

Subpart L The Children's Code

L-1 Definitions

In this Subpart, unless the context otherwise requires:

(a) "Act of delinquency" means an act which if committed by an adult would be punishable as an offense defined under Subpart M of this Code.

(b) "Adult" means a person aged eighteen (18) years or more.

(c) "Child in need of supervision" means a child who:

1. Being subject to compulsory school attendance is habitually truant from school;
or
2. Habitually disobeys the reasonable and lawful demands of his parents, guardian, or other custodian, and is ungovernable and beyond their control.

(d) "Custodian" means a person other than a parent or guardian to whom legal custody of the child has been given by court order or who is acting in loco parentis.

(e) "Delinquent child" or "delinquent" means a child who has committed an act of delinquency and is in need of care or rehabilitation.

(f) "Legal custody" means a legal status created by Court order following an adjudication of delinquency, whereby a minor is permitted to remain in his home subject to supervision and return to the Court for violation of probation at any time during the period of probation.

(g) "Minor" or "child" means a person under the age of sixteen (16) years.

(h) "Neglected child" means a child:

1. Who has been abandoned by his parents, guardian, or other custodian;
2. Who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or other custodian or their neglect or refusal, when able to do so to provide them; or
3. Whose parents, guardian, or other custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.

(i) "Protective supervision" means a legal status created by court order in neglect cases whereby the minor is permitted to remain in his home under supervision, subject to return to the Court during the period of supervision.

L-2 Composition

The judges of the Tribal Court shall act as the Juvenile Court in proceedings in which a child is to be adjudicated neglected, in need of supervision, or delinquent.

L-3 Juvenile Matters

(a) Where a child is accused of committing an offense under the Criminal Code, a judge of the Court may either:

1. If the child is over sixteen (16) years old, proceed with the case as a regular criminal matter and treat the child as an adult when the interests of justice require; or
2. Declare the proceeding a juvenile matter and proceed as provided in Paragraph (b) of this Section.

(b) In any case where a child is accused of committing an act of delinquency, charged with being a child in need of supervision, or deemed to be a neglected child, the Court shall order the proceedings to be adjudicated in a confidential manner.

L-4 Preliminary Hearing

Upon the filing of a petition alleging the need for supervision or court intervention, the Court shall order a preliminary hearing to determine the sufficiency of the petition and to determine whether a full hearing should be ordered.

L-5 Notification of Hearing

(a) The Court shall order the delivery of the summons along with a copy of the petition alleging delinquency, need of supervision or neglect:

1. To the child, if he is over the age of fourteen (14) years and is alleged to be delinquent or in need of supervision;
2. To the parents, guardian, or custodian of the child;
3. To the spouse of a married child; and
4. To any other person the Court deems necessary and proper to the proceedings.

(b) The summons shall order the appearance of the persons before the Court at the preliminary hearing. The summons shall be served personally on the party named in the summons within three (3) days after the filing of the petition and not less than two (2) days before the date set for the preliminary hearing.

L-6 Right to Representation

In delinquency and in need of supervision cases, a child and his parents, guardian or custodian shall be advised by the Court or its representatives that the child may be represented by counsel at his own expense. In neglect cases, the parents, guardian or custodian shall be advised of their right to retain counsel at their own expense. In any juvenile proceeding, the Court may appoint counsel to represent the retained.

L-7 Proceedings

(a) At the preliminary hearing the specific allegations in the petition shall be presented to the parties named in such petition. The named parties shall either admit or deny the allegations in the petition.

(b) If the allegations are admitted, the Court may proceed with the disposition of the case.

(c) If the allegations are denied, the Court shall set a date for hearing at which the parties may present evidence.

L-8 Consent Decrees

(a) At any time after the filing of the petition, the Court on its own motion or on motion by the child or the child's parents, guardian, or custodian, may suspend the proceedings and continue the child under the supervision of the Court in the child's own home, subject to such terms and conditions as the Court deems necessary and as agreed upon by the parties affected. The Court, on its own motion and at any time, may dismiss the complaint or petition if it feels that court adjudication is unnecessary or unwarranted under the circumstances.

(b) Consent decrees shall remain in effect for six (6) months unless the child is sooner discharged by the Court.

L-9 Full Hearing – Proceedings

(a) If, at the full hearing, the Court finds on the basis of a valid admission or a finding based on proof beyond a reasonable doubt that a child committed the acts of which he is alleged to be delinquent or is in need of supervision, it may proceed with the disposition of the case.

(b) If the Court finds from clear and convincing proof that a child is neglected, it may proceed with the disposition of the case.

(c) After any findings in Paragraphs (a) or (b) of this Section, the Court may immediately, or at a later date, hold a disposition hearing wherein any information relevant to the proper disposition of the child may be received. Such information may be received by the Court to the extent of its probative value despite the fact that it would not have been admissible in the hearing on the complaint or petition. The parties shall be afforded an opportunity to examine

and controvert such information and to cross examine any persons responsible for such information.

L-10 Rights and Privileges

(a) Any child charged with being delinquent or in need of supervision shall be accorded the privilege against self-incrimination. Additionally, illegally seized or obtained evidence shall not be received by the Court to establish any allegation against the child.

(b) An admission or confession made by a child outside of court is insufficient to support a finding that the child committed the acts alleged unless such admission or confession is corroborated by other admissible evidence.

(c) In all cases, procedural due process shall be afforded to all stages of any juvenile proceedings.

L-11 Disposition

(a) If a child is found by the Court to be neglected, the Court may make any of the following orders of disposition to protect the welfare of the child:

1. Permit the child to remain with his parents, guardian, or other custodian subject to such conditions and limitations as the Court may prescribe;
2. Place the child under protective supervision;
3. Transfer legal custody to the BIA, Social Services, or other public agency subject to the orders of the court; or
4. Transfer custody to a responsible relative or other adult person who is found by the Tribal Court to be qualified to receive, care for, and supervise the child.

(b) If a child is found to be delinquent or in need of supervision, the Court may make any of the following orders of disposition for his supervision, care and rehabilitation.

1. Any order authorized by Paragraph (a) of this Section for the disposition of a neglected child; or
2. An order placing the child on probation under such terms and conditions as the Court may prescribe.

L-12 Order of Adjudication, Noncriminal

An order of disposition or other adjudication in juvenile proceedings shall not be deemed a conviction for a crime. The disposition of a child and evidence given in any juvenile proceeding shall not be admissible against the child in any case or proceeding in any other court, whether before or after he has reached majority.

L-13 Limitation on Dispositional Orders

- (a) An order of probation or protective supervision shall remain in force no longer than six (6) months unless the child is sooner released by the Court.
- (b) When a child reaches the age of eighteen (18) years, all orders affecting him pronounced by the Juvenile Court shall terminate, and he shall be released from probation or protective supervision under such orders.

L-14 Petition to Revoke Probation

- (a) A child, subject to court supervision or orders, incident to adjudication as a delinquent child or child in need of supervision who violates any terms imposed by the Court may be proceeded against in a hearing to revoke probation.
- (b) Probation shall not be revoked except upon a showing by clear and convincing proof that a term or condition of the child's probation was violated. Probation revocation proceedings shall be governed by the rights and duties applicable to delinquency and in need of supervision cases contained in this Subpart.
- (c) If a child is found to have violated a term or condition of his or her probation, the Court may extend the period of probation or make any other disposition allowed under Subpart L-11 (Disposition).

L-15 Appointment of Guardian Ad Litem

At any state of a juvenile proceeding, the Court may appoint a guardian ad litem for a child who is a party to the proceedings if the child has no parents, guardian, or custodian, or his natural or adoptive parents are not in a position to exercise effective guardianship.

L-16 Protective Orders

In any juvenile proceeding, upon application of a party, or on motion by the Court, the Court may enter an order restraining the conduct of any party over whom the Court has obtained jurisdiction if:

- (a) An order of disposition of a delinquent or neglected child or a child in need of supervision has been entered; and
- (b) The Court finds that the person's conduct is or may be detrimental or harmful to the child and will tend to defeat the execution of the order or disposition; and
- (c) Due notice of the application or Court motion and the grounds thereafter has been given to the persons against whom the order is directed, provided that such person has been given an opportunity to be heard.

L-17 Records; Publication Prohibited

(a) The records of proceedings in juvenile matters shall be kept separate from other Court records and shall not be open to anyone other than the parties to the proceeding, the Court, or other persons authorized by Court order.

(b) No part of the record shall be published by a newspaper or other agency disseminating news or information, nor shall a newspaper or agency publish the name of a child charged with being delinquent, in need of supervision, or neglected.

L-18 Destruction of Records

When a child who has been in a delinquent or a need of supervision proceeding attains the age of eighteen (18) years, the Tribal Court shall order the Court Clerk to completely destroy all records of such proceedings involving such child.

L-19 Termination of Parental Rights and Adoption Ordinance

(a) Statement of Policy.

1. It shall be the policy of the Pueblo of Pojoaque to always protect the best interests of children who are enrolled Members.

2. It shall be the policy of the Pueblo of Pojoaque to recognize the rights of parents to raise their children, free of interference by the Tribal government, except in cases of neglect or abuse.

3. When there is overwhelming evidence that a child has been physically abused or neglected and there is little chance that the conditions or causes of the abuse or neglect are likely to change in the foreseeable future, or when the effects of the physical abuse or neglect are serious, the Tribal Court shall consider terminating parental rights and allowing adoption if it is in the best interests of the child.

4. The Pueblo of Pojoaque recognizes that the effects of termination of parental rights have profound consequences for the natural parent and the child. In order to ensure a fair process, to protect the best interests of the child, and to guard parental rights, the Tribal Court shall follow all procedures contained in this Ordinance.

(b) Definitions. In addition to the definitions contained in Subpart A-3,

1. “Adoption”: The legal process by which a child acquires parents other than the natural parents. The legal process by which a parent acquires a child other than by the natural process.

2. “Parental Rights”: The fundamental right to conceive and raise one’s child.

3. “Relinquishment”: The voluntary termination of parental rights by the natural parent in a legal proceeding.

4. “Termination of Parental Rights”: A legal proceeding for involuntary termination of parental rights of the natural parent. Severing the natural parent’s legal rights and legal obligations to the child.

5. “Tribal Council Notification”: The Tribal Council shall be sent a copy of a Final Order at the conclusion of any proceeding involving the Termination of Parental Rights and Adoption Ordinance.

(c) Relinquishment Procedures and Policy.

1. A parent may decide to relinquish parental rights only if allowed by a written Tribal Court Order.

2. The parent must petition the Tribal Court, in writing, to relinquish parental rights.

3. The petition must contain a written statement why the parent wishes to relinquish parental rights, a specific list of facts supporting the petition, and the child’s place of birth and enrollment status.

4. The petition must contain a written statement that the parent understands that relinquishing parental rights means that, if the petition is granted, the parent shall have no legal rights or responsibilities to the child.

5. The petition must contain a written statement that, if the petition is granted, the petitioner shall not be notified, or have any participation, in future adoption proceedings.

6. The petition must contain a written statement by a licensed psychologist or psychiatrist that the parent has been counseled about the possible psychological effects on both the parent and the child of relinquishing parental rights. The petitioner is responsible for paying for the report.

7. After receiving the petition, the Court shall schedule a hearing to determine whether it is in the child’s best interests to grant the relinquishment.

8. Notice of hearing shall be served to the natural parent(s), if the natural parent(s) is (are) known, or caretaker(s).

9. The hearing shall also determine whether it is proper to restrain the natural parent(s) from having further contact with the natural child.

10. The Court’s determination shall be made in a written Order and shall be final and not appealable.

11. The final Order granting relinquishment shall not be used as evidence of wrongdoing in any other civil or criminal proceeding in any Court.

(d) Involuntary Termination of Parental Rights Procedure and Policy.

1. The Pueblo of Pojoaque, acting on behalf of the child, may request, in writing, that the Tribal Court terminate the parental rights of a child in an involuntary termination of parental rights action.
2. Grounds for involuntary termination of the parental rights are:
 - A. Abandonment of the child: Abandonment is when either parent has left the child without provisions or support for over a month, the custodial parent or social service agency has given written notice to the Tribal Court of the abandonment and, after a Court hearing, the parent who has abandoned the child has not followed the Court Order which shall outline the steps to remedy the abandonment.
 - B. Severe parental neglect: Severe parental neglect is when a Tribal Court action has adjudicated that the child was abused or neglected and the conditions and causes of the abuse or neglect are unlikely to change.
 - C. Parental abuse: Parental abuse is when a parent has caused great bodily harm to the child or their siblings, or the other parent has encouraged or neglected evidence of incest between the siblings, or tried or attempted to try to sexually abuse the child or torture the child.
3. The written petition shall include the grounds for involuntary termination of parental rights, a specific list of facts supporting the petition, and the child's place of birth and enrollment status.
4. A hearing shall be scheduled by the Tribal Court.
5. Notice of hearing shall be served to the natural parents, if the natural parents are known, or caretakers.
6. The Pueblo of Pojoaque shall be responsible for bringing all witnesses and evidence supporting the petition to the hearing.
7. All parties shall have the opportunity to cross-examine the witnesses.
8. Lawyers may be present for all parties, at the parties' own expense.
9. If one party is represented by an attorney, the Pueblo shall provide an attorney for the opposing party.
10. There must be evidence beyond a reasonable doubt that the parent's rights should be terminated.
11. The Court's determination shall be made in a written Order and shall be final and not appealable.

12. The final Order terminating parental rights shall not be used as evidence of wrongdoing in any other civil or criminal proceeding in any Court.

(e) Involuntary Termination of Parental Rights When There is a Disintegration of the Parent-Child Relationship and a New Psychological Parent-Child Relationship Has Developed Between the Child and the Caretaker.

1. The Pueblo of Pojoaque may request, in writing, on behalf of the child and the caretaker, that the Tribal Court terminate the parental rights of a child when there is a disintegration of the parent-child relationship and a new psychological parent-child relationship has developed between the child and the caretaker.
2. This action shall be considered an effective abandonment of the child.
3. In order to bring this action, all of the following conditions must be present:
 - A. The child has lived in the home of the caretaker for over one year.
 - B. The parent-child emotional relationship has disintegrated or was never formed.
 - C. A psychological parent-child relationship has developed between the caretaker and the child.
 - D. The caretaker is willing to adopt the child.
 - E. A child, over the age of twelve (12), has consented to the adoption by the prospective parent(s).
4. The written petition shall include the grounds for involuntary termination of parental rights and adoption and a specific list of facts supporting the petition, the child's place of birth and enrollment status.
5. A hearing shall be scheduled by the Tribal Court.
6. Notice of hearing shall be served to the natural parent(s), if the natural parent(s) is/are known, or caretaker(s).
7. The Pueblo of Pojoaque shall be responsible for bring all witnesses and evidence supporting the petition to the hearing.
8. The Pueblo of Pojoaque shall also include a psychiatrist's report supporting the allegation that the parent-child emotional relationship has disintegrated or was never formed and that a psychological parent-child relationship has developed between the caretaker and the child.
9. All parties shall have the opportunity to cross-examine the witnesses.

10. Lawyers may be present for all parties, at the parties' own expense.
11. There must be evidence beyond a reasonable doubt that the parent's rights should be terminated.
12. The Court's determination shall be made in a written Order and shall be final and not appealable.
13. The final Order terminated parental rights shall not be used as evidence of wrongdoing in any other civil or criminal proceeding in any Court.
14. The final Order shall include the findings supporting termination and adoption.

(f) Requirements for Adoption.

1. Any caretaker may petition, in writing, the Tribal Court for adoption of a child when that child has no living parent or parental rights have been terminated.
2. The Pueblo of Pojoaque represents the caretaker when there is a written petition for adoption of a child in a termination of parental rights action when there is a disintegration of the parent-child relationship and a new psychological parent-child relationship has developed between the child and the caretaker.
3. All prospective adoptive parent(s) shall successfully complete a Pueblo of Pojoaque program for adoptive parent(s). The required program shall be administered through the Pueblo of Pojoaque Social Services Department. The required program shall not be longer than six (6) months in duration, unless the Court finds that there is good cause for extending the length of the program. If there is good cause, the program may recommend adoption to the Tribal Court before six (6) months.
4. The adoptive parent(s) becomes the legal parent(s) of the child and it shall not be the legal obligation of the natural parent(s) to give any further emotional or financial support to the child nor shall the Pueblo of Pojoaque be obligated to give the adoptive parent(s) further support, financial or otherwise.

L-20 Curfew for Minors

(a) Curfew for Parks & Recreation Areas. No person under eighteen (18) years of age, other than duly authorized employees or officers of the Pueblo, is permitted to be in or on any park or recreational area within the exterior boundaries of Pojoaque Pueblo between the hours of 9 PM and 6AM of any day from June 1 through August 31 and between the hours of 7PM and 6AM of any day from September 1 through May 31, except when organized activities are scheduled by approval of the Pueblo of Pojoaque Tribal Council and/or the Governor.

(b) No parent or legal guardian of a child under the age of eighteen (18) years may knowingly allow such child to be upon the streets or other public places within the exterior boundaries of Pueblo of Pojoaque between the hours of 9PM and 6AM from June 1 through

August 31 and between the hours of 7PM and 6AM from September 1 through May 31, hereinafter called "Curfew Hours".

(c) No child under the age of eighteen (18) years is permitted to be upon the streets and other public places within the exterior boundaries of the Pueblo of Pojoaque during Curfew Hours, except under the following conditions:

1. When accompanied by a parent or legal guardian or by some adult to whose care the child has been entrusted by such parent or guardian;
2. When attending a social, patriotic, religious, education, athletic, civic or other similar activity sponsored by a recognized school, church, fraternal or community organization, but in such event, not later than 9PM from June 1 through August 31 or 7 PM from September 1 through May 31 or forty-five (45) minutes after such events terminate.

(d) Any parent or legal guardian who violates or allows a child under his or her custody or control to violate this ordinance may be assessed a civil penalty up to ten dollars (\$10) for the first violation, and twenty dollars (\$20) for the second violation. Any subsequent violations will be assessed a civil penalty of fifty dollars (\$50) and family counseling will be mandatory.

L-21 School Attendance Policy

(a) The Pueblo of Pojoaque Social Services Department shall petition the Pueblo of Pojoaque Juvenile Court to declare a child who does not attend school as "a neglected child" or "a child in need of supervision."

(b) The parent or parents of the child shall attend all court hearings and the Juvenile Court shall order those parent or parents to comply with any of the court's conditions that will stop the absenteeism.

(c) The Juvenile Court decisions in these matters shall be final and not appealable to the Tribal Council.

L-22 Policy and Procedures of Child Protection Team

(a) Policy for Child Protective Services. The Pueblo recognizes that children are one of its most valuable resources. The Pueblo hereby declares that it is the policy of the Pueblo to protect the best interest of its children and to promote the stability and security of the Pueblo through the Child Protection Team ("CPT or Team").

(b) Mission Statement and Purpose. The purpose of Indian child protective services is to promote the stability and security of Indian Tribes and families, and to prevent abuse, neglect, delinquency and exploitation of children by reaching out with services to stabilize family life and to preserve the family unit.

(c) Goals.

1. To implement tribal placement standards established by Pueblo of Pojoaque Tribal Council for the placement of Pueblo of Pojoaque children from their families in which abuse and/or neglect occur.

2. To provide recommendations for the placement of abused and/or neglected tribal children in foster or adoptive homes which reflect the unique values of Pueblo culture.

3. To make recommendations for the provision of short and long-term child protective services for any case of tribal delinquency, child abuse, child neglect, educational neglect or child in need of supervision.

(d) Responsibilities & Duties of the CPT. The CPT shall serve as an advisory board to the Pueblo on child custody and placement matters. The CPT shall review child custody placements involving Pueblo children, as requested by the Social Services Department, and make recommendations regarding placements of Pueblo children. The CPT may make recommendations concerning tribal policies and practices with respect to Pueblo children to the Social Services Department and to the Pueblo of Pojoaque Tribal Council. The CPT shall undertake such additional duties and responsibilities as requested by the Tribal Council.

(e) Members and Leadership of the CPT. Membership shall consist of seven (7) voting members and three (3) nonvoting members appointed by Pueblo of Pojoaque Tribal Council to serve such terms at the pleasure of the Tribal Council until removed or replaced. Members shall be recruited from groups, professions and tribal representatives with special interest or expertise in child welfare and child abuse and neglect. Voting Members may include but not limited to members representative of Tribal Officials, Tribal Council, Tribal Education Department, Tribal Law Enforcement, and Tribal Social Services Department. Nonvoting Members may include but not limited to members representative of Boys and Girls Club, Child Development Center, Youth Program, and where necessary, an attorney or other legal representative. The designated head of the CPT shall be a Chairperson.

(f) Confidentiality. All information and records acquired by the CPT in the exercise of its duties are confidential and may only be disclosed as necessary to carry out its lawful purposes. CPT members shall be advised of the confidential nature of the position and are required to sign confidentiality agreements on a yearly basis. A breach of confidentiality is grounds for removal from the CPT or work-related disciplinary actions if the member is an employee of the Pueblo of Pojoaque.

(g) Conflict of Interest. Conflicts of interest are determined on a case-by-case basis by the Chairperson. If a case involves a relative to one of the CPT members, the member may withdraw their participation. If the member decides not to withdraw participation, (s)he may remain involved in the case as long as their involvement does not interfere with the proper handling of the case as determined at the discretion of the Chairperson.