

CHAPTER 66 - CHILD ABUSE AND NEGLECT

Sec. 66.1 Duty to report; immunity; criminal penalty; civil penalty

1. Any person who has reasonable cause to believe that a child is an abused or neglected child as defined in this Title shall immediately report that information to the Department or the Tribal Police. The Tribal Police shall immediately forward any report it receives to the Department for investigation.

2. The report may be made orally or in writing, and shall include:

a. the name and address or location of the child believed to be an abused or neglected child, and the name, address or location, and phone number(s) of the child's parent, guardian, or custodian;

b. the nature and extent of the child's injuries or health deficiencies, if any; and

c. other information that might be helpful in establishing the cause of the abuse or neglect and the identity of the person responsible for the abuse or neglect.

3. Any person who makes a report pursuant to this Section, testifies in any judicial proceeding arising from that report, or provides information or documents in the course of the Department's investigation of a report, shall be immune from civil or criminal liability on account of that report, testimony, or participation in an investigation, unless the information or documentation provided is false, and the person acted in bad faith or with a malicious purpose.

4. Any Indian who knowingly fails to make a report required by this Section, or who obstructs or impedes any investigation of a report made pursuant to this Section, or who provides false information, documentation, or testimony in bad faith or with a malicious purpose is guilty of a crime and may be imprisoned up to 30 days, fined up to \$1,000.00, or both imprisoned and fined.

5. Any non-Indian subject to the jurisdiction of the Santa Clara Pueblo Tribal Court who knowingly fails to make a report required by this Section, or who obstructs or impedes any investigation of a report made pursuant to this Section, or who provides false information, documentation, or testimony in bad faith or with a malicious purpose may be subject to a civil fine of no more than \$1,000.00.

Sec. 66.2 Investigation

1. Within twenty-four (24) hours after receiving a report that a child is an abused or neglected child, the Department shall conduct a safety check on the child and any other child under the same care who may be an abused or neglected child or in danger of becoming an abused or neglected child to determine whether there are reasonable grounds to believe that the child is an abused or neglected child and whether there is an immediate threat to the child's safety. If so, the Department shall immediately notify a law enforcement officer.

2. Investigations may include interviews of the child and the child's family. Prior to interviewing a child, the Department shall notify the child's parent, guardian, or custodian, unless the Department reasonably determines that notification would adversely affect the child's safety or compromise the investigation.

3. The Department shall complete the investigation promptly, but no later than five (5) days after the date the report was received.

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

Sec. 66.3 Custody Hearing

1. Within fifteen (15) days after either: (a) the Department has filed a petition alleging that a child is an abused or neglected child and has asked for custody of the child, or (b) a child alleged to be an abused or neglected child has been taken into custody pursuant to an emergency order, whichever occurs later, the Children's Court shall hold a custody hearing to determine if the child should be placed or remain in the Department's custody.

2. Upon the written motion of the parent, guardian, or custodian of a child who is in the Department's protective custody, the hearing may be held sooner.

3. At the custody hearing, the Children's Court shall release the child to his or her parent, guardian, or custodian unless probable cause exists to believe that:

a. the child is suffering from an illness or injury, and the parent, guardian, or custodian is not providing adequate care for the child;

b. the child is in immediate danger from his or her surroundings and removal from those surroundings is necessary for the child's health or safety;

c. the child will be subject to injury by others if not placed in the legal custody of the Department;

d. the child has been abandoned; or

e. the parent, guardian, or custodian is not able or willing to provide adequate supervision and care for the child.

4. If the Children's Court determines that probable cause exists pursuant to subsection 3 of this Section, then the Children's Court:

a. may

(i) return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services, or

(ii) award legal custody of the child to the Department, provided that the Department shall place the child in accordance with the preferences set forth at Sec. 66.10(3) (Place of Protective Custody); and

b. shall order the Department to make reasonable efforts to preserve and unify the family, provided that the Department's paramount concern shall be the safety and well-being of the child.

5. If the Children's Court determines that probable cause does not exist pursuant to subsection 3 of this Section, then the Children's Court shall return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child pending the resolution of the petition.

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

Sec. 66.4 Adjudicatory Hearing on Petition

1. The Children's Court shall hold an adjudicatory hearing on a petition within thirty (30) days after it was filed, provided that the court may extend the time period once by thirty (30) days for good cause.

2. If at the conclusion of the presentation of evidence, the Children's Court does not find by clear and convincing evidence that the child is an abused or neglected child, then the court shall dismiss the petition with prejudice, provided, however, that if the court determines by a preponderance of the evidence that further investigation is warranted, the court may continue the adjudicatory hearing once by thirty (30) days to allow for such investigation.

3. If the Children's Court finds by clear and convincing evidence that a child is an abused or neglected child, the court shall either proceed immediately to a disposition of the case, or schedule a disposition hearing to be held, in accordance with Section 66.7, below.

4. If the Children's Court opts to schedule a disposition hearing rather than proceed immediately to a disposition of the case, it shall:

a. require the Department to file a pre-disposition report and proposed case plan at least five (5) days prior to the disposition hearing;

b. either

(i) return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services, or

(ii) award legal custody of the child to the Department; and

c. order the Department to make reasonable efforts to preserve and unify the family, provided that the Department's paramount concern shall be the safety and well-being of the child.

5. An order finding that a child is an abused or neglected child is a final order for purposes of appeal.

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

Sec. 66.5 Pre-disposition Report

The Department shall prepare a pre-disposition report and shall file it with the court at least five (5) days prior to the disposition hearing or disposition review hearing. A pre-disposition report shall:

1. describe all efforts to provide remedial services designed to prevent the breakup of the family;
2. include statements regarding:
 - a. the Department's specific reason(s) for intervention;
 - b. the interaction of the child with his or her parents, guardians, or custodians, siblings, and other family members;
 - c. the child's adjustment and attachment to his or her home, school, community, and the Pueblo;
 - d. the wishes of the child as to his or her disposition or a statement that the child is unable to articulate his or her wishes;
 - e. the wishes of the child's parents, guardians, or custodians as to the child's disposition;
 - f. a description of the home where the child is placed and the appropriateness of the placement;
 - g. whether there is a member of the child's extended family or other person who may be qualified to receive and care for the child; and
 - h. the mental and physical health of the child and the respondent.
3. For pre-disposition reports prepared for disposition review hearings, each report shall also contain statements regarding:
 - a. the Department's reasonable efforts to implement the case plan approved by the court;

b. respondent's progress toward eliminating the cause or causes of the child being adjudicated an abused or neglected child; and

c. respondent's efforts toward maintaining contact with the child and whether those efforts were diligent and made in good faith.

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

Sec. 66.6 Proposed Case Plan

The Department shall prepare proposed case plan and shall file it with the Children's Court at least five (5) days before the disposition hearing or disposition review hearing. The proposed case plan shall:

1. identify steps to ensure that the child's physical, medical, psychological, and educational needs are met;
2. identify steps needed to facilitate permanent placement of the child in the parent, guardian, or custodian's home; and
3. designate a party responsible for each of the steps identified and a time frame for completing the steps.

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

Sec. 66.7 Disposition Hearing

1. If not held in conjunction with the adjudicatory hearing at which the child was found to be an abused or neglected child, the Children's Court shall hold a disposition hearing within 30 days after the adjudicatory hearing. At the conclusion of the initial disposition hearing and any disposition review hearing, the Children's Court shall prepare a written disposition order that contains findings regarding the applicable matters set forth at Sec.66.5, above, and the provisions required by this Section.

2. The Children's Court shall make any of the following dispositions to protect the child:

a. return the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services, or

b. transfer legal custody of the child in accordance with the preferences set forth at Sec. 65.10(3), above, subject to those conditions and limitations that the Children's Court prescribes, including protective supervision.

3. The disposition order shall also:

a. order the Department to implement and the respondent to cooperate with a case plan approved by the court;

b. order the Department to provide reasonable efforts to provide remedial services designed to prevent the breakup of the family;

c. in the event that the child is placed with a person other than the child's parent, guardian, or custodian, provide the child's parent, guardian, or custodian with reasonable rights of visitation with the child, unless the court determines that visitation would not be in the best interest of the child.

4. A disposition order is a final order for purposes of appeal.

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

Sec. 66.8 Limitations on Disposition Orders

1. A disposition order vesting legal custody of a child in a person other than the child's parent, guardian, or custodian shall remain in effect for two (2) years from the date it is entered, unless sooner terminated by order of the Children's Court.

2. A disposition order vesting legal custody of a child in the child's parent, guardian, or custodian shall remain in effect for an indeterminate period from the date it is entered until terminated by order of the Children's Court or until the child is emancipated or reaches the age of eighteen (18) years.

3. At any time prior to its expiration, a disposition order may be modified, revoked, or extended on motion by a party, provided that a disposition order vesting legal custody of child in a person other than the child's parent, guardian, or custodian may be extended only upon a showing that the extension is necessary to protect the child and then only for one (1) additional year.

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

Sec. 66.9 Disposition Review Hearings

1. The Children's Court shall hold a disposition review hearing within six (6) months after the disposition hearing, and thereafter, shall hold a disposition review hearing every six (6) months until the child is permanently placed.

2. At the conclusion of the disposition review hearing, the Children's Court shall prepare a written disposition order that contains findings regarding the matters set forth at Sec. 66.7(1), above, and the provisions required by this Section.

3. If the Children's Court finds that the conditions in the home that led to the child being adjudicated an abused or neglected child have been corrected and it is safe for the child to return to or remain in the home, the court shall dismiss the action and return the child to or allow the child to remain with the parent, guardian, or custodian without protective supervision.

4. If the Children's Court finds that the conditions in the home that led to the child being adjudicated an abused or neglected child have not been corrected, the court shall issue a disposition order in accordance with Sections 66.7 and 66.8, above.

5. The Children's Court shall make supplemental orders as necessary to ensure the compliance with the case plan and the child's safety.

6. If during a disposition review hearing the Children's Court determines that the Department, the respondent, or both have failed to implement or comply with any material provision of the case plan, the court may order:

a. the appropriate party or parties to show cause why it should not be held in contempt;

b. the child to be returned to his or her parent, guardian, or custodian;

c. the Department to file a motion to terminate the parent's, guardian's, or custodian's rights regarding the child; and/or

d. the case to be dismissed.

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

Sec. 66.10 Pre-permanency Planning

1. The parties shall meet at least ten (10) days prior the initial permanency hearing to attempt to develop a proposed permanency plan that serves the best interest of the child.

2. The Department shall file a notice with the Children's Court that the pre-permanency meeting occurred and whether an agreement was reached. If the parties reached an agreement, the Department shall attach a copy of the proposed permanency plan to the notice.

3. A proposed permanency plan shall include a description of the following:

a. the Department's reasonable efforts to provide remedial services to prevent the breakup of the family;

b. the location and type of environment where the child is placed and the location and type of environment where the parties propose to place the child;

c. the propriety of the intended placement and of the services to be provided to meet the needs of the child and the family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child, or if the services are available, why such services are not appropriate;

d. the date by which it is likely that the child will be returned home or otherwise permanently placed;

e. the steps needed to ensure that the child's physical, cultural, medical, psychological, and educational needs will be met after permanent placement, including identification of the party responsible for each step identified and a time frame for completing each step; and

f. identify an alternative permanency plan that could be implemented in the event that the primary permanency plan cannot be realized.

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

Sec. 66.11 Permanency Hearing

1. A permanency hearing shall be held within twelve (12) months after the petition was filed. For good cause, the Children's Court may extend the time for the commencement of a permanency hearing up to two times, for no more than three (3) months at a time. The permanency hearing may be held in conjunction with a disposition review hearing.

2. There shall be a rebuttable presumption that a child's best interest will be served by remaining with or returning to the child's parent, guardian, or custodian.

3. At the conclusion of the permanency hearing, the Children's Court shall issue a written permanency plan in accordance with this Section.

4. The permanency plan shall include the following findings:

a. whether the Department has made reasonable efforts to provide remedial services to prevent the breakup of the family;

b. the location and type of environment where the child is placed and the location and type of environment where the parties propose to place the child; and

c. the propriety of the intended placement and of the services to be provided to meet the needs of the child and the family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child, or if the services are available, why such services are not appropriate.

5. The permanency plan:

a. shall:

i. identify a date by which it is likely that the child will be returned home or otherwise permanently placed;

ii. order steps to be taken to ensure the child's physical, cultural, medical, psychological, and educational needs will be met after permanent placement, including identification of the party responsible for each step identified and a time frame for completing each step; and

iii.set a permanency review hearing.

b. may identify an alternative permanency plan that could be implemented in the event that the primary permanency plan cannot be realized.

6. A permanency plan is a final order for purposes of appeal.

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

Sec. 66.12 Permanency Review Hearings

1. The Children's Court shall hold one or more permanency hearings to monitor the implementation of the permanency plan.

2. The timing of permanency review hearings shall be at the discretion of the Children's Court and may be held in conjunction with disposition review hearings.

3. At the conclusion of every permanency hearing, the Children's Court shall issue appropriate orders, including, but not limited to:

a. returning the child to or permit the child to remain with his or her parent, guardian, or custodian under such conditions that will reasonably ensure the safety and well-being of the child, including protective supervision and/or protective services;

b. changing the permanency plan from reunification to provide for adoption of the child, emancipation of the child, permanent guardianship for the child, or long-term foster care for the child;

c. discharge the case upon a finding that the permanency plan has been fulfilled;
and/or

d. setting another permanency hearing.

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