k).

(Ord. No. SRO-455-2015, § 11-138, 1-7-2015)

Secs. 11-139—11-155. Reserved.

ARTICLE VII. CHILD PROTECTION

Sec. 11-156. Reporting child abuse and neglect.

(a) *Responsibility.* Any person who knows or has reasonable cause to suspect that a child has been physically or sexually abused, neglected, or emotionally maltreated should immediately, after learning of or forming the suspicion of such abuse, neglect, or maltreatment, report the same to the Community police department or to the Community social services department. A person reporting under this section may remain anonymous.

(b) *Persons mandated to report.* The following persons who know or have reasonable cause to suspect that a child has been physically or sexually abused, neglected or emotionally maltreated shall immediately, after learning of or forming the suspicion of such abuse, neglect, or maltreatment, report the same to the Community child protective services agency or law enforcement department:

- (1) Physician, hospital intern or resident, surgeon, nurse, dentist, chiropractor, podiatrist, optometrist, Community health worker or other health care provider.
- (2) Teacher, teacher's aide, counselor, bus driver, truancy officer, principal, or other official or employee of any Community, federal, public or private school.
- (3) Child day care worker, public assistance worker, worker in a group home or residential or day care facility, or social worker.
- (4) Law enforcement officer, probation officer, or other officer of the court, or worker in a juvenile rehabilitation or detention facility.
- (5) Any other person having responsibility for the care of children whose observation or examination discloses evidence of abuse or death which appears to have been inflicted on a child by other than accidental means or which is not explained by the available medical history as being accidental in nature.

(c) *Reports.* Those persons mandated to report who make an oral report to the Community child protective services worker or law enforcement agency shall forthwith follow with a written report. The following information, unless unavailable, shall be included in the written report:

- (1) Name, address, and place of residence of the child and his or her parent, guardian, or custodian.
- (2) Age, sex, and grade of the child, and the school in which the child is currently enrolled.
- (3) Narrative as to the nature and extent of the child's abuse or neglect, including previous abuse or neglect of the child or the child's siblings and the suspected date of the abuse or neglect.
- (4) Name, age, address, and place of residence of the person alleged to be responsible for the child's abuse or neglect.
- (5) Name, address, agency and telephone number of the person making the report.

(d) *Notification.* When reports are received by the Community police department, they shall immediately notify the Community social services department and make such information available to them. In the event such reports are made to the social services department, they shall immediately notify the police department and make such information available to them.

(e) *Penalty for not reporting.*

- (1) Any person mandated under subsection (b) of this section to report known or suspected cases of child abuse and neglect who fails to immediately report such abuse or neglect shall be subject to a civil penalty of not more than \$5,000.00.
- (2) Any person who supervises, or has authority over, a person described under subsection (b) of this section, and who prevents that person from making the known or suspected child abuse or neglect report or intentionally suppresses such report, shall be subject to a civil penalty of not more than \$5,000.00.

(f) *Immunity from liability.* All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect, or anyone participating in a judicial proceeding resulting from such report shall be immune from civil liability and criminal prosecution, unless such person is suspected of or has been charged with abusing or neglecting the child in question. Any provision of law or code of ethics that protects or requires confidentiality shall not apply with respect to information regarding abuse or neglect of a child, and such provisions of law or code of ethics shall not be a defense to a charge of failing to report child abuse and neglect.

(g) *Waiver of parental consent.* Photographs, x-rays, medical examinations, psychological examinations, and interviews of a child alleged to have been subject to abuse or neglect shall be allowed without parental consent if the Community child protective services worker or law enforcement officials have reason to believe the child has been subject to abuse or neglect.

(h) *Protection of child.* It is the policy of the Community that examinations and interviews of a child suspected of having been subject to abuse or neglect shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child. It shall be the responsibility of the Community departments involved in the investigation and prosecution of the alleged offenses to coordinate their interviews and intrusive examinations with respect to the child.

(Code 1981, § 11-27; Code 2012, § 11-27; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-27, 5-30-2012)

Sec. 11-157. Investigation of reports; removal of child.

(a) *Investigation.* A child protective services worker and/or law enforcement officer shall investigate all child dependency reports in a timely manner. All reports of sexual abuse, abandonment, or severe physical abuse or neglect shall be investigated by a child protective services worker and/or law enforcement officer no later than 48 hours following receipt of the report.

(b) *Written report of findings.* Upon completion of the investigation of any report, as set forth under subsection (a) of this section, that reveals substantial abuse or neglect, the child protective services worker and/or law enforcement officer shall prepare a written report and submit such report to the Community prosecution office.

(c) *Authority to remove child.* A child protective services worker and/or law enforcement officer investigating a report of child abuse or neglect who finds that the grounds for removal, as set forth under subsection (d) of this section have been met shall have the authority to remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate shelter without a court order pending the outcome of a custody hearing.

(d) *Grounds for emergency removal.* A child may be removed from the home of the child's parent, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the juvenile court when:

- (1) Failure to remove the child may result in a substantial risk of death, severe or permanent injury, or serious emotional harm; or
- (2) The parent, guardian or custodian is absent and it appears from the circumstances that the child is unable to provide for his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

(e) *Notice to juvenile court of removal.* If a child is removed from his or her home, the person who removed the child shall provide the court notice of such removal no later than the end of the next court working day following the child's removal.

(f) *Notice to parent, guardian or custodian of removal.* If the parent, guardian or custodian is not present when the child is removed, reasonable effort shall be made to immediately notify the parent, guardian or custodian that the child was removed. Reasonable effort shall include written notice at their place of residence, and personal or telephone verbal contact at their place of resi-

dence, employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, verbal notice shall be given to an extended family member.

(Code 1981, § 11-28; Code 2012, § 11-28; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-28, 5-30-2012)

Sec. 11-158. Placement of children.

A dependent child or a child alleged to be neglected or abused shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be placed in the following Community-based shelters:

- (1) *Extended family.* With members of the child's extended family, in the event that the child is dependent or found to be neglected or abused, who are willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court;
- (2) *Licensed foster home.* A licensed foster home or a home otherwise approved by the court to provide foster care, group care, or protective care;
- (3) *Licensed facility.* A facility operated by a licensed child welfare services agency; or
- (4) *Other suitable place.* Any other suitable place which meets the standards for shelter care facilities established by the Community department of social services.

(Code 1981, § 11-29; Code 2012, § 11-29; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-29, 5-30-2012)

Sec. 11-159. Commencement of proceedings.

(a) *Petition required.* Formal child dependency proceedings shall be commenced by a petition filed by the Community prosecutor, social worker, or other interested person on behalf of the Community and in the best interests of the child, and may be based upon oral or written complaint from any source. In the event such proceedings are

initiated by a representative of the Community's social services department, it shall be the responsibility of the Community prosecutor, upon receipt of notice by social services, to thereafter assume adjudication of the petition.

(b) *Time limitations.* In cases where a child is removed from the child's home by a Community law enforcement officer or child protective services pursuant to section 11-157(d), a petition shall be filed with the juvenile court before the end of the third working day following the removal of the child. If a petition is not filed within the allotted time, the child shall be released to the parent, guardian, custodian, extended family member, or other responsible adult.

(c) *Contents of petition.* The petition shall clearly specify the following information:

- (1) The name, age, sex, place of residence and/or address, and tribal affiliation of the child;
- (2) A citation of the jurisdictional ordinance;
- (3) A plain and concise statement of the facts upon which the specific allegations of dependency are based, including the time and location at which the alleged facts occurred; and the identity of social agencies known to be giving care and services to the child and the child's family;
- (4) The names and addresses of the child's parent, guardian or custodian, or nearest relative if the parent, guardian or custodian is unknown;
- (5) If the child is placed outside the home, where the child is placed, the facts necessitating the placement, and the date and time of the placement; and
- (6) A conclusion that the child is in need of the court's protection.

(Code 1981, § 11-30; Code 2012, § 11-30; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-30, 5-30-2012)

Sec. 11-160. Guardian ad litem.

(a) *Purpose.* To ensure that an individual's best interests are protected by appointing a guardian ad litem, and that the appointed guardian ad

litem is performing his or her role appropriately and adequately to protect the individual's best interests throughout the legal action.

(b) *Established; transition.* The guardian ad litem program is hereby created and will be established within the legal services office to provide representation to individuals pursuant to cases filed under this chapter and chapter 10 and to ensure that all participants under legal services office in these proceedings are adequately trained to carry out his or her responsibilities. The legal services office will adopt rules and policies necessary and appropriate for the administration of the program. Notwithstanding any other provision in this chapter and chapter 10, an attorney or advocate employed in the legal services office and designated by the director of that office, who has satisfactorily completed a criminal background check less than three years prior to the date of appointment as guardian ad litem, shall qualify for appointment as guardian ad litem until March 31, 2012. After March 31, 2012, all persons must comply with this chapter and chapter 10 to qualify to serve as guardian ad litem.

(c) *Scope of rules.* Notwithstanding any other provision, these standards will apply to all attorneys and/or advocates representing individuals as guardian ad litem in subsection (d) of this section, but not limited to, dependency, guardianship, termination of parental rights and/or adoption proceedings.

(d) *Qualifications.*

- (1) A guardian ad litem must be an attorney or advocate who is admitted to practice in Community court.
- (2) No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a close relative or representative of an interested party may be appointed as a guardian ad litem in that proceeding.
- (3) An attorney and/or advocate appointed as a guardian ad litem must satisfy the qualifications outlined in article X of this chapter, investigation of persons working with children.

- (4) An attorney and/or advocate shall not be eligible for serving as a guardian ad litem, if the attorney and/or advocate has a criminal conviction in any state, federal or tribal jurisdiction for:
 - a. Child abuse or neglect;
 - b. Homicide;
 - c. Kidnapping;
 - d. Any felony involving the use of a weapon;
 - e. Any registrable sexual offense as indicated in chapter 6.5.
- (5) Criminal convictions other than those listed in subsection (d)(4) of this section may also be considered for eligibility.
- (6) A criminal background check will be updated every three years.
 - a. A criminal history. The term "criminal history" means a defendant's prior arrests, convictions and juvenile adjudications in any jurisdiction. The history shall include, where known, for each conviction, whether the individual has been:
 1. Placed on probation and the length and terms thereof; and
 2. Incarcerated and the length of incarceration.
 - b. The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the number of any case in which the court has removed the person for cause.
- (7) Should the background check indicate the individual has been found guilty of or entered a plea of nolo contendere or guilty to any offense under federal, state or tribal law as indicated in subsection (d)(6) of this section, any active guardian ad litem will be removed from any cases appointed to and denied any further appointments. Criminal convictions other

than those listed in subsection (d)(4) of this section may also be considered for a guardian ad litem's removal.

- (8) Training. A guardian ad litem is required to participate, before he or she begins practicing in Community court under this chapter, in either:

- a. Eight hours of training in juvenile law. The training shall include applicable ordinances, and rules of court. Training in related practice areas such as child development, child abuse and neglect, substance abuse, domestic violence, trial advocacy, family reunification and/or preservation and reasonable efforts is recommended; or
- b. At least six months of experience in related practice area in which the attorney and/or advocate has demonstrated competence in the representation of his or her client in another jurisdiction or in the Community.

A guardian ad litem will participate, at a minimum, in four hours of continuing legal education per year, which is specific to the area of juvenile law.

- (e) *Appointment of guardian ad litem.*

- (1) A guardian ad litem shall be appointed to represent a minor child's best interests in any dependency proceedings. The guardian ad litem shall have reasonable access to the individual that the guardian ad litem is appointed to; and to all otherwise privileged or confidential information about the individual, without the necessity of any further order or release, including, but not limited to, social services, drug and alcohol treatment, medical, evaluation, law enforcement, school, probate and court records, records of trust and accounts of which the individual is a beneficiary, and other records relevant to the case; except that health and mental health records that would otherwise be privileged or confidential under state, federal

or tribal law shall be released to the guardian ad litem only in accordance with those laws.

- (2) Appointment orders shall be directed to the legal services office. Any guardian ad litem designated by legal services office shall comply with training and background requirements as described herein. Should the legal services office have a conflict of interest, an independent contracted guardian ad litem will be utilized. Any independent contracted guardian ad litem utilized shall comply with training and background requirements as described herein.
- (3) A guardian ad litem may represent more than one child in a family group unless and until a potential or actual conflict arises between the children.
- (4) A guardian ad litem may use appropriately trained staff to assist in the performance of the duties listed herein. Any staff used to assist in the performance of these duties must adhere to these standards and staff is bound by the same ethical rules and duties of confidentiality as the guardian ad litem.
- (5) Timing of appointments. The guardian ad litem shall be appointed immediately after the earliest of:
 - a. The filing of a petition alleging child abuse and neglect.
 - b. The guardian ad litem shall be appointed prior to the next scheduled hearing if a guardian ad litem has not been appointed previously pursuant to sections described in this subsection (e).
- (6) Notice of court proceedings. The guardian ad litem shall be notified of any court proceeding concurrently when all other parties have been notified or at least five days prior to the scheduled hearing date. When proper notice was not provided to the guardian ad litem, the scheduled hear-

ing may be continued at the request of the guardian ad litem to allow the guardian ad litem to prepare for the hearing.

- (7) Appointment orders. The court shall issue a written appointment order consistent with this section.

(f) *General authority and duties.* The following are the duties of the guardian ad litem:

- (1) Obtain, without cost, all relevant information from the custodian unless it is otherwise privileged;
- (2) Participate in depositions, negotiations, discovery, pretrial conferences and hearings;
- (3) Inform other parties and their representatives that he or she is representing the individual's best interests and expects reasonable notification prior to changes of placement, changes in visitation schedules, case conferences and other changes of circumstances directly affecting the individual and the individual's family;
- (4) Identify appropriate family and professional resources for the individual;
- (5) Conduct an investigation to determine the facts relevant to the situation of the individual, which may include the individual's parent, legal guardian, or other household or family members;
- (6) Advocate for the best interests of the individual by participating in appropriate aspects of the case and advocating for appropriate Community services when necessary and available;
- (7) Maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the individual;
- (8) Advocate the best interests of the individual throughout the judicial proceeding;
- (9) Present written reports, as required, on the best interests of the individual that

include conclusions and recommendations, and the facts upon which they are based;

- (10) Review all written orders to ensure that they conform to the court's verbal orders and ordinance required findings and notices;
- (11) Monitor the implementation of the court's orders and communicate noncompliance to the responsible agency and, if necessary, the court; and
- (12) If appropriate and the appeal has merit, take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the individual during the pendency of the appeal.

(g) *Actions to be taken by the guardian ad litem.*

- (1) *Meet with individual.* Irrespective of the individual's age, the guardian ad litem shall meet in person with the individual they are appointed to, prior to each substantive court hearing and when apprised of emergencies or significant events impacting the individual.
- (2) *Investigate.* The guardian ad litem's investigations and discovery may include, when applicable, but are not limited to:
 - a. Reviewing the individuals, siblings, parents, and social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case. Should the guardian ad litem need to review any other records related to the case not mentioned in this subsection (g)(2), the guardian ad litem may seek the necessary authorization from the court;
 - b. Reviewing the court files of the individual and siblings (where applicable and permitted under subsections (g)(2)a and (g)(6) of this section), case-related records of the social service agency and other service providers;

- c. Contacting attorneys and/or advocates for other parties, if represented, for background information, if applicable;
 - d. Contacting and meeting with the parents/legal guardians/caretakers of the individual, with permission of their attorney and/or advocate, if applicable;
 - e. Requesting necessary authorizations for the release of information from the appropriate party, if the authorization is not outlined in the court's order or if it is not included in the court's appointment order;
 - f. Interviewing parties involved with the individual, including, school personnel, individual's welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers and other potential witnesses;
 - g. Reviewing the relevant evidence personally, rather than relying on other parties' or counsel's descriptions and characterizations;
 - h. Reviewing relevant photographs, video or audio tapes and other evidence;
 - i. Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staff conferences concerning the individual at the guardian ad litem's discretion; and
 - j. Staying apprised of any additional court proceedings affecting the individual, the parties and other household members.
- (3) *File pleadings.* The guardian ad litem may file petitions, motions, responses or objections as necessary to represent the individual's best interests. Relief requested may include, but is not limited to:
- a. A mental or physical examination of a party or the individual;
 - b. A parenting, custody or visitation evaluation;
 - c. An increase, decrease or termination of contact or visitation;
 - d. An order restraining or enjoining a change of placement;
 - e. Contempt for noncompliance with a court order;
 - f. Termination of the parent-child relationship;
 - g. Guardianship;
 - h. Conservatorship;
 - i. Adoption;
 - j. Child support;
 - k. A protective order concerning the individual's privileged communications or tangible or intangible property;
 - l. Services for individual or family;
 - m. Dismissal of petitions or motions;
 - n. Return to home or the continued out-of-home placement; and
 - o. Determination of paternity.
- (4) *Request services.* The guardian ad litem may petition the court for appropriate services to access entitlements, to protect the individual's interests and to implement a service plan as necessary to represent the individual. These services may include, but not be limited to:
- a. Family preservation-related prevention or reunification services;
 - b. Sibling and family visitation;
 - c. Child support;
 - d. Domestic violence prevention, intervention and treatment;
 - e. Medical, dental and mental health care;
 - f. Drug and alcohol treatment and counseling;
 - g. Parenting education;
 - h. Semi-independent and independent living services;

- i. Long-term foster care;
 - j. Termination of parental rights action;
 - k. Adoption services;
 - l. Education;
 - m. Recreational or social services;
 - n. Housing; and
 - o. Transitional services.
- (5) *Individual with special needs.* The guardian ad litem may petition the court to ensure that an individual with special needs receives appropriate services to address the physical, mental, or developmental disabilities as necessary to represent the individual. These services may include, but are not be limited to:
- a. Special education and related services;
 - b. Supplemental security income (SSI) to help support needed services;
 - c. Therapeutic foster or group home care; and
 - d. Residential/inpatient and outpatient psychiatric treatment.
- (6) *Negotiate settlements.* The guardian ad litem shall participate in settlement negotiations to seek expeditious resolution of the case. The guardian ad litem may use appropriate mediation resources.
- (7) *Court appearances.* The guardian ad litem shall attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves only issues completely unrelated to the individual.
- (8) *Motions and objections.* The guardian ad litem may make appropriate motions, including motions in limine and evidentiary objections as necessary to represent the individual's best interests at trial or during other hearings. If necessary, the guardian ad litem may file briefs in support of evidentiary issues. Further, during all hearings, the guardian ad litem shall preserve legal issues for appeal, as appropriate.
- (9) *Presentation of evidence.* The guardian ad litem shall be allowed to present and cross examine witnesses, offer exhibits and provide independent evidence as necessary. The guardian ad litem shall be allowed to provide the court with recommendations based upon an investigation and knowledge of the case.
- (10) *Determination of individual's testimony.* The guardian ad litem shall be allowed to make recommendations to the appropriateness or ability of an individual to be considered a witness and to provide sworn testimony. The decision should include consideration of the individual's need or desire to testify, any repercussions of testifying, the necessity of the individual's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the individual, and the individual's developmental ability to provide direct testimony and to withstand possible cross-examination. In criminal cases where a party seeks to introduce testimonial hearsay statements of the individual, the guardian ad litem must also consider that such statements are inadmissible, under the confrontation clause, unless the individual is available at trial, or if unavailable, the individual was subjected to prior cross examination. The guardian ad litem may rely upon advice or guidance from professionals familiar with the individual.
- (11) *Obligations after termination of dependency case.* The guardian ad litem shall seek to ensure continued representation of the individual at all further hearings, including administrative or judicial actions that result in changes to the individual's placement or services, so long as the court maintains its jurisdiction.

(Code 1981, § 11-31; Code 2012, § 11-31; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-385-2011, § 11-31, 9-28-2011; Ord. No. SRO-387-2011, 10-2-2011; Ord. No. SRO-402-2012, § 11-31, 5-30-2012)

Sec. 11-161. Protective custody hearing.

(a) *Time and purpose.* A hearing shall be held regarding the removal of a child from his or her home before the end of the second working day following the filing of the dependency petition. The purpose of the protective custody hearing is to allow a judge to review the decision to remove the child from the home and to determine whether it is reasonable to believe that allowing the child to remain in the home is contrary to the welfare of the child and that reasonable efforts were made to prevent the removal of the child from the home. The court must make this determination at this protective custody hearing, regardless of whether the hearing is continued or not.

(b) *Notice.* The court shall make all reasonable efforts to advise the parent, guardian or custodian of the time and place of the custody hearing. The court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include written notice at their place of residence, and personal or telephone verbal contact at their place of residence, employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, verbal notice shall be given to the child's extended family.

(c) *Advisement of rights.* During the hearing, the court shall advise the parties of the reason for the hearing and of their basic rights, as provided in section 11-100.

(d) *Nature.* The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation, including the religious preferences of the child and the family. Hearsay evidence will not be excluded at this hearing if the court determines that it is reasonably reliable and it would aid the court in reaching a just decision in the best interests of the child.

(e) *Reasonable efforts.* Reasonable efforts to prevent the removal of a child or reunify the child and family are not required if the court finds that

- (1) A parent has subjected a child to aggravated circumstances that would be

grounds for the involuntary termination of parental rights as listed in section 11-181; or

- (2) A parent has been convicted of aiding and abetting, attempting to, conspiring to, or soliciting any manner of homicide of a child's sibling or another parent; or
- (3) Parental rights of the parent with respect to a child's sibling have been terminated involuntarily.

(f) *Possible outcomes.* Possible outcomes of the custody hearing are as follows:

- (1) The petition may be dismissed and the child returned to the home.
- (2) The child may be returned to the home of the parent or custodian under protective supervision of the court pending the outcome of further hearings under this article.
- (3) Following a judicial determination that reasonable efforts were made to prevent the removal of the child from the home, the child may remain in protective custody through judicial order for a physical or constructive removal from the home pending the outcome of further hearings under this article.

(g) *Primary consideration.* In placing a child under the guardianship or legal custody of an individual or a private agency or institution, the juvenile court shall give primary consideration to the welfare of the child.

(h) *Documentation of judicial determinations.* Judicial determinations for the following findings must be explicitly documented, made on a case-by-case basis, and so stated in a court order:

- (1) Contrary to the welfare;
- (2) Reasonable efforts to prevent removal; and
- (3) Reasonable efforts to finalize a permanency plan, including when appropriate a judicial determination that reasonable efforts are not required.

(Code 1981, § 11-32; Code 2012, § 11-32; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-

2012, § 11-32, 5-30-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017; Ord. No. SRO-513-2019, 8-28-2019)

Sec. 11-162. Informal adjustment of petition.

(a) *Authority.* The Community prosecutor, child protective services worker and other parties in interest may hold an informal conference with the child's parent, guardian or custodian to discuss alternatives to formal disposition of the petition. The interested parties may agree to informal adjustment of the petition under the following conditions:

- (1) The facts as set forth in the petition are admitted and bring the case within the jurisdiction of the juvenile court;
- (2) An informal disposition of the matter would be in the best interests of the child; and
- (3) The parents, guardian or custodian of the child voluntarily consent to informal disposition of the matter.

This section does not authorize the child protective services worker or the Community prosecutor to compel any person to appear at any such conference, to produce any papers or visit any place.

(b) *Time limitation.* Any informal adjustment period shall not exceed three months without review by the juvenile court. In the event that the parties agree to informal adjustment of the petition, the Community prosecutor shall provide written notice to the court at least ten working days prior to the date set forth formal trial.

(c) *Written agreement.* The Community prosecutor shall set forth in writing the conclusions reached at the informal conference and the disposition agreed to by the parties for remedying the situation.

(d) *Monitoring.* A representative of the Community social services department shall review the family and child's progress at least once every 30 days. If, at any time before the end of the agreed-upon adjustment period, the social services department representative determines

that positive results are not being achieved, the social services department representative may recommend that the Community prosecutor request that a formal trial on the merits be held pursuant to section 11-163.

(e) *Tolling.* If a petition is being adjusted, the time limit for setting formal trial shall be tolled during the period required to comply with the terms of adjustment.

(f) *Case closure.* Upon satisfactory completion of the disposition agreed to by the parties, the Community prosecutor shall request that the petition be dismissed.

(g) *Interagency cooperation and coordination.* It shall be the responsibility of all the involved agencies to cooperate and coordinate work effort to ensure that informal adjustment is used only in cases where such agreements are viewed as effective tools for the resolution, rehabilitation and reunification of families.

(Code 1981, § 11-33; Code 2012, § 11-33; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-33, 5-30-2012)

Sec. 11-163. Adjudication hearing generally.

(a) *Formal trial on issues.* The formal trial on the issues shall be set for no later than 60 days following the filing of the petition unless the petition has been dismissed pursuant to section 11-161(e)(1) or is being adjusted pursuant to section 11-162 or a rehearing has been ordered.

(b) *Witnesses and evidence necessary.* Unless the parent admits that he or she has neglected or abused the child, or that the child is otherwise a dependent child, witnesses must be called and evidence presented to substantiate the allegations of dependency.

(c) *Admissibility.* The records of the protective custody hearing and any statements made during the informal conference shall not be admitted into evidence at the adjudication hearing. This shall not be construed to prevent the admissibility of any evidence that was presented which would normally be admissible under the Community court's rules of evidence.

(d) *Burden of proof.* The burden of proof lies with the petitioner. Findings of fact by the judge as to allegations raised in the petition shall be based on the standard requiring clear and convincing proof.

(e) *Advisement of rights.* The court shall advise the parties of the reason for the hearing and of their basic rights, as provided for in section 11-100.

(f) *Abandoned infants.* If the court determines a child to be an abandoned infant, the petition to terminate parental rights will be filed within 60 days of the court's determination. For purposes of this article, an abandoned infant is a child less than one year of age whose parent through words, actions, or omissions, has abandoned the child as defined by section 11-2.

(g) *Amendment of petition.* The petition may be amended to conform to evidence presented which supports material facts not alleged. A continuance shall be granted to ensure justice and fairness to all parties if the amended petition results in a substantial departure from the original petition.

(Code 1981, § 11-34; Code 2012, § 11-34; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-34, 5-30-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Sec. 11-164. Adjudication hearing notice.

(a) *Issuance of summons.* After a petition has been filed, the court shall issue summons to the parent, guardian or custodian and such other persons as the court deems necessary and proper to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or prior to the hearing.

(b) *Attachments to summons.* A copy of the petition and notice of basic rights, as provided under section 11-100, shall be attached to the summons.

(c) *Service of summons.* Service of summons shall be made under the direction of the court by a Community process server or other suitable

person appointed by the court, or upon request of the court, by a Community law enforcement officer or any other peace officer.

(d) *Personal service.* If the parties to be served with a summons can be found within the exterior boundaries of the Community, service shall be made by delivering a copy of the summons, petition and notice of rights to them personally or by leaving copies thereof at their dwelling house or usual place of abode with a person of suitable age and discretion residing at such place no less than ten days before the stated time of the hearing.

(e) *Mail service.* If the parties cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served, within or without the Community's exterior boundaries, by certified mail with a return receipt requested, at least 15 calendar days before the formal trial.

(f) *Notice to extended family.* If the court cannot accomplish personal or mail service, the court shall attempt to notify the parent, guardian or custodian by contacting an extended family member.

(g) *Publication.* Where it appears that the parent, guardian or custodian is a nonresident of the Community, or that their name, place of residence or whereabouts is unknown, or in cases of unsuccessful personal service or service by certified mail, the court shall direct the clerk to publish a legal notice in the next available issue of the Community's newspaper simultaneously with a legal notice appearing once in another newspaper of general circulation. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown, "a person to whom it may concern," may be used. The name of the court, the title and purpose of the proceeding, the date the petition was filed, and the hearing date shall be set forth in general terms.

(h) *Contempt warning.* The summons issued by the court shall display the following words:

"Notice, Violation of this Order is Subject to Proceedings For Contempt of Court Pursuant to Salt River Community Code Section 6-42.

The Court May Find the Parent, Guardian or Custodian in Contempt For Failure to Appear at a Court Hearing or For Failure to Follow Court Orders."

(Code 1981, § 11-35; Code 2012, § 11-35; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-35, 5-30-2012)

Sec. 11-165. Disposition proceedings.

(a) *Court findings.* After the adjudication hearing, the court will either find the allegations of the petition meet the applicable burden of proof and proceed with disposition of the matter, or the allegations do not meet this burden and dismiss the petition, unless the hearing is continued to a date certain to allow for presentation of further evidence.

(b) *Investigation and predisposition report.* When a child is found to be dependent, the court may order that a predisposition report consisting of a written evaluation of matters relevant to the disposition of the case be made by the Community social service department. The predisposition report shall include the following information and be made available to the court, and those parties deemed appropriate by the court, at least three working days prior to the disposition hearing:

- (1) A summary of the problems; the child's home environment.
- (2) What steps, if any, the parent, guardian, custodian or social services personnel have taken to correct the problems; the present conditions of the child and family.
- (3) How the child is doing in his or her current placement, and, if there have been any moves, the reasons why.
- (4) Report on contacts with the parent, guardian, or custodian and the child.
- (5) An assessment of when the child is expected to return home.
- (6) A case plan and recommendations for the next six months, including a treatment plan for the parent, future placement of the child, and what services, if needed, should be provided for the child.

- (7) Any other information that the juvenile court may request.

(c) *Hearing.* The court may order a hearing to determine the proper disposition of the case. In the event that a disposition hearing is ordered, it shall be held within 60 days of the adjudication hearing date. At the hearing, the court shall consider the predisposition report and recommendations made by the Community social service department, and afford the parties an opportunity to comment. The court shall also consider alternative reports and recommendations of the parties, if any. Any relevant and material information shall be admissible at the hearing.

(d) *Notice of hearing.* Written notice of the hearing shall be given to the parties at least 48 hours prior to the disposition hearing.

(e) *Options.* The court shall give due regard to the customs and traditions of the Community and the family with regard to child-rearing, and may order any of the following dispositions:

- (1) Require the child to submit to periodic counseling.
- (2) Place the child under protective supervision in his or her own home upon conditions determined by the court.
- (3) Place the child in the legal custody of a relative or other suitable person, with or without protective supervision.
- (4) Order that the child be examined or treated by a physician, surgeon, psychiatrist or psychologist, or that he or she receive other special care, and for such purposes may place the child in a hospital or other suitable facility.
- (5) Appoint a guardian for the child when it appears necessary to do so in the interest of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested as such guardian.
- (6) Order any such additional or further remedies that the court, in its discretion, deems necessary for the benefit of the child.

In placing a child under the guardianship or legal custody of an individual or a private agency or institution, the court shall give primary consideration to the welfare of the child.

(f) *Establishment of conditions by court.* The court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his or her custodian or any other person who has been made a party to the proceedings, including, but not limited to, restriction on visitations by the parents or one parent, restrictions on the child's associates and other activities, and requirements to be observed by the parents or custodian.

(g) *Hospitalization of child.* If the court finds, upon due notice to the parent or guardian, and a special hearing is conducted in accordance with the applicable laws and regulations, that a child within the jurisdiction of the court is mentally ill, and because of his or her illness is:

- (1) A threat to himself, herself or others, if allowed to remain at liberty;
- (2) In need of custody, care or treatment in the mental hospital; or
- (3) Gravely disabled;

the court may order the hospitalization of the child in an authorized facility pursuant to chapter 10, article VI of this Code of Ordinances.

(h) *Commitment to facility for mentally handicapped.* The court may make an order committing a child within its jurisdiction to an appropriate facility if the child has been found mentally handicapped in accordance with the provisions of applicable law and regulations.

(i) *Additional orders.* The court may order that a petition to terminate the parent-child relationship be filed, or that a guardianship petition be filed.

(Code 1981, § 11-36; Code 2012, § 11-36; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-36, 5-30-2012)

Sec. 11-166. Placement preferences.

(a) *Least restrictive setting.* If a child cannot be returned home, the child shall be placed in the least restrictive setting which most

approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. The placement restrictions set forth in section 11-158 shall be followed.

(b) *Order of preference.* A child shall be placed in a home with the following characteristics, in the following preference order:

- (1) Members of the extended family.
- (2) An Indian family of the child's tribe.
- (3) An Indian family.
- (4) An other family which can provide a suitable home for the child.

(Code 1981, § 11-37; Code 2012, § 11-37; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-37, 5-30-2012)

Sec. 11-167. Review hearing.

(a) *Requirement.* Except as otherwise provided by this chapter, the status of all children subject to the dependent provisions of this chapter shall be reviewed by the court at least every six months from the time of removal at a hearing, except that the first review hearing shall be held within three months after the judgment or disposition is entered, whichever is later.

(b) *Qualified residential treatment program placements.* Within 60 days of the start of each placement in a qualified residential treatment program, and at every review hearing after that, the court shall:

- (1) Consider the assessment, determination, and documentation made by the qualified individual conducting the assessment;
- (2) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is

consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(3) A approve or disapprove the placement.

(c) *Return to home.* A child shall be returned to the home of the parent, guardian or custodian from a finding made at the review hearing, unless the court finds that a reason for placement outside the home still exists.

(d) *Written order.* If continued court supervision is determined to be necessary, the court shall set forth the following in a written order:

- (1) What services have been provided or offered to the parent, guardian, or custodian to help correct the underlying problems.
- (2) The extent to which the parent, guardian, or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or not otherwise occurred.
- (3) Whether the parent or custodian is cooperative with the court.
- (4) Whether additional services should be offered to the parent, guardian or custodian.
- (5) Whether the parent, guardian, or custodian should be required to participate in any additional programs to help correct the underlying problems.

(6) When the child's return can be expected. (Code 1981, § 11-38; Code 2012, § 11-38; Ord. No. SRO-210-96, § 1, 11-15-1995; Ord. No. SRO-402-2012, § 11-38, 5-30-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017; Ord. No. SRO-537-2022, 11-3-2021)

Sec. 11-168. Permanency policy.

(a) The policy of the Community is to protect the best interests of its children and to promote the stability of its families by setting forth standards that reflect its cultural values while providing children a stable foundation in a permanent home. Every child deserves a permanent and stable home, and to be protected

from emotional and mental harm caused by separation from his or her family and uncertain temporary placement.

(b) Consistent with these policies, all departments and agencies of the Community, and the Community court, shall protect dependent children from unnecessary prolonged separation from their parent(s) and extended family and from uncertain temporary placement.

(Ord. No. SRO-408-2013, § 11-39, 12-1-2012)

Sec. 11-169. Requirement for permanency disposition.

(a) For all children within the dependency jurisdiction of the Community juvenile court, the court shall comply with the permanency policy pursuant to section 11-168 of the Community for the express intent of achieving permanency.

(b) A permanency disposition for all dependent children shall be made within 12 months of the protective custody hearing unless a judge determines that reasonable efforts to prevent the removal are unnecessary. If a judge determines that reasonable efforts to prevent the removal are unnecessary, the permanency disposition shall be made 60 days after the date the child was removed from the home. For purposes of this section, no time shall be tolled, other than exceptional circumstances when the court is unable to accommodate the matter due to unforeseen administrative reasons.

(c) Permanency hearings will occur every 12 months after initial permanency disposition until permanency is achieved.

(Ord. No. SRO-408-2013, § 11-40, 12-1-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Sec. 11-170. Exceptional care requirements.

A permanency disposition as required by section 11-169 or section 11-172 shall not be required within 18 months of the disposition when the court determines exceptional care requirements exist.

- (1) Exceptional care requirements means the:
 - a. Psychological, medical or psychiatric needs of a dependent child that require services and assistance;

- b. The legal and custodial needs of a child who is incarcerated for an extended period of time for delinquent or criminal behavior;
 - c. The bonding needs of a child who is a part of a sibling group in dependent care, or
 - d. A child over the age of 11 years of age.
- (2) Upon motion by a party, the court shall conduct a hearing to determine if exceptional care requirements exist. At the conclusion of such hearing, the court may determine upon clear and convincing evidence that exceptional care requirements exist. The court shall issue an order with findings of fact as to the exceptional care requirements.
- (3) The existence of exceptional care requirements for any child shall not prevent a permanency disposition, including termination of parental rights. If a viable permanency plan exists, the court shall make a permanency disposition as required by section 11-169. The court shall defer to the best interest of the child in making such determinations.
- (Ord. No. SRO-408-2013, § 11-41, 12-1-2012)

Sec. 11-171. Time for permanency disposition hearing.

(a) *Time for hearing for cases originating in the Community juvenile court.*

- (1) When the court ordered permanency, and not a reunification plan or services at disposition pursuant to section 11-165, the permanency hearing shall be held within 30 calendar days after the disposition hearing.
- (2) For children under three years of age at the time of the protective custody hearing, the permanency hearing shall be within six months after disposition unless a judge determines that reasonable efforts to prevent the removal are unnecessary. If reasonable efforts to prevent the removal were unnecessary, the

permanency disposition will take place within 30 days from the date of the protective custody hearing.

- (3) For children over three years of age at the time of the protective custody hearing, the permanency hearing shall be within 12 months after disposition unless a judge determines that reasonable efforts to prevent the removal are unnecessary. If reasonable efforts to prevent the removal were unnecessary, the permanency disposition will take place within 30 days from the date of the protective custody hearing.
 - (4) Permanency hearings will occur every 12 months after the initial permanency disposition until permanency is achieved.
- (b) *Time for hearing when the court accepted transfer.*

- (1) In child dependency cases over which the Community court has accepted transfer of jurisdiction from another court, and the transferring court did not order a permanency disposition, the hearing shall be within six months after disposition in the Community;
- (2) In child dependency cases where the court has accepted transfer of jurisdiction from another court, and the transferring court ordered a permanency disposition, the court shall conduct a permanency disposition review hearing within 30 calendar days of the receipt of such order to determine whether to comply with or modify such orders.

(c) *Permanency hearing upon request.* Any party may request a permanency review hearing at any time prior to the court mandated hearing.

(d) *Concurrent planning.* Reasonable efforts to finalize an alternate permanency plan including adoption and guardianship may be made concurrently with reasonable efforts to reunify the child and family.

(Ord. No. SRO-408-2013, § 11-42, 12-1-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Sec. 11-172. Review of transferring court's order for permanency disposition.

(a) In child dependency cases where the transferring court has ordered permanency disposition of the child, the court shall, in the best interests of the child, maintain such permanency disposition absent a showing of good cause.

(b) In child dependency cases where the transferring court has ordered permanency disposition for the child the court shall, within 30 calendar days of receipt of written documentation of such order, conduct an independent review of the permanency disposition order of the transferring court to determine:

- (1) Whether the transferring court exercised proper jurisdiction over the child and properly determined permanency in the best interests of the child; and
- (2) Whether, if applicable, the provisions of the Indian Child Welfare Act, 25 USC 1901—1963, were properly followed by the transferring court; and
- (3) Whether due process was properly afforded all parties in the permanency proceeding in the transferring court; and
- (4) Whether the permanency disposition proceeding in the transferring court is consistent with the public policies, customs and traditions of the Community.

(c) Upon determination that the provisions of subsection (b) of this section are met and based upon the totality of the circumstances, the court shall, upon written findings of fact and conclusions of law and not longer than 60 calendar days from the permanency disposition review hearing:

- (1) Order that the permanency disposition order of the transferring court be upheld; and
- (2) Order that the transferring court's permanency plan be achieved within 90 calendar days of the permanency disposition review hearing held pursuant to subsection (b) of this section.

(d) Upon determination that the provisions of subsection (b) of this section are not met and based upon the totality of circumstances, the court shall, upon written findings of fact and conclusions of law and not longer than 60 calendar days from the permanency disposition hearing:

- (1) Order that the permanency disposition order of the transferring court not be upheld and order an alternative permanency disposition plan for the child; and
- (2) Order that the alternative permanency disposition plan be achieved within 90 calendar days of the permanency disposition review hearing held pursuant to subsection (b) of this section.

(Ord. No. SRO-408-2013, § 11-43, 12-1-2012)

Sec. 11-173. Pre-permanency hearing report.

(a) Prior to the permanency disposition hearing, the Community social services department shall prepare and submit to the court a permanency report. The report shall be submitted to the court no later than ten calendar days before the hearing with copies provided to all parties. The purpose of the report is to aid the court in making a permanency disposition and shall include the following, where applicable:

- (1) The circumstances of the dependency;
- (2) The present condition of the child and parent(s), including physically, emotionally, and psychologically;
- (3) Proposed placement and other relevant care plans for the child, including the plans and ability for the child to maintain cultural-connectedness and familial ties, where feasible and in the child's best interest;
- (4) The child's desires if over the age of 14, or where otherwise deemed appropriate;
- (5) The age of the child;
- (6) The remedying actions of the respondent parent(s) or guardian(s) from the time of removal;
- (7) A history of any out-of-home placements;

- (8) Any bonds the child has formed with substitute care;
- (9) Efforts by the Community social services department to identify any available relative placement options when the child is not placed with family;
- (10) A description of all reasonable efforts by the Community social services department to assist the parent(s) and children with reunification of the family;
- (11) Any other such facts, conclusions or observations as may be pertinent to the parent and child relationship; and
- (12) A recommendation as to the permanency disposition for the child.

(b) The court shall also accept and consider any such pre-permanency hearing reports from any assigned guardian ad litem and/or any report prepared by an expert who has reviewed the case and offers a best interest recommendation.

(c) The pre-permanency report may be waived by the court and the parties when the permanency hearing is held in conjunction with disposition. (Ord. No. SRO-408-2013, § 11-44, 12-1-2012)

Sec. 11-174. Permanency hearing.

(a) At the permanency disposition hearing, the court shall determine the following factors:

- (1) The circumstances of the dependency;
- (2) The present condition of the child and parent(s), including physically, emotionally, and psychologically;
- (3) Proposed placement and other relevant care plans for the child, including the plans and ability for the child to maintain cultural-connectedness and familial ties, where feasible and in the child's best interest. For proposed placement considerations, the court considers placements in the tribal service area and out of the tribal service area. If the child is located out of the tribal service area, the court will determine if the placement continues to be appropriate and in the best interest of the child;
- (4) The child's desires if over the age of 14, or where otherwise deemed appropriate;
- (5) The age of the child;
- (6) The remedying actions of the respondent parent(s) or guardian(s) from the time of removal;
- (7) A history of any out-of-home placements;
- (8) Any bonds the child has formed with substitute care;
- (9) Efforts by the Community social services department to identify any available relative placement options when the child is not placed with family;
- (10) The existence of any reasonable efforts by the Community social services department to assist the parent(s) and children with reunification of the family, when reasonable efforts were required;
- (11) The recommendations of the Community prosecutor and Community social services department;
- (12) The recommendations of the appointed guardian ad litem;
- (13) The recommendations of the parent(s) or legal guardian(s);
- (14) The recommendations of all persons who have a privileged relationship with the child who has made a recommendation, including any expert who has made a best interest recommendation;
- (15) Any other such facts, conclusions or observations as may be pertinent to the parent and child relationship;
- (16) For a child for whom another planned permanent living arrangement has been determined as the permanency plan, the steps the Community social services department is taking to ensure the child's foster family or childcare institution is following the reasonable and prudent parent standard and to ascertain whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities; and

(17) For a child 14 years of age or older, the services needed to assist the child in making a successful transition from foster care to successful adulthood.

(b) Upon considerations of all of the factors of subsection (a) of this section, the court shall make specific findings as to the following:

- (1) The remedying actions of the respondent parent(s) or guardian(s), and the effectiveness of such actions;
- (2) Any emotional bonds the child has formed with substitute care;
- (3) Efforts by the Community social services department to identify any relative placement options when the child is not placed with family;
- (4) The existence of any reasonable efforts by the Community social services department to assist the parent(s) and child(ren) with reunification of the family, when reasonable efforts were required;
- (5) The Community social services department has made reasonable efforts to finalize the permanency plan within 12 months from the time the child entered the Community's care and at least once every 12 months thereafter while the child remains in the Community's care; and
- (6) The best interest of the child.

(c) Qualified residential treatment program placements. If a child is in placement at a qualified residential treatment program, the court shall:

- (1) Consider the assessment, determination, and documentation made by the qualified individual conducting the assessment;
- (2) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is

consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child; and

(3) Approve or disapprove the placement.

(d) The best interest of the child shall be the primary determining factor in making the permanency disposition. As to the determination of best interest, the court shall consider the following (if such information exists):

- (1) Any recommendations from the child's treating mental health professional regarding the plans to meet the child's needs for consistency and bonding, including any emotional bonds the child has formed with substitute care;
- (2) Proposed plans regarding the ability of the child to maintain cultural-connectedness and cultural identity;
- (3) Any evidence in the record of the parent's demonstrated ability or lack of ability to substantially remediate the underlying issues that led to the dependency action;
- (4) Any other relevant evidence presented.

(e) Upon motion by the parties, the court may reconsider a permanency determination plan that was previously ordered. In doing so, the court shall conduct a permanency hearing pursuant to this section.

(f) Procedural safeguards will be applied to permanency hearings.

(Ord. No. SRO-408-2013, § 11-45, 12-1-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017; Ord. No. SRO-538-2022, 11-3-2021)

Sec. 11-175. Possible outcomes.

(a) At the conclusion of a permanency hearing, the court shall order a permanency disposition and issue a written order within 15 calendar days. The following are the possible permanency dispositions available to the court:

- (1) Approval of a proposed plan that results in restoration to the full care and custody of a parent within six months, when the child will be in safe care with the respondent parent, or a grant of legal

custody to a noncustodial parent when that parent was not alleged to have contributed to the dependency of the child and the court finds that no grounds for a dependency would exist if child were placed in the custody of the noncustodial parent;

- (2) Approval of a proposed plan to grant guardianship or permanent legal guardianship;
- (3) Approval of a proposed plan to achieve adoption, when there are no remaining legally established parents; or
- (4) Approval of a plan for the filing of termination of parental rights to be filed by a party, pursuant to section 11-180(a), if grounds for termination exist, for purposes of adoption eligibility and a proposed plan for post-termination disposition consistent with this chapter.

(b) When none of the dispositions described in subsection (a) of this section are available or not in the best interest of the child, due to exceptional care requirements, the court shall order the Community social services department to submit an appropriate plan for the child's needs. If the child is to remain a ward of the court and no permanency disposition is ordered, the court shall determine what requirements will be imposed upon any respondent parent, with the best interest of the child as the primary consideration.

(c) In all orders pursuant to subsection (a)(2), (3) or (4) of this section, the court shall order the final permanency disposition to be achieved within six months of the permanency hearing, absent another planned permanent living arrangement as described in subsection (f) or exceptional circumstances.

(d) In the rare event that exceptional circumstances exists and the court determines that the child will remain in out-of-home placement longer than six months from the date of the permanency order, the court shall conduct a review hearing not longer than every six months. After reviewing the order, the court may reaffirm the order or direct other disposition of the child.

(e) In any case where the court finds exceptional circumstances prevents achieving final permanency disposition for a child within six months, the court shall make specific findings on the record as to such exceptional circumstances and the child's best interest.

(f) When a child has attained the age of 16 and the Community social services department has documented compelling reasons, as of the date of the permanency hearing, that it would not be in the best interest of the child to be returned home, have parental rights terminated, have a guardian appointed, enter into a permanent placement, or be placed for adoption, the child may be placed in another planned permanent living arrangement.

(g) *Documentation of judicial determinations.* The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize a permanency plan, including judicial determinations that reasonable efforts are not required, must be explicitly documented, made on a case-by-case basis, and so stated in a court order. All possible outcomes will include specific findings reflecting the appropriateness of the placement that is in the best interest of the child.

(Ord. No. SRO-408-2013, § 11-46, 12-1-2012; Ord. No. SRO-493-2017, 8-9-2017, eff. 10-9-2017)

Sec. 11-176. Legal guardianship or permanent legal guardianship as permanency disposition.

(a) At the conclusion of a permanency hearing, the court may establish a permanent guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:

- (1) The child has been adjudicated a dependent child;
- (2) The child has been in the physical custody of the prospective permanent legal guardian for at least three months immediately preceding the filing of the permanent legal guardianship petition as a dependent child;

- (3) If the child is in the legal custody of the Community social services department, and the Community social services department has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds that reunification efforts are not required by law, or if reunification services were not ordered at disposition, or if reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child; or the parent's consent;
 - (4) The likelihood that the child would be adopted is remote or termination of parental rights would not be in the child's best interests; and
 - (5) The prospective guardian has satisfied all requirements of section 10-116 and section 10-118.
- (b) At the conclusion of a permanency hearing, the court may establish a guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:
- (1) The child has been in the physical custody of the prospective legal guardian for at least three months immediately preceding the filing of the legal guardianship petition as a dependent child; and
 - (2) If the child is in the legal custody of the Community social services department, and the Community social services department has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds that reunification efforts are not required by law, or if reunification services were not ordered at disposition, or if reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child; or the parent's consent; and
 - (3) The likelihood that the child would be adopted is remote or termination of parental rights would not be in the child's best interests; and
 - (4) The prospective guardian has satisfied all requirements of section 10-116 and section 10-118.
- (c) The court may consider any adult over the age of 21, including a relative or foster parent, as a permanent legal guardian or a legal guardian. The court may consider as a legal guardian an adult over the age of 18, if the potential legal guardian is a sibling of the minor. An agency or institution may not be a permanent legal guardian or legal guardian. The court shall consider the wishes of the child if the child is at least 14 years of age and wishes to address the court. The court may consider the wishes of any child under the age of 14 if the court finds appropriate. A minor wishing to address the court may submit written documentation or appear in open court to provide the court with their wishes. A party may motion the court to conduct an in camera interview if the party believes it would be in the child's best interest. Should the court grant the motion, the court shall conduct the in camera interview with the minor and appointed guardian ad litem. The interview shall be recorded and be made available to the parties upon request. When the potential permanent legal guardian is a sibling of the child, the court may consider the potential guardian if they are over the age of 18 years old.
- (d) Unless specifically described in this section, the procedural rules for guardianship as described by the Community law shall apply, with the exception of section 10-119(c) in all matters regarding permanent legal guardianship or legal guardian of dependent children.
- (e) Petitions for permanent legal guardianship or legal guardianship of a dependent child shall not be addressed by the court until a permanency hearing has been conducted and the court has concluded that permanency is in the best interest

of the child, unless all parties consent to the hearing occurring before the permanency hearing.

(f) In proceedings for permanent legal guardianship or legal guardianship, the court shall give primary consideration to the best interest of the child, including the physical, mental and emotional needs of the child. The court shall also consider the willingness and ability of the potential guardian(s) to foster cultural-connectedness for the dependent child.

(g) Upon receipt of the filing of a petition for permanent legal guardianship or legal guardianship for a dependent child the court shall conduct an initial hearing regarding the petition within 30 calendar days. If a petition is contested at the initial hearing by a parent or the Community, the court shall set a date for a hearing within 90 calendar days after the permanency hearing. The court shall issue a final order regarding the guardianship within 15 calendar days of the permanency hearing. If a petition is noncontested by all parties, the court may set an appropriate hearing as described in section 10-119, to ensure the appropriate procedures are scheduled to ensure that the prospective permanent legal guardian(s) meet the requirements and qualifications of a guardian as described in section 10-118.

(h) The hearing for permanent legal guardianship or legal guardianship shall be conducted consistent with section 10-119(g), (h) and (i). The petitioner shall have the burden of presenting evidence at the hearing to prove the appropriateness of the petition. Before granting any permanent legal guardianship or legal guardianship, the court shall require the prospective permanent legal guardian(s) or legal guardian(s) to acknowledge all duties and responsibilities as described in section 10-123.

(i) A grant of permanent legal guardianship or legal guardianship provides for the permanent custody of the child to someone other than the parent(s) and shall have the following effect:

- (1) A grant of permanent legal guardianship shall not terminate the parental rights of the natural parent to the child, including the right of the natural parent to consent to adoption of the child.

- (2) The natural parent shall remain responsible for the financial support of the child, if so ordered by the court, until an order vacating child support has been entered.
- (3) The parent will no longer be obligated to complete the court-ordered service plan for reunification, but may be permitted to attend review hearings within the court's discretion.
- (4) The court shall enter any visitation orders with the parent(s) or siblings as the court deems appropriate, or may delegate such authority to the permanent legal guardian.
- (5) There shall be a presumption of continued permanent legal guardianship in order to provide stability of the child.
- (6) A grant of permanent legal guardianship shall include the ability of the permanent legal guardian to change the legal name of the child. A grant of legal guardianship does not include the ability of the legal guardian to change the legal name of the child.
- (7) A court order for permanent legal guardianship or legal guardianship does not affect the child's inheritance rights from and through the child's birth or adoptive parent(s).

(j) The permanent legal guardian's or legal guardian's rights and responsibilities not specifically outlined in this section shall be consistent with section 10-123.

(k) All adjustments, terminations, relinquishment, or other amendments to any grant of legal guardianship of a dependent child of the Community shall be heard by the Community court that granted the legal guardianship.

(l) Permanent legal guardianship shall only be terminated based upon the unsuitability of the permanent legal guardian(s) rather than the competency or suitability of the parent(s).

(m) The court shall conduct a review of all guardianship grants for dependent children at an annual review for a minimum period of two years. At the reviews of the guardianship hearing, the parties to the matter shall be present.
(Ord. No. SRO-408-2013, § 11-47, 12-1-2012)

Sec. 11-177. Adoption as permanency disposition.

If, at the conclusion of a permanency hearing, the court finds that in the best interest of the child, the child should be adopted, the following shall apply:

- (1) Unless specifically described in this section, the procedural rules for adoption pursuant to chapter 10 shall apply in all matters regarding adoption of dependent children.
- (2) When a dependent child has no surviving parent, the court shall order the child eligible for adoption.
- (3) When the parental rights of all legally-established and surviving parents of a child have been terminated, the court shall order the child eligible for adoption.
- (4) The court shall require that an adoption hearing and final disposition of the child be achieved within six months of the permanency disposition hearing, unless there are exceptional circumstances where the court is unable to accommodate the matter due to unforeseen administrative reasons.

(Ord. No. SRO-408-2013, § 11-48, 12-1-2012)

Sec. 11-178. Termination of parental rights as a permanency disposition.

If, at the conclusion of a permanency hearing, the court finds that in the best interest of the child, the parental rights of any parent should be terminated to achieve permanency for the child, the following shall apply:

- (1) An eligible party, pursuant to section 11-180(a)(1) through (4), may identify to the court the intent to file a petition to terminate parental rights of the parent(s) within ten calendar days.

- (2) The requirement of a petition will not be required when the parent submits to voluntary termination of parental rights.
- (3) The court shall not order termination of parental rights if the parties advise there are no statutory grounds on which to form a petition.

(Ord. No. SRO-408-2013, § 11-49, 12-1-2012)

Sec. 11-179. Voluntary termination of parental rights.

(a) Parental rights may be voluntarily terminated by a parent.

(b) Voluntary termination shall not be accepted or acknowledged by the court prior to ten calendar days after birth of the child.

(c) A parent may voluntarily terminate parental rights in court, under oath, after being apprised of the parent's legal rights including:

- (1) To have the assistance of legal counsel; and
- (2) That termination of parental rights is final; and
- (3) The effect of the termination of parental rights; and
- (4) If a petition to terminate parental rights has been filed, that the petitioner has the burden of proof by clear and convincing evidence that grounds exist and that the termination is in the child's best interest.

(d) The court may also accept a sworn and notarized affidavit of intent to voluntarily terminate parental rights, when the parent is unavailable to attend court. Any affidavit shall acknowledge that the parent understood their legal rights including:

- (1) To have the assistance of legal counsel; and
- (2) That termination of parental rights is final; and
- (3) The effect of the termination of parental rights; and
- (4) If a petition to terminate parental rights has been filed, that the petitioner has the

burden of proof by clear and convincing evidence that grounds exist and that the termination is in the child's best interest.

(e) The voluntary termination of parental rights shall have no legal effect on the parental rights of any other legal parent.

(f) When a parent seeks to voluntarily terminate parental rights, all other legal parent(s) shall be noticed and given an opportunity to be heard. If the child is a dependent child, the Community shall also be noticed and given an opportunity to be heard.

(g) Voluntary termination shall not be permitted solely to eliminate any financial obligation of the parent. If the parent is financially supporting the child, or is legally-obligated to support the child, the court shall consider the effect of the voluntary termination on the child's best interest. (Ord. No. SRO-408-2013, § 11-50, 12-1-2012)

Sec. 11-180. Petition to terminate parental rights of a dependent child.

(a) *Who may file.* A petition to terminate the parent-child relationship may be filed by:

- (1) The Community prosecutor on behalf of the Community;
- (2) The appointed guardian ad litem representing the child's best interest;
- (3) Any advocate or attorney representing the child in the dependency matter; or
- (4) A parent, for the voluntary termination of his/her own parental rights, or the involuntary termination of parental rights of another legally established parent.

(b) *Contents of termination petition.* The petition for termination of the parent-child relationship shall include the following to the best information and belief of the petitioner:

- (1) The address of the petitioner;
- (2) The full name, sex, date of birth, current place of residence and tribal affiliation of the child;
- (3) The basis for the court's jurisdiction;

- (4) The length of time the child has been dependent;
- (5) The names, addresses and places of residence, tribal affiliation of the child's parent(s);
- (6) The age(s) of the child's parent(s), if the parent(s) are under 18 years of age;
- (7) If the child's parent is under the age of 18, the names, addresses and current place of residence of the parent's parent(s) or guardian;
- (8) The name and address of the person or agency having legal or temporary custody of the child;
- (9) The grounds and basic facts upon which the termination is sought under section 11-181;
- (10) A list and statement of value of all assets of the child; and
- (11) When any of the facts required by this subsection are unknown, the petition shall so state.

(c) *Parties filing petition to terminate.* Any party as described in subsection (a) of this section may file the petition to terminate parental rights when basic facts exist to support any of the grounds for termination pursuant to section 11-181 and may be filed prior to a permanency hearing. (Ord. No. SRO-408-2013, § 11-51, 12-1-2012)

Sec. 11-181. Grounds for involuntary termination of parental rights.

Any one of the following allegations proven by the petitioning party at trial shall be grounds for the involuntary termination of a parent's rights:

- (1) The parent is or has been incarcerated for more than 24 months (including separate incarceration periods), requiring the child to be separated from the parent;
- (2) The parent willfully, intentionally or negligently caused the death of a child;
- (3) The parent sexually assaulted or molested a child;

- (4) The parent assaulted a child resulting in serious physical injuries;
- (5) The parent willfully or intentionally caused the death of a legal parent of the child;
- (6) If the parent is alleged to be the father, the father failed to establish paternity after being given notice of the allegation as a part of the dependency action;
- (7) The parent has had their parental rights terminated as to another child, when the grounds for such termination were abuse or neglect and the parent has not remediated the causes of such abuse or neglect, such as substance abuse or a treatable mental illness;
- (8) The respondent is the alleged father and the child was conceived as a result of a rape or incest;
- (9) The respondent is the mother and the child was conceived as a result of consensual incest;
- (10) The parent failed to maintain contact with the child for a period of more than six months, or if the child was in dependent care, the parent failed to maintain contact with the social services department for six months;
- (11) The parent is unable to discharge parental responsibilities because of mental illness and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period;
- (12) If the child is under three years of age at the time of the filing of the petition to terminate parental rights, the fact that the child has been in dependent care for six months and is not likely to be returned to safe parental care within six months from the filing of the petition or the parents have failed to make reasonable efforts at reunification;
- (13) The child has been in dependent care for 24 months;
- (14) The parent willfully or intentionally inflicted serious or chronic emotional abuse upon the child;

- (15) The parent engaged in egregious conduct that poses a risk to the child's well-being; or
- (16) The parent had knowledge of emotional or physical abuse or neglect of the child and failed to protect that child from such harm.

(Ord. No. SRO-408-2013, § 11-52, 12-1-2012)

Sec. 11-182. Timing of hearing and service for initial hearing for termination and termination of parental rights trial.

Upon the court's receipt of the filing of a petition for termination of parental rights, the court shall set a time for an initial hearing on the petition for termination of parental rights within 20 calendar days.

- (1) The petition for termination of parental rights shall be filed by the petitioner with the court and copies provided to the parent(s), as well as any other necessary party, including the parties to the dependency matter.
- (2) The court shall issue a summons to the parent(s), any legal guardians and any such other persons as the court deems necessary and proper to the proceedings. The summons shall require them to appear personally before the court at the time set for the initial hearing for termination. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or prior to the hearing, or who is given personal notice of the hearing date and time during any other court proceeding.
- (3) Service of summons shall be made under the direction of the court by a Community process server or other suitable person appointed by the court, or upon request of the court, by a Community law enforcement officer or any other peace officer.
- (4) If the parties cannot be personally served, and if their address is known, the summons, petition, and notice of rights may

be served, within or outside of the Community's exterior boundaries, by certified mail with a return receipt requested, at least 15 calendar days before the initial hearing for termination. The court shall ensure that certified mail is employed as soon as service by personal service is not achievable.

- (5) Where it appears that the parent, guardian or custodian is a nonresident of the Community, or that their name, place of residence, or whereabouts is unknown, or in cases of unsuccessful personal service or service by certified mail, the court shall direct the clerk to publish a legal notice in the next available issue of the Community's newspaper simultaneously with a legal notice appearing once in another newspaper of general circulation. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown, "a person to whom it may concern," may be used. The name of the court, the title and purpose of the proceeding, the date the petition was filed, and the hearing date shall be set forth in general terms. The court shall direct notice by publication to the Clerk of the court to be completed as soon as the court is aware that the service by mail or personal service is not achievable. When publication is the method of service employed, the initial hearing shall not occur less than 60 calendar days after the filing of the petition for termination of parental rights.

- (6) The summons issued by the court shall display the following words:

"Notice, Violation of This Order is Subject to Proceedings for Contempt of Court Pursuant To Salt River Community Code Section 6-42. If Good Cause is Not Shown, the Court May Find the Parent, Guardian or Custodian in Contempt for Failure to Appear at a Court Hearing or for Failure to Follow Court Orders. Further, the Parties Should be Advised that the Hearing for Termination of Parental Rights May Proceed Without the Parent or Necessary

Respondent Present. Failure to Appear May Result in the Hearing Being Held Without The Parent and the Parental Rights of the Parent May be Terminated." (Ord. No. SRO-408-2013, § 11-53, 12-1-2012)

Sec. 11-183. Initial hearing for termination of parental rights.

(a) The court shall advise the parent(s) of the ability to voluntarily terminate their parental rights at the initial hearing.

(b) If the termination is contested at the initial hearing, the court shall set a date for trial on termination of parental rights within 90 calendar days of the initial hearing. The court shall identify from the parties the witnesses expected to be called at the trial, the need for any in camera proceedings, including the testimony of any child, and direct the parties to exchange any pertinent information relevant to the trial. The court shall schedule an appropriate amount of time for the termination trial after consultation with the parties. Notice of the time for the termination trial shall be provided to all parties present at the initial hearing.

(c) If the parent(s) voluntarily terminate their parental rights at the initial hearing, the court shall set a disposition hearing within 30 calendar days, which may be consolidated with any adoption, guardianship, or permanent legal guardianship hearings that are scheduled, so long as the hearing is within 90 calendar days of the voluntary termination.

(Ord. No. SRO-408-2013, § 11-54, 12-1-2012)

Sec. 11-184. Termination of parental rights trial.

(a) When the parent(s) fails to appear for the termination of parental rights trial, the court shall make a finding as to whether service was completed. If service was completed, and the parent fails to appear, the court may find that the parent(s)' have waived the right to be present. When the court finds that the parent has waived the right to be present, the hearing shall be conducted in the absence of the parent(s), absent good cause. If service has been completed, and the court has no information as to the parent's failure

to appear, the presumption shall be that the parent has voluntarily absented themselves from the trial and has waived the right to be present.

(b) The petitioning party shall have the burden of proof and shall prove by clear and convincing evidence that at least one of the allegations in the petition provides a legal basis for termination of parental rights and that the best interests of the child will be served by termination of the parent-child relationship.

(c) On occasion, when there is no viable option for reunification with a parent, a petition for termination of parental rights may be filed to mitigate any harm that the parent(s) may be imposing on a dependent child or upon the care of the child as a result of residual parental rights. In such cases, a permanency plan may not be a precondition to the termination. All other requirements for termination of parental rights remain the same.

(d) Rules of court for termination trial.

- (1) The court, within its discretion, may permit witnesses to appear telephonically.
- (2) The court may take judicial notice of procedural facts that were previously determined by the court.
- (3) When a parent is unable to attend the trial due to incarceration or some other involuntary means, the court shall make reasonable efforts to accommodate the parents participation in the trial, such as by allowing for telephonic appearance and the submission of depositions for the purpose of avoiding delay and the best interest of the child.
- (4) The court may permit the parties to stipulate to facts and evidence.
- (5) The court shall make specific findings as to the grounds for termination and the best interest of the child, requiring the petitioning party to prove each by clear and convincing evidence.
- (6) The court may consider any conduct relevant to the allegations, regardless of where such conduct occurred, so long as the evidence is reliable.

(7) Any other relevant evidence.

(e) The best interest of the child shall be the primary determining factor in making a decision as to the termination of parental rights. As to the determination of best interest of a child, the court shall consider the following (if such information exists):

- (1) Any recommendations from the child's treating mental health professional regarding the plans to meet the child's needs for consistency and bonding, including any emotional bonds the child has with substitute care;
- (2) Proposed plans regarding the ability of the child to maintain cultural-connectedness and cultural identity;
- (3) Any evidence in the record of the parent's demonstrated ability or lack of ability to substantially remediate the underlying issues that led to the dependency action;
- (4) Any other relevant evidence presented.

(f) Within 15 calendar days of the hearing, the court shall make findings of fact and conclusions of law as to the termination of the parental rights, specifically as to the alleged grounds for termination and as to the best interest of the child, and shall issue a written order of its findings. The court shall limit its finding to evidence presented in the records.

(g) A petition for termination of parental rights may not be dismissed with prejudice absent a hearing on the merits.

(Ord. No. SRO-408-2013, § 11-55, 12-1-2012)

Sec. 11-185. Effect of termination.

Upon termination of the parent-child relationship, all rights, powers, privileges, immunities, duties and obligations, including any right to custody, control, and visitation existing between the child and parent shall be severed and terminated unless otherwise directed by the court. The parent shall have no standing to appear at any future legal proceedings concerning the child. The rights of one parent may be terminated without affecting the rights of the other parent. A termination of parental rights order shall not prevent a

child from receiving child support or inheritance from the natural parent or adoptive parent until a final adoption is ordered.

(Ord. No. SRO-408-2013, § 11-56, 12-1-2012)

Sec. 11-186. Disposition after termination.

(a) Upon the entering of termination of parental rights order, the court shall conduct a disposition hearing within 30 calendar days, but may conduct the disposition immediately upon the consent of the remaining parties. The disposition hearing may be consolidated with any adoption or permanent legal guardianship hearings that are scheduled, so long as the hearing is within 90 calendar days of the termination order.

(b) If upon entering a termination of parental rights order, there remains no parent having parental custody, the court shall give primary consideration to the best interest of the child and with due regard to the customs and traditions of the Community and the family with regard to child-rearing, and may order any of the following dispositions:

- (1) Place the child for adoption under applicable law and regulations, including section 11-166;
- (2) Grant a guardianship or permanent legal guardianship for the child; or
- (3) Maintain the child in court-ordered placement and direct the social services department to identify a permanent plan immediately.

(c) This section does not apply when the court finds that exceptional care requirements exist.

(Ord. No. SRO-408-2013, § 11-57, 12-1-2012)

Sec. 11-187. Termination of parental rights petition denied, permanency review hearing required.

Upon entering an order denying a termination of parental rights petition, the court shall immediately schedule a permanency review hearing. The permanency review hearing shall take place within 30 calendar days. The hearing may take place immediately only upon consent of all parties.

(Ord. No. SRO-408-2013, § 11-58, 12-1-2012)

Sec. 11-188. Subsequent permanency review hearings.

In the cases where a termination of rights petition was denied by the court, permanency review hearings shall be conducted every 90 calendar days until permanency is achieved for the child, or the child is no longer dependent, consistent with sections 11-169 and 11-175.

(Ord. No. SRO-408-2013, § 11-59, 12-1-2012)

Sec. 11-189. Subsequent petition to terminate parental rights after denial of prior petition to terminate.

(a) A subsequent petition to terminate parental rights shall not be precluded when there has been a previous termination of parental rights denial by the court, however any subsequent petition to terminate parental rights received by the court shall only be considered when the circumstances of the child or the parent have materially and substantially changed since the previous petition for termination was denied, or when new grounds for termination of parental rights exist.

(b) The court may consider evidence presented in a previous hearing in a termination hearing so long as it is not the sole evidence under consideration.

(Ord. No. SRO-408-2013, § 11-60, 12-1-2012)

Secs. 11-190—11-216. Reserved.

ARTICLE VIII. CURFEW

Sec. 11-217. Curfew described; exception.

It is unlawful for any juvenile under 18 years of age to be away from the dwelling house or usual place of abode of such juvenile between the hours of 10:00 p.m. and 6:00 a.m. of the following day, unless the juvenile is:

- (1) Accompanied by a parent, guardian or custodian;
- (2) Accompanied by a person authorized by a parent, guardian or custodian and the juvenile is on a reasonable, legitimate and

specific business or activity directed or permitted by a parent, guardian or custodian;

(3) On an emergency errand; or

(4) An emancipated minor.

(Code 1981, § 11-71; Code 2012, § 11-71; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-71, 5-30-2012)

Sec. 11-218. Responsibility of parent, guardian or custodian.

The parent, guardian or custodian of a juvenile under 18 years of age shall ensure that the juvenile is not away from the dwelling house or usual place of abode of the juvenile in violation of this section. It is unlawful for any parent, guardian or custodian of a juvenile under 18 years of age to permit such juvenile to be away from the dwelling house or usual place of abode of the juvenile in violation of this section.

(Code 1981, § 11-72; Code 2012, § 11-72; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-72, 5-30-2012)

Sec. 11-219. Legal requirements.

(a) *Offense by omission.* The offenses described in sections 11-217 and 11-218 shall be considered offenses by omission. The prosecution shall have the burden of proving that the juvenile was not at the dwelling house or usual place of abode. Both the juvenile and the parent shall have an affirmative duty to ensure the juvenile is at the dwelling house or usual place of abode during the hours required. The prosecution shall not be required to prove where the juvenile actually was during the hours required.

(b) *Lack of knowledge not a defense.* It shall not constitute a defense that the parent, guardian or custodian of a juvenile who comes within the provisions of this section did not have actual knowledge of the presence of such juvenile being away from the dwelling house or usual place of abode of the juvenile, if the parent, guardian or custodian, in the exercise of reasonable care and diligence, should have known of the failure of the juvenile to be in the dwelling house or usual place of abode.

(c) *Procedure.* Proceedings for any juvenile alleged to have violated the provisions of this article shall be conducted in accordance with sections 11-129 through 11-136. Proceedings for any parent, guardian or custodian alleged to have violated the provisions of this article shall be conducted pursuant to chapter 5 of this Code of Ordinances.

(Code 1981, § 11-73; Code 2012, § 11-73; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-73, 5-30-2012)

Sec. 11-220. Curfew violations to be separate offenses.

Each violation of the provisions of sections 11-217 and/or 11-218 shall constitute a separate offense.

(Code 1981, § 11-74; Code 2012, § 11-74; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-74, 5-30-2012)

Sec. 11-221. Penalties.

Any juvenile or any parent, guardian or custodian of a juvenile who violates any provision of this article shall be sentenced to imprisonment not to exceed six months, or to a fine not to exceed \$5,000.00, or to both such fine and imprisonment, or shall be subject to a civil penalty not to exceed a \$5,000.00 fine.

(Code 1981, § 11-75; Code 2012, § 11-75; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-75, 5-30-2012)

Sec. 11-222. Law enforcement authority for transport.

When a law enforcement agency outside the Community has custody of a juvenile for an alleged curfew violation, a duly authorized law enforcement officer of the Community may transport the juvenile to the Community.

(Code 1981, § 11-76; Code 2012, § 11-76; Ord. No. SRO-344-09, 11-12-2008; Ord. No. SRO-402-2012, § 11-76, 5-30-2012)

Secs. 11-223—11-252. Reserved.

ARTICLE IX. RIGHTS OF CHILD VICTIMS OR WITNESSES OF CRIME

Sec. 11-253. Intent.

The Community recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to Community enforcement efforts and the general effectiveness of the criminal justice system of the Community. Therefore, it is the intent of the Community Council by means of this article to ensure that all child victims and witnesses of crime are treated with sensitivity, courtesy and special care in order that their rights may be protected by law enforcement agencies, social agencies, protection afforded the adult victim, witness or criminal defendant.
(Code 1981, § 11-81; Code 2012, § 11-81; Ord. No. SRO-136-91, § 1, 11-28-1990; Ord. No. SRO-402-2012, § 11-81, 5-30-2012)

Sec. 11-254. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this article.

Advocate means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.

Child means any person under the age of 18 years.

Crime means an act punishable under the laws of the Community or equivalent federal or state law.

Family member means child, parent, legal guardian or extended family member.

Victim means any person against whom a crime has been committed.

Witness means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or a person who is subject to call or likely to be called as a witness for

the prosecution by reason of having relevant information, whether or not an action or proceeding has been commenced.

(Code 1981, § 11-82; Code 2012, § 11-82; Ord. No. SRO-136-91, § 2, 11-28-1990; Ord. No. SRO-402-2012, § 11-82, 5-30-2012)

Sec. 11-255. Rights enumerated.

There shall be every reasonable effort made by law enforcement agencies, prosecutors and judges to ensure that child victims and witnesses are afforded the rights enumerated in this section. The enumeration of these rights shall be construed to create substantive rights and duties; and the application of an enumerated right in an individual case is not subject to the discretion of the law enforcement agency, prosecutor or judge. Child victims and witnesses have the following rights:

- (1) To have explained in language easily understood by the child all legal proceedings and/or police investigations in which the child may be involved.
- (2) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.
- (3) To prevent the disclosure of the names, addresses or photographs of the living child victim or witness by any law enforcement agency, prosecutor's office or state agency without the written permission of the child victim, child witness, parents or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel or tribal or private agency that provides services to the child victim or witness.
- (4) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

- (5) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.
- (6) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation and judicial proceedings in which the child is involved.
- (7) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.
- (8) To provide information to the court as to the need for the presence of other supportive persons at the court proceeding while the child testifies in order to promote the child's feelings of security and safety.
- (9) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of child victims.
- (10) To be provided with coordinated tribal services so as to decrease any duplication of services and to minimize the number of interviews with the child victim or witness.
- (11) To be provided with the use of closed circuit television or other such similar recording device for the purposes of interviewing or court testimony when appropriate, and to have an advocate remain with the child prior to and during any recording sessions. The use of closed circuit television or other such similar recording device is appropriate when the trial court, after hearing evidence, determines this procedure is necessary to protect the particular child witness' welfare; and specifically finds the child would be traumatized, not by the courtroom generally, but by the defendant's presence and finds that the emotional distress suffered by the child in the defendant's presence is more than de minimus.

(Code 1981, § 11-83; Code 2012, § 11-83; Ord. No. SRO-136-91, § 3, 11-28-1990; Ord. No. SRO-402-2012, § 11-83, 5-30-2012)

Sec. 11-256. Civil liability.

The failure to provide notice to a child victim or witness under this article of the rights enumerated in section 11-255 shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to ensure that child victims and witnesses are afforded the rights enumerated in section 11-255 shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence.

(Code 1981, § 11-84; Code 2012, § 11-84; Ord. No. SRO-136-91, § 4, 11-28-1990; Ord. No. SRO-402-2012, § 11-84, 5-30-2012)

Secs. 11-257—11-275. Reserved.

ARTICLE X. INVESTIGATION OF PERSONS WORKING WITH CHILDREN

Sec. 11-276. Policy.

It is the policy of the Community that all employees who provide direct services to children shall have fingerprints on file with the department of personnel.

(Code 1981, § 11-91; Code 2012, § 11-91; Ord. No. SRO-148-92, § 1, 4-8-1992; Ord. No. SRO-402-2012, § 11-91, 5-30-2012)

Sec. 11-277. Employment application; background requirements.

All employment applications for persons seeking work for any position which involves direct services to children shall address the following issues:

- (1) Whether the individual has ever been arrested for or charged with a crime involving a child, and if so, the disposition of that arrest or charge;
- (2) Whether the individual is a parent or guardian of a child adjudicated to be a dependent child as defined in article I of this chapter; and
- (3) Whether the individual has ever been denied a license to operate a facility for

the care of children in the State of Arizona or any other state or jurisdiction or had a license or certificate to operate such a facility revoked, and if so, the reason for such denial or revocation.

(Code 1981, § 11-92; Code 2012, § 11-92; Ord. No. SRO-148-92, § 2, 4-8-1992; Ord. No. SRO-402-2012, § 11-92, 5-30-2012)

Sec. 11-278. Responsibilities of personnel department.

(a) The personnel department assisted by the department to which an application for employment is addressed shall make documented good faith efforts to contact previous employers of each applicant to obtain information and/or recommendations which may be relevant to such person's fitness to be employed in a position involving contact with children.

(b) The personnel department shall annually review its files to determine that the fingerprinting and other requirements of this article have been adhered to and shall report to the Community manager the results of the annual review. (Code 1981, § 11-93; Code 2012, § 11-93; Ord. No. SRO-148-92, § 3, 4-8-1992; Ord. No. SRO-402-2012, § 11-93, 5-30-2012)

Sec. 11-279. Background information.

(a) Each application for employment for positions which provide direct services to children shall have their fingerprints taken by a law enforcement officer of the department of public safety or such other agency as designated by the department of public safety. The fingerprints shall be turned over to the personnel department for inclusion in the applicant's file.

(b) The department of public safety shall provide background information using the applicant's fingerprints as determined by a criminal history check to the personnel department. The criminal history check shall be:

- (1) Based on such fingerprints and other identifying information.
- (2) Conducted through the identification division of the Federal Bureau of Investigation, as well as through all state criminal

history repositories and tribal jurisdictions that the applicant lists as residences on the employment application.

(Code 1981, § 11-94; Code 2012, § 11-94; Ord. No. SRO-148-92, § 4, 4-8-1992; Ord. No. SRO-402-2012, § 11-94, 5-30-2012)

Sec. 11-280. Confidentiality.

The employment application, background inquiries and fingerprint criminal history check shall be confidential.

(Code 1981, § 11-95; Code 2012, § 11-95; Ord. No. SRO-148-92, § 5, 4-8-1992; Ord. No. SRO-402-2012, § 11-95, 5-30-2012)

Secs. 11-281—11-308. Reserved.

ARTICLE XI. TRUANCY

Sec. 11-309. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Absence means nonattendance in school for a school day as defined within this section or for the accumulation of the following tardies:

- (1) Five school days in a semester for elementary school students; or
- (2) Five class periods in a semester for secondary school students (grades seven through 12).

Community means the Salt River Pima-Maricopa Indian Community, its government, and any of its political subdivisions, departments, agencies or enterprises.

Excessive absences means when the number of absent days exceeds ten percent of the instructional days scheduled for the semester.

Fail to attend school during the hours school is in session means that the student has one or more absences.

Habitually truant means a child who is truant for at least ten school days in a semester, whether consecutive or not.

Reasonable effort to notify means:

- (1) If a telephone number is available, attempting to contact the child's parent, guardian or custodian by telephone at least two times a day on three different days;
- (2) If the residence of the child's parent, guardian or custodian is known and within the Community, attempting to contact the child's parent, guardian or custodian at the residence three times; and
- (3) If the workplace is known and is within the Community, attempting to contact the child's parent, guardian or custodian once at the workplace.

Respondent means the party upon whom a truancy citation is issued.

School means any public school, state-approved charter school, Bureau of Indian Affairs boarding or grant school, private, secular or parochial school, whether a boarding or day school, which has been duly licensed by the United States or any state, or any school or instructional program operated by or under the jurisdiction of the Community.

School day means for kindergarten through grade six, any day that children are required to be in attendance at school for instructional purposes. For grades seven through 12, school day means one entire class period.

Tardy means an unexcused or unverified failure to arrive at school or for a class period on time (that is, by the time the school day or class period begins).

Truant or *truancy* means an unexcused or unverifiable absence for at least one class period during the day that has been referred or is referable to an attendance officer for citation pursuant to the administrative truancy procedures adopted by a Community school and approved by the Community's board of education or that has been referred by a school outside the Community pursuant to procedures set forth by the Community's board of education.

Truant child means a child who is at least five years of age but less than 18 years of age who is truant.

(Code 1981, § 11-100; Code 2012, § 11-100; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-100, 8-4-2011; Ord. No. SRO-402-2012, § 11-100, 5-30-2012)

Sec. 11-310. School instruction.

Every child between five and 18 years of age shall be instructed in at least the subjects of reading, grammar, mathematics, language and culture, social studies, and science.

(Code 1981, § 11-101; Code 2012, § 11-101; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-101, 8-4-2011; Ord. No. SRO-402-2012, § 11-101, 5-30-2012)

Sec. 11-311. School attendance.

(a) It is unlawful for any child between five and 18 years of age who resides within the Community to fail to attend school during the hours school is in session, unless:

- (1) The child's absence is due to a verified or verifiable temporary illness, disease or injury that has been documented by a medical professional where the medical condition requires absence from school for more than three consecutive absences, or a medical condition that a parent or legal guardian observes and reports to the school when the child must be absent for less than three consecutive days;
- (2) The child is accompanied by a parent, guardian or custodian or person authorized by a parent, guardian or custodian and the child's absence is due to a compelling verified or verifiable reason such as death or serious illness of an immediate family member, legal proceedings, etc.; or

- (3) The child has completed the required instructional program for graduation or its equivalent and documentation can be provided to evidence such completion.

(b) The parent, guardian or custodian of a child between five and 18 years of age shall enroll the child in and ensure that the child attends school for the full-time school is in session. A parent, guardian or custodian of the child who fails to enroll a child or fails to ensure that the child attends school for the full-time school is in session shall be subject to the civil penalties set forth in sections 11-317 and 11-318.

(c) It is unlawful for any child between five and 18 years of age who resides within the Community to have excessive absences, regardless of the reasons or justification for such.

(d) In addition to the finding of a violation of this section, a child who is found to be habitually truant or who has excessive absences, as defined in section 11-309, may be determined to be an incorrigible child. The court may impose reasonable conditions upon the child, under the supervision of the probation department, to remedy any incorrigible behaviors.

(e) This section shall not apply when a court of competent jurisdiction has previously determined that the physical or mental condition of the child makes regular school attendance inexpedient or impracticable and the related circumstances have not changed since that determination. In the event of such a finding by a court, the parent, guardian or custodian shall arrange for instruction through an approved alternative education program as is practicable. The parent, guardian or custodian shall notify the Community's department of education and/or the school officials of the district in which the child is enrolled or eligible to enroll of such determination.

(Code 1981, § 11-102; Code 2012, § 11-102; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-102, 8-4-2011; Ord. No. SRO-402-2012, § 11-102, 5-30-2012)

Sec. 11-312. Attendance officer.

(a) The Community may employ attendance officers to enforce the law relating to school attendance of children between the ages of five and 18 years to implement this article.

(b) The attendance officers shall be authorized to:

- (1) Issue a civil citation for alleged violations of this article;
- (2) Refer all violations of this article to the Community prosecutor for prosecution;

(c) The attendance officer shall:

- (1) Make a reasonable effort to notify the child's parent, guardian or custodian that the citation was issued and that the parent, guardian or custodian is required to appear in court with the child;
- (2) Provide proof of such notice, if available, to the court or shall provide a description of the attempts to provide notice.

(Code 1981, § 11-103; Code 2012, § 11-103; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-103, 8-4-2011; Ord. No. SRO-402-2012, § 11-103, 5-30-2012)

Sec. 11-313. Citation.

(a) A short form citation may be used and shall include the name of the child and the parent, guardian or custodian, the dates alleged to be truant, and shall indicate the time for the court appearance.

(b) The citation shall require the person cited to appear before the juvenile court and shall advise the person to whom the citation is issued that failure to appear at the time and place specified in the citation may result in the issuance of a warrant for the person's arrest.

(c) A citation shall be issued to any adult and/or child over the age of 12 who is alleged to be in violation of this article.

(d) A citation may be issued to any child 12 years of age or older who is alleged to be in violation of this article, regardless of whether the parent, guardian or custodian is also cited.

(e) A citation issued to a child under 18 years of age shall require the child's parent, guardian or custodian to appear with the child at the time and place specified in the citation; provided, however,

the child may be civilly sanctioned under this section even if there is no proof the parent, guardian or custodian was served but the parent, guardian or custodian does appear at the hearing.

(f) A truant child shall be referred to an attendance officer for citation when:

- (1) The child refuses to participate in the school's administrative truancy procedures; or
- (2) The truancy continues despite the school's administrative truancy procedures.

(Code 1981, § 11-104; Code 2012, § 11-104; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-104, 8-4-2011; Ord. No. SRO-402-2012, § 11-104, 5-30-2012)

Sec. 11-314. Waiver of school attendance.

The requirement of school attendance in section 11-311(a) may be waived under the following four conditions:

- (1) The child meets one of the following:
 - a. The child has no one to support him or her or no place to live rent free and it is not possible to arrange a normal school schedule around necessary employment or child care;
 - b. The child does not have sufficient credits to graduate by June of the calendar year in which he or she will turn 19 years of age even if he or she attends school full-time, including summer school; or
 - c. The child will be 18 years of age by December 31 of the next calendar year and has fewer than six high school credits;
- (2) The Community's education division or Salt River High School certifies that the child fits within one or more of the criteria listed in subsection (1) of this section;
- (3) There is an alternative training/educational plan for the child which will ensure

that a GED is earned within one year, or within two years if part of an on-going vocational training program; and

- (4) The Community's education board approves the waiver.

(Code 1981, § 11-105; Code 2012, § 11-105; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-105, 8-4-2011; Ord. No. SRO-402-2012, § 11-105, 5-30-2012)

Sec. 11-315. Informal agreement.

(a) On a first violation of this article only, the prosecutor shall have the discretion to adjust the citation, at any time prior to the adjudication, by entering into an informal adjustment agreement with the respondent. The informal adjustment agreement shall be consistent with section 11-130, except that:

- (1) Only the prosecutor shall be authorized to enter into such an agreement; and
- (2) The agreement may be entered into after the citation has been filed.

If the terms of the agreement are not met, the prosecutor shall pursue the truancy matter as set forth in section 11-316 et seq., including but not limited to the mandatory fine.

(b) Any tardiness or truancy subsequent to the date of the informal agreement shall constitute an automatic termination of the agreement.

(Code 1981, § 11-106; Code 2012, § 11-106; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-106, 8-4-2011; Ord. No. SRO-402-2012, § 11-106, 5-30-2012)

Sec. 11-316. Community court hearings.

(a) Procedures for a hearing pursuant to this article shall be governed by section 11-24, and the standard of proof shall be preponderance of the evidence.

(b) A person or persons listed in the school's records for the current school year as the parent, guardian or custodian shall be presumed to be a

parent, guardian or custodian for purposes of this section; provided, however, this presumption may be rebutted by a preponderance of the evidence.

(c) Lack of knowledge of the child's truancy shall not be a defense to finding of a violation of this article.

(d) The time set for adjudication shall be at least five and no more than ten business days from the date of citation unless service may be effectuated only by publication then the time for adjudication shall be no more than 90 calendar days from the date of the citation.

(e) The Community court shall hold hearings each week for all alleged violators of this article who have been issued citations in the previous ten days.

(f) Administrative actions taken by a school due to a student's misconduct shall not be a defense to nonattendance or a finding of a violation of this article.

(g) A truancy citation shall not be dismissed solely because the respondent was not served and did not appear.

(h) Hearings may not be continued unless the court finds that:

- (1) A serious emergency circumstance exists that prevents the respondents from attending the hearing;
- (2) The attendance officer who issued the citation is not at work the day of the hearing or is otherwise unable to attend the hearing as recognized by applicable personnel policies;
- (3) The respondents do not appear at the hearing and there is no proof of service in the record; or
- (4) Other serious circumstance that requires a continuance in the interest of justice.

(i) Upon the court's receipt of a truancy citation accompanied by a sworn statement from the attendance officer that the attendance officer is unable to provide notice to the parent, guardian,

or custodian after making a reasonable effort to give notice of a court hearing as required by subsection (d) of this section, the court shall:

- (1) Issue a summons for the parent, guardian or custodian to appear for an initial hearing within ten days.
- (2) Order service of process of the summons pursuant to Rule 5-13(d), (e) or (f) of the Rules of Civil Procedure (set forth in article IV of chapter 5) for the Community court. If service may be effectuated only by publication, a hearing shall be held within 90 calendar days from the date of the citation.
- (j) If the respondents received proper notice, the court may:
 - (1) Conduct the hearing, including the taking of evidence to substantiate the allegations, without the presence of one or more respondents; or
 - (2) Continue the hearing and determine whether an order to show cause proceeding, issuance of a bench warrant, or other action is appropriate for the respondents who failed to appear.

Where a bench warrant is issued, the bench warrant shall direct that the person be brought to the court at the first opportunity and if the person signs a promise to appear, the person shall be released immediately; the court may also allow the respondent to appear in court voluntarily and the bench warrant will be quashed.

(Code 1981, § 11-107; Code 2012, § 11-107; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-107, 8-4-2011; Ord. No. SRO-402-2012, § 11-107, 5-30-2012)

Sec. 11-317. Fines.

(a) Fines shall be assessed as follows against parents, guardians, custodians and children 12 years of age or older who are found by the court to have violated this article:

- (1) A civil fine of \$1,000.00 for the first finding of a violation within an academic

year; provided, however, the court may order that the amount of the fine, minus court costs, are rebated to the respondents only if all of the provisions of the court order have been fulfilled, including any civil sanctions consistent with section 11-318 that may have been imposed, and there has been no further truancy citation for the subsequent five months of school or until graduation, whichever comes first.

- (2) A civil fine of \$2,500.00 for the second finding of a violation within an academic year.
- (3) A civil fine of \$5,000.00 for the third finding of a violation within an academic year.
- (4) \$500.00 for each truancy after the finding of a third violation within an academic year.

(b) If a Community member, who has been fined under this article, receives per capita payments and has not paid a fine by other means prior to the next quarterly per capita payout, all such fines shall be deducted from the subsequent per capita payment) of the parents, guardians, custodians and/or children over the age of 12 beginning with the next scheduled payment and continuing until the entire amount due is paid consistent with the Community's administrative Policy 3-4 or a similar policy approved by the Community Council.

(c) For persons who do not receive Community per capita payments, fines shall be paid as directed by the court and may be collected as any other civil fine or judgment.

(d) The fines set forth in this section are mandatory, which means that the fines must be imposed and cannot be suspended or deferred.

(e) Fines shall be assessed on a per child and per violation basis.

(f) For any truancy violation in a citation for each individual child, the court has discretion to determine whether one of or both the cited child or the cited parent, guardian or custodian shall be

responsible for the mandatory fines, so long as the mandatory fine is imposed on at least one or the other.

(g) The computation of first, second, etc., violations of this article shall begin anew each school year.

(Code 1981, § 11-108; Code 2012, § 11-108; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-108, 8-4-2011; Ord. No. SRO-402-2012, § 11-108, 5-30-2012)

Sec. 11-318. Additional civil sanctions.

In addition to a civil fine, upon a finding of a violation of this article, the court may order one or more of the following:

- (1) Community service to be performed by a parent, guardian or custodian and/or the student;
- (2) Saturday school or a similar school-based truancy intervention program, as may be available, to be attended by both a parent, guardian or custodian and the student;
- (3) Participation in any other intervention or rehabilitative program;
- (4) A report to the court on school progress and attendance as described by the court;
- (5) A requirement for the student to be at his or her home, workplace or school during certain hours as set by the court for the remainder of the school year or other duration imposed by the court and/or until any imposed fines are paid in full.

(Code 1981, § 11-109; Code 2012, § 11-109; Ord. No. SRO-307-06, 11-30-2005; Ord. No. SRO-308-06, 1-4-2006; Ord. No. SRO-309-06, 2-8-2006; Ord. No. SRO-314-06, 8-16-2006; Ord. No. SRO-382-2011, § 11-109, 8-4-2011; Ord. No. SRO-402-2012, § 11-109, 5-30-2012)