

## TITLE V - CHILD WELFARE CODE

### CHAPTER 1. GENERAL PROVISIONS

#### Sec. 101. Jurisdiction

(a) The Chitimacha Tribal Court shall have exclusive original jurisdiction over any child custody proceeding involving a child who resides or is domiciled within the Chitimacha Reservation, settlement area or trust lands, or a child who is a ward of the court, notwithstanding the residence or domicile of the child. Where the Chitimacha Tribal Court asserts jurisdiction over a child pursuant to this Title, the Chitimacha Tribal Court shall also have jurisdiction over any adult residing in the child's home to the extent necessary to issue any orders protecting the best interests of the child.

(b) The Chitimacha Tribal Court shall have the authority to issue all orders necessary to ensure the safety of children within the jurisdiction of the Chitimacha Tribe of Louisiana, including the issuance of subpoenas and orders of restriction, the imposition of fines and sanctions for contempt, and such other orders as may be appropriate. All actions brought under this Title shall be determined by the Court in accordance with Tribal Law.

(c) The Chitimacha Tribal Court may accept a transfer of jurisdiction from any court of competent jurisdiction involving a child custody proceeding of a child not domiciled or residing within the Chitimacha Reservation, upon the petition of either parent or the child's custodian, or the Chitimacha Tribe; provided however, that the Chitimacha Tribal Court may decline to accept jurisdiction over a child custody proceeding when there is good cause to decline such jurisdiction. The Chitimacha Tribal Court may transfer a child custody proceeding to an appropriate court of competent jurisdiction when the transfer is in the best interests of the child.

(d) The Chitimacha Tribal Court shall give full faith and credit to the public acts, records and judicial decrees applicable to child custody proceedings of any court of competent jurisdiction to the same extent that such court gives full faith and credit to the public acts, records and judicial decrees of the Chitimacha Tribal Court.

(e) In any child custody proceeding in a state court, the Chitimacha Tribe of Louisiana shall have the right to intervene at any point in the proceeding to protect the best interests of the child.

(f) Chitimacha Tribal Court judges who preside over any proceeding pursuant to this Title shall meet the general qualifications for Chitimacha Tribal Court judges, and, in addition, shall have significant training and experience in child welfare matters, and be familiar with the Indian Child Welfare Act, 25 U.S.C. §§ 1901–1923, and the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. §§ 3201–3211, 18 U.S.C. § 1169. The Chitimacha Tribal Court may establish qualifications for additional court personnel as needed, such as guardians ad litem, court appointed special advocates and special investigators.

(Revised by Ordinance # 5-98; Adopted: June 18, 1998; Effective: June 18, 1998; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 102. Supervision over Welfare of Children**

The Chitimacha Human Services Department shall have general supervision over the provision of services to children and families who require the care and protection of the Chitimacha Tribe of Louisiana.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 103. Definitions**

(a) "Abandonment" means:

- (1) the continued inability, despite a diligent search, to identify the whereabouts of the parent of a child for a period of at least four (4) months as of the date of the initial hearing; or
- (2) the complete lack of contact by a parent with his or her child for any period of six (6) consecutive months or marginal contact for twenty-four (24) of the past forty-eight (48) months, as of the date that the petition is filed; and
- (3) the failure by a parent to provide adequate and continuous financial support for his or her child for any period of six (6) consecutive months, as of the date that the petition is filed.

Placement of the child with a member of the parent's extended family shall not constitute abandonment.

(b) "Abandoned child" means a child who is the victim of abandonment as defined in paragraph (a) of this Section.

(c) "Abused child" means a child who is the victim of child abuse as defined in paragraph (f) of this Section.

(d) "Adult" means a person who is at least eighteen (18) years of age or older. A person under the age of eighteen (18) years who is a parent may be treated as an adult.

(e) "Child" means any Indian and/or natural or adopted child, step-child, foster child, legal ward, or orphan of an Indian eligible for services pursuant to 25 U.S.C. § 1680c, who resides in an Indian household on any lands now held, or hereafter acquired by or for the Chitimacha Tribe of Louisiana and, is under eighteen (18) years of age.

(f) "Child abuse" means any case in which a child has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or emotional harm upon the child, including excessive corporal punishment or an act of sexual abuse. For purposes of this paragraph:

- (1) "Physical harm" means but is not limited to any case in which a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma or soft tissue swelling and such condition is not justifiably explained or may not be the product of an accidental occurrence.
- (2) "Sexual abuse" means any case in which a child is subjected to sexual assault, sexual

molestation, sexual exploitation, sexual contact, or prostitution.

(g) "Child custody proceeding" means:

- (1) "foster care placement" which shall mean any action removing a child from his or her parent or custodian for temporary placement in a foster home or institution or the home of a guardian where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (2) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
- (3) "pre-adoptive placement" which shall mean the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
- (4) "adoptive placement" which shall mean the permanent placement of a child for adoption, including any action resulting in a final decree of adoption.

For purposes of Section 103(g) under this Title, child custody proceeding shall not include a placement based upon an award in a divorce proceeding of custody to one of the parents or intra-family custody dispute.

(h) "Child neglect" means:

- (1) the failure by the parent or custodian of a child, including a person responsible for the child's welfare, to provide the minimal care which a reasonably prudent parent would provide in the circumstances for the subsistence, education and welfare of the child. Neglect includes prenatal neglect; or
- (2) the neglect or refusal by the parent or custodian of a child, including a person responsible for the child's welfare, to provide a reasonable level of special care for a child who has special physical or mental conditions; or
- (3) the failure by the parent or custodian of a child, including a person responsible for the child's welfare, to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

A child shall not be deemed to be neglected if the reason for the failure to provide adequate care for the child is the indigence of the parent or guardian. Minimal care shall mean the provision of adequate food, clothing, shelter, medical care and day-to-day supervision. In determining whether a parent or guardian, including a person responsible for the child's welfare, has provided minimal care, the Chitimacha Tribal Court shall apply the standards prevailing in the community.

(i) "Child Protective Services" ("CPS") means the designated staff within the Chitimacha Human Services Department with primary responsibility for receiving reports of children in need of the Chitimacha Tribe of Louisiana's care and protection, making referrals and coordinating the screening and investigation of suspected child neglect and abuse, and ensuring that protective services and related assistance are provided to children and families.

(j) "Custodian/Guardian" means any person who has legal custody of a child or with whom temporary care, custody and control has been placed, by the order of a court of competent jurisdiction or who is acting in loco parentis, and who is responsible for the health, safety, and welfare of a child. Such a person has the duty and authority to make major decisions affecting such child's welfare, including, but not limited to major medical, psychiatric or surgical treatment.

(k) "Delinquent child" means a child who commits an act which if committed by an adult would be in violation of any provision of Title III of the Chitimacha Comprehensive Codes of Justice (Criminal Offenses). Traffic offenses shall be deemed delinquent acts only if committed by an individual under fifteen (15) years of age.

(1) This section shall also be applicable in the handling of juvenile matters occurring off the Chitimacha Reservation when:

(i) the act is also deemed delinquent under this subsection, and;

(ii) the case has been referred to Law Enforcement Services and/or Tribal Court for processing.

(l) "Detention" means the temporary, secure custody of a child in facilities designated by the Chitimacha Tribal Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the juvenile has sight or sound contact with incarcerated adult offenders.

(m) "Diversion" means a course of remedial action taken in matters arising under this Title designed to avoid formal court action and to serve the best interests of the child involved.

(n) "Domicile" means a person's permanent home, legal or main residence. The domicile of a child is generally that of the custodial parent or guardian. A child shall be considered a domicile of the Chitimacha Reservation where the child's custodial parent or guardian considers the Reservation to be his or her permanent home.

(o) "Family Education Assessment Team Helping to Empower and Restore our Strength (hereinafter "FEATHERS") Committee" means a standing committee comprised of the Chitimacha School Principal, Chitimacha Daycare Center Director, Human Services Department Director, Juvenile Officer, Tribal Prosecutor, the parent(s) or custodian/guardian(s) of a child who is the subject of the committee's focus, and any other individual who has been invited to attend, whose purpose is to address the needs of and offer viable solutions for children and their parent(s) or custodian/guardian(s), by providing screening, assessment and judicial services, in cases of truancy, excessive tardiness, suspensions, criminal activities, related behavioral problems and such other areas as may be appropriate.

(p) "Foster care" means the temporary care of a child in a private home or institution approved by the Chitimacha Tribal Court as appropriate to provide such care.

(q) "Law Enforcement Services" ("LES") means the Chitimacha Tribal Police Department

(r) "Minor" means a person under the age of eighteen (18) years.

(s) "Neglected child" means a child who is the victim of child neglect as defined in paragraph (h) of this Section.

(t) "Parent" means the biological parent of a child, or any person who has lawfully adopted a child. Parent shall not mean the unwed father of a child where paternity has not been established or acknowledged. Parent shall not mean any person whose parent-child relationship has been lawfully terminated.

(u) "Prenatal neglect" means the unlawful use by a mother during pregnancy of a controlled dangerous substance that results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant's body.

(v) "Probable cause" means such facts and circumstances as would convince a reasonable person.

(w) "Status offender" means a child:

(1) (i) who is subject to compulsory school attendance and is habitually truant from school without justification; or

(ii) who has committed an offense committable only by children; or

(iii) who is habitually disobedient to the reasonable and lawful commands of the parent or custodian; or

(iv) who habitually absents himself or herself from the home or care of his or her parent(s) or guardian without the consent of his or her parent(s) or guardian; and

(2) who the Chitimacha Tribal Court determines is in need of rehabilitation.

(3) This subsection shall also be applicable in the handling of juvenile matters occurring off the Chitimacha Reservation when:

(i) the juvenile, is over fifteen (15) years of age, and has been issued a citation by a State, Parish and/or City Law Enforcement Officer for a violation of the State Traffic Code; and/or

(ii) the case has been referred to Law Enforcement Services and/or Chitimacha Tribal Court for processing.

(x) "Repeat Delinquent Offender" means a juvenile that has committed a subsequent offense within a one (1) year period of a prior offense.

(Revised by Ordinance #5-93; Adopted: May 10, 1993; Effective: May 10, 1993; Revised by Ordinance #3-96; Adopted: August 15, 1996; Effective: August 15, 1996; Revised by Ordinance # 5-98; Adopted: June 18, 1998; Effective: June 18, 1998; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

## **CHAPTER 2. TAKING A CHILD INTO CUSTODY BEFORE A COURT HEARING**

### **Sec. 201. Taking a Child into Protective Custody**

(a) Any Law Enforcement Services officer who has probable cause to believe a child is a delinquent child and is likely to commit other delinquent acts unless detained may take the child into detention. The child may be placed in an institution for delinquent children. Status offenders shall not be taken into custody without a court order.

(b) Any licensed physician, Law Enforcement Services officer, Human Services Department or designated Tribal representative, who has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home may place the child in foster care. Such child may be placed in a private home, protective care or temporary foster home or institution, but not in a facility where the child has sight or sound contact with alleged delinquents or incarcerated adult offenders.

(c) In no event shall a child be kept in custody without a court order for more than seventy-two (72) hours.

(Revised by Ordinance #3-96; Adopted: August 15, 1996; Effective: August 15, 1996; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

### **Sec. 202. Application to Court**

Any Law Enforcement Services officer, licensed physician, Chitimacha Human Services Department, or designated Tribal representative, who takes a child into custody without a court hearing shall:

(a) immediately notify the Court and make a good faith effort to notify the parents of the child; and

(b) within twenty-four (24) hours submit to the Court a petition under Section 301 of this Title. If the child is taken into custody on a weekend or holiday, the individual taking the child into custody shall have twenty-four (24) hours from the start of the first subsequent work day to file a petition in Court.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

### **Sec. 203. Emergency Authorization of Medical Treatment**

(a) This Section shall apply to the immediate removal of a child under circumstances as outlined in paragraph 201(b) of this Chapter.

(b) When a licensed physician indicates that in his or her professional opinion, the life of the child would be greatly endangered or that there is a strong likelihood that the child would suffer permanent and/or serious harm without specified treatment, the protective or foster care parent or the Chitimacha Tribal Court on an ex parte basis may authorize emergency medical treatment. Every effort shall be made to contact the child's parents and the Chitimacha Human Services Department before authorization is given. The child's parents or an extended member of the child's family shall be notified of the emergency treatment immediately thereafter.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

## **CHAPTER 3. COURT PROCEDURES**

### **Sec. 301. Petitions**

Any person may submit to the Chitimacha Tribal Court a petition to have any child subject to the jurisdiction of the Court declared abused, neglected, abandoned, delinquent, or a status offender. Such petition shall include:

- (a) the name, address, and telephone number of the applicant, the child and, if known, the child's parent(s) or custodian;
- (b) the reason(s) why the applicant believes the child is abused, neglected, abandoned, delinquent, or a status offender; and
- (c) supporting credible evidence, including affidavits or written statements from social workers, other child care professionals, or members of the community. The petition shall indicate whether the child is in protective custody.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

### **Sec. 302. Release from Protective Custody; Home Study**

(a) Where the child is in protective custody, the Chitimacha Tribal Court shall immediately either direct a Child Protective Services worker or designated tribal representative or request that the appropriate Bureau of Indian Affairs personnel review the petition, perform a preliminary investigation, and make a recommendation to the Court. The purpose of the investigation shall be to determine whether the preventive detention is still justified under the standards set forth in Section 201 of this Title. Upon receiving a recommendation, the Chitimacha Tribal Court shall order the child released to the custody of the parent or custodian or order continued protective custody pending the initial hearing. The Court may also order continued protective custody pending the initial hearing. The Court may also order continued protective custody pending the completion of the preliminary investigation.

(b) Home Study. Upon receiving a petition filed under Section 301 of this Title, the Chitimacha Tribal Court shall direct a Child Protective Services worker or designated tribal representative or request that the appropriate Bureau of Indian Affairs conduct a home study with respect to the petition, to be submitted to the Court. Such study should be undertaken before the initial hearing, if possible, and in all cases before the fact finding hearing, and before subsequent hearings upon periodic review by the Court. The home study shall, if possible, include interviews of the child, parent(s) or custodian and an investigation of the conditions in the home.

(c) In the case of a child who is the subject of a petition based on abuse, abandonment, or neglect, the Chitimacha Tribal Court shall order that a licensed physician examine the child.

(d) Informal resolution.

(1) Abandoned, neglected or abused children and status offenders. The personnel authorized may recommend counseling, treatment, or such other disposition of an abandoned, neglected or abused child or status offender which in the officer's opinion is in the best interests of the child. Such recommendations shall be implemented, without Court action, only upon the consent of the

parent(s) or custodian with the knowledge that consent is voluntary. Upon receiving consent, the personnel authorized shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separates the child from the parent or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six (6) months.

(2) Delinquent children. In cases where the child has no previous record of delinquency and the child is alleged to have committed a misdemeanor, the personnel authorized may recommend a diversion program, including counseling or treatment, in the best interests of the child. The Court may in its discretion approve such recommendation without a hearing. A child who successfully completes the diversion program shall not be deemed a delinquent for any purpose. No diversion program shall exceed six (6) months.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 303. Initial Hearing**

(a) After receiving a petition, the Chitimacha Tribal Court shall immediately schedule an initial hearing, to be held immediately if possible and in all cases within seventy-two (72) hours of the time a child is placed in protective custody and within seven (7) days if the child is not in protective custody. The Court shall make all reasonable attempts to notify, by telephone or other means, the child and the child's parent(s) or custodian of the time and place of the initial hearing and of the right of the parent, custodian and the child:

- (1) to obtain counsel at their own expense;
- (2) to be present at the hearing; and
- (3) to testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(b) Prior to the initial hearing, the Chitimacha Tribal Court shall order that the child be interviewed by a social worker, or other child care professional.

(c) The initial hearing shall be conducted informally and shall be closed to the public.

(d) If, after the initial hearing, the Chitimacha Tribal Court determines that there is probable cause to believe that the child has been abused, neglected, abandoned or is a delinquent or status offender, the Court may temporarily order such disposition as is appropriate under Section 307(d) of this Title, pending a fact-finding hearing. Otherwise the case shall be dismissed.

(e) If, after the initial hearing, the Chitimacha Tribal Court determines that there is probable cause to believe that a child has been sexually abused, severely physically abused, or severely neglected, and the Court determined that a criminal investigation has commenced or will commence in the near future, the Court shall place the child as provided under Section 307(d) of this Title. Such placement shall remain in force until the fact-finding hearing, at which time placement shall be determined according to Section 307(d) without regard to the provisions of this subsection. The Chitimacha Tribal Court shall have the discretion to implement this subsection according to the best interests of the child.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)



**Sec. 304. Guardians Ad Litem**

(a) Appointment of Guardians Ad Litem. The Chitimacha Tribal Court in its discretion may appoint a Guardian Ad Litem to represent a child in any proceedings under Chapters 2 and 3 of this Title or any criminal proceedings under Title II where the child may be a witness, except that in every case involving an abused or neglected child that results in any judicial proceeding under Chapters 2 and 3 of this Title or any criminal proceedings under Title II where the child may be a witness, a Guardian Ad Litem may be appointed.

(b) Qualifications of Guardians Ad Litem. The Guardian Ad Litem shall be at least twenty-one (21) years of age, be of high moral character and integrity, and shall not have any other special interest in the case that would prevent the guardian from representing the best interests of the child in an objective way. The Chitimacha Tribal Court may appoint the Guardian Ad Litem at the initial hearing, Section 303 of this Title, or at any other appropriate point during the proceedings, including before a petition is filed. If a Guardian Ad Litem is to be appointed, the Tribal Court shall initially determine whether an attorney or a court appointed special advocate (CASA) is available to serve in the appointment. It is preferable but not a requirement that the Guardian Ad Litem for the child is an attorney or a CASA (or both).

(c) Duties of the Guardian Ad Litem. The Guardian Ad Litem shall meet and become acquainted with the child as soon as feasible after appointment. The Guardian Ad Litem shall, except where the best interests of the child indicate otherwise, attend all court proceedings in the case, be present at interviews between the child and law enforcement officials, social workers, and other personnel who need to speak with the child in connection with the case, visit the child in any foster home or other court-ordered placement for the purpose of determining whether the placement is in the best interests of the child, and determine the views of the child with respect to placement and communicate those views to the Chitimacha Tribal Court. The Guardian Ad Litem shall perform such other duties as the Chitimacha Tribal Court shall order as is in the best interests of the child.

(d) Terms and Compensation. The Guardian Ad Litem shall continue to serve until discharged by the Chitimacha Tribal Court and may be compensated as determined by the Chitimacha Tribal Council. The Guardian Ad Litem shall be allowed reasonable compensation which shall be assessed against the petitioner. If the Court finds that the petitioner is unable to pay, the reasonable compensation shall be paid by the Court, which may seek reimbursement of such fees according to Tribal Law.

(e) Notice of Court Proceedings. The Chitimacha Tribal Court shall notify the Guardian Ad Litem of any court proceeding at which his or her attendance is required. Notice shall be furnished as provided in Section 306(b) of this Title.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 305. Transfer of Juvenile Proceedings**

Upon motion of petitioner or on its own motion, the Chitimacha Tribal Court may waive juvenile proceedings so that the child may be tried as an adult in the Chitimacha Tribal Court where:

(a) the child is sixteen (16) years of age or more and has previously been found to be a delinquent; or

(b) the child is at least seventeen (17) years of age.

In determining whether the child should be tried as an adult, the Chitimacha Tribal Court shall consider the seriousness of the crime alleged to have been committed; the extent of the child's prior delinquency record; the possibility of rehabilitation of the child; and the effects of prior attempts to rehabilitate the child. The Tribal Court shall provide the child and the child's authorized representative with prior notice of a hearing on this issue, as provided in Section 306 of this Title, and shall hold a hearing as provided in that section.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 306. Fact-Finding Hearing**

(a) When a fact-finding hearing shall be held. If the child remains in the custody of his or her parent or custodian/guardian, the fact-finding hearing shall be held within ninety (90) days of the Initial Hearing, unless the child or the child's authorized representative requests a postponement. If the child has been placed in the custody of the Chitimacha Tribe of Louisiana, the fact-finding hearing shall be held within forty-five (45) days of the Initial Hearing, unless the child or the child's authorized representative requests a postponement.

(b) Notice. The Chitimacha Tribal Court shall serve prior written notice of the date, time, and place of the hearing upon the child, any person authorized to represent the child, and the parent or custodian. Notice shall be served in person or by certified mail, return receipt requested. The notice shall also specify that the child (and any other party served with notice) has a right to retain counsel at his or her own expense, be present, testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

(c) Procedures. The child may be physically present at the fact-finding hearing in the Chitimacha Tribal Court's discretion, except that in delinquency cases, the child must be present. Hearings shall be closed to the general public. The Tribal Court may require the testimony of a physician or child care expert based on an examination of the child. The child or his or her authorized representative, and the parent or custodian, may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at their own expense. The Court may call such witnesses as it deems necessary.

(d) Order. If the Chitimacha Tribal Court shall find, after the fact-finding hearing, that (1) there is a clear and convincing evidence that the child is abused, neglected, abandoned or a status offender, or (2) that there is evidence beyond a reasonable doubt that the child is delinquent, the Court shall determine the proper disposition of the child under Section 307 of this Title. Otherwise, the petition shall be dismissed.

(Revised by Ordinance #5-98; Adopted: June 18, 1998; Effective: June 18, 1998; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 307. Dispositional Hearings**

(a) When a dispositional hearing shall be held. A dispositional hearing shall be conducted as soon as practicable after the conclusion of the fact-finding hearing. For good cause and in the interests of justice, adequate time between the hearings, not to exceed thirty (30) working days, shall be allowed to permit the Chitimacha Tribal Court to consider the dispositional alternatives that are in the best interests of the child.

(b) Rights of the parties to the dispositional hearings. All rights provided at the fact-finding hearing shall be provided at the dispositional hearing. The child shall be physically present at the dispositional hearing if over ten (10) years of age unless the Chitimacha Tribal Court determines that the child would likely

suffer severe emotional harm as a result of such presence. Otherwise the presence of the child shall be in the discretion of the Court. The Chitimacha Tribal Court in its discretion may confer with the child with only the Guardian Ad Litem present in order to determine the child's desires concerning disposition.

(c) Evidence. At the dispositional hearing the Chitimacha Tribal Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The Chitimacha Tribal Court shall consider all relevant reports submitted at the hearing in making a disposition including any reports prepared by the child and his or her representative.

(d) Disposition.

(1) Best interests of child. The Chitimacha Tribal Court shall make such disposition as is in the best interests of the child.

(2) Abused, neglected, or abandoned children. If the Chitimacha Tribal Court has found a child to have been abused, neglected, or abandoned, the Court shall order one of the following dispositions, listed in order of preference:

(i) to the custody of the parent or custodian subject to such counseling, treatment, or other services as are deemed necessary to keep the child in the home;

(ii) to the custody of a person related by blood or marriage to the child on or off the Chitimacha Reservation;

(iii) to the custody of an Indian foster home or institution;

(iv) to the custody of an approved institution on the Chitimacha Reservation provided that such institution cannot be used for delinquents as well; or

(v) to the custody of a non-Indian foster care home or institution off the Chitimacha Reservation, provided that such home or institution shall not be used for delinquent children as well.

In addition, the Court may prescribe such counseling or treatment for the custodial parents as it deems necessary.

(3) Determining and changing placements. In determining which of several relatives shall have placement of the child under subsection (2), the Chitimacha Tribal Court shall consider their ability to provide adequate food, shelter, medical care, love and emotional support, and day-to-day supervision. The Court shall also take into account the desires of the child.

(4) Delinquents, repeat delinquent offenders or status offenders. If a child is found to be delinquent, repeat delinquent offender or a status offender, the Chitimacha Tribal Court shall order one of the following dispositions, listed in suggested order of preference:

(i) probation with such conditions as the Court deems necessary;

(ii) to the custody of an approved facility for delinquents, repeat delinquent offenders or status offenders on the Chitimacha Reservation; or

(iii) to an approved facility for delinquents, repeat delinquent offenders or status offenders off the Chitimacha Reservation, provided under subsections (ii) and (iii) that status offenders shall not have sight or sound contact with delinquents.

(iv) counseling to eliminate the removal of the juvenile/status offender from the home.

(5) Term of commitment to facility. No order for commitment of any delinquent, repeat delinquent offender or status offender in an approved facility shall be for a term longer than six (6) months ~~or extend beyond the child's eighteenth (18) birthday~~. If, after at least five (5) months of a six (6) month term have elapsed, the child care professional in charge of the delinquent, repeat delinquent offender or status offender believes that the child needs further treatment and rehabilitation, he or she shall inform the Chitimacha Tribal Court and a hearing shall be held. If the Court finds that further treatment or rehabilitation is in the child's best interests, the Court shall order a further commitment of up to six (6) months. If therapeutic inpatient treatment is ordered, the child and parent shall execute an inpatient treatment agreement with the Chitimacha Human Services Department. If an order imposes a term of commitment that extends beyond a child's eighteenth birthday, the Chitimacha Tribal Court may waive juvenile proceedings so that the terms of the order may be monitored and enforced in the same manner as an adult criminal judgment.

(6) Off-Reservation placement. Off-Reservation placement shall be used only as a last resort, where no reasonable on-Reservation placement is available. Whenever a child is placed temporarily off the Chitimacha Reservation, the Chitimacha Tribal Court shall require the party receiving the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

(7) Repeat Delinquent Offender. If the child is found to be a repeat delinquent offender or found to be in Contempt of Court for failure to comply with the terms and conditions of probation and placed in a detention facility, he or she will be responsible for the cost of current detention and previous detention costs expended in all active cases according to the number of offenses as listed:

(i) First Offense. No costs; or

(ii) Second Offense. Fifty percent (50%) of costs incurred for detention; or

(iii) Third Offense. One hundred percent (100%) of costs incurred for detention.

The Gaming Revenue Allocation Plan per capita trust fund account of the child shall be seized for purposes of recovering detention costs incurred by the Chitimacha Tribal Court.

(Revised by Ordinance #3-96; Adopted: August 15, 1996; Effective: August 15, 1996; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 308. Confidentiality**

All hearings held pursuant to this Title shall be:

- (a) conducted in closed and private chambers;
- (b) the names of all children involved shall not be published; and
- (c) a record of all proceedings shall be made and preserved with the Court.

All Court records concerning children under this Title, including social, medical and psychological reports, shall be kept confidential and shall be open for inspection only upon Court order to the following persons or agencies:

- (1) the child;
- (2) the child's Guardian Ad Litem or other representative;
- (3) the child's parent(s) or custodian and their representatives;
- (4) the authorized personnel; and
- (5) any other person having a legitimate interest in the case and in the performance of their duties, as determined by the Court.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 309.        Expungement of Records**

Records of children involved in proceedings under this Title shall be physically sealed when the child reaches the age of eighteen (18) years. Upon reaching the age of eighteen (18) years, any child involved in proceedings under this Title may petition the Chitimacha Tribal Court to have such Court records destroyed. In any case, the Chitimacha Tribal Court may order such records, except those dealing with termination of parent-child relationship to be destroyed ten (10) years after the child reaches the age of eighteen (18) years.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 310.        Periodic Review for delinquents and status offenders in approved facilities**

Every ninety (90) days, the Chitimacha Tribal Court shall hold a hearing, following the procedures under Section 307 of this Title, to determine if the delinquent or status offender should remain in the approved facility to which he or she has been committed. If the Chitimacha Tribal Court finds that the child is not likely to commit additional delinquent acts or status offenses if released, the Court may release the child, subject to such terms or probation as the Court deems necessary.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 311.        Petition for return of abused, neglected or abandoned child removed from parent or custodian**

(a) The child, the child's Guardian Ad Litem, parent or custodian may petition the Chitimacha Tribal Court for return of an abused, neglected, or abandoned child to the parent or custodian. Such a petition shall not be filed until three (3) months after the order of disposition and only at six (6) month intervals

thereafter. The petition shall be in writing, but need not be in any particular form. Grounds for return include a showing that the child would not be in danger of being abused, neglected or abandoned upon return to the parent or custodian.

(b) Upon receipt of a petition for return of a child, the Chitimacha Tribal Court shall order the "authorized personnel" to undertake a home study. If after consideration of the petition and home study, the Chitimacha Tribal Court finds substantial evidence that the child may safely be returned to the home of the parent or guardian, the Court shall order and hold a hearing on the matter, following the procedures set forth in Section 307 of this Title.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 312. Periodic Review for abused, neglected, or abandoned child removed from parent or custodian**

Whether or not a petition for return is filed, the Chitimacha Tribal Court shall each ninety (90) days hold a hearing, following the procedures under Section 307 of this Title, to determine if the basis for the original removal still exists. If the Chitimacha Tribal Court finds that there is no longer clear and convincing evidence that grounds for removal exist, the Court shall order the return of the child to the parent or custodian.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**CHAPTER 4. TERMINATION OF PARENT-CHILD RELATIONSHIP**

**Sec. 401. Purpose of termination of the parent-child relationship**

(a) The purpose of this Chapter is to provide for the voluntary or involuntary termination of the parent-child relationship by court order resulting in the complete severance of the legal relationship, with all its rights, duties and obligations, between the child and his or her parents to enable the child to be adopted by other adults, except that it shall not affect the right of inheritance of the child or the child's membership rights in the Chitimacha Tribe of Louisiana.

(b) This Chapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and to individual family members when that unit remains united and together, and that termination of the parent-child relationship bears such permanent effects that it should be used only as a last resort when, in the opinion of the court, all efforts have failed to preserve a viable family unit and termination is in the best interests of the child concerned. This Chapter shall only be used in conjunction with a pending adoption proceeding.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 402. Appointment of Guardian Ad Litem for Minor or Incompetent Parent**

(a) Whenever, with respect to any petition filed under this Chapter, it appears that either parent of the child is a minor or incompetent, the Chitimacha Tribal Court shall appoint a Guardian Ad Litem for such parent. The Chitimacha Tribal Court shall initially determine whether an attorney authorized to practice law in Chitimacha Tribal Court is available to serve in the appointment. It is preferable but not a requirement that the Guardian Ad Litem for the child is an attorney.

(b) The Guardian Ad Litem shall be allowed reasonable compensation which shall be assessed against the petitioner. If the Court finds that the petitioner is unable to pay, the reasonable compensation shall be paid by the Court, which may seek reimbursement of such fees according to Tribal Law.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 403. Who may file a petition**

Any of the following persons may initiate and file a petition for the termination of the parent-child relationship:

- (a) either or both parents;
- (b) the custodian/guardian of the child;
- (c) the tribal prosecutor on behalf of the Chitimacha Tribe of Louisiana; or
- (d) any other person possessing a legitimate interest in the matter.

In addition, one parent may file a petition for termination of the parent-child relationship between the other parent and the child.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 404. Contents of the Petition.**

(a) The petition for termination of the parent-child relationship shall be entitled "In the interests of (Name of Child), a person under the age of eighteen (18) years," and shall set forth with specificity:

- (1) the name, sex, date and place of birth, present address and tribal affiliation of the child;
- (2) the name and address of the petitioner, and the nature of the relationship between the petitioner and the child;
- (3) the names, dates and places of birth, addresses, and tribal affiliation of the child's parents;
- (4) if the parent of the child is a minor, the names and addresses of the parents or guardian of the minor;
- (5) the name and address of the person or agency having legal or temporary custody or guardianship of the child, or acting in the place of the parent of the child;
- (6) the facts upon which the termination is sought, the effects of a termination decree and the basis for the court's jurisdiction;
- (7) the name of the persons or agencies which have agreed to accept custody or guardianship of the child upon disposition of the matter; and
- (8) a list of the assets of the child, together with a statement of the value thereof.

(b) If the information required under subsections (2) and (6) of subsection (a) of this Section is not stated, the petition may be dismissed in the discretion of the Chitimacha Tribal Court. If any of the other facts required hereunder are not known or cannot be ascertained by the petitioner, the petitioner shall so state in the petition. The petitioner shall sign and date the petition, and attest to the veracity of the information contained therein.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 405. Home Study Prior to Hearing**

When the Chitimacha Tribal Court receives a petition under this Chapter it shall direct authorized Chitimacha Human Services Department personnel or request that the appropriate Bureau of Indian Affairs personnel prepare a home study to be submitted to the Court prior to the hearing.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 406. Notice**

(a) After a petition has been filed and the home study has been submitted to the Chitimacha Tribal Court, the Court shall set the time and place for a hearing. The Chitimacha Tribal Court shall give notice by summoning the petitioner, the child, the parents, custodian, and such other persons as the Court determines are necessary for the proper adjudication of the matter. Notice shall provide the date, time and place of the hearing. Notice to the child and parent(s) shall specify that each shall have the right:

- (1) to retain counsel at his or her own expense;
- (2) be present; and
- (3) to testify, present documentary evidence, call witnesses, and ask questions of all witnesses.

Where possible, notice shall be served as provided under Title IV, Section 102.

(b) Where service cannot be accomplished otherwise, service may be accomplished by publishing the summons, or an order of the Court directing the person to appear by a certain date, in either three (3) consecutive editions of a tribal or Reservation newspaper of general circulation or at least once each week for three (3) consecutive weeks in a newspaper of general circulation published off the Chitimacha Reservation in the parish in which such person was last known to reside.

(c) Proof of service of the summons and petition, or of notice by publication must be filed with the Chitimacha Tribal Court. Where notice is by publication, such proof shall be made by filing an affidavit of the publisher or printer of the newspaper, or the publisher or printer's foreman, clerk, or bookkeeper, to which is annexed a copy of the summons or order of the Court. The affidavit shall specify the name of the newspaper in which publication was made and the dates upon which publication was made. In addition, a certificate by the Clerk of Court specifying that a copy of the summons and petition was mailed to the person's last known address, not later than ten (10) days after the date of the first publication shall be filed.

(d) In the case of a voluntary petition by a parent to terminate his or her parental rights, the parent may



waive, in writing, notice and appearance in court, provided the court is assured that the parent understands the meaning and the consequences of the termination action. Where the parent is a minor, waiver shall not be effective.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 407. Hearing**

The child may be physically present at the hearing, in the Chitimacha Tribal Court's discretion. The hearing shall be closed to the public. The Chitimacha Tribal Court may require the testimony of a physician or child care expert based on examination of the child. The child, the child's authorized representative, and the parent may summon or produce such witnesses or evidence as they may desire. The Court may call such witnesses as it deems necessary.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 408. Grounds for Termination; Order**

If the Chitimacha Tribal Court shall find after hearing that there is clear and convincing evidence:

- (a) that the child has been abused for an extended period of time; or
- (b) that the child has been neglected or abandoned for an extended period of time which shall not be less than one (1) year; or
- (c) that the child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being and the continuation of the parent-child relationship would be detrimental to the best interests of the child; or
- (d) that the services available cannot adequately reduce the likelihood of further abuse, neglect or abandonment or there is no other way to protect the child from the risk of serious physical injury; or
- (e) that the parent whose rights are to be terminated consents to the termination and has not withdrawn that consent for over one (1) year, the Court shall order a termination of parental rights.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 409. Disposition**

A child whose parent-child relationship has been terminated under this Title shall be placed with an adoptive parent under Title VI, Chapter I of this Code.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 410. Effects of Termination Order**

All rights, duties, and obligations between the parent(s) and the child shall be terminated by a termination order except that, whereas the parent(s)' right of inheritance from the child shall be terminated, the child shall retain the right of inheritance from the parent(s).

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

## **CHAPTER 5. REPORTING ABUSE, NEGLECT AND ABANDONMENT**

### **Sec. 501. Obligation to report child abuse, neglect and abandonment**

(a) Mandatory reporters include any of the following individuals in the performance of his or her occupational duties:

(i) Health practitioners including physicians, hospital staff members, emergency medical technicians, or coroners who diagnose, examine, or treat a child or his or her family;

(ii) Mental health or social service practitioners including psychiatrists, psychologists, marriage or family counselors, social workers, clergy persons, aides, or other individuals who provide counseling services to a child or his or her family;

(iii) Clergy persons including priests, ministers, rabbis, evangelists, apostles or practitioners of any religious denomination accredited by the religious body to which he or she belongs, or an individual reasonably believed so to be by the person consulting him or her, or a traditional spiritual adviser recognized by the tribe or nation to which the adviser belongs, or an individual reasonably believed so to be by the person consulting the adviser;

(a) A clergy person is not required to report a confidential communication, as defined in the Chitimacha Rules of Evidence, from a person to a clergy person who, in the course of the discipline or practice of that church, denomination, or organization, is authorized or accustomed to hearing confidential communications, and under the discipline or tenets of the church, denomination, or organization has a duty to keep such communications confidential.

(iv) Teachers or child care providers including public or private teachers, teacher's aides, instructional aides, school principals, school staff members, social workers, probation officers, foster home parents, group home or other child care institutional staff members, personnel of residential home facilities, or licensed or unlicensed daycare providers, or any individual who provides such services to a child;

(v) Police officers or law enforcement officials;

(vi) Commercial film and photographic print processors who have knowledge of or observe any film, photograph, videotape, negative, or slide depicting a child, whom he or she knows or should know is under age seventeen (17), that constitutes child pornography;

(vii) Mediators including but not limited to peacemakers; and

(viii) Parenting coordinators including but not limited to individuals assisting with resolution of disputed child-related matters.

(b) Notwithstanding any claim of privileged communication, any mandatory reporter who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse, neglect or

abandonment, or that abuse, neglect or abandonment was a contributing factor in a child's death, shall immediately report such abuse, neglect or abandonment to Law Enforcement Services or Child Protective Services, and other tribal official, if any, designated by the Chitimacha Tribal Court and approved by the Chitimacha Tribal Council.

(c) Any other person who has cause to believe that a child's physical or mental health or welfare is endangered as a result of abuse, neglect or abandonment may report. Reports from persons not obligated to report are encouraged.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 502.        Contents of Report**

The report may be made orally or in writing and shall contain as much of the following information as is known to the person making the report:

- (a) the name, address, age, and sex of the child;
- (b) the nature, extent, and cause of the child's injuries or endangered condition, including any previous known or suspected abuse to this child or the child's siblings;
- (c) the name of the person or persons who are thought to have caused or contributed to the child's condition and the name of such person or persons if named by the child;
- (d) the name and address of the child's parent(s) or other caretaker;
- (e) the names and ages of all other members of the child's household;
- (f) the name and address of the reporter;
- (g) an account of how this child came to the reporter's attention;
- (h) any explanation of the cause of the child's injury or condition offered by the child, the caretaker, or any other person;
- (i) the number of times the reporter has filed a report on the child or the child's siblings; and
- (j) any other information which the reporter believes might be important or relevant.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 503.        Immunity for good faith reports; Penalties for reports made in bad faith**

- (a) Any person who in good faith makes a report pursuant to this Chapter, who cooperates in an investigation, or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report, investigation, or testimony and, if employed by the Chitimacha Tribe of Louisiana, shall not be subject to discipline, suspension, or termination.
- (b) Any caseworker who in good faith conducts an investigation, makes an investigative judgment or

disposition, or releases or uses information contained in the central registry, if one is maintained, for the purpose of protecting a child shall be immune from any civil or criminal liability because of such investigation, judgment or disposition, or release or use of information and, if employed by the Chitimacha Tribe of Louisiana, shall not be subject to discipline, suspension, or termination.

(c) This immunity shall not be extended to:

(i) Any alleged principal, conspirator, or accessory to an offense involving the abuse, neglect or abandonment of the child.

(ii) Any person who makes a report known to be false or with reckless disregard for the truth of the report.

(d) Civil Liability.

(i) In any action to establish damages against a defendant who has made a false report of child abuse, neglect or abandonment the plaintiff shall bear the burden of proving that the defendant who filed the false report of child abuse, neglect or abandonment knew the report was false or that the report was filed with reckless disregard for the truth of the report.

(ii) A plaintiff who fails to meet his or her burden of proof provided in Subparagraph (i) of this Paragraph shall pay all court costs and attorneys fees of the defendant.

(e) Criminal Liability. Any person who makes a report pursuant to this Chapter in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, is guilty of a Class B misdemeanor.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 504. Failure to Report**

Any person failing to make a report required by this Chapter shall be guilty of a Class A Misdemeanor and may be subject to a penalty of no less than five hundred dollars (\$500.00), except that no imprisonment shall be imposed by the Chitimacha Tribal Court.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 505. Procedures Following a Report of Child Abuse, Neglect or Abandonment**

Pursuant to the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. §§ 3201–3211, and 18 U.S.C. § 1169, the following procedures shall be followed for reporting child abuse, neglect or abandonment.

(a) Whenever Law Enforcement Services or Child Protective Services receive an initial report or referral from any person of the abuse, neglect or abandonment of a child in Indian country or actions which would reasonably be expected to result in the abuse, neglect or abandonment of a child in Indian country, the receiving agency shall:

(1) immediately notify the appropriate officials of the other agency and the tribal prosecutor of

such report and information, and

(2) submit a copy of the written preliminary report required under subsection (c) of this Section to such agency and office.

(b) Where an initial report or referral of abuse involves an Indian child or where the alleged abuser is an Indian and the preliminary report indicates that a criminal violation has occurred, Law Enforcement Services shall immediately report such occurrence to the Federal Bureau of Investigation.

(c) Within thirty-six (36) hours after receiving an initial report or referral of child abuse, neglect or abandonment, the receiving agency shall prepare a written preliminary report which shall include, if available:

(1) the name, address, age, and sex of the child who is the subject of the report;

(2) the grade and the school in which the child is currently enrolled;

(3) the name and address of the child's parents or other person responsible for the child's care;

(4) the name and address of the alleged offender;

(5) the name and address of the person who made the report to the agency;

(6) a brief narrative as to the nature and extent of the child's condition or injuries, including any previously known or suspected abuse, neglect or abandonment of the child or the child's siblings and the date of the suspected abuse, neglect or abandonment; and

(7) any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse, neglect or abandonment.

(d) Upon receipt of a report alleging neglect or abuse, Child Protective Services, in conjunction with Law Enforcement Services, shall:

(1) convene a Multi-Disciplinary Team ("MDT") comprised of personnel with experience and training in prevention, identification, investigation and treatment of incidents of child neglect and abuse and family violence which shall provide advice, technical assistance and consultation in these areas, and assist in the investigation of such allegation. Unless otherwise directed, the standing FEATHERS Committee shall serve as the MDT;

(2) take immediate and appropriate steps to secure the safety and well-being of the child or children involved;

(3) provide appropriate services to the family; and

(4) complete the investigation and prepare a written final report on such allegation within fifteen (15) days.

(e) If the investigation reveals probable cause that abuse, neglect or abandonment has occurred, the procedures outlined in Chapters 2 and 3 of this Title shall be initiated.

(f) The Chitimacha Human Services Department, in conjunction with Law Enforcement Services, shall develop protocols for the reporting, screening, investigation, and treatment of child neglect and abuse, and to clarify roles and responsibilities of the tribal departments and agencies involved in child welfare matters.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 506. Recordkeeping**

A designated tribal official shall keep a separate file for each report of abuse or neglect received under this Chapter. The file shall include a complete record of the complaint itself, the results of all investigations, a summary of any court proceedings and any other pertinent information.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 507. Central Registry**

Law Enforcement Services and Child Protective Services may maintain a central registry of all reports of suspected child neglect or abuse. If a central registry is maintained, the information contained in the reports and any other information relative to the report, wherever located, shall be confidential, subject to their use and access as required for any interview, examination, investigation, or prosecution, or to prevent or discover further abuse of children.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 508. Confidentiality**

(a) The identity of any person making a report of suspected child abuse, neglect or abandonment shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of the tribe, or state or federal government, who needs to know the information in the performance of such employee's duties.

(b) Pursuant to 25 U.S.C. § 3205, 5 U.S.C. § 552a, and 20 U.S.C. § 1232g, or any other applicable provision of law, agencies of the tribe that investigate and treat incidents of child abuse may provide information and records to those agencies of any other tribe, state, or the federal government that need to know the information in the performance of their duties.

(c) The records described in Section 506 of this Title shall be confidential, except that the Chitimacha Tribal Court shall have access to the case file as needed for criminal proceedings against the offender or for proceedings under Chapters 2, 3, and 4 of this Title.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 509. Interviews and Examinations**

(a) In any case where the Law Enforcement Services or Child Protective Services reasonably believe that the child has been subjected to abuse or neglect, officials of those agencies shall be allowed to take photographs, x-rays, medical and psychological examinations of the child and interview the child without

first obtaining the consent of the parent, guardian/custodian.

(b) All examinations and interviews of a child who may have been subjected to abuse or neglect shall be conducted under the supervision of the Chitimacha Human Services Department and in a manner that minimizes additional trauma to the child.

(c) The expense of such examinations and diagnostic tests shall be paid by the parents or guardian/custodian of the child, or if they are unable to pay, by the Chitimacha Human Services Department, which may seek reimbursement according to Tribal Law.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 510. Character Investigations**

Pursuant to 25 U.S.C. § 3207:

(a) The Chitimacha Human Services Department shall compile a list of all positions which involve regular contact with, or control over, Indian children.

(b) The Chitimacha Human Services Department shall, in conjunction with Law Enforcement Services, conduct an investigation of the character of each individual who is employed, or is being considered for employment by the Chitimacha Tribe of Louisiana, in a position listed in subsection (a) of this Section.

(c) The minimum standards of character that are to be prescribed under this Section shall ensure that none of the individuals employed in any position listed in subsection (a) have been found guilty of, or entered a plea of no contest or guilty to, any offense under federal, state or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, or crimes against persons.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**CHAPTER 6. PROCEDURES OF THE CHITIMACHA TRIBE WITH RESPECT TO THE INDIAN CHILD WELFARE ACT**

**Sec. 601. Intent of this Chapter**

The intent of this Chapter is to provide speedy and effective procedures for responding to notices and case referrals of child custody proceedings from state and tribal courts and agencies. It is the policy of the Chitimacha Tribe of Louisiana to accept transfer of cases and to intervene in cases where such transfer or intervention is in the best interests of the child.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 602. Definitions**

For purposes of this chapter, the terms "child custody proceeding", "Indian child", and "Indian custodian" shall have the definitions set forth in 25 U.S.C. 1903 (1), (4), and (6).

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 603. Receipt of Referrals**

The Chitimacha Human Services Department Director shall be the tribal official designated to receive notice from state and tribal courts and agencies of pending child custody proceedings involving an Indian child. The Chitimacha Tribe of Louisiana shall make its best efforts to notify state courts and agencies in the local area that the Chitimacha Human Services Department Director has been so designated. If another tribal official receives a notice from a state or tribe concerning a pending child custody matter, that official shall immediately give the notice to the Chitimacha Human Services Department Director. The Chitimacha Human Services Department Director shall keep a log by date and case name of all notices received. The Chitimacha Human Services Department Director shall then give a copy of the notice to the Clerk of the Chitimacha Tribal Court.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 604. Duties of the Clerk of Court**

The Clerk of Court, upon receiving notice as required under Section 603 of this Title, shall make a record containing all essential information concerning the case, including:

- (a) The source of the notice;
- (b) The names and addresses of the child, parents, and Indian custodian, if different from the parents;
- (c) The date of the referral;
- (d) Any deadline for responding to the notice;
- (e) The type of proceeding in the referring court or agency;
- (f) Whether the state or tribe is requesting that the Chitimacha Tribe accept jurisdiction over the matter.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 605. Investigation of referral by Chief Judge or designee**

Following proper docketing of the referral as described in Section 604 of this Title, the Chief Judge or his or her designee shall initiate an investigation of the case. The purpose of the investigation is to determine whether the Chitimacha Tribe of Louisiana has jurisdiction and, if it does, whether the Tribe should seek transfer of the case or intervene in the case in the foreign court or agency. The Chief Judge's designees can include appropriate Chitimacha Human Services Department personnel.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 606. Determination of tribal membership status, domicile and residency, and status as ward of the Tribal Court**

- (a) The first objectives of the investigation shall be to determine whether the child involved is a member of the Chitimacha Tribe or eligible for membership, whether the child has domicile or residence on the Reservation, and whether the child is a ward of the Tribal Court. The child shall be considered a ward of



the Tribal Court if the child was removed from the custody of his or her parent or Indian custodian under Chapters 2 or 3 of Title VI of the Chitimacha Comprehensive Codes of Justice.

(b) If the child is:

(1) a member of the Chitimacha Tribe of Louisiana or eligible for membership; and

(2) has residence or domicile on the Chitimacha Reservation or is a ward of the Chitimacha Tribal Court, the child custody proceeding is in the Chitimacha Tribe's exclusive jurisdiction the Chief Judge shall immediately forward the case to the Chitimacha Tribal Council. The Tribal Council, if it agrees that the Tribe has exclusive jurisdiction, shall direct the Chief Judge for further investigation.

(c) If the child is a member of the Chitimacha Tribe of Louisiana or eligible for membership, but neither has residence or domicile on the Chitimacha Reservation nor is a ward of the Chitimacha Tribal Court, the Chitimacha Tribe has concurrent jurisdiction over the case and can either request transfer of the case, intervene in the proceeding in the foreign court or agency, or take no formal action.

(d) If the child is not a member of the Chitimacha Tribe of Louisiana or eligible for membership, then the Indian Child Welfare Act does not guarantee the right to have the case transferred or the right to intervene. Nonetheless, the Chitimacha Tribe can seek transfer of the case or to intervene in a case where it deems that such action would be in the best interests of the child as determined under the standards set forth in Section 607 of this Title.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 607. Best Interests of the Child**

The next objective of the investigation shall be to determine facts that will assist the Chief Judge of the Chitimacha Tribal Court and the Chitimacha Tribal Council in determining the course of action that is in the best interests of the child, taking into account that continuing contact with the child's extended Indian family and Indian heritage is a strong component of that interest.

The Chief Judge and the Chitimacha Tribal Council shall take into account the wishes of the child's family and the wishes of the child, where the child is of sufficient age, but these wishes need not be given controlling weight. Where possible, the investigation should include review of the case file and interviews with the parent(s) or Indian custodian, the child, the state or tribal social worker or other individual familiar with the case, and the foster parents, if any.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 608. Recommendation of the Chief Judge**

After the investigation is complete, the Chief Judge of the Chitimacha Tribal Court shall recommend to the Chitimacha Tribal Council that the Chitimacha Tribe either request transfer of the case, seek to intervene in the case, or take no formal action. The Chief Judge shall make his or her best effort to forward the recommendation to the Tribal Council within ten (10) working days of the Tribe's receipt of the referral. The Chief Judge shall be responsible for requesting that the proceedings in the foreign court or agency be stayed so that the Tribe can complete its investigation.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 609. Final Decision by Tribal Council or designee**

After receipt and review of the recommendations from the Chief Judge of the Chitimacha Tribal Court, the Chitimacha Tribal Council, or the Chitimacha Human Services Department Director if so designated by the Tribal Council, shall make a final decision on the action to be taken. Where the Tribal Council has decided to request transfer of jurisdiction or to intervene, the Chief Judge shall immediately file or cause to be filed an appropriate petition in the foreign court or agency.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**Sec. 610. Notification of Parents and Indian Custodian**

The Chitimacha Tribal Council shall notify the Indian child's parents, and the Indian custodian where different from the parents, of any decision to request transfer of jurisdiction or intervene. Notice shall be by certified mail, return receipt requested.

(Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

**CHAPTER 7. CURFEW**

**Sec. 701. Curfew**

A curfew is established for each child under the age of eighteen (18) years as follows:

(a) No child shall walk, run, loiter, stand or ride in or on any vehicle upon any street, highway, road, alley, public property or vacant premises:

(1) between the hours of 10:00 p.m. and 5:00 a.m. of the following day from Sunday through Thursday, or;

(2) between the hours of 11:45 p.m. and 5:00 a.m. of the following day from Friday through Saturday and on any holiday, unless he or she is either:

(i) accompanied by his or her parent, guardian or other adult person having the care and custody of the minor; or

(ii) attending a school, civic or church function or activity and returns to his or her home within thirty (30) minutes after the termination of such civic, school or church function or activity.

(b) No child who has enrolled or is required to be enrolled in any school shall be at any place within the Chitimacha Reservation except in attendance at school between the hours of 7:55 a.m. and 3:00 p.m. during any school day unless he or she:

(1) has been suspended or expelled from school, in which case that child shall be required to remain in his or her domicile or place designated as his or her family home between the hours of 8:30 a.m. and 3:00 p.m.; or

(2) has written proof from school authorities excusing him or her from attending school at that particular time; or

(3) is accompanied by a parent or legal guardian or other responsible adult selected by the parent or legal guardian to supervise the child; or

(4) is not required by law to be in attendance at school; or

(5) is subject to the jurisdiction of the Chitimacha Tribal Court.

Any Law Enforcement Services officer may transport a child found violating this section to the child's residence or the school the child usually attends and may release the child into the care of a parent, court-appointed tutor or legal guardian, or to the school. The choice of destination to be made at the discretion of the Law Enforcement Services officer based on proximity of the destination or other relevant factors, and subject to the need of the officer to respond to emergency or priority calls. The provisions of this Chapter may be enforced civilly by the issuance of a summons to the child and to the parent or guardian of the child, as consistent with the provisions for civil enforcement of Title VII or as a status offense in accordance with the provisions of Chapter 3 of this Title.

(c) For civil enforcement of this Chapter "child" shall read to include "all children present on the Chitimacha Indian Reservation under the age of eighteen (18)".

(Added by Ordinance #3-96; Adopted: August 15, 1996; Effective: August 15, 1996; Revised by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)

## **CHAPTER 8. SAFE HAVEN FOR INFANTS LAW**

### **Sec. 801. Short Title**

This Chapter may be cited as the "Chitimacha Safe Haven for Infants Law".

### **Sec. 802. Purpose**

The purpose of the Chitimacha Safe Haven for Infants Law is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, ninety (90) days of age or less, at a safe haven facility. This law is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents.

### **Sec. 803. Definitions**

As used in the Chitimacha Safe Haven for Infants Law:

(a) "Indian child" means an American Indian child as defined by the federal Indian Child Welfare Act of 1978;

(b) "infant" means a child no more than ninety (90) days old, as determined within a reasonable degree of medical certainty;

(c) "safe haven facility" means an acute care general hospital, health care clinic, tribal police department or tribal fire department licensed by the United States of America or the Chitimacha Tribe of Louisiana; and

(d) "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the safe haven facility.

**Sec. 804. Leaving an Infant**

(a) A person may leave an infant with the staff of a safe haven facility without being subject to criminal prosecution for abandonment or abuse if the infant was born within ninety (90) days of being left at the safe haven facility, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to the provisions of this Title.

(b) A safe haven facility may ask the person leaving the infant for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the safe haven facility.

(c) The safe haven facility is deemed to have received consent for medical services provided to an infant left at a safe haven facility in accordance with the provisions of the Chitimacha Safe Haven for Infants Act or in accordance with procedures developed between the Chitimacha Human Services Department and the safe haven facility.

**Sec. 805 Safe Haven Facility Procedures**

(a) A safe haven facility shall accept an infant who is left at the safe haven facility in accordance with the provisions of the Chitimacha Safe Haven for Infants Act.

(b) In conjunction with the Chitimacha Human Services Department, a safe haven facility shall develop procedures for appropriate staff to accept and provide necessary medical services to an infant left at the safe haven facility and to the person leaving the infant at the safe haven facility, if necessary.

(c) Upon receiving an infant who is left at a safe haven facility in accordance with the provisions of the Chitimacha Safe Haven for Infants Act, the safe haven facility may provide the person leaving the infant with:

- (1) information about adoption services, including the availability of private adoption services;
- (2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and
- (3) written information regarding whom to contact at the Chitimacha Human Services Department if the parent decides to seek reunification with the infant.

(d) A safe haven facility shall ask the person leaving the infant whether the infant has a parent who is either a member of an American Indian tribe or is eligible for membership in an American Indian tribe, but the person leaving the infant is not required to provide that information to the safe haven facility.

(e) Immediately after receiving an infant in accordance with the provisions of the Chitimacha Safe Haven for Infants Act, a safe haven facility shall inform the Chitimacha Human Services Department that the

infant has been left at the safe haven facility. The safe haven facility shall provide the Chitimacha Human Services Department with all available information regarding the child and the parents, including the identity of the child and the parents, the location of the parents and the child's medical records.

**Sec. 806      Responsibilities of the Chitimacha Human Services Department**

(a) The Chitimacha Human Services Department shall be deemed to have emergency custody of an infant who has been left at a safe haven facility according to the provisions of the Chitimacha Safe Haven for Infants Law.

(b) Upon receiving a report of an infant left at a safe haven facility pursuant to the provisions of the Chitimacha Safe Haven for Infants Law, the Chitimacha Human Services Department shall immediately conduct an investigation, pursuant to applicable provisions of the Chitimacha Comprehensive Codes of Justice.

(c) When an infant is taken into custody by the Chitimacha Human Services Department, the Department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child:

(1) the child's tribe shall be notified as required by the federal Indian Child Welfare Act of 1978; and

(2) pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of the federal Indian Child Welfare Act of 1978 and applicable provisions of the Chitimacha Comprehensive Codes of Justice regarding Indian child placement preferences.

(d) The Chitimacha Human Services Department shall perform public outreach functions necessary to educate the public about the Chitimacha Safe Haven for Infants Law, including developing literature about that act and distributing it to safe haven facilities.

(e) An infant left at a safe haven facility in accordance with the provisions of the Chitimacha Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services.

**Sec. 807.      Procedure if Reunification is Sought**

(a) A person established as a parent of an infant previously left at a safe haven facility shall have standing to participate in all proceedings regarding the child pursuant to applicable provisions of the Chitimacha Comprehensive Codes of Justice.

(b) If a person not previously established as a parent seeks reunification with an infant previously left at a safe haven facility and the person's DNA indicates parentage of the infant, that person shall have standing to participate in all proceedings regarding the infant pursuant to applicable provisions of the Chitimacha Comprehensive Codes of Justice.

**Sec. 808.      Immunity**

A safe haven facility and its staff are immune from criminal liability and civil liability for accepting an infant in compliance with the provisions of the Chitimacha Safe Haven for Infants Law but not for subsequent negligent medical care or treatment of the infant.

(Added by Ordinance # 01-10; Adopted: July 15, 2010; Effective: July 15, 2010)