# WAGANAKISING ODAWAK STATUTE 2006-018

# CHILD PROTECTION STATUTE

## SECTION I CHILDREN'S COURT DIVISION

A. While proceeding under this Statute, the Court shall be termed the Children's Court Division of the Little Traverse Bay Bands of Odawa Indians Tribal Court.

B. The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

C. This Statute repeals and replaces the previous Child Welfare Code, being Waganakising Odawak Statute 1998016, as amended.

## SECTION II PURPOSE

A. Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity as Odawak will help them grow into strong, healthy responsible adult Tribal Citizens.

B. The purpose of this Statute is to ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children when necessary for their care. Specifically:

1. The Court shall protect the rights and interests of its young by proceeding with a course of action that will provide for the welfare, care and protection of its Children and their Families;

2. To preserve the unity of the family by separating the children from their parents and siblings, only as a course of last resort;

3. To take action that will best meet the spiritual, emotional, mental, and physical needs of the Children, and preserve the interest and culture of the Tribe;

4. To recognize and acknowledge the Tribal customs and practices of;

5. To preserve and strengthen children's cultural ethnic identity whenever possible;

6. To provide procedures for intervention in state court proceedings involving Indian children and for the transfer of jurisdiction over Indian children from state and other Indian courts to the

6. To provide procedures for intervention in state court proceedings involving Indian children and for the transfer of jurisdiction over Indian children from state and other Indian courts to the Little Traverse Bay Bands of Odawa Indians Tribal Court;

7. To secure the rights of and ensure fairness to the children, their parents, guardians, custodians, extended family members, and other parties who come before this Court under the provisions of this Statute;

8. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community based alternatives; and

9. To transfer appropriate cases to any traditional or alternative dispute resolution body created by the Tribe.

## SECTION III CHARACTER INVESTIGATIONS

Pursuant to the Indian Child Protection and Family Prevention Act, 25 U.S.C. Chapter 34 Section 3207, Tribal employees or prospective employees whose duties involve regular contact with, or control over, Indian children must meet minimum standards for such employment. The Tribe shall conduct an investigation of the character of each individual so employed or under consideration for such employment. The Tribe shall not employ individuals in such positions if they have been convicted of any offense under Federal, State, or Tribal law involving crimes of sexual assault, molestation, exploitation, or prostitution. If an individual has a conviction involving violence, the Tribe shall not employ that person unless the person has been certified as rehabilitated by the Tribal Court.

## SECTION IV DEFINITIONS

For the purposes of this Statute only, the words and phrases shall have the meanings delineated below. The plural encompasses the singular, and the singular encompasses the plural wherever appropriate.

A. "Abandon" When the parent leaves a child without communication or fails to support the child and there is no indication of the parent's willingness to assume their parental role for a period exceeding six (6) months.

B. "Adult" A person eighteen (18) years of age or older or other wise emancipated by order of a Court of competent jurisdiction.

C. "Active Efforts" Exhaustive proactive assistance to parents, guardians and custodians in developing and completing service goals.

D. "Best Interests of the Child" As used in this statute, means the sum total of the following factors to be considered, evaluated, and determined by the Court:

1. The love, affection, and other emotional ties existing between the parties involved and the child;

2. The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any;

3. The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of the Tribe in place of medical care, and other material needs;

4. The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity;

5. The permanence, as a family unit, of the existing or proposed custodial home or homes;

6. The moral fitness of the parties involved;

7. The mental and physical health of the parties involved;

8. The home, school, and community record of the child;

9. The reasonable preference of the child, if the Court considers the child to be of sufficient age to express preference;

10. The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents;

11. Domestic violence, regardless of whether the violence was directed against or witnessed by the child; and

12. Any other factor considered by the Court to be relevant.

E. "Child" Any unmarried person who is less than eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the Court.

F. "Child born out of wedlock" A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

G. "Child in need of care" A child:

1. Who has no parent, guardian or custodian available and willing to care for him/her;

2. Who has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a risk of death, disfigurement, or impairment of bodily function;

3. Whose parent, guardian or custodian has not, for reasons other than poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his/her health and well being. The fact that one of the parents, guardian or custodian is providing adequate food, clothing, shelter, medical care, education, or supervision necessary for the health and well-being of a child, does not excuse the neglect of the offending parent, guardian or custodian;

4. Who has been sexually abused or exploited by a parent, guardian or custodian either intentionally, or negligently;

5. Whose parent had the opportunity to prevent physical injury or physical or sexual abuse, failed to do so;

6. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;

7. Who has been emotionally and/or psychologically abused or neglected;

8. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child;

9. Whose parents are separated and no court of competent jurisdiction has issued a temporary custody and support order;

10. Whose parent has been convicted of a violent or criminal sexual crime against the other parent or a sibling of the child;

11. Whose parent has been convicted of a crime of a nature that demonstrates the parent's unfitness to adequately parent the child;

12. Who has a parent whose parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse;

13. Who is found under conditions that would support grounds for involuntary termination of parental rights found in Section 5.123 B;

14. Who is a court ward less than twenty years of age, in foster care, and who is a full time high school student or actively pursuing a GED.

15. Who is exposed to an environment where adults are manufacturing, selling, or using a controlled substance or hazardous materials.

H. "Child Welfare Commission" A Commission created by Tribal Statute and appointed by the Tribal Council to protect and promote the welfare of Tribal children and families.

I. "Children's Court" The Little Traverse Bay Bands of Odawa Indians Tribal Court, when exercising jurisdiction under this Statute, abbreviated in this Statute as "the Court."

J. "Children's Court Judge" Any duly appointed judge of the Little Traverse Bay Bands of Odawa Indians Tribal Court when exercising jurisdiction under this Statute.

K. "Commit" Means to transfer legal custody.

L. "Controlled Substance" Any substance defined or described as such in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as amended.

M. "Custodian" A person, other than a parent or guardian, to whom legal custody of a child has been given by a court of competent jurisdiction.

N. "Domicile" A person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent, guardian or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers being his/her permanent home.

O. "Extended Family" A person who is the child's grandparent, great aunt or uncle, aunt or uncle, brother or sister, step-brother or step-sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step parent, or other individual considered part of the child's extended family by Tribal tradition and custom.

P. "Family Services Coordinating Team" A case specific team established by Tribal Social Services to involve and coordinate the child protection services of various service providers as set forth in Section IX of this Statute.

Q. "Father" Means:

1. A man married to the mother at any time from a child's conception to the child's birth unless the child is determined not to be an issue of the marriage;

2. A man who legally adopts the child, or;

3. A man whose paternity is established in one of the following ways within time limits when applicable set by the Court pursuant to this Statute:

a. The man and the mother of the child acknowledge that he is the child's father in a writing executed and notarized and filed in the Court.

b. The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth;

c. The man acknowledges the child, without the acknowledgment of the mother, with the approval of the Court; or

d. A man who by order of filiations or by judgment of paternity is determined to be the father of the child.

R. "Guardian" A person other than a parent assigned by a court of competent jurisdiction to exercise the duty and authority to provide care, and control of a child.

S. "Hazardous materials" are substances, natural or man-made, which are intrinsically dangerous or otherwise pose a safety hazard. Examples are materials which are explosive, poisonous, chemically active (including acids and other corrosives), radioactive, or biologically active (including human blood and other medical waste).

T. "Indian" Any enrolled or eligible citizen of a federally recognized Indian Tribe, band or community, or Alaskan Native, and/or any person so defined by Tribal, federal or state law.

U. "Indian Child" Any child who is a citizen of a federally recognized tribe, historic tribe or a child that is considered by the community to be a North American Indian.

V."Least Restrictive Alternative" The placement alternative which is the least restrictive method, in terms of restrictions to be placed upon the child and family, or obtaining the objectives of the Court and this Statute.

W."Parent" A person who is legally responsible for the control and care of the child including a mother, father, guardian or custodian, including a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established

X. "Parental Rights and Duties" Legal rights which include rights, responsibilities, duties and obligations between the parent and the child including, but not limited to:

1. Care, custody, maintenance, health and protection. A child has a right to call upon the parent to exercise those duties;

2. Advise the child. Law presumes that advice is given in good faith and in the best interest of the child;

3. Right to discipline. Parents may use discipline that is reasonable;

4. Control of education. Parents may choose where the child attends school;

5. Religious training. The religious training of the child, or lack of it, is a matter solely within the parent's control;

6. The right to a child's services and earnings. Parents have the fiduciary responsibility to act in good faith and in the best interest of the child; and

7. The right to direct the child's activities and make decisions regarding the child's care and control, education, health and religion.

Y. "Presenting Officer" The person appointed by the Tribal Council to represent the Tribe in matters before the Children's Court.

Z. "Protective Services Worker" The protective service worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities as set forth in Section VIII of this Statute [WOTC 5.108].

AA. "Reservation" All lands within the boundaries of the reservations for Little Traverse as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse reservation by the Department of the Interior.

BB. "Tribal Child" a person who is less than eighteen (18) years of age, has not been emancipated by a court of competent jurisdiction, and is either (1) a Tribal citizen or (2) eligible for citizenship in the Tribe.

CC. "Tribal Council" The Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

DD. "Tribal Court" The Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

EE. "Tribal Social Services" The Department of the Tribe which provides social services to the citizenship and residents of the Little Traverse Bay Bands of Odawa Indians' reservation.

FF. "Tribe" or "Tribal" The Little Traverse Bay Bands of Odawa Indians (LTBB).

## SECTION V JURISDICTION

A. Jurisdiction of the Children's Court Division except as provided herein, the Children's Court Division of the Tribal Court shall have jurisdiction over the following persons in cases where it is alleged that a child is in need of care:

1. Any Tribal child who is found or resides within the exterior boundaries of the Reservation;

2. Any child transferred to Tribal Court pursuant to the Indian Child Welfare Act, 25 U.S.C. Section 1901-1963;

3. Any child residing within Tribal Trust Lands;

4. Any person residing within Tribal Trust Lands who is pregnant and abusing alcohol or controlled substances;

5. Any Tribal citizen who resides within the exterior boundaries of the Reservation and who is pregnant and abusing alcohol or controlled substances; or

6. Any person who is alleged to have caused any child, subject to this Court's jurisdiction, to become a child-in-need-of-care.

B. Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by the Court.

C. Jurisdictional Procedures.

1. Child found or residing within Trust Lands. When a Tribal child is found or resides within Tribal Trust Lands, Tribal original and exclusive jurisdiction to protect the child and family, and implement proceedings under this Statute if necessary, through its Tribal Social Services Department, Law Enforcement Department and Tribal Court.

2. Child found or residing on the Tribal Reservation outside of Trust Lands. The Tribe shall use its best efforts to develop protocols with appropriate Michigan state and local agencies to involve Tribal Social Services and Law Enforcement in the initial stages of investigation and provision of services when a child is found or resides within the Tribal Reservation outside of Trust Lands. The Tribe shall also use its best efforts to develop protocols with the Michigan courts of all foster care proceedings (as defined in the Indian Child Welfare Act, 25 USC 1903) involving such children. Since Tribal jurisdiction is exclusive within the exterior boundaries of the Reservation, the Tribal Court must accept transfer of all such cases

## SECTION VI TRANSFER OF JURISDICTION

A. Application of the Indian Child Welfare Act. The Children's Court Division may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this Statute. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court Division except where specifically provided for in this Statute.

B. Transfer to State or Other Indian Court. In any proceeding before the Children's Court, the Court may transfer the proceedings to an appropriate state Court, or another Indian Court where the state or the other Indian Court has a significant interest in the child, and the transfer would be in the best interest of the child.

C. Transfer from Other Courts. The Children's Court may accept or decline, under the procedures set forth in this Statute, transfers of child welfare cases from federal, state or other Indian Courts.

D. Procedures for Intervention and Transfer from State Courts.

1. Receipt of Notice: The Tribal agency for service of notice of state court child custody

proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Social Services Department.

2. Intervention: If the notice involves a child who is a citizen, or eligible for citizenship in the Tribe, the Tribal Presenting Officer or Tribal Attorney shall forthwith file a notice of intervention, or a motion to intervene if necessary, with the state court.

3. Investigation and Pre-Transfer Report: The Tribal Social Services Department shall conduct an investigation and file a written report with recommendations to the Child Welfare Commission.

4. Decision to Transfer: The Child Welfare Commission shall determine whether the Tribe should petition for a transfer of proceedings from the state Court, or not. The Child Welfare Commission in their determination shall consider these factors:

a. The best interest of the child;

b. The best interest of the Tribe;

c. Availability of services for the children and their family; and

d. The prospects for permanent placement for the children.

5. Petition for Transfer: Upon receipt of the determination from the Child Welfare Commission the Presenting Officer or Tribal Attorney shall forthwith file a Petition to Transfer in the state court and file a copy of the petition in Tribal Court.

6. Acceptance of Transfer: The Children's Court has discretion whether to accept or deny the transfer of cases arising outside of the exterior boundaries of the reservation.

7. Hearing/s: Upon the receipt of the transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Statute.

E. Recognition of Foreign Court Orders.

1. State Court Orders: State child custody orders involving children over whom the Children's Court could take jurisdiction may be recognized by the Children's Court only after a full independent review of the state court proceedings leads to the following findings:

a. The state court had jurisdiction over the child;

b. The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed;

c. Due process was provided to all interested persons participating in the state proceeding; and

d. The state court proceeding does not violate the public policies, customs, or common law of the Tribe.

2. Court Orders of other Tribal Courts: Court order of other Tribal courts involving children over whom the Children's Court may take jurisdiction shall be recognized by the Court has determined:

a. That the other Tribal Court exercised proper subject matter jurisdiction over the parties; and

b. Due process was accorded to all interested parties participating in the other Tribal Court proceeding.

## SECTION VII PROCEDURES AND AUTHORIZATIONS

A. Rules of procedure. The procedures in the Children's Court shall be governed by the rules of procedure for the Tribal Court which is not in conflict with this Statute.

B. Cooperation and Grants. The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program/s and to receive grants in aid to carry out the purposes of this Statute. This authority is subject to the approval of the Tribal Council, if it involves the expenditure of Tribal funds.

C. Social Services. The Children's Court shall utilize social services as may be furnished by any tribal, federal, or state agency provided that such services are economically administered without unnecessary duplication and expense.

## SECTION VIII CHILDREN'S COURT PERSONNEL

A. Guardian Ad Litem. At any stage of the proceedings conducted under this Statute, the Children's Court may appoint a lawyer or advocate as guardian ad litem, for the child.

1. Role of the Guardian Ad Litem. The duty of the guardian *ad litem* is to represent the interests of the child.

2. Duties of the Guardian Ad Litem. The guardian ad litem shall perform the following duties:

a. Appear at all hearings to competently represent the interests of the child in proceedings

before the Court;

b. Conduct an independent investigation, including interviewing the child, parents, social workers, school personnel, care providers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is in-need-of-care within the jurisdiction of the Court;

c. Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;

d. Provide a written report of findings and recommendations to the Court at each hearing held before the Court;

e. Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his or her family;

f. Monitor implementation of case plans and disposition orders to determine whether services ordered by the Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;

g. Inform the Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes,

h. Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter;

i. Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services;

j. Advocate for the interests of the child in mental health, educational, juvenile justice, and other community systems when related to the circumstances causing the child to come within the jurisdiction of the Children's Court; and

k. Attend training programs as recommended and provided by the Court or the Indian Child Welfare Committee.

1. Confidentiality. All records, information, and reports prepared, acquired or received or reviewed by Guardians ad litem are confidential and shall only be disclosed or dispersed pursuant to this Statute or the Tribal law.

B. Court Appointed Attorney for a Parent. At any stage of the proceedings conducted under this Statute, the Children's Court may appoint a lawyer or advocate for a parent if the interests of justice require.

## SECTION IX PROTECTIVE SERVICE WORKERS

A. Powers and duties of protective service workers. A protective service worker shall:

1. Receive from any source, oral or written, information regarding a child who may be a child in need of care.

2. Upon receipt of any report or information under subsection (1), within twenty four (24) hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and course of any condition which is contrary to the child's best interest and the name, age, and condition of other children in the home.

3. In conducting the investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within twenty four (24) hours after becoming aware that one or more of the following conditions exist:

a. Abuse or neglect is the suspected cause of a child's death;

b. The child is the victim of suspected sexual abuse or sexual exploitation;

c. Abuse or neglect resulting in severe physical injury to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well being of a child;

d. Law enforcement intervention is necessary for the protection of the child, the protective service worker, or another person involved in the investigation or

e. The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

4. Schools and other institutions shall cooperate with social services department during an investigation of a report of child abuse or neglect. Pursuant to Section 552a of title 5, the Family Educational Rights and Privacy Act of 1974 (20 U.S. C. 1232g):

**a.** Examinations and Interviews. Photographs, medical examinations, psychological examinations, and interviews of an Indian child alleged to have been subject to abuse or neglect in Indian country shall be allowed without parental consent if Tribal child protective services or Tribal law enforcement officials have reason to believe the child has been subject to abuse.

**b.** Interviews by Law Enforcement and Child Protective Officials. In any case in which officials of the Tribal law enforcement agency or Tribal child protective services agency have reason to believe that an Indian child has been subject to abuse or neglect in Indian country, the officials of those agencies shall be allowed to interview the child without first obtaining the consent of the parent, guardian, or legal custodian. The parent, guardian, or legal custodian shall be provided notice of the contact with the child as soon as reasonably possible.

**c.** Protection of Child. Examinations and interviews of a child who may have been the subject of abuse shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child and, where time permits, shall be conducted with the advice, or under the guidance, of a Tribal or inter-agency multidisplinary team.

d. Cooperation; Information Sharing. All tribal departments, agencies and programs shall cooperate with Tribal social services in investigations of a report of child abuse or neglect. This includes the sharing of information without the need of signed releases for the development of case service plans and monitoring compliance with such plans.

5. Take a child into temporary custody if necessary pursuant to Section XI [WOTC 5.111]. Law enforcement officials shall cooperate with protective services personnel to remove a child from the custody of his parents, guardian or custodian when necessary.

6. After investigation, evaluate and assess the home environment of the children in the home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent.

7. Substantiate whether there is probable cause to believe that the child is a child in need of care.

8. Offer to the family of any child found to be a child in need of care, appropriate services which may include, but shall not be restricted to, prevention services, and document such offer/s.

9. Within thirty (30) days after a referral of a potential child in need of care, submit a written report of his/her investigation and evaluation which shall be included in the records maintained by the protective services division of the Tribal Social Services Department and shall include a

determination as to whether the report is substantiated or unsubstantiated. Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

B. Cooperation from Law Enforcement. Law enforcement officials shall cooperate with the protective services worker and the Tribal Social Services Department in conducting investigations pursuant to this Section.

C. Limitations of Authority; Duty to Inform. Before offering protective services to a family, a worker shall inform the family that he/she has no legal authority to compel the family to receive such services. If the family declines the offered services, the worker may request authorization to initiate a child protection petition in the Children's Court. Nothing in this Section limits the authority of the protective services worker to act in emergency situations pursuant to Section XI [WOTC 5.111] or to obtain a medical evaluation of the child pursuant to Section XXIV [WOTC 5.124].

## SECTION X FAMILY SERVICES COORDINATING TEAM

The Family Services Coordinating Team is designed to promote cooperation, communication and consistency among service providers and monitor progress with the case service plan. The Family Services Coordinating Team shall assist the family to comply with the requirements of the case service plan. All team shall maintain confidentiality.

The Tribal Social Services Director shall be responsible for convening a family services coordinating team. The Family Services Coordinating Team shall consist of all involved services providers. The team shall share case service information and collaborate on ensuring active efforts are undertaken to assist the family in complying with the case service plan. All team citizens shall maintain confidentiality.

A. Team Citizenship. The Family Services Coordinating Team shall consist of the Tribal Protective Services Worker, and a representative from the Tribal Law Enforcement Department. The Team may request the assistance of any other person in carrying out its responsibilities, such as persons with knowledge and experience in the following matters: medical/health, mental health, substance abuse, social services, law enforcement, and protective services. The Team may request the assistance of any person in carrying out its responsibilities.

## SECTION XI DUTY TO REPORT CHILD ABUSE AND NEGLECT

A. General Duty to Report. Any person who has a reasonable cause to suspect that a child is being abused or neglected shall immediately make a report to the Protective Services Division of Tribal Social Services or to the Tribal Law Enforcement Department. Any person so reporting may remain anonymous, unless such person is in a category listed in subsection (B) below.

B. Specific Duty to Report.

1. A physician, coroner, dentist, medical examiner, nurse, a person licensed to provide emergency medical care, community health representative, audiologist, psychologist, family therapist, certified social worker, social worker, social work technician, substance abuse counselor, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider who has reasonable cause to suspect that a child may be a child in need of care shall immediately make by phone or otherwise an oral report, or cause an oral report to be made, of the suspected condition to the Tribal Protective Services Division, or Law Enforcement Department.

2. Within seventy two (72) hours after making an oral report the reporting person shall file a written report. If the reporting person is a citizen of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of said entity of his finding and that the report has been made and shall make a copy of the written report available to the person in charge. One report from a hospital, agency or school shall be considered adequate to meet the reporting requirement. A citizen of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this Section or for cooperating in an investigation.

3. The Protective Services Division shall provide to any person making a report pursuant to subsection "B" above within sixty (60) days of its receipt the Division's determination of the report as founded or unfounded.

C. Immunity from Liability. All persons or agencies complying in good faith with the provisions of this Section shall be immune from civil liability and criminal prosecution.

D. Abrogation of Privilege. Any legally recognized privileged communication, except that between attorney and client, is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Section.

E. Penalty for not Reporting. Any person mandated to report under subsection "b" above who knowingly fails to do so or willingly prevent someone else from doing so shall be subject to a charge of civil contempt with a civil forfeiture of up to $5,000.00.

F. Abuse and Neglect Reports. Persons mandated to report under this Section shall include the following information in their written report:

1. Names, addresses, and tribal affiliation of the child and his/ her parents, guardian or custodian;

2. The children's age;

3. The nature and content of the child's abuse or neglect;

4. Previous abuse or neglect of the child and/or siblings;

5. Name and address of the person alleged to be responsible for the child's abuse or neglect; and

6. Name and address of the person or agency making the report.

G. Medical Examinations. The Protective Services Division may request a Court order for a medical evaluation of a child pursuant to Section XXIV [WOTC 5.124] of this Statute. The Division shall have a medical evaluation done without a Court order if the child's health is seriously endangered and a Court order cannot be obtained.

1. When a child suspected of being a child in need of care is seen by a physician, the physician shall make the necessary examinations which may include physical examinations, X-rays, photographs, laboratory studies, and other pertinent studies.

2. The physician shall immediately report the results of the evaluation to the Protective Services Division, Law Enforcement and the Court, if requested to do so. The physician's written report to the Division shall contain a summary of the evaluation.

## SECTION XII INVESTIGATION AND EMERGENCY REMOVAL

A. Investigative Orders; Orders for examination. Upon a showing of probable cause to believe that a child is a child in need of care, which may be done *ex parte*, the Court may order further investigation and discovery, including but not limited to taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, by a physician, dentist, psychologist, or psychiatrist.

B. Authority to Remove. Upon application by any person which may be *ex parte*, if the Court finds probable cause to believe the child is a child in need of care and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well being the Court may order the child be taken into custody. The Court may include in such an order:

1. An authorization to enter specified premises to remove the child; and

2. A directive to place the child in protective custody pending a preliminary hearing.

C. Emergency Removal without a Court Order. A child may be taken into protective custody without a Court order by a law enforcement officer or the Tribe's protective services worker if such person has probable cause to believe the child is a child in need of care, and

1. Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm; or

2. The parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his/her own basic necessities of life, and no satisfactory arrangements have been made by the parents, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

## SECTION XIII NOTICE OF REMOVAL

A. Notice to the Children's Court. After a child is removed from his/her home the person who removed the child shall attempt to contact the Children's Court within six (6) hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made by the removing person, no later then 12:00 PM of the next working day.

B. Notice to the Parent, Guardian or Custodian. The person removing the child shall make reasonable efforts to notify the parents, guardian or custodian, within 12 hours of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to citizens of the extended family of the parent, guardian or custodian and/or the extended family of the child. Said notice shall advise the parent, guardian or custodian of their rights under this Statute.

C. Notice to Indian child's tribe if different from LTBB jurisdiction. If the Children's Court asserts jurisdiction over a person who is a citizen of an Indian tribe other than the Little Traverse Bay Bands of Odawa Indians, the Tribal Court shall notify the Indian court of its child that jurisdiction has been asserted.

## SECTION XIV PLACEMENT OF CHILDREN

A. Placement Priorities. A child may be placed in the following community based shelter facilities listed in order of preference:

1. Citizens of the child's Tribal extended family;

2. Citizens of the child's non-Tribal extended family;

3. An Indian family of the same tribe as the child, which is approved by the Commission or an Indian family otherwise authorized by law to provide care for the child;

4. A facility operated by a licensed child welfare services agency or an Indian tribal facility; or

5. Any other suitable placement which meets the standards for shelter care facilities established by the Tribe.

## SECTION XV DELEGATIONS OF PARENTAL AUTHORITY

A. Power of Attorney. A parent, legal custodian, or by a properly executed power of attorney, may delegate any powers of a parent regarding the care, custody and property of a minor child to another person. Said powers include but are not limited to the following: the consent to admission to a hospital or school, consent to secure routine dental care, non-surgical medical care and emergency dental, medical or surgical treatment. The delegation does not include power to consent to marriage, non-emergency elective surgery or adoption. The delegation shall be valid for six (6) months from the date of execution and may be revoked in writing, at anytime by the person or agency delegating the power. A person acting under a power of attorney may be referred to as an "attorney in fact", "agent" or "power of attorney." The delegation is renewable upon the re-execution of the document.

B. Limited Guardianship.

1. Establishment. The Court may establish a limited guardianship for good cause shown, upon petition of the custodial parent(s) only, under such terms and conditions as the Court sets forth in the written order. A limited guardianship may be terminated if the Court determines that it is in the best interest of the child to change custody from the limited guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent and the child's extended family shall be granted visitation rights unless deemed inappropriate by the Court. A limited guardianship shall be established by parental consent only, and may be revoked by the Court upon parental request.

2. Visitation. The parent and the child's extended family shall be granted visitation rights unless deemed inappropriate by the Court.

3. Termination. Only the custodial parent(s) may file a petition for termination of a limited guardianship, which shall be granted within one year. However, the Court must make an inquiry into whether the cause(s) for establishing the limited guardianship have been mitigated and the child returned to the custodial parent(s) or alternative placement.

C. Full Guardianship.

3. Purpose. The Children's Court, when it appears necessary or convenient, may appoint guardians for the persons under the Court's jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall be responsible for the care, custody and education of the child until such child arrives at the age of eighteen (18) years, dies, is emancipated by the Court, or until the guardian is legally discharged.

4. Grounds. The Court may appoint a guardian for a child is either of the following circumstances exists:

a. Parental rights of both parents or of the surviving parent, have been terminated or suspended by prior Court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetence, by disappearance, abandonment, or by confinement in a place of detention; or

b. The appointment is necessary for the immediate physical well being of the child.

3. Who may file. Any person, including Tribal Social Services and mental health services may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if ay least fourteen (14) years of age.

4. Notice. Before appointing a guardian, the Court must give reasonable notice to all interested parties.

5. Contents of Petition. The petition for guardianship shall include the following to the best of the petitioner's knowledge, information and belief:

a. The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;

b. The full name, address, tribal affiliation, relationship, if any, to the minor, and interest in the proceeding of the petitioner;

c. The names and addresses of the minor's parents, if living, and other persons known to have an interest in the petition for the appointment of guardian; the name and date of death of the minor's deceased parent or parents, if appropriate;

d. The basis for the Court's jurisdiction;

e. The name and address of the person or agency having legal or temporary custody of the proposed ward;

f. A statement of the reason that the appointment of a guardian is sought and whom the

petitioner recommends to have appointed a guardian; and

g. A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and accounts receivable to which the proposed ward is entitled.

6. Certified Petition. All petitions must be dated, signed, and certified by the petitioner and notarized or witnessed by a clerk of the Court.

7. Guardianship Report. Upon the filing of a guardianship petition, the Court shall immediately request that the Social Services Department, Guardian Ad Litem or other qualified agency conduct a guardianship report on the proposed guardian and the proposed ward.

a. Contents of Report. The guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

b. When Report Due. No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court no later than ten (10) days before the hearing. The Court may order additional reports, as it deems necessary.

8. Powers and Duties of Guardian. To the extent that it is not inconsistent with the terms of any order of the Court, a guardian has the following powers and duties:

a. The guardian is entitled to custody of the ward and shall make provisions for the ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for the ward's training, education, employment, and rehabilitation. The guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward;

b. In arranging for a place of abode, the guardian shall give preference to places on reservation over places off reservation, if both on reservation and off reservation places are substantially equivalent. The guardian also shall give preference to places that are not treatment facilities. If the only available and appropriate places of domicile are treatment facilities, such as group homes, over treatment facilities that are not tribal based; and

c. The guardian shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the ward. The guardian may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest. The guardian may petition the Court for approval of the consent or approval.

9. Reimbursement. The guardian is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his/her duties. The Court may order monthly reimbursement payments to the guardian upon request, subject to the availability of funds.

D. Conservatorship. The Court may upon the filing of a petition similar to a petition for guardianship, appoint a conservator for a minor, if in the Court's opinion, a guardianship is not necessary. A conservator shall not have authority over the person but shall be responsible for marshaling and preserving the assets of the minor and paying for the legitimate expenses incurred in the care and maintenance of the minor, subject to the availability of funds.

E. Annual Reports. All limited guardians, guardians and conservators, shall file annual reports with the Tribal Court providing an update on the condition of the ward and an accounting of funds collected and funds expended on behalf of the ward. The reports shall be available for review by interested parties.

F. Annual Review Hearings. Limited guardians, guardians and conservators, shall schedule annual review hearings in conjunction with the filing of annual reports. Any interested party may request additional hearings.

G. Resignation. Any limited guardians, guardians, or conservators who wishes to resign, may petition the Court setting forth the reasons for the request. The Court shall review a final accounting prepared by the limited guardian, guardian, or conservator. If the Court is satisfied, it may accept the resignation, discharge the limited guardian, guardian, or conservator and appoint a successor. The limited guardian, guardian, or conservator remains liable for all matters occurring from the time of appointment to the time of discharge.

H. Appointment of Successors. Upon the removal, death, or resignation of a limited guardian, guardian, or conservator, the Court shall appoint a successor following the same criteria provided for in the original appointment.

I. Fiduciary Duty. All persons acting under a power of attorney, limited guardians, guardians, conservators and any person or agency appointed to act on behalf of a minor under this Statute acts in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interest of the minor, exercising sound judgment and avoiding conflicts of interest. Any person acting under power of attorney, limited guardian, guardian, or conservator, breaching his/her fiduciary duty will be liable for any damages resulting from such breach.

## SECTION XVI FILING CHILD PROTECTION PETITION

A. Authorization to File Petition. Upon authorization by the Tribal Presenting Officer, the child protective service worker shall initiate formal child protection proceedings by filing a child protection petition on behalf of the Tribe and in the best interest of the child. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section XI of this Statute [WOTC 5.111].

B. Time Limitations. If a child has been removed from the home, then a child protection petition shall be filed with the Children's Court no later than noon of the second working day following the removal.

C. Contents of Petition. The child protection petition shall set forth the following with specificity:

1. The name, birth date, sex, residence and tribal affiliation of the child;

2. The basis for the Court's jurisdiction;

3. The specific allegation which cause the child to be a child in need of care;

4. A plain and concise statement of the facts upon which the allegations of a child in need of care are based, including the date, time and location at which the alleged facts occurred;

5. The names, residence and tribal affiliation of the child's parents, guardians or custodians, if known; and

6. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

## SECTION XVII NOTICE AND SERVICE OF SUMMONS

A. General. Unless a party must be summoned as provided in subsection (B) below, a party shall be given notice of a proceeding in the Children's Court in any manner authorized by this Statute or the Tribal Court Statute.

B. Summons. In a Children's Court proceeding, the summons shall be issued and served on the parent and the person with whom the child resides, if other than a parent or a Court ordered custodian, directing such person to appear with the child for trial. The summons shall include a notification of the parties' rights under this Statute. The Court may direct that the Child's appearance in Court is unnecessary.

1. In a proceeding for termination of parental rights, the summons for a hearing on the Petition must be issued and served on the parent and the person with whom the child resides, if other than the parent or a guardian. The Court may direct that the child's appearance in Court is

unnecessary.

2. Contents. The summons shall direct the person to whom it is addressed to appear with the child (unless the child's appearance has been excused) at a time and place specified by the Court and must:

a. Identify the nature of the hearing;

b. Include a prominent notice that the hearing could result in termination of parental rights; and

c. Have a copy of the petition attached to the summons.

3. Manner of Serving Summons.

a. Except as provided in subsections (b) and (c) below, a summons required under Section XVII [WOTC 5.117] must be served delivering the summons to the party personally.

b. If personal service of the summons is impracticable or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.

c. If the Court finds service cannot be made because the whereabouts of the person/s to be summoned has not been determined after reasonable effort, the Court may direct any manner of substituted service reasonably calculated to provide notice, including publication.

4. Time of Service.

a. A summons shall be served at least:

i. Seven (7) days prior to adjudication; and

ii. Fourteen (14) days prior to a hearing on a petition to terminate parental rights.

b. If the summons is served by registered mail, it must be sent at least seven (7) days earlier than subsection (a) requires for personal service of a summons.

c. If service is by publication, the published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and, if not, in the county where the action is pending. The published notice must appear one or more times, fourteen (14) days prior to the hearing.

C. Notice of Hearing. Notice of hearing must be given in writing which may be on the record or mailed to the last known address at least seven (7) days prior to the hearing, unless provided for otherwise in this Statute.

1. Persons Entitled to Notice. The Court shall ensure - that the following persons are notified of each hearing.

a. The parent or parents;

b. The attorney for the parent;

c. The child or the advocate for the child;

d. The legal guardian or custodian other than the parent, if any;

e. The Tribal Presenting Officer;

f. The responsible child placement agency;

g. The CASA of a party appointed pursuant to this Statute; and

h. Any other person the Court may direct to be notified.

2. Preliminary Hearing. When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section XI [WOTC 5.111] (emergency removal) as soon as the hearing is scheduled, the notice may be in person, in writing, on the record, or by telephone.

3. Termination Proceedings. Notice of a hearing on a petition to terminate parental rights must be given in writing or on the record at least 14 days prior to the hearing.

4. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

D. Subpoenas. The attorney for a party or the Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

E. Waiver of Service. A person may waive notice of hearing or service of process. The Waiver shall be in writing. When a party waives service of a summons required by Section XVII(B) [WOTC 5.117(B)], the party must be advised as set forth in Section XVII(B)(3) [WOTC 5.117(B)(3)].

F. Subsequent Notices. After a party's first appearance before the Court, subsequent notice of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party, either personally or by ordinary mail, except that a summons must be served before a trial or termination hearing as provided in subsection (B) unless a prior Court appearance of the party in the case, was in response to service by summons.

G. Putative Fathers. If the Court determines that the child has no father as defined in Section III (P) [WOTC 5.103(P)], the Court shall take appropriate action as described in this Section.

1. The Court shall take initial testimony on the tentative identity and address of the natural father. If the Court finds probable cause to believe that an identifiable person is the natural father of the child, the Court shall direct that notice be served on that person in the manner as provided in this Section. The notice shall include the following information.

a. That a petition has been filed with the Court;

b. The time and place of hearing at which the natural father is to appear to express his interest, if any, in the child; and

c. A statement that failure to attend the hearing will constitute a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any parental rights.

2. After notice to the putative father the Court may conduct a hearing and determine that:

a. The putative father has been personally served or served in some other manner which the Court finds to be reasonably calculated to provide notice to the putative father. If so, the Court may proceed in the absence of the putative father;

b. A preponderance of the evidence establishes that the putative father is the natural father of the child and justice requires that he be allowed fourteen (14) days to establish his relationship according to Section III (P) [WOTC 5.103(P)], provided the Court may extend the time for good cause shown if the best interests of the child so require;

c. There is probable cause to believe that another identifiable person is the natural father of the child. If so, the Court shall proceed with respect to the other person in accord with this subsection (G) and

d. If after diligent inquiry, the identity of the natural father cannot be determined. The Court shall publish a notice at least once, in a manner calculated to alert a person who may be the father of the child. If no person comes forward the Court shall terminate the parental rights of the unknown father and proceed without further notice.

3. The Court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights if;

a. He fails to appear after proper notice; and

b. He appears, but fails to establish paternity within the time set by the Court.

## SECTION XVIII PRELIMINARY HEARING

A. Time for Hearing. If a child:

1. Has been released to his/her parents, guardian or custodian, the Court shall conduct a preliminary hearing within seven (7) days after filing of the petition.

2. Has been placed out of home, the Court shall conduct a preliminary hearing by 12:00 PM on the second work day following the placement for the purpose of determining:

a. Whether probable cause exists to believe the child is subject to the jurisdiction as a child in need of care; and

b. Whether the home conditions continue to be such as there is no alternative to removal to adequately safeguard the child.

B. Absence of Parent at Preliminary Hearing. If the child's parent, guardian or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the child's parent, guardian or custodian, the Court shall recess for not more than twenty four (24) hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent's, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

C. Conduct of Preliminary Hearing. The Court shall read the allegations in the petition in open Court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation.

D. Testimony at Preliminary Hearing. The Court shall hear testimony concerning:

1. The circumstances that gave rise to the petition; and

2. The need for continued placement.

E. Finding of No Probable Cause. If probable cause to believe the child is a child in need of care is not found, the petition shall be dismissed and the child shall be released.

F. Finding of Probable Cause. If the Court finds that probable cause exists to believe the child is a child in need of care, the Court:

1. Shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Court; and

2. May release the child in the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well being of the child; or

3. May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:

a. Custody of the child with a parent, guardian or the custodian presents a substantial risk of harm to the child's life, physical health or mental well being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk; and

b. Conditions of custody of the child away from the parent, guardian or custodian are adequate to safeguard the child's health and welfare.

G. Court Ordered Examinations. The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order any involved child, parent, guardian or custodian to undergo a physical, mental or psychological examination by a qualified professional.

## SECTION XIX ADJUDICATORY HEARING

A. Purpose. The Court shall conduct an adjudicatory hearing for the purpose of determining whether the facts support a finding that the child is a child in need of care.

B. Commencement. The adjudicatory hearing shall commence as soon as possible but not later than forty five (45) days after the petition is filed with the Court.

C. Continuances. Continuances of an adjudicatory hearing may be granted by the Court but only for any of the following purposes:

1. Upon stipulation of the parties;

2. Where service of process cannot be completed;

3. The Court finds that the testimony of a presently unavailable witness is needed;

4. One time only for up to fourteen (14) days at a parent's request for the parent to obtain counsel, or

5. For good cause shown.

D. Evidence and Conduct of Hearing.

1. The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.

2. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross examine individuals who made the reports.

E. Findings and Judgment. If the allegations of the petition are sustained by a preponderance of the evidence, the Court shall find the child to be a child in need of care, as the facts indicate, and schedule a dispositional hearing. The Court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child. If the allegations of the petition are not sustained, the Court shall dismiss the matter and release the child.

## SECTION XX DISPOSITIONAL HEARING

A. A dispositional hearing is conducted to determine measures to be taken by the Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

B. Time for Hearing. The dispositional hearing may be held immediately after the adjudicatory hearing. The interval if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the child is in placement, the interval may not be more than 60 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties or in accordance with Section XVII [WOTC 5.117] (Notice and Service of Summons).

C. Proposed Disposition (Case Service Plan). Active efforts to provide remedial services and rehabilitative programs, designed to prevent the breakup of the family, must be made available to the parent, custodian or guardian.[20]

1. The Tribal Social Services Department, and/or other agency designated by the Court shall prepare and submit a proposed disposition/case service plan in writing to the counsel of record,

and the Tribal Presenting Officer at least three (3) days prior to the dispositional hearing.

2. The Tribal Social Service Department shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the involved child placement agency, if any, and the protective service worker. The report shall contain a specific plan for the care of and assistance to, the child and/or the child's parent, guardian or custodian designed to resolve the problems presented in the petition.

3. The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the child. The report shall include the effort to prevent removal, and to rectify conditions that caused removal, of the child from the home.

4. If the report recommends placement of the child some where other than with the child's parent, guardian or custodian, it shall state the specific reasons underlying its placement recommendations.

5. Each case service plan shall be reviewed by the Child Welfare Commission; the Commission shall advise the Court in writing of the disposition which is recommended by vote of the citizens.

D. Evidence. All relevant and material evidence, including sworn oral testimony and written reports shall be received and included into the record as evidence, subject to the following:

1. The parties shall be given an opportunity to examine and controvert written reports so received and may cross examine individuals making reports.

2. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the disposition phase, or material prepared pursuant to a Court ordered examination, interview, or course of treatment.

E. Disposition Order. The Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on the disposition, the Court shall approve a case service plan and may order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interest of the child. The order of disposition shall state whether reasonable efforts have been made to prevent the child's removal from his/her home or to rectify the conditions that caused the child's removal from his/her home.

F. Dispositional Alternatives. If a child has been found to a child in need of care, the Court may make the following dispositions which are listed by priority:

1. Permit the child to remain with his/her parent, guardian or custodian, subject to such conditions as the Court may prescribe;

2. Place the child with a relative within the primary service area of the Tribe, subject to such

conditions as the Court may prescribe;

3. Place the child in a licensed foster home within the Tribe's primary service area, subject to such conditions as the Court may prescribe;

4. Place the child with a relative, outside of the primary service area of the Tribe, subject to such conditions as the Court may prescribe;

5. Place the child in a licensed foster home, outside of the primary service area of the Tribe, subject to such conditions as the Court may prescribe; and

6. Direct the Tribal Presenting Officer to file a petition to terminate parental rights under this Statute.

G. Reimbursement for Care. Parents, custodians or guardians may be ordered by the Court to reimburse the Tribe for the cost of care and placement.

H. Child Support. Parents, custodians or guardians may be ordered by the Court to make child support payments for children placed with relatives or friends who are not eligible for foster care payments or payments not sufficient to cover the cost of caring for the children.

I. Amended Orders. If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Children's Court in this Statute at any time as the Court considers it necessary and proper and in the best interest of the child.

## SECTION XXI DISPOSITIONAL REVIEW HEARING

A. Frequency. The dispositional order is to be reviewed at the discretion of the Court but at least once every six (6) months.

B. Notice of Review. Notice of the review hearing shall be provided on the record or by ordinary mail as provided in Section XVII(C) [WOTC 5.117(C)].

C. Purpose and Content of Review.

1. At a review hearing the Court shall review on the record the compliance with the case service plan prepared pursuant to Section XX [WOTC 5.120] and the previous orders of the Court including:

a. Services provided or offered to the child and his/her parent, guardian or custodian; whether the parent, guardian or custodian has complied with and benefited from those

services~~.~~, active efforts to provide services; and

b. If visitation did not occur or was infrequent, the Court shall determine why visitation did not occur or was infrequent.

2. After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child in need of care. The Tribal Social Services Department or other Court designated agency may submit a modified case service plan, taking into account circumstances which arose or became known since the time of the original case plan development. The Court may modify any part of the case service plan including, but not limited to, the following:

a. Prescribing additional services that are necessary to rectify the conditions that caused the child to become a child in need of care.

b. Prescribing additional actions to be taken by the parent, guardian or custodian to rectify the conditions that caused the child to become or remain a child offender, or a child in need of care.

3. At a review hearing the Court shall determine the continuing necessity and appropriateness of the child's placement and review the recommendations on such placement of the Child Welfare Commission, the Family Services Coordinating Team and the child placement agency, and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

4. If the child remains in placement, the Court shall determine at the dispositional hearing and at each review hearing whether the case should be reviewed before the next review hearing required under this Section. In making this determination, the Court shall consider, but not be limited to, both of the following:

a. The parent ability and motivation to make necessary changes to provide a suitable environment for the child.

b. Whether there is a reasonable likelihood that the child may be returned to his/her home prior to the next review hearing required by this Section.

D. Return of Child Without Hearing. In the event that the agency charged with the supervision of the child determines that the child should be returned to his home, the agency shall request a hearing on the determination, subject to the notice provisions of Section XVII [WOTC 5.117]. If no party files an objection to the return within the time period prior to the hearing, the Court may issue an order permitting return of the child without a hearing.

E. Reports. An agency report filed with the Court shall be accessible to all parties to the action and shall

be offered into evidence.

## SECTION XXII PERMANENCY PLANNING HEARINGS

A. Purpose. A permanency planning hearing shall be conducted to review the status of the child adjudicated as in need of care and the progress being made toward the child's return to his/her natural parent or to some other permanent home.

B. Frequency of Hearings. The Court shall conduct a permanency planning hearing one year after entry of the order of disposition and every twelve (12) months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section XXI [WOTC 5.121] of this Code.

C. Determination.

1. Child Returned. If parental rights to the child have not been terminated and the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well being, the Court shall order the child returned to his/her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the Court as evidence that return of the child to his/her parent would cause a substantial risk of harm to the child's life, physical health, or mental well being.

2. Child Not Returned. If the Court determines at a permanency planning hearing that the child should not be returned to his/her parent, the Tribal Social Services Department shall file a petition to;

a. Terminate parental rights;
b. Place child permanently with a relative; or
c. Place child in long term foster care.

## SECTION XX111 PERMANENCY REVIEW HEARINGS

A. Purpose. The Court shall conduct a Permanency Review Hearing to review a child's placement and welfare.

B. Frequency. The Court shall conduct a Permanency Review Hearing every twelve (12) months.

C. Reports Required. Before every Permanency Review Hearing a written report of the condition of a minor is to be filed by the caretaker that includes education, report card grades and absences, health and

progress of the minor. The Tribal Social Services worker shall file a home study report with placement recommendations and with an independent assessment of the child's welfare.

## SECTION XXIV AUTHORIZATION OF MEDICAL TREATMENT

A. Circumstances for Court Order. At any time, regardless of whether a child is under the authority of the Court, the Court may authorize medical or surgical care for a child when:

1. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or

2. A physician informs the Court orally or in writing that in his/her professional opinion, the life of a child would be greatly endangered without certain treatment and the parent, guardian or custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.

B. Parental use of spiritual treatment to be given consideration. In making its order the Court shall give due consideration to any treatment being given the child by prayer or through other traditional spiritual practices, if the child or his/her parent, guardian or legal custodian are adherents of an established religious denomination that relies on this form of treatment, in lieu of medical treatment.

C. Written Order. After entering any authorization under this Section, the Court shall reduce the circumstances, findings and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the appropriate Physician, hospital, or both.

D. Oral Authorization for Treatment Sufficient. Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the Court for performance of care or treatment in reliance on the Court's authorization, and any function performed there under shall be regarded as if it were performed with the child's and/or the parent authorization.

## SECTION XXV EMANCIPATION

A child who is seventeen (17) years of age may petition the Court for emancipation. The Court shall grant such status when the child proves to the Court that the child is capable of functioning as an independent and responsible citizen of the community.

## SECTION XXVI TERMINATION OF PARENTAL RIGHTS

A. Purpose. The purpose of this Section is to provide for the voluntary and involuntary termination of the parent child relationship and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family citizens when that unit remains united, and that termination of the parent child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the Court, all efforts have failed to avoid termination and it is in the best interest of the child concerned and of the Tribe to proceed under this Section.

B. Mandated Request for Termination of Parental Rights. The Department of Social Services shall include a request for termination of parental rights within the initial petition filed with the Court, if the parent is a suspected perpetrator or a parent is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk. In the following circumstances, the Court will consider the request for termination at the initial dispositional hearing. The mandated petition must include one of the following citations.

1. Abandonment of a young child;
2. Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
3. Battering, torture or other severe physical abuse;
4. Loss or serious impairment of an organ or limb; or
5. Life threatening injury; murder or attempted murder.

C. Grounds for Involuntary Termination. The Court may only terminate the parental rights of a parent to a child if the Court finds, beyond a reasonable doubt, one or more of the following exist:

1. The child has been deserted under either of the following circumstances:
    a. The child's parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this section, a parent is unidentifiable if the parent's identify cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
    b. The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
2. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
    a. The parent's act caused the physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
    b. The parent who had the opportunity to prevent the physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

c. A non-parent's act caused the physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

3. The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
   a. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
   b. Other conditions exist that cause the child to come within the Court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

4. Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful, and there is a reasonable expectation that custody of the child by the parent is likely to result in serious emotional or physical damage to the child.

5. Conviction of Violent or Sexual Crime. A parent of the child is convicted of a violent or criminal sexual crime against the other parent or a sibling of the child.

6. Conviction of a Felony. A parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child.

7. Imprisonment for More than two (2) Years. The parent is imprisoned for over two (2) years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

C. Termination at Initial Disposition. If a petition to terminate parental rights to a child is filed, the Court may enter an order terminating parental rights under subsection (b) at the initial dispositional hearing.

D. Quality of Evidence. The same rules of evidence which apply at adjudication under Section XIX [WOTC 5.119] shall apply in termination proceedings.

E. Termination of Parental Rights Order. An order terminating parental rights under this Statute may not be entered unless the Court makes findings of fact, states its conclusions of law, and includes the legal basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court shall state the findings and conclusions in a written opinion. If the Court does not

issue a decision on the record following hearing, it shall file its decision within sixty (60) days after the taking of final proofs.

F. Voluntary Relinquishment of Parental Rights. Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his/her parental rights shall be provided an interpreter if he/she does not understand the English or Odawa language used by the Court. Prior to the entry of an order of termination, the Court shall determine that entry of such an order is in the best interest of the affected child and of the Tribe.

G. Withdrawal of Voluntary Relinquishment. A parent who has voluntarily relinquished parental rights to a child may withdraw such consent to termination of parental rights at any time prior to the issuance of a final adoption decree. A person who has voluntarily relinquished parental rights may withdraw such consent and demand re-establishment of the parent child relationship upon a showing to the Court of clear and convincing evidence that such consent was obtained by fraud or duress.

H. Child's Continued Right to Benefits. An order terminating the parent child relationship shall not disentitle a child to any benefits due the child from any third person, agency, state or the United States, nor shall any action under this Statute be deemed to affect any rights and benefits that the child derives from the child's citizenship in or eligibility for citizenship in a federally recognized tribe.

I. Advise of Right to Appeal. Immediately upon entry of an order terminating the parental rights, the Court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order. Appellate review shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Children's Court on appeal from an order terminating parental rights.

J. Post Termination Review Hearings. If a child remains a ward of the Court following the termination of parental rights to the child, the Court shall conduct a review hearing, at least every twelve (12) months to review the progress toward permanent placement of the child. The Court shall make findings on whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interest of the child.

## SECTION XXVII ADOPTION

A. Purpose. The purpose of this Statute is to protect the rights and the well being of children, natural parents, and adoptive parents. It is the policy of the Tribe to promote the adoption of Indian children by citizens of the Tribe.

B. Jurisdiction. The Court shall have jurisdiction over all adoptions.

C. Types. The tribe recognizes the following types of adoption:

1. Open. The parental rights of the biological parents will be terminated but visitation rights of the parents and/or other named citizens of the child's biological family will be maintained as outlined in the adoption order;

2. Closed. The parental rights of the biological parents will be terminated and visitation rights of the parents and/or other named citizens of the child's biological family will not be maintained. All contact by the biological parents and/ or family will be forbidden;

3. Open Traditional. Parental rights will be granted to the adoptive party and the biological parent's rights will not be terminated. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parents and/or other named citizens of the child's biological family will be maintained as outlined in the adoption order; and

4. Closed Traditional. Parental rights will be granted to the adoptive party and the biological parent's rights will not be terminated. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parents and/or other named citizens of the child's biological family will not be maintained. All contact by the biological parents and/ or family will be forbidden.

D. Who May File a Petition. Any person over the age of 21 may file an adoption petition. Married persons or a couple maintaining a home together must make a joint petition, except where one spouse is a natural parent of the adoptee.

E. Parental Consent to Adoption. The Court may order adoption when written consent executed by surviving parent(s) or guardian has been filed with the Court. The consent must be signed in the presence of a court of competent jurisdiction. The Court shall satisfy itself that persons consenting have been informed of the nature and consequences of their actions. The minority-age status of parent (s) shall not be a bar to the right of consent nor shall it invalidate such consent.

1. Minority-Age Status. The minority-age status of parent(s) shall not be a bar to the right of consent nor shall it invalidate such consent.

F. Non-Consenting Natural Parents. The rights of non-consenting natural parents may be terminated after all active efforts to prevent the removal of a child from his family, and if removed, to reunite the child with his family has been exhausted. The Court may execute consent to adoption of such children or authorize another person to do so.

G. Withdrawal of Consent. Consent to adoption may be withdrawn by a parent(s) whose parental rights have not been terminated at any time before the entry of the final order of adoption.

H. Petition for Adoption. The petition for adoption shall be filed with the Court. It shall be signed by the adopting parent(s) and shall contain:

1. The full name, residence, documentary proof of the date and place of birth, and the degree of Indian blood of the adoptee;

2. The full name(s), residence(s), date(s), and place(s) of birth, degree(s) of Indian blood, occupation(s), and documentary proof of marital status of adopting parent(s);

3. Proof of parental consent to the adoption;

4. A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee; and

5. A full description and statement of value of all property owned or possessed by the adoptee, to the best of the petitioner's knowledge.

I. Pre-Placement Assessment. The Court shall not order a pre-adoptive placement until it receives and reviews a pre-placement assessment either prepared by the Tribal Social Services Department or prepared by a social services agency of a different jurisdiction and approved by the Tribal Social Services Department.

1. A pre-placement assessment must contain the following information:

a. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any.

b. Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent.

c. Physical and mental health, including any history of substance abuse.

d. Educational and employment history and any special skills and interests.

e. Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual.

f. Reason for wanting to adopt.

g. The capacity and disposition of the parties involved to immerse the child in the Tribe's culture and traditions;

h. Whether the individual has ever been the respondent in a domestic violence

proceeding or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding.

i. Whether the individual has ever been convicted of crime.

j. Any fact or circumstance that raises a specific concern about the suitability of the individual as an adoptive parent, including the quality of the environment in the home, the functioning of other children in the household, and any aspect of the individual's familial, social, psychological, or financial circumstances that may be relevant to a determination that the individual is not suitable. A specific concern is one that suggests that placement of any child, or a particular child, in the home of the individual would pose a risk of harm to the physical or psychological well being of the child.

J. Consent of Biological Parents.

1. A biological parent whose parental rights to a child being considered for adoption have not been terminated by a court of competent jurisdiction may voluntarily consent to the adoption of the child by petitioner.

2. Requirements for validity. A consent to adoption must be executed either:

a. In the presence of the Court after the Court explains:

i. The consent may result immediately in a pre-adoptive placement with placement with petitioner. Once the pre-adoptive placement is ordered by the Court, the parent will have no legally enforceable right to visit or have any contact with the child, unless ordered under Section V of this Statute.

ii. The consent may result in a final order of adoption. Upon entry of the final adoption order, the parent shall have no legally recognized relationship to the child, and have no legally enforceable right to visit or have any contact with the child, unless under Section V of this Statute.

iii. If for any reason prior to the entry of a final adoption order, petitioner does not retain custody of the biological parent unless the biological parent is also subject to involuntary removal under the Child Welfare Statute (WOTC 5.101 *et seq*).

iv. Outside of the presence of the Court, with two witnesses and notarized, and containing such statements and under such circumstances as the Court is assured that the consent was voluntary executed and that the parent fully understood the ramifications set out in subsection III (A)(1) above.

3. Consent conditioned on open adoption. Consent to adoption may be expressly conditioned on

entry of an order of the Court approving an open adoption agreement between the parent and petitioner under Section V of this Statute.

K. Open Adoption Agreements. Simultaneously with, or prior to, execution of a consent to adoptive placement, the parent and petitioner may execute an open adoption agreement that sets out post adoption visitation rights of the parent and/or other named citizens of the child's biological family. Upon accepting consent conditioned on such agreement, the Court shall enter the open adoption agreement as a fully enforceable order of the Court. Provided, if the Court finds that such agreement would significantly threaten the safety of the child, the Court may refuse to accept the consent or enter the open adoption order. In such situations, an adoptive placement can only proceed following involuntary termination of parental rights under this child protection statute.

L. Recommendation of the Indian Child Welfare Commission. Upon completion of the investigative report, the adoption worker shall submit a report to the Indian Child Welfare Commission and the Commission shall meet with the adoption worker and formulate a written recommendation for the Court.

M. Initial Hearing. Within ten (10) days of the receipt of the recommendation from the Commission, the Court shall schedule a hearing on the petition for adoption.

1. Notice. The adoptee, adopting parent(s) and any other party of record shall be given notice of the hearing.

2. Appearance Mandatory. The adoptee and adopting parent(s) shall appear in person at the initial hearing.

N. Waiver of Trial Custody Period. If the adoptee has been in the custody of the adoptive parent(s) for more than six (6) months and the Commission recommends adoption at the initial hearing, the Court, upon a motion by the Presenting Officer, may waive the trial custody period and the final adoption decree may be entered at the initial hearing.

O. Final Hearing If Trial Custody Period Not Waived. Not less than ninety (90) days, or more than one hundred twenty (120) days, after the adoptee has been in the custody of the adoptive parent(s), the adoptee and adoptive parent(s) shall appear before the Court. They shall report to the Court about the welfare of the adoptee, the current status of their home, and the desire of the adoptive parent(s) to finalize the adoption.

P. Adoption Decree; Extension of Trial Custody Period. If the Court is satisfied that the interests of the adoptee are best served by the proposed adoption, the final adoption decree may be entered. The Court may order, or adoptive parent(s) may request, a six (6) months extension of the trial custody period, after which a final adoption decree must be entered or the adoptee returned to the custody of the Court. The Court shall provide a certified copy of the adoption decree to the Tribal Enrollment Office.

Q. Effect of the Final Adoption Decree.

1. Parent and Child Relationship. After the final adoption decree is entered, the relation of parent(s) and child and the rights, duties and other legal consequences of a natural relationship of child to parent(s) shall thereafter exist between the adoptee and the adoptive parent(s).

2. Tribal Status Not Affected. The status of an adoptee as a citizen of the Tribe shall not be affected by adoption. An adoptee that is eligible for citizenship in the Tribe shall be enrolled as a tribal citizen prior to the finalization of the adoption.

3. Assumption of Surname. Minors adopted by order of the Court shall assume the surname of the person(s) whom they are adopted, unless the Court orders otherwise.

4. Rights of Adoptees.

a. Adoptees shall be entitled to the same rights of person and property as children or heirs of the adoptive parents.

b. Adoptees shall be entitled to the society and companionship of their natural siblings.

5. Tribal Citizenship. Any child of Indian descent, who is legally adopted by a citizen of the Tribe, shall have citizenship rights consistent with Tribal law.

R. Confidentiality of Proceedings and Record. Unless the Court otherwise orders, hearings held in proceedings under this Section shall be confidential and shall be held in closed session, without the admission of any persons other than the interest parties and witnesses. All papers, records, petitions, or files pertaining to proceedings, except the final order of adoption, shall be maintained by the Court in locked files, and shall not be released to anyone, except pursuant to Court order.

## SECTION XXVIII CHILD PROTECTION RECORDS

A. Children's Court Records. A record of all hearings under this Statute shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to any but the following:

1. The child;

2. The child's parent, guardian or custodian;

3. The child's counsel or Court appointed special advocate;

4. The Children's Court personnel directly involved in the handling of the case;

5. Any other person by order of the Court, having legitimate interest in the particular case or work of the Court.

B. Law Enforcement and Social Services Records. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

1. The child;

2. The child's parent, guardian or custodian;

3. The child's counsel or Court appointed special advocate.

4. Law enforcement and social service personnel, including the Child Welfare Commission and Family Services Coordinating Team, Tribal Presenting Officer, directly involved in the handling of the case.

5. The Children's Court personnel directly involved in handling of the case.

6. Pursuant to Section 552a of title 5, the Family Educational Rights and Privacy Act of 1974 (20 U.S. C. 1232g) agencies of any Indian tribe, of any state, or of the Federal Government that investigate and treat incidents of abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. Indian tribal governments shall be treated the same as other Federal Government entities.

7. Any other person by order of the Court upon petition from a person or entity having legitimate interest in the particular case.

C. Access to Child Protection Service Records. Upon written request child protection records shall be released under the following procedures:

1. Records may be released only to a person identified in subsection (B) above. All information in the record shall be released, unless mental health records in the file are subject to a statement from the mental health provider that such records contain information which, if released, might be harmful to the mental health client or others.

2. The Tribal Social Services Department shall review the record to determine which sections may be shared without revealing the identity of the reporting person, or any other information that would jeopardize the health, safety and well-being of any person.

3. The name and other identifying information of the reporting person need not be deleted if the entity requesting record access is a law enforcement agency, prosecuting attorney, or a child protection agency of another jurisdiction.

4. In the event that compelling reasons exist for the release of the reporting person's name, that person must authorize release of his/her identity in writing. If the person does not do so, a Court order shall be requested for release of the name.

5. Any information released from child protection records shall be clearly designated as confidential.

D. Unauthorized Release of Confidential Information. Any person who permits or encourages the unauthorized dissemination of child protection records shall be subject to a civil fine not to exceed $5,000.00 for each action or omission. The Court may remit all or a portion of the fine to any person demonstrating harm from the unauthorized release and dissemination of child protection records

## SECTION XXIX REHEARING

A. Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within thirty (30) days after the decision of the disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which if true would cause the Court to reconsider the case.

B. Notice. All parties must be given notice of the motion in accordance with Section XVII [WOTC 5.117].

C. Response by Parties. Any response by parties must be in writing and filed with the Court and opposing parties within seven (7) days after notice of the motion.

D. Procedure. The judge may affirm, modify or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate for the case.

E. Hearings. The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

F. Stay. The Court may stay any order pending a ruling on the motion.

## SECTION XXX APPEALS

A. Who Can Appeal. Any party to a Children's Court hearing may appeal a final Children's Court order to the Appellate Court. An order terminating parental rights is appealable by right.

D. Record. For purposes of appeal, a record of the proceedings in Children's Court shall be made available to the child his/her parents, guardian or custodian, their counsel and others upon Court order. The party seeking the appeal shall pay cost of obtaining this record.

E. Stay of Order. An order of the Children's Court may be stayed upon order of the Appellate Court.

## SECTION XXXI SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## SECTION XXXII EFFECTIVE DATE

Effective upon the signature of the Executive, or 30 days from submission to the Executive Branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

## CERTIFICTAION

As the Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 10, 2006 at which a quorum was present, by a vote of _8_ in favor, _0_ opposed, _0_ abstentions, and _1_ absent as recorded by this roll call:

| | In Favor | Opposed | Abstained | Absent |
|---|---|---|---|---|
| Regina Gasco Bentley | X | | | |
| Fred Harrington, Jr. | X | | | |
| Dexter McNamara | X | | | |
| Mary Roberts | X | | | |
| Rita Shananaquet | X | | | |
| Alice Yellowbank | X | | | |
| Shirley Oldman | | | | X |
| Melvin L. Kiogima | X | | | |
| Beatrice A. Law | X | | | |

Date: 9/10/06 Beatrice A. Law
Beatrice A. Law, Legislative Leader

Date: 9/10/06
Melvin L. Kiogima, Secretary

Received by the Executive Office on 9-11-06 by Ellis K Payne

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 9-18-2006
Frank Ettawageshik, Tribal Chairperson