

Chapter 28. Juvenile Code

AMENDED

Section 6.1 Tribal Juvenile Code

The Fort McDermitt Paiute-Shoshone Tribe does hereby establish the Fort McDermitt Juvenile Court, a division of the Fort McDermitt Tribal Court.

Section 6.2 Juvenile Court Judges

Any duly authorized judge of the Fort McDermitt Tribal Court may preside as judge of the Fort McDermitt Juvenile Court.

Section 6.3 Jurisdiction

A. ***Personal Jurisdiction.*** The Juvenile Court shall have jurisdiction over:

1. Any Indian child who is a member of the Fort McDermitt Paiute and Shoshone Tribe, or any Indian child who is eligible for membership, whether or not the child resides or is domiciled within the Fort McDermitt Reservation. Furthermore, the Fort McDermitt Juvenile Court is hereby authorized to accept transfer of jurisdiction from another court in the case involving a child who is a member of this tribe or eligible for membership in this tribe.
2. Any Indian child who is domiciled or resides within the Fort McDermitt Reservation;
3. Any Indian child who commits an act within the Fort McDermitt Reservation that if committed by an adult would be a crime.
4. Any Indian child whose presence and participation is necessary to accomplish the purpose of this chapter, including but not limited to the following:
 - a. Any adult who is found within the Fort McDermitt Reservation who induces, aids, or encourages a child to violate any federal or tribal law or who aids or contributes to the delinquency, dependency or neglect of a child;
 - b. Any adult who resides within the Fort McDermitt Reservation who has a child in his legal or physical custody or in his employment who willfully ill treats, neglects or abandons such child or treats him in any manner likely to cause the child unnecessary suffering or serious injury to his health or morals;
 - c. Any adult who comes within the Fort McDermitt Reservation who forcibly takes away any child from, or induces him to leave, the legal or physical custody of any person, agency, or institution with whom the child legally resides or has been legally placed for care, support, education or adoption.
 - d. Any adult who comes within the Fort McDermitt Reservation and takes or detains or harbors a child after demand is made for his return by his parent or by the Court or other authorized agency;
 - e. Any adult who commits an act of violence against a child within the Fort McDermitt Reservation.

- B. **Subject Matter Jurisdiction.** The Fort McDermitt Juvenile Court shall have jurisdiction over the following types of cases.
1. An Indian child who is alleged to have violated any federal, tribal, state or local law;
 2. An Indian child who is neglected or dependent or incorrigible and beyond the control of his parent(s), custodian, or school authorities;
 3. Any Indian child who is alleged to be a runaway;
 4. The custody of a child or the appointment of a guardian;
 5. Determination of paternity and the exercise of parental rights and duties including the duty to provide support;
 6. The emancipation of a child and consent to marriage of an underage person;
 7. The treatment or commitment of a developmentally disabled or mentally ill child;
 8. Concerning any other matter of critical importance to the welfare of any child within this court's jurisdiction.

Section 6.4 Transfer of Jurisdiction

1. The Juvenile Court may transfer jurisdiction of a juvenile matter over which it has asserted jurisdiction to any other court of competent jurisdiction if the receiving court consents;
2. The Juvenile Court may accept transfer of jurisdiction from another court if the child is a tribal member or resides or is domiciled within the Fort McDermitt Reservation;
3. The Juvenile Court may transfer a case to the Tribal Court in those cases where the minor child reaches the age of eighteen (18) years before the juvenile case reaches final disposition. Such a case shall be transferred and not dismissed.

Section 6.5 Rules of Procedure

1. The filing of a petition commences all proceedings in Juvenile Court. No fee shall be charged for the filing of a petition under this Chapter.
2. The petition shall declare the facts of the case and shall include the following information:
 - a. The name and birth date of the minor child;
 - b. The name and address of the parent or custodian;
 - c. The basis of the Court's jurisdiction;
 - d. Any facts relevant to the present physical or legal custody of the child;
 - e. An allegation that the child is delinquent, incorrigible, abused, neglected, or dependent, or is a minor in need of care and a statement of the facts that the allegation is based on;
 - f. A statement of what action the petitioner asks the court to take.
3. The petition may be signed and submitted by a police officer, parent, guardian, custodian, Social Services, or other interested person. Whoever signs the petition must sign upon oath under penalty of perjury or must file an affidavit setting forth the facts. The signature on the affidavit must be notarized.
4. After a petition is filed, the Clerk of the Court shall issue a summons which shall be served on the minor child and his parent, guardian or custodian.
5. A copy of the petition and summons shall be served on the minor child and his parent, guardian, or custodian by certified mail or by personal delivery by a law enforcement officer no later than five days preceding the date set for a hearing on the petition.

6. If the minor child's parent, guardian or custodian cannot be located, notice can be given by posting notice in three public places for thirty (30) days, except that only the names of the parent, guardian, or custodian may be published and not the name of the minor child.

Section. 6.6 Proceedings Civil in Nature

Proceedings under this Juvenile Code are civil in nature and shall follow the rules of civil procedure except that if a minor child commits an act that would be a major crime or felony if it were committed by an adult, the child shall be prosecuted criminally if he was 14 years of age or older at the time of the offense.

Section 6.7 Conduct of Hearings

1. All hearings concerning a minor child shall be private and closed to the public. Only the parties, their attorneys, witnesses and other persons approved by the Court may be present at the hearing.
2. In a delinquency hearing, the minor child and his parent, guardian, or custodian shall be advised of the minor child's legal rights.
3. He shall then be asked whether he admits or denies the charges filed against him. If the minor child denies the charges, the Court will set the matter for an adjudicatory hearing. If he admits the charges, the Court will make a dispositional decision. The child's admission must be knowing and voluntary.
4. An adjudicatory hearing shall be a presentation of witnesses and evidence by the Tribal Prosecutor on each element of the charge. The adjudicatory hearing shall result in a ruling by the court as to whether the charges have been proven. If the court concludes that the minor child committed the offense as charged, the court shall impose any penalties permitted under this Code.
5. In a hearing involving an alleged abused or neglected child, the Court will hear testimony and receive evidence to determine the facts of the case. Any relevant and material information shall be admissible.
6. Social Services and any other interested party may make a recommendation to the Court regarding disposition or placement if the Court concludes that the child is a minor-in-need-of-care.
7. Parties adversely affected by a final disposition shall be informed of the right to appeal under Section 6.14.

Section 6.8 Standard of Proof

1. The standard of proof for delinquency proceedings shall be beyond a reasonable doubt for each element of the offense.
2. The standard of proof for all other juvenile cases shall be clear and convincing evidence.
3. All competent, material and relevant evidence helpful in determining the questions presented, including oral and written reports, may be received by the Court and may be relied upon to the extent of its probative.

Section 6.9 Speedy Trial

Every case involving a child alleged to be delinquent or a minor-in-need-of-care shall be decided within ninety (90) days from the submission thereof unless extraordinary circumstances exist which warrant an extension of this time period, or, if the juvenile and his parents waive this right.

Section 6.10 Presence of Parent(s)

One or both of the minor child's parents, or his guardian or custodian, shall be present at any hearing. If the parent, guardian, or custodian cannot be located, the Court shall appoint a Guardian ad Litem for the child.

The Guardian ad Litem shall have the duty to assist the child to understand and respond to the proceedings of court.

Section 6.11 Consent to Placement of Minor-in-need-of-Care

The parents, guardian, or custodian may enter an informal agreement with Social Services for the temporary care or treatment of a minor-in-need-of-care. Such agreement shall be in writing and shall be signed by the parent(s), guardian, or custodian and by Social Services. Social Services may execute an informal agreement without an order from the Court.

Section 6.12 Dispositional Alternatives

The Court may order any of the following alternatives in any combination taking into account the best interests of the child and where appropriate, the welfare of the community:

1. The Court may order the child to remain in the care of his parents, guardian, or custodian subject to conditions set by the Court;
2. The Court may place the child with a member of his extended family;
3. The Court may place the child in foster care;
4. The Court may make the child a ward of the Court;
5. The Court may place the child in a rehabilitative or residential treatment facility;
6. The Court may place the child on probation for an appropriate period of time. All children placed on probation are subject to unannounced visits by the probation officer who is hereby authorized to enter residences for the purpose of monitoring the activities of a minor child on probation;
7. The Court may impose restrictions on the child's daily activities and associations, including a limit on what the child's parents may permit him to do and a more restrictive curfew;
8. The Court may order the child to undergo professional evaluation or treatment or to be admitted to appropriate treatment facilities;
9. The Court may order a Juvenile Offender to be taken into custody and placed in detention;
10. The Court may order a Juvenile Offender or his parents to pay restitution for any damage he caused;
11. The Court may order a Juvenile Offender to perform appropriate community service or to be assigned to an employment or work program for a period of time;

12. The Court may appoint a Guardian for the child;
13. The Court may enter any other order that the Court finds appropriate considering the minor child's age and the facts and circumstances of the case;
14. An interested party or Social Services, upon investigation and completion of a report into the fact and circumstances of the case, may file a petition to terminate the parental rights of the minor child's parents consistent with the requirements of Section 6.13.

Section 6.13 Termination of Parental Rights

A petition for termination of parental rights may be filed if one of the following conditions is found:

1. The parent is unfit and incompetent by reason of conduct or condition seriously detrimental to the child including but not limited to one or more of the following:
 - a. Habitual drunkenness rendering the parent unable to provide adequate care for the child;
 - b. Habitual failure to provide adequate supervision;
 - c. Habitual failure to send the child to school;
 - d. Serious physical or emotional abuse or neglect;
 - e. Abandonment.
2. The parent shall not be considered to have abandoned the child if the parent places the child in the care of a family member for a period of time so long as the parent demonstrates some interest in the child by staying in contact with the child or his caregiver or by providing financial support.
3. The parent has substantially and continuously or repeatedly failed or refused to give the child proper parental care and protection after the child has been returned to the parent under protective supervision or probation. A finding of failure or refusal to give proper parental care must be based on clear and convincing evidence.
4. Proceedings for the termination of parental rights shall require a showing that:
 - a. The parent has been provided with remedial services to improve parenting skills;
 - b. Evidence exists to support a finding that continued custody by the parent or parents is likely to result in serious emotional or physical harm to the child.

Section 6.14 Petition for Restoration Custody

A parent, guardian, custodian, or Social Services may petition the Court to return custody of the child to the parent, guardian, or custodian. The petition must be based on a change in circumstances that support a finding that returning the child to his parent, guardian, or custodian is in the child's best interest. A person whose parental rights have been terminated as to a particular child is not that child's parent.

Section 6.15 Appeal

1. Any final Order or Judgment of this Court may be appealed by filing a Notice of Appeal with the Clerk of the Court within thirty (30) days of the date that the order or judgment is entered, as determined by the date that appears on the file stamp.
2. All Juvenile Court orders must include an advisement of the right to appeal and must state the time limits for filing an appeal.

3. Unless otherwise ordered by the Juvenile Court or by the appellate court, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. If the order requires a change of custody, the hearing on the appeal shall take place at the earliest available time.

Section 6.16 Records

1. All records of the Court involving an alleged delinquent act or a minor-in-need-of-care shall be confidential and shall not be open to public inspection. Only those persons who have a direct interest in the case shall have access to the records, namely, the minor, his parent, guardian, or custodian, their attorney or advocate, and Social Services.
2. When a minor who has been the subject of any proceeding under this Juvenile Code attains his 18th birthday, the Clerk of the Court shall seal both the court records and the law enforcement records concerning the minor.
3. The Juvenile Court or the Tribal Court shall have continuing jurisdiction over all matters and parties over which it has properly asserted jurisdiction.

Section 6.17 Review by the Court

Following any disposition of a case after a finding of delinquency or that a child is a minor-in-need-of-care, the Court shall retain continuing jurisdiction over the minor. The matter shall be subject to review in the discretion of the Court, or upon motion of any person that would have been a proper party to the initial proceeding or by Tribal Social Services.

Section 6.18 Duties of Parents

1. Parents have a legal duty to support their children and to provide them with parental control and guidance.
2. Parents have an affirmative duty to send their children to school and to assure the general welfare of each child including but not limited to providing food, shelter, reasonable discipline, supervision, and adequate medical treatment a child.
3. Parents may be held liable for damages caused by a delinquent act of their child.

Section 6.19 Tribal Social Services

Tribal Social Services shall have the duties as provided in this Code or as ordered by the Court, which shall include but not be limited to the following:

1. Conduct investigations;
2. Make reports to the Court;
3. Provide supervision for minors;
4. Place a minor in detention or shelter care;
5. Identify and develop resources to meet the needs of the community;
6. Prepare Family Reunification Plans;
7. Prepare Case Plans for achieving stated objectives;
8. Recommend placement, treatment, or rehabilitation as appropriate;
9. Work with a child and his parents, guardian, or custodian to develop a plan that addresses the child's needs;

10. Perform such other duties in connection with the care, custody, or transportation of minors as the Court may require.

Section 6.20 Juvenile Probation Officer

The Probation Officer shall have the following duties and authorizations:

1. Meet with the minor child and his parent, guardian, or custodian to enter a probation agreement that conforms to the conditions of probation;
2. Meet regularly with the child and his parent, guardian, or custodian, to monitor the child's progress and observance of the conditions of his probation;
3. Make reasonable unannounced visits to the child's home to check on the child and to observe his living conditions;
4. Make reports to the Court to report the child's progress;
5. Recommend release from probation if the child has completed the conditions of probation;
6. Recommend that the probation be revoked for failure of the child to abide by the required conditions. If probation is revoked, the minor child shall be subject to an alternative disposition as determined by the Court;
7. The Probation Officer is not a police officer, but is an officer of the Court with the right to enforce the requirements of a court ordered period of probation.

Section 6.21 Child Protection Team

The Tribal Council shall appoint members to the Child Protection Team. It shall be the responsibility of the Child Protection Team to consider the needs of children whose behavior or circumstances bring them to the attention of the Child Protection Team. The Team shall recommend action to assist and protect any Indian child who resides or is domiciled within the Fort McDermitt Reservation or in Indian country that is subject to the governance of the Fort McDermitt Paiute Shoshone Tribe. The Child Protection Team shall follow bylaws enacted by the Team.

Section 6.22 Prohibited Offenses

- A. **CURFEW.** No minor child shall be outside of his home after 10:00 p.m. on weekdays, which shall mean Sunday through Thursday. No minor child shall be outside of his home after 11:30 p.m. on weekends, which shall mean Friday through Saturday. Any minor child found in violation of this curfew shall be taken into custody, cited or a violation of this section, and directed to immediately return to his home.
- B. **HABITUAL TRUANCY.** No minor child shall be absent from school without legitimate excuse as determined by school administrators. Any minor child who school administrators find to be missing an excessive amount of school without a legitimate excuse as determined by the school shall be cited and brought before the court on a petition alleging habitual truancy.
- C. **VANDALISM.** No minor child may damage or destroy property belonging to another.
- D. **DRUG OR ALCOHOL USE.** No minor child shall use, possess, sell, or distribute any controlled substance or purchase or consume or possess any alcoholic beverage.
- E. **ANY OTHER VIOLATION OF THE LAW AND ORDER CODE.** No minor child shall commit any act that is denominated a crime in the Fort McDermitt Law and Order Code.

Section 6.23 Investigations

1. The Court may require a social investigation to be made and a report submitted to the Court. The report shall include but not be limited to commentary on the child's home environment, the present conditions of the child and family, the child's history and associations, and recommendations for the child's future care or placement. In cases involving the duty of support, the report shall include the earnings, assets, financial obligations, and employment.
2. The police shall investigate and file a report with the Tribal Prosecutor regarding any alleged incident of delinquent behavior. The police may issue a citation to the alleged offender in the discretion of the investigating officer. The report shall include the date, time, place, and nature of the incident, as well as the names, addresses, and telephone numbers of any complaining parties, witnesses, or victims. It shall be the duty of the Tribal Prosecutor to file a petition alleging delinquency if the facts warrant it.

Section 6.24 Criminal History of Persons

The police shall have the authority to conduct a background check on any person who may come into contact with minor children either through employment or community activities. Any person who has a criminal history of child sexual abuse shall register with the Tribal Police or be subject to banishment from the Fort McDermitt Reservation.

Section 6.25 Arrest and Detention of Children

1. A minor child may be taken into custody by any police officer or probation officer pursuant to a warrant issued by this Court.
2. A minor child may be taken into custody by a police officer or probation officer without a warrant when:
 - a. The child violates federal or tribal law in the presence of the officer;
 - b. There are reasonable grounds to believe that the child has committed an act, which if committed by an adult, would be a crime;
 - c. The child is seriously endangered in his surroundings and immediate removal appears to be necessary for his protection;
 - d. The child has committed an act which is a breach of the peace;
 - e. There are reasonable grounds to believe that the child requires immediate care or medical attention;
 - f. The child is alleged to have committed a serious offense that places the community or himself or herself in danger of harm or injury.
3. When an officer takes a minor child into custody, the officer shall immediately notify the child's parents, guardian, or custodian.
4. A child shall not be detained by an officer any longer than is reasonably necessary to obtain his name, age, residence and other information, and to contact and obtain the appearance of his parent, guardian, or custodian.
5. If a child is taken to detention, the officer shall promptly file a brief report with the Court stating the facts giving rise to taking the child into custody and stating why the child was not released. No child shall be held in detention for more than twenty-four (24) hours unless the Court orders that the child be held in an appropriate facility subject to further order of the Court. The Court may issue a verbal order in an emergency, but the verbal

order shall be followed up by a written order within twenty-four hours of the time that the verbal order is entered.

6. The Tribal Prosecutor must file a petition alleging delinquency within seventy-two hours of the time when the child is taken into custody setting forth the allegations against the child. The petition shall commence formal court action against the child.
7. The Court may order the child released to his parents with or without restrictions if the child can be safely left in their care and if the parents agree to bring the child to Court at the appointed time.

Section 6.26 Search and Arrest Warrants

1. If a summons cannot be served on the minor child's parent, guardian, or custodian, or, if the welfare of the child requires that he be brought immediately before the Court, a warrant may be issued for the arrest of the parent, guardian, or custodian, or the child, and any such warrant may be served anywhere within the Fort McDermitt Reservation.
2. Upon a showing of probable cause, the Court may issue an arrest warrant for a minor child who has engaged in behavior that if committed by an adult would be a crime. Tribal Police or the Tribal Prosecutor shall file an application for an arrest warrant stating the facts that amount to probable cause to believe that the named minor child committed an unlawful act.
3. Upon application in writing by a police officer, the Court may issue a Search Warrant authorizing the police to search a particular location for specifically named evidence. The application must state the reason that a Search Warrant is necessary and must with particularity describe the items that the police will search for.
4. If a child is being ill-treated or detained in any place within the jurisdiction of the Court, based on probable cause, the Court may issue a warrant authorizing a police officer to enter the house or premises, by force if necessary, in order to remove the child.

Section 6.27 Emergency Custody of Minor-in-Need-of-Care

Tribal Social Services is hereby authorized to take a child into custody if in the judgment and experience of the Social Worker, a child is in imminent danger or is unsupervised and incorrigible. Tribal Social Services shall file a petition for temporary emergency custody of the child within twenty-four (24) hours of taking emergency custody of a child.

Section 6.28 Rights of Child

1. The minor child and his parent(s) shall be advised that they have the right to retain legal counsel at their own expense;
2. The minor child and his parent(s) shall be informed that the child does not have to be called as a witness against himself;
3. The minor child and his parent(s) shall be advised that they may introduce evidence and examine witnesses and that they may avail themselves of the subpoena power of the Court;
4. In instances of alleged delinquent acts, the minor child and his parent(s) shall be informed that the minor child has the right to remain silent and that anything that he says may be used against him in Court.

Section 6.29 Welfare of the Child

The Court shall give primary consideration to the welfare of the child when determining legal custody, guardianship, or placement of a child.

Section 6.30 Definitions

- A. **ABANDON.** When a parent leaves a child without adequate supervision and fails to communicate with or support a child and there is no indication that the parent is willing to assume his parental role.
- B. **ADULT.** Any person who is eighteen years of age or older.
- C. **COURT.** The Fort McDermitt Paiute Shoshone Tribal Court or Juvenile Court.
- D. **CUSTODIAN.** An adult tribal member other than a parent or guardian, to whom temporary custody of the child has been given as an exercise of tribal tradition.
- E. **DELINQUENT ACT.** A violation of this Code or any other act, which, if committed by an adult, is designated a crime under the Fort McDermitt Paiute Shoshone Tribal Law and Order Code.
- F. **DEPENDENT CHILD.** A child is (1) Homeless or destitute or without proper support or care through no fault of his parent or guardian; (2) Lacks proper care by reason of the mental or physical condition of his parent, guardian, or custodian.
- G. **DETENTION.** The placement of a minor in a physically restrictive facility or secure custody.
- H. **EXTENDED FAMILY.** The grandparents, aunts, uncles, nieces or nephews, or first cousins of a child.
- I. **GUARDIAN.** A person other than the minor's parent who is by law responsible for that minor child.
- J. **GUARDIAN AD LITEM.** An adult or advocate appointed by the Court to safeguard the legal rights of a child or a ward of the Court.
- K. **JUVENILE OFFENDER.** A person who commits a delinquent act while he is a minor.
- L. **MINOR CHILD OR CHILD.** A person who is under eighteen years of age; or, a person who has turned eighteen, but for whom proceedings were commenced prior to the minor turning eighteen; or, a person who is eighteen, but who is under the continuing jurisdiction of the Court.

- M. **MINOR IN NEED OF CARE.** A minor who
- a. Has no parent(s), custodian, or guardian available and willing to provide supervision and care;
 - b. Has suffered or is likely to suffer physical harm because of neglect or lack of supervision;
 - c. Has not been provided with adequate food, clothing, shelter, medical care, education, or supervision necessary for the minor's health and well-being;
 - d. Has been sexually abused;
 - e. Has committed delinquent acts as a result of parental pressure or approval;
 - f. Is subject to emotional or mental abuse.
- N. **PARENT.** A natural or adoptive parent but not persons whose parental rights have been terminated, nor the unwed father whose paternity has not been acknowledged or established.
- O. **PROBATION.** A trial period ordered by the Court whereby a minor child must observe and obey conditions or limitations set by the Court. During probation, the minor child shall be subject to the supervision of the police or other appointed officer of the Court.
- P. **PROBATION OFFICER.** The person who is authorized by the Court to supervise and monitor a minor child's activities during the period of probation to assure that the minor child successfully completes the conditions of probation.
- Q. **SHELTER.** The temporary placement of a minor child into a physically restricted facility pending court disposition.
- R. **TERMINATION OF PARENTAL RIGHTS.** The permanent removal of all parental rights and duties by the Court.
- S. **TRIBAL COURT.** The Fort McDermitt Paiute Shoshone Tribal Court.
- T. **MEMBERSHIP.** Means enrolled with the Fort McDermitt Paiute and Shoshone Tribe, or as defined in Article II – Membership, Section 1 (a) and (b), and Section 2 (a) and (b), in the Constitution and Bylaws of the Fort McDermitt Paiute and Shoshone Tribe.