

CHAPTER 3 - FIRST APPEARANCE / ADJUDICATION

301 DIVERSION

- A. Prior to the filing of a Petition, the Nation Prosecutor may divert any case or refer any case to the Peacemaker process of the Nation Court except when the child is accused of committing a crime which is classified as a felony under the Nation's Penal Code.
- B. At any time after the filing of a Petition and prior to disposition, the Court, in its discretion, may divert any case or refer any case to the Peacemaker process of the Nation Court except when the child is accused of committing a serious offense.
- C. The Probation Officer shall monitor and supervise the diversion progress of the child and file reports, as required, with the Nation Prosecutor and the Court. The reports shall contain a detailed explanation of relevant information concerning the child, child's family, environment, diversion plan and any progress, conduct, diversion plan compliance or non-compliance, need for further diversion, referral or treatment. The Probation Officer shall coordinate with the appropriate Nation agencies and/or departments and develop an appropriate diversion plan for the child.
- D. If at any time during the diversion period, the child or child's parents, guardian or custodian fails or refuses to comply with any requirements of the diversion plan, the Probation Officer may refer the case back to the Nation Prosecutor for further proceedings under this Code. Such referral shall be accompanied by a report prepared by the Probation Officer according to the provisions of Section 301.C.
- E. Upon successful completion of the diversion plan, the Probation Officer shall file a final report with the Nation Prosecutor or Court informing of the plan compliance and recommending dismissal of the Petition or closure of the matter.
- F. The diversion of any case shall not affect the timely or speedy disposition of the case nor shall it affect the time limitations of any offense as prescribed by Section 103.A or 103.B of this Code.

302 PLEADINGS

- A. Title of Proceedings. The proceedings shall be entitled: "In the matter of an alleged juvenile offender".
- B. Petition. The Nation Prosecutor, having knowledge of a child who appears to be an alleged juvenile offender, may file a verified petition with the Court on forms designated for this purpose.

303 SUMMONS; PERSONS UPON WHOM SERVED; FORM.

Upon the filing of a Verified Petition pursuant to section 302, the Court may direct a copy of the Petition, along with a summons, to be issued requiring the child who is alleged to be a juvenile offender and his parent, guardian or custodian to appear in Court pursuant to section 304 at a time and date set by the Court. The summons and a copy of the Petition shall be personally served upon:

- (a) the child alleged to be a juvenile offender; and
- (b) a parent, guardian or custodian of the alleged juvenile offender; and
- (c) any other person designated by the Court. In the event that the child fails to appear in Court as directed in the summons, or if the child is likely to leave the Court's jurisdiction or otherwise evades service of a summons, then the Court may issue a warrant directing that the child be brought before the Court in the manner prescribed by the Court in the warrant.

304 FIRST APPEARANCE

At his first appearance before the Court, the child alleged to be a juvenile offender and the child's parent, guardian or custodian shall be informed by the Court of the following:

- 1. the allegations against the child;
- 2. the right to an attorney;
- 3. the right to testify or remain silent and that any statement made by the child, parents, guardian or custodian may be used against the child;
- 4. the right to cross-examine witnesses;
- 5. the right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf; and
- 6. the possible consequences if the allegations in the petition are found to be true.

305 ADJUDICATION HEARINGS

A. Hearings shall be held before the Court without a jury. The general public shall be excluded. The Court shall admit only such persons as have an interest in the case, including persons whom the parents or guardian wish to be present. Hearings may be continued from time to time as ordered by Court.

B. A verbatim record shall be taken of all proceedings.

- C. When more than one child is named in a petition the hearings may be consolidated; or heard separately at any stage of the proceeding in the Court's discretion.
- D. The name, picture, place of residence, or identity of any child, parent, guardian, custodian, or person appearing as a witness in proceedings under this Code shall not be published in any newspaper or in any other publication nor given any other publicity unless, for good cause, it is specifically permitted by order of the Court. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, thereof, shall be punished by a civil fine of not more than Five Hundred Dollars (\$500.00).
- E. The child may stipulate to the fact that he is a juvenile offender.
- F. If the Court finds that the allegations of the Petition are supported by clear and convincing evidence, the Court shall order a pre-disposition report and set the matter for a disposition hearing.
- G. If the Court finds that the allegations of the Petition are not supported by clear and convincing evidence the Court shall order the petition dismissed and the child discharged from any detention, restriction, conditions or terms previously ordered. His parents, guardian, or custodian shall also be discharged from any restriction, condition or term under a previous temporary order.

306 PREDISPOSITION REPORT

Once a child has been adjudicated a Juvenile Offender or stipulates to that adjudication, the Court shall order a predisposition study.

- A. Predisposition Study and Report. The Court shall direct the Probation Officer to prepare a written predisposition study and report for the Court concerning the juvenile offender, the juvenile offender's family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case. The parent(s), guardian or custodian shall execute appropriate releases as necessary.
- B. Contents of Predisposition Study and Report. The report shall contain a specific plan for the juvenile offender, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the juvenile offender under the proposed plan. Preference shall be given to the dispositional alternatives that are least restrictive of the juvenile offender's freedom and are consistent with the interests of the community.
- C. Medical Assessment and Treatment for Alcohol or Substance Abuse. The Court may order a medical and/or psychological assessment of the juvenile offender.
- D. Submission of Reports. Evaluations, assessments, dispositional reports and other

material to be considered by the Court in a juvenile hearing shall be submitted to the Court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the Court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.