

TITLE XI - CHILDREN’S CODE  
CHAPTER 65 - GENERAL PROVISIONS

Sec. 65.1      Title

This Title shall be known as the Santa Clara Pueblo Children’s Code.

Sec. 65.2      Purposes

The purposes of this Title are to protect children from abuse and neglect; to provide services to children and families that are in need of such services; and to establish appropriate judicial procedures and consequences for juvenile offenders. This Title shall be liberally interpreted in order to achieve its purposes.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec’y April 21, 2020.

Sec. 65.3      Definitions

As used in this Title, the following terms shall have the following meanings:

1.      “Abandoned” means a parent, guardian, or custodian has failed to ensure reasonable support for and regular contact with a child for an unreasonable period without justifiable cause.
2.      “Abused or neglected child” means a child:
  - a.    who has suffered or is at risk of suffering serious emotional or physical harm due to the action or inaction of the child’s parent, guardian, or custodian;
  - b.    who has suffered sexual abuse or sexual exploitation inflicted by the child’s parent, guardian, or custodian;
  - c.    whose parent, guardian, or custodian has knowingly, intentionally, or negligently placed the child in a situation that endangers the child’s life or health;
  - d.    whose parent, guardian, or custodian has tortured, cruelly confined, or cruelly punished the child;
  - e.    who has been abandoned by the child’s parent, guardian, or custodian;
  - f.    who is without proper parental care and control or whose subsistence, education, medical care, or other care or control necessary for the child’s well-being is inadequate because of the faults or habits of the child’s parent, guardian, or custodian, or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;
  - g.    whose parent, guardian, or custodian failed to take reasonable steps to protect the child from physical or sexual abuse when the child’s parent, guardian, or custodian knew or

should have known of the abuse;

h. whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or mental disorder or incapacity;

i. who is subject to compulsory school attendance and is habitually absent from school without good reason.

Nothing herein shall be construed to imply that a child who is being treated solely by spiritual or traditional means is for that reason alone an abused or neglected child.

3. “Adjudicatory hearing” means a proceeding to determine whether a child is an abused or neglected child or has committed a juvenile offense.

4. “Adult” means a person eighteen (18) years of age or older.

5. “Child” means a person under eighteen (18) years of age who is: (1) an enrolled member of the Pueblo, eligible for enrollment with the Pueblo, or a child of an enrolled member of the Pueblo, wherever the child resides or is domiciled; (2) an Indian who resides or is domiciled within the jurisdiction of the Pueblo; or (3) otherwise subject to the jurisdiction of the Pueblo.

6. “Custodian” means an adult, other than a parent or guardian, who exercises physical control over, has custody of, or cares for a child.

7. “Code” means this Santa Clara Pueblo Children’s Code.

8. “Department” means the Santa Clara Pueblo Social Services Department.

9. “Disposition hearing” means a proceeding to determine how to resolve a case after it has been determined that a child is an abused or neglected child or has committed a juvenile offense.

10. “Foster home” means a home licensed and certified by the Department or the State of New Mexico to provide care for children who are in the custody of the Department, the State of New Mexico, or other jurisdiction.

11. “Guardian” means a person appointed by an order of court of competent jurisdiction whose order is recognized by the Children’s Court as entitled to comity or by a power of attorney signed by a parent to care for a child.

12. “Juvenile offender” means a child who, before his or her eighteenth (18<sup>th</sup>) birthday, commits a juvenile offense.

13. “Juvenile offense” means an act committed by a child (1) that would be designated a criminal offense under any title of the Santa Clara Pueblo Tribal Code if the act had been committed by an adult, or (2) that violates Pueblo custom and tradition.

14. “Law enforcement officer” means a peace officer employed by Santa Clara Pueblo Tribal Police Department or commissioned to enforce Santa Clara Pueblo law or employed by the Bureau of Indian Affairs to enforce federal laws on Santa Clara Pueblo lands.

15. “Legal custody” means a legal status created by order of the Children’s Court or other court of competent jurisdiction whose order is recognized by the Children’s Court as entitled to comity, or by operation of statute that vests in a person: the right to determine where and with whom a child shall live; the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; and the right to consent to major medical, psychiatric, psychological, and surgical treatment.

16. “Parent” means a biological or adoptive parent but does not include a person whose parental rights have been legally terminated or an unwed father whose paternity has not been acknowledged or established.

17. “Protective custody” means temporary physical custody of a child without a court order, in accordance with the provisions of this Code.

18. “Protective services” means services furnished by the Department or under arrangement through the Department to a child, and the child’s family members, parents, guardians, or custodians, as appropriate, with the consent of the parents, guardians, or custodians, or pursuant to court order. Protective services may include social, psychiatric, health, and other services to detect, correct, or eliminate abuse and neglect.

19. “Protective supervision” means the right of the Department to visit a child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations, and obtain information and records concerning the child.

20. “Tribal Code” means the Santa Clara Pueblo Tribal Code.

21. “Tribal Court” means the Pueblo of Santa Clara Tribal Court.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec’y April 21, 2020.

#### Sec. 65.4      Establishment of Children’s Court

There is established in the Tribal Court a division to be known as the Children’s Court. Unless a judge has been specifically appointed as a Children’s Court judge and is acting in that capacity and is available, any judge appointed in accordance with Section 36.1 of the Tribal Code may perform the duties of a Children’s Court judge on a full-time, part-time, or as-needed basis.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec’y April 21, 2020.

Sec. 65.5      Jurisdiction; Judicial Power

The Children's Court shall have jurisdiction over all proceedings in which a child is alleged to be an abused or neglected child, or a juvenile offender. The scope and extent of the judicial power of the Children's Court is set forth at Section 35.1 of the Tribal Code.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

Sec. 65.6      Transfers from Other Courts

The Children's Court may accept or decline, in its discretion, requests from the Tribal Court, other tribal courts, or from state courts to transfer to the Children's Court a case involving an abused or neglected child, or a juvenile offender, provided that the Children's Court shall accept a transfer from the Tribal Court of a case where a child has been charged criminally in the Tribal Court but the jurisdiction of the Tribal Court is not appropriate under Sec. 69.7(2).

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

Sec. 65.7      Computation of Time

When computing a time period specified in either the Children's Code or an order of the Children's Court:

1.      exclude the day of the event that triggers the time period, and
2.      include the last day of the time period, but if the last day of the time period is a Saturday, Sunday, or day that the Court is closed, then the period continues to run until the next day that is not a Saturday, Sunday, or day that the Court is closed.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

Sec. 65.8      Juvenile Probation Officers

1.      The Children's Court may assign one or more adult probation officers under its authority to serve as juvenile probation officers. The Children's Court may appoint such a juvenile probation officer to any case before the court to conduct investigations prior to court hearings, to provide written or oral reports to the court, to make recommendations for disposition, and to supervise a child.

2.      Juvenile probation officers will be familiar with and abide by any applicable Pueblo of Santa Clara customs, ways, and traditions, or shall seek the guidance of a person designated by the Chief Judge of the Tribal Court on such matters.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

Sec. 65.9      Taking a Child into Protective Custody

1.      A child may be taken into protective custody by a law enforcement officer if there

exists, reasonable grounds to believe that the child is an abused or neglected child and that there is an immediate threat to the child's health or safety that can only be remedied by removal.

2. A child may be taken into protective custody by a law enforcement officer when the child has run away from the child's parent, guardian, or custodian; the child is without parental supervision and is suffering from illness or injury; the child has been abandoned; or the child is found in surroundings or conditions that endanger the child's health or welfare and removal from those surroundings is necessary to ensure the child's safety. A runaway child is presumed to be an abused or neglected child unless a law enforcement officer has filed a petition in conformity with Section 65.15 alleging that the child has committed a juvenile offense.

3. If a law enforcement officer takes a child believed to be an abused or neglected child into protective custody, he or she shall immediately deliver the child to the Department, unless the child is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, in which case the officer shall deliver the child to a medical facility and notify the Department that the child has been placed in the Department's protective custody.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.10 Place of Protective Custody

1. A child taken into protective custody shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders.

2. A child taken into protective custody shall be placed in the least restrictive setting within reasonable proximity to the child's home.

3. In the absence of good cause to the contrary, preference shall be given to the following placements, listed in order of priority:

a. a member of the child's extended family who is willing to guarantee that the child will not be returned to the child's parent, guardian, or custodian without the prior approval of the Department or the Children's Court;

b. a foster care home licensed by the Pueblo and located within the territorial jurisdiction of the Pueblo;

c. a foster care home licensed by the state and located outside the territorial jurisdiction of the Pueblo.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.11 Protective Custody Notification and Time Limits

1. A person who takes a child into protective custody shall:

a. immediately notify the child's parent, guardian, or custodian that the child has been taken into protective custody and disclose the child's location, unless there are reasonable

grounds to believe that the disclosure of the location could jeopardize the child's safety; and

b. with reasonable speed, release the child to the child's parent, guardian, or custodian and issue verbal counsel or warning, as may be appropriate.

2. If a child taken into protective custody is not released to the child's parent, guardian, or custodian within twenty-four (24) hours after being taken into protective custody, the Department or the law enforcement officer, as appropriate, shall give written notice to the child's parent, guardian, or custodian within such period of the reasons for taking the child into protective custody.

3. A child taken into protective custody shall be released to the child's parent, guardian, or custodian within seventy-two (72) hours, unless:

a. a petition has been filed in accordance with this Code; and

b. the Children's Court has issued a written order awarding legal custody of the child to a person other than the child's parent, guardian, or custodian.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.12 Emergency Custody Order

1. At the time a petition alleging either that a child is an abused or neglected child is filed or any time thereafter, the Children's Court may issue an emergency custody order upon a sworn, written statement of facts showing probable cause exists to believe that the child is an abused or neglected child and that there is an immediate threat to the child's health or safety that can only be remedied by issuing an emergency custody order.

2. Emergency custody orders issued pursuant to this section shall be valid for no longer than fifteen (15) days, provided that for good cause or upon agreement of the parties such orders can be extended one (1) time for up to fifteen (15) days.

3. Rules of evidence do not apply to the issuance of emergency custody orders. The Children's Court shall admit such evidence as it reasonably believes to be reliable and trustworthy.

4. The Children's Court shall hold a custody hearing pursuant to Section 66.3 (Custody Hearing), below, before the emergency custody order expires.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.13 Conduct of Hearings

Hearings under this Title shall be conducted as follows:

1. Hearings shall be conducted without a jury and may be conducted in an informal manner. Hearings may be continued or recessed from time to time and, in the interim, the

Children's Court may take such action and issue such orders as it deems in the best interests of the child, in accordance with the provisions of this Code. The court shall exclude the general public from these hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court.

2. The petitioner or movant shall have the burden of proof.

3. Each child, parent, guardian, or custodian who is a party to an action brought under this Title has the right to be represented by lay counsel or by a professional attorney, at his or her own expense.

4. The Children's Court may appoint a guardian-ad-litem to protect the interests of the child when it appears at any stage of the proceeding that such action is necessary, and the court believes that such an appointment is desirable.

5. Except in juvenile offender proceedings, the Children's Court may waive the presence of the child in court at any stage of the proceedings when it is in the best interest of the child to do so. In a juvenile offender proceeding, after the child is adjudicated a juvenile offender, the court may excuse the presence of the child from the hearing when it is in the best interest of the child to do so. In any proceeding, the court may temporarily excuse the presence of the parent, guardian, or custodian of the child when it is in the best interests of the child to do so. The lay counsel, professional attorney or guardian ad litem of an excused party, if any, has the right to continue to participate in any proceedings during the absence of the child, parent, guardian, or custodian.

6. The child and his or her parent, guardian, custodian are entitled to be heard, to present evidence material to the case, and to confront and cross-examine witnesses, and they shall not be deprived of the privilege against self-incrimination.

7. The Children's Court shall provide to all parties' reasonable notice of the time and location of the hearing.

8. For all hearings, the court shall admit such evidence as it reasonably believes to be reliable and trustworthy.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.14 Emergency Hearings

1. For good cause shown, or upon the Children's Court's motion, the Children's Court may hold one or more emergency hearings.

2. The timing of an emergency hearing shall be at the discretion of the Children's Court.

3. At the conclusion of an emergency hearing, the Children's Court shall issue appropriate orders in writing.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

**Sec. 65.15     Contents of a Petition filed Pursuant to the Children's Code; Who May File**

1. A petition filed pursuant to the Children's Code shall state:
  - a. the name of the petitioner;
  - b. the child's name, date of birth, and residence;
  - c. the name or names of the respondent or respondents;
  - d. the name and residence of the child's parent, guardian, or custodian;
  - e. the facts necessary to invoke the jurisdiction of the Children's Court;
  - f. the relief sought;
  - g. the facts supporting the relief sought; and
  - h. whether the child has been taken into custody, and if so, who has custody of the child.

2. If any matter required to be set forth in a petition is not known, the petitioner shall state that such matter is unknown.

3. The statements in a petition may be made upon information and belief.

4. The petition shall be verified, signed, and filed with the Tribal Court clerk, who shall place on the petition the date of filing and assign a docket number to the matter.

5. A petition alleging that a child is an abused or neglected child, a petition to terminate parental rights under this Code, and a motion for permanent guardianship under this Code may only be filed by the Department. A petition alleging that a child has committed a juvenile offense may only be filed by a law enforcement officer.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

**Sec. 65.16     Informal Resolution**

1. At any time after the initiation of proceedings under this Title and before the entry of judgment, the Children's Court may:

- a. Refer a proceeding for informal resolution in accordance with custom and tradition; and/or



b. Appoint a juvenile probation officer to confer with the initiating law enforcement officer (or his or her delegate), the child, and the child's parent, guardian, or custodian regarding alternative courses of resolution to resolve the matter informally.

2. The child and the child's parent, guardian, or custodian shall be informed their rights under Section 65.13 (Conduct of Hearings).

3. Statements made by the child and the child's parent, guardian, or custodian at a proceeding conducted pursuant to this Section shall not be used against the person who made the statement in determining the truth of the allegations in the petition.

4. If the child or the child's parent, guardian, or custodian objects to the informal resolution proposed, or chooses not to participate, the Children's Court shall proceed to an adjudicatory hearing and disposition of the case. If the initiating law enforcement officer, or his or her delegate, objects to the informal resolution, then the Children's Court shall determine in its discretion whether the matter should be informally resolved as proposed.

5. If the matter is to be informally resolved, the Children's Court may suspend the proceedings and continue the child and/or his parent, guardian, or custodian under supervision for up to twelve (12) months, or until the child and/or his parent, guardian, or custodian is released from supervision, whichever occurs first. The Children's Court shall issue a written order that sets forth the terms of the informal resolution, as appropriate.

6. If the respondent fails to abide by or fulfill the terms of the informal resolution or if a new petition under this Chapter is filed before the respondent is released from supervision under an informal resolution, the Children's Court may extend the period of the informal resolution or revoke the informal resolution and make any other disposition that would have been appropriate in the original proceeding.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.17 Child Support

If a child adjudicated to be an abused or neglected child is placed with a person other than his or her parent, and the Children's Court determines that the child's parent is financially able to pay child support, the court shall order the parent to pay the reasonable costs of support and maintenance of the child.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.18 Powers and Duties of the Department

1. Subject to funding availability, the Department shall employ caseworkers to carry out its duties under this Title.

2. The Department shall:

- a. develop, maintain, and update as needed a process to receive a report that a child is believed to be an abused or neglected child;
- b. assess the child and the child's situation to determine what immediate protective services or protective custody may be required;
- c. conduct a prompt and thorough investigation to determine if the report that a child is an abused or neglected child is substantiated;
- d. document evidence, observations, and other information obtained in the course of an investigation;
- e. file a petition to adjudicate a child as an abused or neglected child when it determines that the filing of the petition is in the best interest of the child;
- f. establish an evaluation or assessment process to conduct a pre-disposition evaluation of a child for whom a petition has been filed;
- g. develop a plan to provide the child and his or her family with, or referral to, protective services or other intervention service;
- h. ensure that the protective services or protective custody provided by or through the Department is the least restrictive setting, provided that the safety and well-being of the child is the paramount concern; and
- i. when requested by the Children's Court, prepare home studies and other reports and provide assistance to behavioral health, welfare, and other social service agencies that have primary responsibility over a matter pending before the Children's Court.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

Sec. 65.19     Confidentiality of Records Regarding Children

1.     The Department's records regarding any activities it undertakes pursuant to this Title, and any services or referrals provided, are confidential and may be viewed only by authorized representatives of the Department, law enforcement personnel, a prosecutor appointed to handle any case on behalf of the Pueblo under this Title, the parties to a case pending before the Children's Court and their attorneys.
2.     The Children's Court's records of proceedings under this Title shall be kept as follows:
  - a.     The Children's Court Judge shall keep a record of the proceedings in any manner as the judge deems necessary and proper. The Children's Court records shall include the petition, summons, notice, findings, orders, decrees, judgments and motions, and such other documents as the Children's Court Judge deems necessary and proper. The records shall be open at all reasonable times to the inspection and copying by any child to whom the records relate; his or her parent, guardian, or custodian and their attorneys; authorized representatives of the

Department; law enforcement personnel; a prosecutor appointed to handle any case on behalf of the Pueblo under this Title; and, with the permission of the Children's Court, such other persons whom the court determines have valid reasons to see the records.

b. Except as provided in the subsection 2.a. of this Section, or as required by applicable law, none of the records of the Children's Court shall be open to public inspection or their contents disclosed except by order of the court.

3. The Tribal Police records pertaining to alleged or adjudicated juvenile offenders shall be kept separate from other records and shall not be open to the public or disclosed to the public except by order of the Children's Court. The police shall not photograph or fingerprint any child taken into custody without the consent of the Children's Court.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.

#### Sec. 65.20 Appeals

1. Any party may appeal from a final order of the Children's Court to the Southwest Intertribal Court of Appeals in the manner provided by Title VII, Section 42, Rules of Appellate Procedure.

2. The appeal shall be heard by the appellate court upon the record of the Children's Court.

3. Files and records that are required to be kept confidential by this Code shall be kept confidential in the same manner by the appellate court.

Enacted by Res. No. 2019-021, May 10, 2019; approved by Sec'y April 21, 2020.