

WAGANAKISING ODAWA



TRIBAL CODE of LAW

TITLE V. CHILD WELFARE

2023.3

WAGANAKISING ODAWA TRIBAL CODE of LAW

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TITLE V. CHILD WELFARE

Chapter 1. Child Protection Statute

5.101 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. Proceedings under this statute shall be open to the public, unless the Court determines it is in the best interests of the child or a party to close the hearing or, on motion of a party, the Court closes the proceedings to the public during the testimony of a child based on the nature of the proceedings and the age, maturity, and preference of the child witness. At any time during a proceeding or on the record, where testimony is being taken or evidence is being offered regarding a child who is a victim of a sexual offense or alleged sexual offense, that portion of the proceeding or record shall only be open to the direct parties involved in the proceedings and their legal representatives.

C. This Statute establishes the Family Preservation Court (FPC) within the Children's Court Division.

D. This Statute repeals and replaces any previous Child Protection Statute or Child Welfare Code, including WOS 1998-106, WOS 2006-018, and WOS 2012-010, or as may be amended.

(Source: WOS 2022-001, January 26, 2022, Section I)

5.102 DECLARATION OF VALUES AND 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, and the health and well-being of the Tribe's children depends, in turn, on the health and well-being of their families. 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 adult Tribal Citizens who are strong, healthy, and responsible. Accordingly, it is the policy of the Tribe to

ensure a safe and appropriate physical and emotional environment that will protect the health, safety, and development of all children; to compel the parent or custodian of a child to provide a proper environment for the child; to facilitate changes or improvement in the home environment as necessary to provide a proper environment for the child; to establish a judicial process to protect the health and safety of children, including the provision of substitute care and supervision for children in need of care; and to protect a child's identity and ties with the child's family and the Tribal community. To achieve this, the Tribe recognizes that families have a right to meaningful assistance from the Tribe to achieve and maintain spiritual, emotional, mental, physical, and cultural health, except in aggravated circumstances cases as defined in Section V.D. Accordingly, family preservation is the strongly preferred goal of the Tribe.

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 families and placing children outside their home only when necessary to protect them from a substantial risk of physical or psychological harm under the removal procedures in this Statute. Specifically:

1. To protect the rights and interests of children by proceeding with a course of action that will provide for their welfare, care, and protection;
2. To preserve the unity of the family by separating children from their parents and siblings only as a course of last resort and for the shortest time possible in order to protect them from a substantial risk of physical or psychological harm;
3. To take action that will best meet the spiritual, emotional, mental, and physical needs of children, and preserve the interest and culture of the Tribe;
4. To recognize and acknowledge Tribal customs and practices;
5. To preserve the opportunity for children to learn about their culture and heritage, and to become productive adult members of the Tribe, by experiencing their culture on an ongoing basis;
6. To secure the rights of and ensure fairness to the children, their custodians, and other parties who come before the Court under the provisions of this Statute;

7. To preserve families, including parental rights, whenever doing so is safe for their children;
8. To provide child welfare services to children and families that are in accord with the laws, traditions, and cultural values of the Tribe; and
9. To transfer appropriate cases to any traditional or alternative dispute resolution body created by the Tribe.

C. To achieve its purposes and support the values of the Tribe, this Code establishes the Family Preservation Court (FPC), a specialty court encompassing all cases in which children are maintained in their homes or, if removed, reunification is the goal. Because reunification and family preservation are core values of the Tribe, the Court will utilize the FPC in all cases unless aggravated circumstances are alleged, as defined in Section V.D. The FPC is devoted to healing and strengthening families, preventing removal, and providing a comprehensive continuum of high-quality services to families whose children come within the Court’s jurisdiction

D. This Code also establishes a non-specialty track within the Tribal Court for aggravated circumstances cases as defined in Section V.D. and cases in which parents agree with the Department at the outset of the case to permanency options outside of their care, such as guardianships.

(Source: WOS 2022-001, January 26, 2022, Section II)

5.103 DECLARATION OF THE RIGHTS OF CHILDREN

A. Children have the right not to be separated from their parents forcibly or against their will, except when competent authorities subject to judicial review determine that such separation is necessary for their best interests and all legal requirements in this Code for removal of a child are met. Whenever such separations are necessary, children have the right wherever possible not to be separated from other members of their immediate and extended family.

B. Children temporarily or permanently deprived of their family environment shall be entitled to special protection and assistance provided by the Tribe, which shall strive to ensure continuity in their upbringing and the maintenance of ethnic, cultural, religious, and linguistic heritage.

(Source: WOS 2022-001, January 26, 2022, Section III)

5.104 CHARACTER INVESTIGATIONS

Pursuant to Section 3207 of the Indian Child Protection and Family Prevention Act, 25 U.S.C. § 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 minimum standards of character that are to be prescribed under this Section shall ensure that none of the individuals so employed or considered for employment have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence; or one misdemeanor involving sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

(Source: WOS 2022-001, January 26, 2022, Section IV)

5.105 DEFINITIONS

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

A. "Abandon," "abandoned," and "abandonment" mean either of the following circumstances:

- 1.** The child's parent is unidentifiable, has left the child for 28 or more days, and has not sought custody of the child during that period. For the purposes of this subsection, a

parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

2. The child's parent has left the child for 91 or more days and has not sought custody of the child or otherwise indicated a willingness to assume their parental role during that period.

B. "Active Efforts" means actions to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and to reunify the child with the family. Active efforts require more than a mere referral to a service; rather, these efforts require actively engaging the child and family. Active efforts include, but are not limited to, doing or addressing all of the following:

1. Engaging the child, child's parents, Tribe, extended family members, and individual caregivers through the utilization of culturally appropriate services and in collaboration with the parent or child's Tribe and the Tribe's social services agencies.

2. Identifying appropriate services and helping the parents to overcome barriers to compliance with those services.

3. Conducting or causing to be conducted a diligent search for extended family members for placement.

4. Completing a comprehensive assessment of the family's situation, including a determination of the likelihood of protecting the child's health, safety, and welfare effectively in the child's home.

5. Notifying and consulting with extended family members of the child, including extended family members who were identified by the Tribe or parents, to identify and to provide family structure and support for the child, to assure cultural connections, and to serve as placement resources for the child.

6. Making arrangements to provide natural and family interaction in the most natural setting that can ensure the child's safety, as appropriate to the goals of the child's

permanency plan, including, when requested by the Tribe, arrangements for transportation and other assistance to enable family members to participate in that interaction.

7. Offering and employing all available family preservation strategies.
8. Identifying community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the family with special needs, and providing information about those resources to the family, and actively assisting family or offering active assistance in accessing those resources.
9. Monitoring client progress and client participation in services.
10. Providing a consideration of alternative ways of addressing the needs of the family, if services do not exist or if existing services are not available to the family.

C. "Adult" means a person eighteen (18) years of age or older or otherwise emancipated by order of a Court of competent jurisdiction.

D. "Aggravated Circumstances" means in the Petition, the parent is alleged to have abused the child or a sibling of the child, or the parent is alleged to have placed the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, and one or more of the following circumstances is alleged:

1. Abandonment.
2. 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.

5. Life threatening injury.
6. Murder, manslaughter, or attempted murder or manslaughter.
7. Aiding and abetting, conspiring to commit, or soliciting murder or manslaughter.

E. "Child" means 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 in need of care" means a child:

1. Who has no custodian available and willing to care for him/her;
2. Who has suffered or is likely to suffer a physical injury or physical abuse through the intentional acts or negligence of the custodian or nonparent adult;
3. Whose 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 custodians is providing adequate food, clothing, shelter, medical care, education, and/or supervision necessary for the health and well-being of a child does not excuse the neglect of the offending custodian;
4. Who has suffered or is likely to suffer sexual abuse or sexual exploitation by a custodian or nonparent adult either intentionally or negligently;
5. Whose parent had the opportunity to prevent physical injury or physical or sexual abuse and 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 suffered or is likely to suffer emotional and/or psychological abuse or neglect by a custodian or nonparent adult;

- 8.** Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or developmental harm to the child;
- 9.** Whose custodial parent or parent exercising visitation rights is being charged with or has been convicted of a violent or sexual crime that demonstrates the parent's current inability to meet the needs of the child;
- 10.** 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 that demonstrates the parent's current inability to meet the needs of the child;
- 11.** Who is found under conditions that would support grounds for involuntary termination of parental rights found in Section XXVI;
- 12.** 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;
- 13.** Who is exposed to an environment where adults are manufacturing, selling, or illegally using a controlled substance;
- 14.** Who is exposed to an environment where adults are manufacturing, selling, or using hazardous materials in a manner that puts the child's safety at risk; or
- 15.** Whose parents' drug, alcohol or substance abuse creates an unreasonable risk of harm to the child.

G. "Child Welfare Commission" means the Commission created by Statute and appointed by the Tribal Council to protect and promote the welfare of Tribal children, families, and the best interest of the Tribe.

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

- I.** "Children's Court Judge" means any duly appointed judge of the Little Traverse Bay Bands of Odawa Indians Tribal Court when exercising jurisdiction under this Statute.
- J.** "Commit" means to transfer legal custody.
- K.** "Conservator" means a person appointed by a court to manage the estate and financial affairs of a minor or of someone who is legally incapable of doing so.
- L.** "Controlled Substance" means any substance defined or described as such in LTBB law or not inconsistent with LTBB law in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as amended.
- M.** "Custodian" means a parent, legal guardian, or other person with legal custody of a child.
- N.** "Department" means the Human Services Department of the Little Traverse Bay Bands of Odawa Indians.
- O.** "Domicile" means a person's permanent home, legal home, or main residence where they physically reside or intend to return. The domicile of a child is generally that of the custodial parent, guardian or custodian.
- P.** "Extended Family" means 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.
- 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 filiation or by judgment of paternity is determined to be the father of the child.

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

T. "Indian" means any enrolled or eligible citizen of a federally recognized Indian tribe, band, community, or Alaskan Native entity.

U. "Indian Child" means any child who is an enrolled or eligible citizen of a federally recognized Indian tribe, band, and community or Alaska Native entity.

V. "Indian Child Welfare Act or ICWA" means the federal Indian Child Welfare Act of 1978, Pub. L. 95-608, codified at 25 U.S.C. §§ 1901-1963.

W. "Interests of the Tribe" means the Tribe has an interest in preserving the legacy of the next seven generations, including by protecting and promoting the child's relationship to the

Tribe and the stability, culture, and security of Indian Tribes and families while promoting child safety.

X. "Least Restrictive Alternative" means the placement alternative that is the least restrictive method, in terms of restrictions to be placed upon the child and family, while obtaining the objectives of the Court and this Statute.

Y. "Needs of the Child" means any combination of the interests of the child in safety; development into their full potential; healthy, loving relationships with caregivers; access to food, clothing, shelter, education, medical care, and other basic necessities; strong connections to their Tribe and culture; stability in their care; permanency; and any other factors the Court and Multidisciplinary Family Team found in Section XIX.C. wish to consider.

Z. "Nonparent Adult" means a person who is 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to a child over whom the Court takes jurisdiction under this Code:

1. Has substantial and regular contact with the child.
2. Has a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.
3. Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

AA. "Parent" means a mother or father, including a natural or adoptive parent, but "parent" does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established

BB. "Parental Rights and Duties" means 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 these duties;

2. Advise the child. Law presumes that such 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 in light of prevailing cultural and/or social norms;
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.

CC. “Party” means the petitioner, child, respondent, and parent, guardian, or legal custodian—even if not a respondent—in a child protection proceeding.

DD. "Prosecutor" means the person appointed by the Tribal Council who has the constitutionally derived power and authority to represent the Tribe in any and all child welfare proceedings before all courts, commissions or tribunals within the Tribe's jurisdiction, also known within this Statute as Tribal Presenting Officer.

EE. "Protective Services Worker" means the protective service worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities as set forth in Sections X and XI of this Statute.

FF. “Putative Father” means a man who is alleged to be the biological father of a child who has no father as defined in Section V.Q.

GG. “Respondent” means any custodian alleged to have caused, through any form of abuse or neglect, the child to become a child in need of care.

HH. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

II. “Tribal Child” means 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 under Article V, Subsection A of the LTBB Constitution.

JJ. “Tribal Council” means the Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

KK. “Tribal Court” means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

LL. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

MM. "Tribal Presenting Officer" means the Tribal Prosecutor serves as Tribal Presenting Officer to represent LTBB in Tribal Court proceedings under this Statute, and state court proceedings in accordance with this Statute and the ICWA.

(Source: WOS 2022-001, January 26, 2022, Section V)

(Source: WOS 2023-011, October 6, 2023, Section V, Subsections (GG.-MM).)

5.106 JURISDICTION

A. Jurisdiction of the Children's Court Division. Except as otherwise 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 Indian child who is found or resides within the Tribe’s territorial jurisdiction;
- 2.** Any Indian child transferred to Tribal Court pursuant to the Indian Child Welfare

Act;

- 3.** Any child residing with a Tribal citizen within the Tribe's territorial jurisdiction;
 - 4.** Any child residing within the Tribe's territorial jurisdiction if another court does not timely exercise jurisdiction; and
 - 5.** The custodian of a child in need of care and, to the extent legally permissible, any other person who is alleged to have caused the child to become a child in need of care.
- B.** The Court shall have jurisdiction over voluntary guardianship appointments brought under this Statute, regardless of where the Tribal child is domiciled.
- C.** Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by the Court.
- D.** In any case before the Children's Court Division under this Code, the Court has the authority to issue orders affecting any agency of the Tribe in order to achieve the goals of the Court and may compel representatives of any such agency to attend Court staffing.
- E.** Jurisdictional Procedures.
- 1.** Indian Child found or residing within the Tribe's territorial jurisdiction. When an Indian child is found or resides within the territorial jurisdiction of LTBB, the Tribe has original jurisdiction over all cases and exclusive jurisdiction over Tribal children. The Court shall not defer to the jurisdiction of another Court unless it transfers jurisdiction under Section VII.
 - 2.** Tribal Child found or residing outside of the Tribe's territorial jurisdiction. The Tribal Court shall accept transfer of any case involving a Tribal child who resides outside of the Tribe's territorial jurisdiction but within the boundaries of the Reservation described in Article III.H of the Tribe's Constitution. The Tribal Court may accept transfer of any case involving a Tribal child residing outside of the Reservation based on the following criteria:

- a.** The needs of the child;
 - b.** The interests of the Tribe;
 - c.** Availability of services for the children and their family; and
 - d.** The prospects for permanent placement for the children.

- 3.** Notification when taking jurisdiction over non-LTBB Indian child. When the Court takes jurisdiction over an Indian child who is an enrolled or eligible citizen in a tribe other than LTBB, the Court shall provide notice to such tribe of the pending LTBB Court proceeding.

- 4.** Notification when taking jurisdiction over non-Indian child. When the Court takes jurisdiction over a non-Indian child, the Court shall provide notice to the State of Michigan of the pending LTBB Court proceeding.

(Source: WOS 2023-011, October 6, 2023, Section VI)

5.107 TRANSFER OF JURISDICTION

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

- B.** Transfer from Other Courts. The Children's Court may accept or decline transfers of cases that may fall under the purview of this Statute from federal, state or other Tribal courts under the procedures set forth in this Statute.

- C.** Child's Rights. A Tribal child has rights afford by this statute and protected through Tribal Court proceedings, such rights include intervention and transfer.

D. Procedures for Intervention and Transfer from State Courts.

- 1. Receipt of Notice:** The Tribal agency for service of notice of state court child protective proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Prosecutor.
- 2. Intervention:** If the notice involves a Tribal child, the Tribal Prosecutor 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 Department shall conduct an investigation and provide a pre-transfer report to the Child Welfare Commission and Prosecutor. The Commission shall provide its written recommendation with regard to transfer to the Department, which will be placed in the official Department case file and be considered part of the Department record of the case.
- 4. Decision to Transfer:** The Child Welfare Commission may make recommendations to the Tribal Prosecutor on whether the Tribe should petition for a transfer of proceedings from the state court. The Child Welfare Commission's recommendation shall be considered but is not binding on the independent decision-making process of the Tribal Prosecutor. The Child Welfare Commission may present their written recommendations, so long as they also serve their recommendations on all parties, and it is within the discretion of the prosecutor whether to present the Commission's written recommendations to the Court. The Child Welfare Commission, in their recommendation, and Prosecutor in deciding whether to file a petition to transfer, shall consider these factors, and the petition shall include a statement of the evidence to be presented with regard to each of these criteria. The Court shall weigh these criteria in deciding whether to grant a transfer petition:
 - a.** The needs of the child;
 - b.** The interests of the Tribe;
 - c.** Availability of services for the children and their family; and

- d.** The prospects for permanent placement for the children.

Petition for Transfer: The Tribal Prosecutor shall make the determination on whether file a request for transfer in state court. Upon receipt of the state court's granting of the transfer request, the Tribal Prosecutor shall file a request to accept the transfer in the Tribal Court. The Court shall have the discretion as to whether or not the case is accepted for transfer.

5. Acceptance of Transfer: The Children's Court has discretion whether to accept or deny the transfer of cases arising outside of LTBB's territorial jurisdiction based on the criteria in subsection 4 above. The decision to accept or deny transfer shall include findings of fact based on the evidence presented for each of the four criteria.

6. Hearings:

- a.** The Tribal Court shall hold a hearing within fourteen (14) days of receipt of a petition to transfer from the Tribal Prosecutor.
- b.** Upon the receipt of the transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Statute.

E. Prior State Court Orders.

1. State Court Orders: State court orders involving children over whom the Children's Court could take jurisdiction pursuant to this Statute may be recognized by the Children's Court only after the Children's Court finds:

- a.** The state court had jurisdiction over the child and subject matter;
- b.** The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed;
- c.** The order was not obtained by fraud, duress, or coercion;

- d. The order was obtained after fair notice and a fair hearing;
 - e. The state court proceeding is not repugnant to the public policy of the Tribe; and
 - f. The order is final under the laws and procedures of the state court.
2. Court Orders of other Tribal Courts: Court orders of other Tribal courts involving children over whom the Children's Court may take jurisdiction shall be recognized by the Court if the Court has determined:
- a. That the other Tribal Court exercised proper personal and subject matter jurisdiction over the parties; and
 - b. Due process was accorded to all interested parties participating in the other Tribal Court proceeding.

(Source: WOS 2022-001, January 26, 2022, Section VII)

(Source: WOS 2023-011, October 6, 2023, Section VII, Subsection (D)(5))

5.108 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 that are 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 programs 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 Department shall be the primary provider for child and family services and may utilize social services as may be furnished by any tribal, federal, state, public or

private agency provided that such services are economically administered without unnecessary duplication and expense.

D. The Tribe shall use its best efforts to develop protocols with appropriate courts and governmental agencies to involve the Department and Law Enforcement in the initial stages of investigation and provision of preventative or protective services involving Tribal children.

E. The Tribe may enter into an agreement with the state that permits a judge of either the state or Tribal court to preside over child welfare hearings and staffing in either court under rules specified in the agreement.

(Source: WOS 2022-001, January 26, 2022, Section VIII)

5.109 COURT APPOINTED ATTORNEYS

A. Lawyer-Guardian ad Litem. The Children's Court must appoint an attorney to serve as Lawyer-Guardian ad Litem for the child.

1. Role of the Lawyer-Guardian ad Litem. The duty of the Lawyer-Guardian ad Litem is to represent the best interests of the child. However, the Lawyer-Guardian ad Litem must ascertain the child's expressed interests to the extent possible, inform the Court of the child's expressed interests, and follow the requirements of subsection 2, below.

2. Duties of the Lawyer-Guardian ad Litem. The Lawyer-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 a child in need of care;

- c.** Ascertain and incorporate the child’s expressed interests into the Lawyer-Guardian ad Litem’s best interest determination according to the child’s competence and maturity, such that the Lawyer-Guardian ad Litem must represent the child’s expressed interests as would an attorney for an adult if the child is able to articulate his or her interests and participate fully in the Lawyer-Guardian ad Litem’s representation;
- d.** Participate as a full member of the Multidisciplinary Family Team in a Family Preservation Court case;
- e.** Urge that specific and clear orders are entered for evaluation, assessment, social 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, 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.

3. Confidentiality. All records, information, and reports prepared, acquired, received or reviewed by the Lawyer-Guardian ad litem are confidential and shall only be disclosed or dispersed pursuant to this Statute or other applicable Tribal law.

B. Court Appointed Attorney for a Parent. At the first court hearing held under this Statute or any subsequent hearing in which a parent is not represented by counsel, the Children’s Court must inquire whether the parent wants to have a court-appointed lawyer. If the parent accepts representation, the Court must appoint a lawyer to represent that parent, which shall be at public expense if the parent is unable to afford to hire counsel. If the parent declines representation, the Court may appoint a lawyer to represent that parent if it deems the parent incapable of self-representation in Court.

C. Any attorney representing the Department is expected to have a full attorney-client relationship with the Department as such relationships are contemplated in the Rules of Professional Conduct.

D. The Children’s Court has the authority to appoint and compensate attorneys to handle collateral legal issues relevant to the child protection case, either before or after a petition has been filed.

(Source: WOS 2022-001, January 26, 2022, Section IX)

5.110 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 Department or to the Tribal Law Enforcement. 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, counselor/therapist, social worker, school administrator, school counselor or teacher, law enforcement officer, probation officer, duly regulated child care provider, or other persons whose job responsibilities involve direct interaction with children, 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 Department or Law Enforcement Department.

2. Within twenty-four (24) hours after making an oral report, the reporting person shall file a written report. Any person who has a specific duty to report under this Statute shall not be dismissed or otherwise penalized for making a report required by this Section or for cooperating in an investigation.

3. The Department may inform any person making a report pursuant to this subsection (B) of the Department'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 not constitute grounds for excusing a report otherwise required to be made or 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 prevents someone else from doing so shall be subject to a civil infraction with a fine of up to \$5,000.00. The Tribal Prosecutor shall be responsible for bringing enforcement actions under this Section.

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

- 1.** Names, addresses, and tribal affiliation of the child and his/her 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 Department may request a court order for a medical evaluation of a child pursuant to Section XXIX of this Statute. The Department 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 Department, Law Enforcement, and the Court, if requested to do so. The physician's written report shall contain a summary of the evaluation.

(Source: WOS 2022-001, January 26, 2022, Section X)

5.111 PROTECTIVE SERVICES

A. The Department 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 that is contrary to the needs of the child, as well as the name, age, and condition of other children in the home.

3. In conducting the investigation, the Department 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 exists:

- 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 the 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 the Department 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, if Tribal Law Enforcement or the Department has reason to believe that a child who resides in the territorial jurisdiction has been subject to abuse or neglect in Indian country, the officials of those departments 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 multidisciplinary assessment team.
 - d.** Cooperation; Information Sharing. All Tribal departments, agencies and programs shall cooperate with Tribal social services in the investigation 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. Protective Services shall also cooperate with all Multidisciplinary Family Team members and share information.
- 5.** Take a child into temporary custody if necessary pursuant to Section XII.C. Law enforcement officials shall cooperate with the Department to remove a child from the custody of his/her 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, which shall be included in the records maintained by the Department and shall include a determination as to whether the report is substantiated or unsubstantiated. Upon completion of the investigation by Tribal Law Enforcement or the Department, they may inform the person who made the report as to the disposition of the report.

B. Cooperation from Law Enforcement. Law Enforcement shall cooperate with the Department in conducting investigations pursuant to this Section.

C. Limitations of Authority; Duty to Inform. Before offering the Family Preservation Court services or protective services to a family, a Department 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 Department to act in emergency situations pursuant to Section XII.C. or to obtain a medical evaluation of the child pursuant to Section XXIX.

(Source: WOS 2022-001, January 26, 2022, Section XI)

5.112 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 and 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, that the Department has made active efforts, consistent with the circumstances, to prevent or eliminate the need to remove the child, and that the conditions in which the child is found present a substantial and imminent 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 person must demonstrate that waiting to convene a full hearing would jeopardize the child's life, physical health, or mental well-being. 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 and imminent risk of death, serious injury, or serious emotional harm; or
2. The custodian is absent and it appears, from the circumstances, that the child is unable to provide for his/her own basic necessities of life, no satisfactory arrangements have been made by the custodian to provide for such necessities, and no alternative arrangements except removal are available to protect the child.

(Source: WOS 2022-001, January 26, 2022, Section XII)

5.113 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 than 12:00 PM of the next working day.

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

C. Notice to Indian Child's Tribe If Different from LTBB. If the Children's Court ascertains that the removed child is a citizen of an Indian tribe other than the Little Traverse Bay Bands of Odawa Indians, the Tribal Court shall notify the court of the other tribe that a child enrolled in their tribe has been placed in protective custody.

(Source: WOS 2022-001, January 26, 2022, Section XIII)

5.114 PLACEMENT OF CHILDREN

A. Placement Priorities. A child shall be placed in the following placements listed in order of preference, except the order of preference may be modified to meet special needs of the child:

- 1.** Members of the child's Tribal extended family;
- 2.** Members of the child's non-Tribal extended family;
- 3.** An Indian family of the same tribe as the child;
- 4.** An Indian family otherwise authorized by law to provide care for the child;
- 5.** A home licensed by LTBB;
- 6.** An Indian tribal facility;
- 7.** A facility operated by a licensed child welfare services agency; or

8. Any other suitable placement that meets the needs of the child.

(Source: WOS 2022-001, January 26, 2022, Section XIV)

5.115 DELEGATIONS OF PARENTAL AUTHORITY

A. 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 shall act in a fiduciary capacity. As a fiduciary, one owes a duty to act in the best interests of the minor, exercising sound judgment and avoiding conflicts of interest. Any person acting under power of attorney or a limited guardian, guardian, or conservator breaching his/her fiduciary duty will be liable for any damages resulting from such breach.

B. Power of Attorney. A parent or legal custodian, 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 any time 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.

C. Voluntary Guardianship.

1. **Establishment.** The Court may establish a voluntary guardianship upon petition of the custodial parent(s) only under such terms and conditions as the Court sets forth in the written order. An order granting a voluntary guardianship shall set forth provisions regarding visitation, support, duration, or any other condition related to the child's care. The Court shall hold a hearing on the petition within thirty days of receipt of the petition.

2. Annual Reports. A voluntary guardian shall file an annual report to the 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.
3. Annual Review. Voluntary guardians shall schedule annual review hearings in conjunction with the filing of annual reports. Any interested party may request additional hearings.
4. Resignation. Any voluntary guardian 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 voluntary guardian. If the Court is satisfied, it may accept the resignation and discharge the voluntary guardian. The voluntary guardian remains liable for all matters occurring from the time of appointment to the time of discharge.
5. Termination. A party to a guardianship may file a petition for termination of the guardianship. The Court must hold a hearing within 30 days of receipt of the petition to terminate the guardianship to determine whether termination of the guardianship is appropriate considering the needs of the child.
6. Appointment of Successor. Within 30 days of the removal, death, or resignation of a voluntary guardian, the Court shall appoint a successor following the same criteria provided for in the original appointment.

D. Full Guardianship

1. Purpose. The Children's Court may appoint guardians for children 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.
2. Grounds. The Court may appoint a guardian for a child if 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.

3. Who May File. The Department, the Tribal Prosecutor, the proposed guardian, the child if at least fourteen (14) years of age, or a child's guardian ad litem may file a petition for full guardianship.

4. Notice and Hearing. Upon receipt of a petition for full guardianship the Court shall:

- a.** Transmit a copy of the petition to the Department with a written request to the Department for a full guardianship assessment;
- b.** The Department shall complete the assessment within twenty days of receipt of the request;
- c.** The court shall hold a hearing on the petition within fourteen days of receipt of the assessment from the Department.

5. Contents of Petition. The petition for full 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, of the petitioner, and the petitioner's interest in the proceeding;
- 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 a full guardian;

- d.** The name and date of death of the minor's deceased parent or parents, if applicable;
- e.** The basis for the Court's jurisdiction;
- f.** The name and address of the person or agency having legal or temporary custody of the proposed ward;
- g.** A statement of the reason that the appointment of a full guardian is sought and whom the petitioner recommends be appointed as full guardian; and
- h.** 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. Any petition brought pursuant to this Section shall be signed and dated by the petitioner.

7. Full Guardianship Assessment. Upon the filing of a full guardianship petition, the Court shall immediately request that the Department submit a full guardianship assessment on the proposed guardian and the proposed ward. The guardianship assessment shall contain the following information:

- a.** Address of the proposed guardian;
- b.** Identifying information of the proposed full guardian and members of the proposed full guardian's household;
- c.** Criminal records check and/or safety assessments of all household members of the proposed full guardian's household;
- d.** The ability of the proposed full guardian to provide for the physical and emotional well-being of the child; and

- e. Any other information deemed relevant by the Department.
- 8. Establishment of Full Guardianship.** If the Court finds that a full guardianship is in the best interest of the ward, the Court shall grant the petition for full guardianship. An order granting a full guardianship shall set forth provisions regarding visitation, support, fiduciary obligations of the full guardian, and/or any other condition related to the care of the ward.
- 9. Powers and Duties of a Full Guardian.** To the extent that it is not inconsistent with the terms of any order of the Court, a full guardian has the following powers and duties:
- a. The full 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 full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are with the ward.
 - b. The full guardian shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service for the ward. The full guardian may give any other consent or approval on the ward's behalf that may be required or in the ward's best interest.
- 10. Support and Reimbursement.** The Court may order the ward's parents to pay child support. The full guardian is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the provision of care of the ward. The Court may order monthly reimbursement payments to the guardian upon request, subject to the availability of funds.
- 11. Annual Reports.** The full guardian shall file an annual report 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.

12. Annual Review Hearings. The full guardian shall schedule annual review hearings in conjunction with the filing of annual reports. Any interested party may request additional hearings.

13. Resignation. A full guardian 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 full guardian. If the Court is satisfied, it may accept the resignation, discharge the full guardian, and appoint a successor. The full guardian remains liable for all matters occurring from the time of appointment to the time of discharge.

14. 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.

E. Conservatorship. The Court may upon the filing of a conservatorship petition appoint a conservator for a minor.

(Source: WOS 2022-001, January 26, 2022, Section XV)

5.116 FILING CHILD PROTECTION PETITION

A. Authorization to File Petition. The Tribal Presenting Officer shall initiate formal child protection proceedings to protect the best interests of the child by filing a child protection petition on behalf of the Tribe, acting through its Department. Nothing in this Section shall preclude Law Enforcement or the Department from taking emergency action under Section XII of this Statute.

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 allegations 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 relief requested by the petitioner;
6. The names, residence, and tribal affiliation of the child's custodians, if known;
and
7. 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.

(Source: WOS 2022-001, January 26, 2022, Section XVI)

5.117 NOTICE AND SERVICE OF PETITION

- A.** General. A party shall be given notice of a proceeding in the Children's Court in any manner authorized by this Statute.
- B.** Notice of Hearing. Notice of hearing must be given in writing seven (7) days before the hearing if personally served, or mailed to the last known address at least fourteen (14) days prior to the hearing, unless provided for otherwise in this Statute. If the Court finds service cannot be made because the whereabouts of the persons to be noticed have not been determined after reasonable effort, the Court may direct any manner of substituted service reasonably calculated to provide notice, including publication.
 1. Persons Entitled to Notice. The Court shall ensure that the following persons are notified of each hearing.

- a.** The parent(s) or attorney for the parent(s);
- b.** Putative fathers in accordance with the provisions of this Statute;
- c.** The child or the child's lawyer-guardian ad litem;
- d.** The legal guardian or custodian other than the parent, if any;
- e.** The Tribal Presenting Officer;
- f.** The responsible child placement agency;
- g.** 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 XIII as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, by electronic communication, or by telephone.

3. Contents. The notice shall direct the person to whom it is addressed to appear at a time and place specified by the Court, and the Court may direct the appearance of the child if it deems necessary. The notice must:

- a.** Identify the nature of the hearing;
- b.** Include a prominent notice of the potential outcome of the hearing, including out of home placement and suspension or termination of parental rights; and
- c.** Include a copy of the petition.

4. A person who fails to appear after being properly noticed forfeits all rights to present evidence, make arguments, present witnesses, cross-examine witnesses, and testify.

C. Subpoenas. The attorney for a party, the lawyer-guardian ad litem, 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.

D. Waiver of Service. A person may waive notice of hearing in writing.

E. 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.

F. Putative Fathers. If the Court determines that the child has no father as defined in Section V.Q., 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. 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 (F); and
- c. 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 putative 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; or
- b. He appears but fails to establish paternity within the time set by the Court.

(Source: WOS 2022-001, January 26, 2022, Section XVII)

5.118 PRELIMINARY HEARING

A. Purpose. The purpose of the preliminary hearing is to determine all of the following:

- 1. Whether probable cause exists to believe the child is subject to the jurisdiction of the Court as a child in need of care.

2. Whether the home conditions continue to be such that there is no alternative to removal to adequately safeguard the child. The Tribe has a strong preference for maintaining children in their homes if possible, and the Court and Department shall consider whether in-home services, frequent monitoring, and/or the removal of the alleged abuser from the home may be adequate to allow the child to remain in the home safely.
3. Whether active efforts to prevent the removal of the child from the home have been made, and what active efforts occurred.
4. Whether the criteria for removal of the child from the custodian are met, including in a case in which the child has already been removed either with or without a court order.
5. If the case is not an aggravated circumstances case as defined in Section V.D., the court shall notify the custodian that the case is designated as a Family Preservation Court case as described in Section XIX.
6. If Section V.D. applies, the court shall notify the custodian that the case is an aggravated circumstances case and will be placed on the non-specialty track of the Children's Court for consideration of the Department's petition to terminate parental rights. Similarly, if the custodians are in agreement that the child shall be placed in a guardianship or the custodians intend to release their rights to the child voluntarily, the case will be placed on the non-specialty track of the Children's Court for further proceedings to achieve permanency for the child as quickly as possible.
7. If the case is a Family Preservation Court case, the Court must order the Multidisciplinary Family Team, as described in Section XIX.C., to convene and adopt an initial Family Strengthening Plan, as described in Section XX, within two weeks of the preliminary hearing.

B. Time for Hearing. If a child:

1. Has been released to his/her custodian, or no removal of the child is requested, the Court shall conduct a preliminary hearing within seven (7) days after filing of the petition.

2. Has been placed out of his/her home, or a request has been made to remove the child, the Court shall conduct a preliminary hearing within 24 hours of removal or filing of the petition that requests removal, excluding court holidays and weekends.

C. Absence of Custodian at Preliminary Hearing. If the child's 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 custodian. If it appears that further efforts are likely to produce the child's 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 custodian. The preliminary hearing may be conducted in the custodian's absence.

D. Conduct of Preliminary Hearing. The Rules of Evidence do not apply in a Preliminary Hearing. The Court shall read the allegations in the petition in Court unless this reading is waived by the custodian. The Court shall advise the custodian of their rights, unless waived, to have counsel represent them, including the right to have court-appointed counsel at public expense if the custodian cannot afford counsel, and to a trial on the allegations in the petition. After advising the custodian of the right to remain silent, the Court shall allow the custodian an opportunity to deny or admit the allegations and make a statement of explanation.

E. Testimony at Preliminary Hearing. Unless waived by the custodian, to establish whether there is probable cause to believe the child is subject to the jurisdiction of the Court as a child in need of care, the Court shall hear testimony concerning:

- 1.** Location minor child is found or domiciled;
- 2.** The circumstances that gave rise to the petition; and
- 3.** The need for removal or continued placement of the child.

F. Finding of No Probable Cause. If the Court does not find probable cause to believe the child is a child in need of care, the Court shall dismiss the petition and release the child. The Department may still work with the family on a voluntary basis.

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

1. The Court shall order the custodian to appear at an adjudicatory hearing on a date and time set by the Court; and

2. The Court may release the child in the custody of either of the child's custodians under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child. These terms and conditions may include an order removing the alleged abuser from the child's home if the Court finds that probable cause exists that the child is a child in need of care and the Court finds on the record that the presence of the alleged abuser in the home presents a substantial risk of harm to the child's life, physical health, or mental well-being; or

3. Recognizing that removal of the child is a last resort that should be avoided if possible, the Court may order placement or continued placement of the child with someone other than a custodian, if the Court, after receiving evidence and taking testimony, determines by clear and convincing evidence that all of the following conditions exist:

- a.** Custody of the child with the custodian presents a substantial risk of harm to the child's life, physical health or mental well-being;
- b.** No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk;
- c.** Consistent with the circumstances, the Department made active efforts to prevent or eliminate the need for removal of the child; and

- d. Conditions of custody of the child away from the custodian are adequate to safeguard the child's health and welfare.

4. If the Court removes the child from a custodian, the Court shall permit frequent visitation between the custodian and child. This visitation must occur at least twice per week unless the Court finds, considering the needs of the child and the needs of the family, that visitation should be less frequent, or the Court finds that visitation, even if supervised, is likely to be harmful to the child's life, physical health, or mental well-being. If the Court determines that visitation, even if supervised, is likely to be harmful to the child's life, physical health, or mental well-being, the Court may suspend visitation until the risk of harm no longer exists. If visits must be supervised, the Court shall order visits in the most family-like settings possible under the circumstances, which can involve qualified members of the community supervising visits.

5. Active efforts are required to place siblings who are removed from their home in the same placement, unless the Court finds that doing so would be contrary to the safety or well-being of any of the siblings. If siblings are separated, active efforts are required to provide for frequent sibling visitation, unless the Court finds that doing so would be contrary to the safety or well-being of any of the siblings.

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

I. Court's Explanation of Rights of Custodian. The first time any custodian in a child in need of care proceeding appears before the Court, the Court shall inform the custodian on the record of the right:

- 1. To be represented by an attorney of the custodian's choosing at his/her expense or have court-appointed counsel at public expense if the custodian cannot afford counsel;
- 2. To examine Court records, Law Enforcement records, and Department records in the case in accordance with Section XXVIII of this Statute; and

3. To present evidence, examine evidence introduced by other parties, call and examine witnesses, and cross-examine witnesses.

J. Court Ordered Mediation. The Court may, at any time after conducting a preliminary hearing at which it finds probable cause to proceed upon a petition, order the custodians to participate in mediation. Any statements made by the custodians in the mediation process will not become part of the official record of the case or be used against them in further proceedings. However, statements made during mediation regarding new allegations of abuse or neglect shall be reported to the Department of Human Services.

K. Peacemaking. In lieu of mediation, the parties may request peacemaking. Peacemaking is a voluntary process that utilizes cultural approaches to dispute resolution. Peacemaking is a confidential process; statements made during the peacemaking process cannot be used in court proceedings. However, statements made during peacemaking regarding new allegations of abuse or neglect shall be reported to the Department of Human Services.

(Source: WOS 2022-001, January 26, 2022, Section XVIII)

5.119 FAMILY PRESERVATION COURT

A. The goal of the Family Preservation Court (FPC) is to use collaborative approaches to strengthen families so that they can thrive and raise their children safely. Child removal and any transfer of the case to the non-specialty court track are to be avoided if it is safe to do so.

B. The FPC shall ensure that the Department makes active efforts to prevent removal or reunify the family.

C. The FPC shall convene and oversee a Multidisciplinary Family Team (MFT) comprised of:

- 1.** The Department caseworker assigned to the case;
- 2.** The Tribal Prosecutor or designee;

3. An attorney for the Department if the Department has retained one;
4. The Lawyer-Guardian ad Litem;
5. Attorneys for the parents, custodians, and/or guardians;
6. Service providers currently providing services to the family, including representatives of any community or Tribal agencies working with the family (e.g., housing agencies, schools, mental health providers, substance abuse treatment providers, etc.);
7. Providers of any services that the family needs to address the issues identified in the case;
8. A representative of the Child Welfare Commission;
9. The State Indian Outreach Worker, if the Worker is available and chooses to participate; and
10. Anyone else the FPC deems necessary.

D. The Department, Court, and any other relevant members of the MFT must endeavor to secure the participation of the custodians in hearings and services, including identifying and assisting with resolving any barriers to participation by the custodians.

E. The FPC must direct the MFT to convene and adopt an initial Family Strengthening Plan (FSP) within two weeks of the preliminary hearing. The Department must ensure that the FSP is served on the parties.

F. The MFT must meet at least prior to every hearing and evaluate whether any changes to the FSP are needed.

G. The FPC and MFT are to be collaborative and non-adversarial. The MFT is to strive for a consensus. If the MFT does not reach consensus, the FPC resolves any outstanding issues in a manner designed to help the family progress towards reunification and/or dismissal of the case.

H. During the dispositional phase of the case, or if the petition is held in abeyance while the family engages in services, the FPC is to hold hearings no more than thirty days apart to ascertain progress and make orders as needed to help the family progress towards reunification and/or dismissal of the case.

I. The FPC may switch the case to the non-specialty court track if any of the following occurs:

- 1.** Abandonment of the child by the custodian as defined in this Code.
- 2.** New allegations of abuse or neglect arise in a supplemental petition and result in a probable cause finding of aggravated circumstances as defined in Section V.D. at a preliminary hearing.
- 3.** In a case where the child has been removed, the custodian fails to make progress toward reunification for 12 months. For this subsection to apply, the FPC must hold an evidentiary hearing and make a finding by a preponderance of the evidence that the custodian has failed to make substantial progress and is unlikely to make enough progress to result in reunification within a reasonable time. The Rules of Evidence do not apply at this hearing.

(Source: WOS 2022-001, January 26, 2022, Section XIX)

5.120 FAMILY STRENGTHENING PLAN

A. This provision applies only to FPC cases.

B. DHS must submit an initial Family Strengthening Plan (FSP) to the MFT prior to the first meeting of the MFT. The FSP must be developed in consultation with the custodians unless the custodians are unavailable and cannot be located and made available.

- C.** The MFT must convene and consider the initial FSP within two weeks of the preliminary hearing.
- D.** The MFT must adopt the initial FSP with or without modifications.
- E.** The FSP must account for every identified challenge that has brought the family to the attention of child protection authorities. The FSP must contain concrete goals and specific desired outcomes.
- F.** The FSP must require the Department and all service providers to make active efforts to prevent removal or achieve reunification.
- G.** If possible, consensus must be reached in order for the MFT to recommend the FSP to the Court. If consensus is not reached about the entire plan, the FPC shall resolve any outstanding issues at a dispositional, dispositional review, permanency planning, or other hearing.
- H.** Prior to the dispositional hearing, services must be offered to the family that reflect provisions adopted by the entire MFT as well as any services recommended by the Department and/or other members of the MFT. However, family participation in services prior to the dispositional hearing is voluntary, and non-participation cannot be used as evidence against respondents at adjudication.

(Source: WOS 2022-001, January 26, 2022, Section XX)

5.121 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.** Timing. 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 custodian's request to obtain counsel; or
5. For good cause shown.

D. Evidence and Conduct of Hearing.

1. The Rules of Evidence shall apply at these proceedings.
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 and are sufficient to indicate that the child is a child in need of care, the Court shall find the child to be a child in need of care, place the child under the Court's jurisdiction, 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.

F. A respondent custodian may make a plea of admission or no contest to the allegations in the petition. The Court may accept a plea at any time prior to or during an adjudication hearing. The Court may accept a plea of no contest if a plea of admission may expose the respondent to additional civil or criminal liability. Before accepting a plea, the Court must be satisfied that the plea is knowingly, understandingly, and voluntarily made and that the plea is supported by an

adequate factual basis. If the plea is no contest, the Court shall not question the respondent to establish the factual basis but may establish the factual basis by other means, such as questioning other witnesses or through documentary proof. Prior to accepting a plea, the Court must advise the respondent on the record of the following:

1. The allegations in the petition;
2. That the respondent has a right to counsel if the respondent is not yet represented by counsel;
3. That, if the Court accepts the plea, the respondent will give up the rights to:
 - a. trial by a judge;
 - b. have the petitioner prove the allegations in the petition by a preponderance of the evidence;
 - c. have witnesses against the respondent appear and testify under oath at the trial;
 - d. cross-examine witnesses; and
 - e. have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
4. That admissions by the respondent can be used later as evidence in a proceeding to terminate parental rights if the case comes to that; and
5. That the respondent may appeal to challenge any errors in the adjudicatory process, but the appeal must be timely.

(Source: WOS 2022-001, January 26, 2022, Section XXI)

5.122 DISPOSITIONAL HEARING

A. Purpose. The dispositional hearing is held after the Court has determined by trial or plea that the child is a child in need of care. In FPC cases, the dispositional hearing is when the Court makes its formal determination of how the Court, MFT, Department, and Tribe can best meet the needs of the family. Accordingly, the FPC may make orders that affect anyone involved in the case, such as the child, any adult, service provider, agency, or the Department. In non-specialty track cases, the dispositional hearing is when the Court considers and may order non-reunification permanency options, such as termination of parental rights or guardianship, provided that the Court has followed proper procedures to make such findings.

B. Time for Hearing. In FPC cases, the Court may hold a dispositional hearing immediately after adjudication if the parties have received the Family Strengthening Plan. If the FPC does not hold the dispositional hearing immediately after adjudication, it must hold such a hearing within two weeks of adjudication. In non-specialty track cases, the Court may hold a dispositional hearing immediately after adjudication or within 30 days of adjudication. If the dispositional hearing is not held immediately after 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.

C. Family Strengthening Plan. In FPC cases, the MFT must present the FSP to the Court. The MFT must submit the FSP in writing to the Court and all parties at least seven days in advance of the hearing. If the MFT failed to reach consensus about the FSP, the MFT must submit in writing to the Court and all parties any FSP provisions on which the MFT did reach consensus and describe to the Court any outstanding issues. The Court may resolve any outstanding issues in the FSP, considering the needs of the child and the family, or direct the MFT to meet further about the FSP, in which case the Court may adjourn the hearing for a period not to exceed one week. If the MFT reached consensus about the FSP, the Court may adopt the FSP as proposed or modify it as the Court sees fit in order to best serve the needs of the child and the family. The Court must ensure that the MFT and the FSP are consistent with the active efforts requirement to prevent removal or achieve reunification.

D. Evidence. All relevant and material evidence 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 received by the Court 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, of 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 FSP and other evidence offered bearing on the disposition. The Court may order compliance with all or part of the FSP and may enter such orders as it considers necessary considering the needs of the child and the family.

F. Removal. Regardless of whether the case is in the FPC, the Court may determine that removal of the child is required, although removal should be a last resort to protect a child from a substantial risk of physical or psychological harm. Such a determination requires that the Department or the Prosecutor request and prove the need for removal by a preponderance of the evidence, which must meet the multi-part test required in Section XVIII.G.3. Any removal order must follow the placement preferences of the Tribe unless there is good cause for deviation.

G. Continued Placement. If the child was removed from his/her custodian, the Court must hear evidence about the continued need for placement. To continue the removal requires evidence that the child would be at substantial risk of harm if returned to the custodian.

(Source: WOS 2022-001, January 26, 2022, Section XXII)

5.123 DISPOSITIONAL REVIEW HEARINGS IN A FAMILY PRESERVATION COURT CASE

A. Purpose. The purpose of a dispositional review hearing is to bring the parties together in a spirit of collaboration, review and celebrate case progress, discuss and address barriers to progress, modify the Family Strengthening Plan as needed, determine whether any change of placement is appropriate, determine whether to change the case track based on whether criteria for such a change have been met, and ensure that the Department is making active efforts to prevent removal or achieve reunification and the FSP reflects that requirement. The FPC may

make orders that affect anyone involved in the case, such as the child, any adult, service provider, agency, or the Department.

B. Frequency. The Court must hold frequent dispositional review hearings, at least once every 30 days after the dispositional hearing and preferably more frequently.

C. Removal. The Court may determine that removal of the child is required, although removal should be a last resort to protect a child from a substantial risk of physical or psychological harm. Such a determination requires that the Department request and prove the need for removal by a preponderance of the evidence, which must meet the multi-part test required in Section XVIII.G.3., above. Any removal order must follow the placement preferences of the Tribe unless there is good cause for deviation.

D. Continued Placement. If the child was removed from his/her custodian, the Court must review the Department's placement recommendations and hear evidence about the continued need for placement. To continue the removal requires evidence that the child would be at substantial risk of harm if returned. If the Court does not order the child returned to the custodian, the Court may continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

E. Family Strengthening Plan. The MFT must present the current version of the FSP to the Court. The MFT must submit the FSP in writing to the Court and all parties at least seven days in advance of the hearing. If the MFT failed to reach consensus about the updated FSP, the MFT must submit in writing to the Court and all parties any FSP provisions on which the MFT did reach consensus and describe to the Court any outstanding issues. The Court may resolve any outstanding issues in the FSP, considering the needs of the child and the family, or direct the MFT to meet further about the FSP, in which case the Court may adjourn the hearing for a period not to exceed one week. If the MFT reached consensus about the FSP, the Court may adopt the FSP as proposed or modify it as the Court sees fit in order to best serve the needs of the child and the family. The Court must ensure that the MFT and the FSP are consistent with the active efforts requirement to prevent removal or achieve reunification.

F. Notice of Review. Notice of the dispositional review hearing shall be provided on the record or by ordinary mail or by email as provided in Section XVII.

G. Court Findings Regarding Progress. After review of the Family Strengthening 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 Department may submit a modified FSP, 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 FSP including, but not limited to, the following:

1. Prescribing additional services that are necessary to rectify the conditions that caused the child to become a child in need of care;
2. Prescribing additional actions to be taken by the custodian to rectify the conditions that caused the child to become or remain a child offender or a child in need of care.

H. Short Review. If the child remains in placement, the Court shall determine whether the case should be reviewed before the next dispositional review hearing required under this Section. In making this determination, the Court shall consider the following:

1. The custodian's ability and motivation to make necessary changes to provide a suitable environment for the child.
2. Whether there is a reasonable likelihood that the child may be returned to his/her home prior to the next dispositional review hearing required under this Section.

I. Return of Child Without Hearing. At any time, in the event that the Department determines that the child should be returned to his home, the Tribal Presenting Officer shall request a hearing on the determination, subject to the notice provisions of Section XVII. If no person entitled to notice of the hearing 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.

(Source: WOS 2022-001, January 26, 2022, Section XXIII)

5.124 PERMANENCY PLANNING HEARINGS

A. Purpose. The Court shall hold a permanency planning hearing to review the status of the child in need of care and the progress being made toward the child's return to his/her custodian or to some other permanent home. In an FPC case, the Court shall convene the parties in a spirit of collaboration to review and celebrate their progress, discuss and address barriers to progress, modify the Family Strengthening Plan as needed, determine whether any change of placement is appropriate, determine whether to change the case track based on whether criteria for such a change have been met, and ensure that the Department is making active efforts to prevent removal or achieve reunification and the FSP reflects that requirement.

B. Frequency. The Court shall conduct an initial permanency planning hearing no more than one year after entry of the initial order of disposition. Subsequent permanency planning hearings shall be held at least once every 30 days. A permanency planning hearing may be combined with a dispositional review hearing under Section XXIII of this Statute.

C. Family Strengthening Plan. The MFT must present the current version of the FSP to the Court. The MFT must submit the FSP in writing to the Court and all parties at least seven days in advance of the hearing. If the MFT failed to reach consensus about the updated FSP, the MFT must submit in writing to the Court and all parties any FSP provisions on which the MFT did reach consensus and describe to the Court any outstanding issues. The Court may resolve any outstanding issues in the FSP, considering the needs of the child and the family, or direct the MFT to meet further about the FSP, in which case the Court may adjourn the hearing for a period not to exceed one week. If the MFT reached consensus about the FSP, the Court may adopt the FSP as proposed or modify it as the Court sees fit in order to best serve the needs of the child and the family. The Court must ensure that the MFT and the FSP are consistent with the active efforts requirement to prevent removal or achieve reunification.

D. Request to Change the Permanency Goal; Notice. If the Tribal Presenting Officer intends to seek a change in the permanency goal from reunification to some other permanency option, the Tribal Presenting Officer shall provide notice to the parent(s) in accordance with the provisions of this Code.

E. Determination. The Court must determine the following:

1. Return the Child. If 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 custodian. 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 custodian to substantially comply with the terms and conditions of the Family Strengthening Plan and dispositional orders of the Court as evidence that return of the child to his/her custodian would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

2. Placement Extension. If the Court finds that the parent has substantially complied or is making significant progress in complying with the Family Strengthening Plan, but circumstances exist that indicate that an immediate return home would be contrary to the needs of the child, the Court may order continuation of the placement for a period up to ninety (90) days. After such extension the Court will conduct a hearing to determine whether return or some other permanency plan is consistent with the needs of the child.

3. Removal. The Court may determine that removal of the child is required, although removal should be a last resort to protect a child from a substantial risk of physical or psychological harm. Such a determination requires that the Department request and prove the need for removal by a preponderance of the evidence, which must meet the multi-part test required in Section XVIII.G.3., above. Any removal order must follow the placement preferences of the Tribe unless there is good cause for deviation.

4. Child Not Returned. If the Court determines at a permanency planning hearing that the child should not be returned to his/her custodian, the Court shall either extend the child's placement or change the permanency goal for the child. Permanency goal options are as follows:

a. Guardianship.

b. Adoption.

- c. Long term foster care. Long term foster care shall only be available as a permanency option in cases where the child is sixteen years of age or older, or where other placement options in this Section are not available for the child.
- d. Place the child on an independent living plan. At a minimum the independent living plan shall address the basic needs of the child, including food, clothing, shelter, medical care, education, and/or supervision for the child.
- e. Emancipation of the child.

(Source: WOS 2022-001, January 26, 2022, Section XXIV)

5.125 EMANCIPATION

A. The Department of Human Services must inform a child who is at least sixteen (16) years of age and the subject of a proceeding under this Statute that the child may seek emancipation and instruct the child on the process for doing so.

B. A child who is at least sixteen (16) years of age may petition the Court for emancipation. The Court may only grant such status if the child proves to the Court by clear and convincing evidence that the child is capable of functioning as an independent and responsible member of the community and that emancipation is consistent with the needs of the child.

C. Contents of Petition. A petition for emancipation shall include the following information:

- 1. The name of the petitioner;
- 2. Petitioner's date of birth;
- 3. Petitioner's current address;
- 4. The name of the school or educational institution the petitioner is attending;

5. The name of Petitioner's employer and average paycheck, and/or any other sources of income;
6. Petitioner's means of transportation;
7. The names and addresses of petitioner's parent(s) or legal guardian(s);
8. Statement of why emancipation is consistent with the needs of the petitioner; and
9. Signature of the petitioner.

D. Persons entitled to notice. The following persons shall be entitled to notice of a proceeding brought pursuant to this Section:

1. The petitioner.
2. The petitioner's parent(s) or legal guardian(s), unless the parent(s) or legal guardian's parental rights have suspended or terminated by prior court order, or the parent(s) or legal guardian(s) is deceased.
3. The LTBB Department of Human Services, if the petitioner is the subject of an active child welfare case.
4. The Tribal Presenting Officer, if the petitioner is the subject of an active child welfare case.
5. The petitioner's lawyer-guardian ad litem, if the petitioner is the subject of an active child welfare case.

E. Procedure. Hearings held pursuant to this Section shall be governed by the procedures set forth in this Section and applicable court rule.

(Source: WOS 2022-001, January 26, 2022, Section XXV)

5.126 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 greatest value to the community and the individual family members 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, efforts have failed to avoid termination, there is no reasonable expectation that further efforts will result in safely maintaining the family unit, no other options exists to ensure a child's stability, safety, and permanency, and it is consistent with the needs of the child to proceed under this Section.

B. Mandated Request for Termination of Parental Rights. In an Aggravated Circumstances case as defined in Section V.D., the Tribal Presenting Officer shall include a request for termination of parental rights in the initial petition filed with the Court, and the Court shall consider the request for termination at the initial dispositional hearing.

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 abandoned under either of the following circumstances:
 - a.** The child's parent is unidentifiable, has left 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 identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent.
 - b.** The child's parent has left the child for 91 or more days and has not sought custody of the child or otherwise indicated a willingness to assume their parental role during that period.

- 2.** The child or a sibling of the child has suffered physical injury or physical or sexual abuse under one or more of the following circumstances:

 - a.** The parent's act caused the physical injury or 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 injury or 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 nonparent adult's act caused the physical injury or 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 Statute, and the court finds 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.
- 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, 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.** A parent of the child is convicted of a violent or sexual crime, and the Court determines that continuing the parent-child relationship with the parent would be harmful to the child.
- 6.** Based on the conduct or capacity of the child's parent, there is a reasonable likelihood that the child will be harmed if he or she is returned to the home of the parent.

7. The parent is imprisoned for over two (2) years, 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.

8. The parent abused the child or a sibling of the child, the abuse included one or more of the following, and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent:

- a.** Abandonment of a child.
- b.** Sexual abuse involving penetration, attempted penetration, or assault with intent to penetrate.
- c.** Battering, torture, or other severe physical abuse.
- d.** Loss or serious impairment of an organ or limb.
- e.** Life-threatening injury.
- f.** Murder, manslaughter, or attempted murder or manslaughter.
- g.** Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or manslaughter.

D. Evidence. The Rules of Evidence shall apply in the determination of whether a ground for involuntary termination is met, but not in the determination of whether termination is consistent with the needs of the child.

E. If the Court finds that there are grounds for termination of parental rights, that active efforts were made, that no other option exists to protect the child's safety and give the child stability, and that termination of parental rights is consistent with the needs of the child, the court

shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

F. 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 its 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 thirty (30) days after the taking of final proofs.

G. Termination through Voluntary Relinquishment of Parental Rights. Parental rights may be voluntarily relinquished by a parent in writing, if signed by the parent in the presence, and with approval, of the Court. Presence for the purpose of this section can be through electronic means. A relinquishment of parental rights shall not be accepted or acknowledged by the Court within ten (10) days following birth of the child. The Court shall inform the parent on the record of his/her rights and shall inform the parent of the consequences of the voluntary relinquishment of parental rights. 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 of parental rights, the Court shall determine that entry of such an order is consistent with the needs of the affected child. If the Court declines to grant a voluntary termination, the Court shall refer the case to the Department for a mandatory safety assessment.

H. Withdrawal of Voluntary Relinquishment.

1. Prior to Adoptive Placement. 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.

2. Withdrawal Related to Fraud or Duress. A parent 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 by clear and convincing evidence that such consent was obtained by fraud or duress.

I. 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.

J. Advice of Right to Appeal. Immediately upon entry of an order terminating 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.

(Source: WOS 2022-001, January 26, 2022, Section XXVI)

5.127 ADOPTION

A. Jurisdiction. When the Court has exercised jurisdiction over a child in need of care under this Statute and ordered a change of permanency goal to adoption under Section XXIV, the Court may proceed with an adoption under this Section.

B. Types. The Tribe recognizes the following types of adoption:

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

2. Closed. The parental rights of the biological parents have been terminated, and visitation rights of the parents and/or other named members of the child's biological family will not be maintained. All contact by the biological parents and/ or family will be forbidden unless the adoptive parents consent.

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 members of the child's biological family will be maintained as outlined in the adoption order.

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 members of the child's biological family will not be maintained. All contact by the biological parents and/ or family will be forbidden unless the adoptive parents consent.

C. Who May File a Petition. Any person over the age of twenty-one (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.

D. 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 the consenting persons 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.

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

F. 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.

G. 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 the adopting parent(s);
3. Proof of parental consent to the adoption, if the parent has consented;
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;
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; and
6. The type of adoption the petitioner is seeking: open, closed, open traditional, or closed traditional.

H. Pre-Adoptive Placement Assessment. The Court shall not order a pre-adoptive placement until it receives and reviews a pre-adoptive placement assessment submitted by the Department. A pre-adoptive placement assessment must contain the following information about the prospective adoptive parent(s):

1. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any.
2. 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(s).
3. Physical and mental health, including any history of substance abuse.
4. Educational and employment history and any special skills and interests.
5. Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual.
6. Reason for wanting to adopt.

7. The capacity and disposition of the parties involved to immerse the child in the Tribe's culture and traditions.
8. 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.
9. Whether the individual has ever been convicted of a crime.
10. 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.

I. Consent of Biological Parents. 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.

1. Requirements for validity. Consent to adoption must be executed either:
 - a. In the presence of the Court. Presence for the purpose of this section may be through electronic means after the Court explains:
 - i. The consent may result immediately in a pre-adoptive 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 otherwise ordered by the Court.
 - ii. The consent may result in a final order of adoption.

iii. If, for any reason prior to the entry of a final adoption order, petitioner does not retain custody of child, the child will be returned to the biological parent(s), unless doing so would immediately result in the child being a child in need of care; or

b. 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 voluntarily executed and that the parent fully understood the ramifications set out in this subsection (I).

2. 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 subsection (J).

J. 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 members 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. 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.

K. Recommendation of the Department. Upon completion of the pre-adoptive placement assessment the Department shall, in consultation with the Child Welfare Commission, formulate a written recommendation for the Court.

L. Initial Hearing. Within ten (10) days of the receipt of the recommendation from the Department, 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.

M. Waiver of Trial Custody Period. If the adoptee has been in the custody of the proposed adoptive parent(s) for more than six (6) months and the Department recommends adoption at the initial hearing, the Court, upon recommendation of the Department, may waive the trial custody period, and the final adoption decree may be entered at the initial hearing.

N. Trial Custody Period; Final Hearing. Not less than ninety (90) days, nor more than one hundred twenty (120) days, after the adoptee has been in the custody of the proposed adoptive parent(s), the adoptee and proposed 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 proposed adoptive parent(s) to finalize the adoption.

O. 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 the proposed 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 placed under the custody of the Court. The Court shall provide a certified copy of the adoption decree to the Tribal Enrollment Office.

P. 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 by, 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 consistent with the provisions of this Section.

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.

Q. 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 interested parties and witnesses. Any papers, records, petitions, or files pertaining to the proceedings and maintained by the Department or the Court shall be kept in locked files and shall not be released to anyone, except pursuant to Court order.

R. Rights of Adoptive Children to Familial Information. Any child adopted pursuant to this Statute shall have the right to obtain information regarding their biological parents, including but not limited to the names of their biological parents, child's place of birth, residence of parents at the time of adoption, and known siblings. The Court shall order release of this information upon petition of the child.

(Source: WOS 2022-001, January 26, 2022, Section XXVII)

5.128 CHILD PROTECTION RECORDS

A. Children's Court Records. All Children's Court records are open unless deemed confidential by the Court or otherwise provided in this Statute. Records deemed confidential by the Court shall not be open to inspection to any but the following:

- 1. The child, the child's attorney, or court appointed special advocate;
- 2. The child's custodian, or their attorney;

3. The Children's Court personnel directly involved in the handling of the case;
4. By order of the Court, any other person having legitimate interest in the particular case or work of the Court;
5. The Tribal Prosecutor.

B. Law Enforcement and Department Records. All law enforcement and Department service records shall be confidential and shall not be open to inspection to any but the following:

1. The child, the child's attorney, or court appointed special advocate;
2. The child's custodian, or their attorney;
3. Law enforcement and Department personnel directly involved in the handling of the case, the Child Welfare Commission, and Tribal Presenting Officer;
4. 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 child abuse 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;
5. The Tribal Prosecutor;
6. By order of the Court, any other person 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 of the client or others.

2. The 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 disseminates or permits or encourages the dissemination of child protection records that have been deemed confidential by the Court shall be subject to a civil fine not to exceed \$5,000.00 for each action or omission, and the cost of restitution that shall be paid to any person who can show that they have been harmed as a result of the unauthorized release and dissemination of such confidential child protection records.

(Source: WOS 2022-001, January 26, 2022, Section XXVIII)

5.129 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 custodian is not immediately available and cannot be found after reasonable effort under 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 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 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, religious practice or through other traditional spiritual practices if the spiritual or religious practice the child or custodian are adherents of rely 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 the performance of care or treatment in reliance on the Court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and/or the custodian authorization.

(Source: WOS 2022-001, January 26, 2022, Section XXIX)

5.130 RE-HEARINGS; APPEALS

Rehearing or appeals of decisions rendered by Tribal Court to the Appellate Court shall be governed by the Constitution of the Little Traverse Bay Bands of Odawa Indians and applicable court rules.

(Source: WOS 2022-001, January 26, 2022, Section XXX)

5.131 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.

(Source: WOS 2022-001, January 26, 2022, Section XXXI)

5.132 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval, whichever comes first, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-011, October 6, 2023, Section XXXII)

5.133 OTHER RELATED STATUTES

See WOS 2012-011 Child Welfare Commission, and WOS 2011-006 Tribal Prosecutor, or as may be amended.

(Source: WOS 2022-001, January 26, 2022, Section XXXIII)

Chapter 2. Child Welfare Commission

5.201PURPOSE

The purpose of this Statute is to create the Child Welfare Commission as an advisory and foster care licensing entity to protect and promote the welfare of Tribal children and families. This Statute repeals and replaces Waganakising Odawa Statute, 2009-013 and any amendments thereto to protect and promote the welfare of Tribal children and families. This Statute repeals and replaces Waganakising Odawa Statute, 2009-013 and any amendments thereto.

(Source: WOS 2012-011, August 5, 2012, Section I)

5.202 DEFINITIONS

- A.** “Department” means the Human Services Department.
- B.** “Emergency” means an unexpected situation that requires immediate action.

(Source: WOS 2012-011, August 5, 2012, Section II)

5.203 CREATION

- A.** Creation of Commission. The Tribal Council hereby creates the Child Welfare Commission, which shall consist of five (5) Tribal members at least eighteen (18) years of age appointed by the Tribal Council.
- B.** Term and compensation. Members of the Child Welfare Commission shall be appointed to serve for three (3) year terms. Members may be reappointed for additional terms without limitation. One of the Commission members shall be appointed by the Commission to serve as Chairperson for a one (1) year term. One of the Commission members shall be appointed by the Commission to serve as Vice-Chair. There shall be no limit on reappointment as long as the Chairperson and /or Vice Chair remain on the Commission. The Tribal Council may determine and authorize compensation to be paid to members of the Commission based upon the Tribal Council's determination of the time to be expended upon Commission duties and the

qualifications of the appointed Commissioners.

C. Oath of Office. Upon appointment, The Tribal Court shall administer the Oath of Office to members of the Child Welfare Commission which shall include a commitment to uphold the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians and to perform faithfully and diligently the duties and responsibilities set forth in this Statute.

D. Vacancies. In the event a vacancy occurs in the Child Welfare Commission, by virtue of death, resignation or removal, the Tribal Council shall appoint a qualified Tribal Citizen to fill the remaining term of office.

E. Removal. Members may be removed in accordance with applicable laws.

(Source: WOS 2012-011, August 5, 2012, Section III)

5.204 DUTIES

A. The Child Welfare Commission shall have the following duties:

- 1.** Shall be the licensing and monitoring body of community based shelter facilities including: group, shelter, foster, adoptive homes, and child placing agencies in consultation with the Department and other applicable entities.
- 2.** Shall be advised of pending state court proceedings and may make verbal or written recommendations to the Tribal Prosecutor regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court.
- 3.** May advise the Executive on general child welfare matters (non-case-specific), and recommend statutes, policies and procedures to protect children and help families.
- 4.** May make recommendations to the Tribal Prosecutor and Department regarding the need to take formal court action to protect a child.
- 5.** May make recommendations for programs and services to the Department.

6. Appear in court proceedings as required pursuant to valid subpoenas or court order.

7. Commission members shall not be involved in investigations outside of Commission meetings.

8. All Child Welfare Commission recommendations shall be placed in the Department file which is open and available to all parties to the proceeding.

B. Licensing of Child Placement. The Commission shall develop regulations for issuing and monitoring community based shelter facility licenses that shall be submitted to Tribal Council for approval. Such regulations shall include minimal home safety standards and qualifications for license holders. The Human Services Department shall conduct home and facility studies and present its assessments and recommendations for licensing to the Commission for approval or denial.

C. Notice.

1. Pending State Court Proceedings. Upon receipt of notice of a State Court proceeding, the Tribal Prosecutor shall provide a copy to the Child Welfare Commission.

2. Children Domiciled on the Reservation. Tribal Prosecutor shall notify the Commission of all instances where they believe Tribal Court action may be necessary to protect a child domiciled on the Reservation.

D. Meetings, Emergency Meetings, Voting, Conflicts of Interest, Confidential Records.

1. Meetings. The Child Welfare Commission shall meet as necessary to carry out its duties. Due to the confidential nature of the business conducted by the Child Welfare Commission, meetings or portions of meetings where specific cases are being discussed shall be closed to all persons other than those whose participation is necessary and appropriate to the specific case.

2. **Emergency Meetings.** Emergency meetings shall be held for any urgent matter arising from an unexpected situation requiring immediate action.

3. **Voting.** Actions of the Child Welfare Commission shall be decided by a majority vote of those present at the meeting. The Chair is entitled to vote on all matters brought before the Commission. A quorum shall consist of three (3) members. Any action may be ratified by non-attending members. If ratification is sought, all non-attending members shall be contacted personally, or by phone or fax, and all ratifications shall be reduced to writing and placed in the minutes and approved at the next regularly scheduled Commission meeting.

4. **Investigation.** The Commission shall not be involved in gathering information on Tribal families and children outside of Commission meetings. Field work, such as home studies, shall be conducted by Department. When requested by the Commission, the Department shall provide the Commission with all written reports and studies on Tribal families and children. The Commission may request the Department to gather additional information where appropriate. All members shall have access to the same information. If Commission members are contacted individually, they shall refer inquiries to the appropriate Tribal official or staff member.

5. **Conflicts of Interest.** Commission members who are serving as foster parents or guardians may participate in the review of the status of children under their own care only to the extent as any other foster parent or guardian. Commission members shall not participate in the review of the status of children under the care of members of their immediate family (father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child) as defined in the Constitution and may absent themselves in any situation where their relationship with individuals before the Commission may interfere with their objectivity, or the Commissioner otherwise believes that he/she has or appears to have a conflict of interest.

6. **Confidential Records.** All records of the Commission involving specific child welfare matters shall be kept confidential. Confidential records may be introduced and

used in court cases. Confidential records may be reviewed by an auditor and such auditor shall adhere to any applicable Code of Conduct standards.

(Source: WOS 2012-011, August 5, 2012, Section IV)

5.205 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.

(Source: WOS 2012-011, August 5, 2012, Section V)

5.206 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.

(Source: WOS 2012-011, August 5, 2012, Section VI)

Chapter 3. Direct Consent and Open Adoptions

5.301 PURPOSE

The purpose of this statute is to allow for the voluntary adoptive placement of Tribal children to foster their stability and well being, and, whenever appropriate, provide for the continued contact between the adopted child, the child’s biological parents, grand-parents, and/or other members of the extended family.

(Source: WOS 2000-09, July 23, 2000, Section I)

5.302 DEFINITIONS

- A. “**Court**” means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians.
- B. “**Parent**” means the biological parent of a child.
- C. “**Petitioner**” means a person who files a petition to adopt a child.
- D. “**Child**” means a person less than eighteen years of age.
- E. The terms “**parent**” and “**petitioner**,” include the plural unless inconsistent with the context where such terms appear.

(Source: WOS 2000-09, July 23, 2000, Section II)

5.303 PETITION FOR ADOPTION

- A. An adoption proceeding is commenced when a person, or if married, husband and wife jointly, who desires to adopt a child over whom the Tribal Court properly exercises jurisdiction, files a petition for adoption in the Court. Petitioner must serve the petition on the biological parents of the child whose rights have not been terminated by a court of competent jurisdiction, and the Child Welfare Commission of the Little Traverse Bay Bands of Odawa Indians.

B. Contents of Petition. The petition for adoption shall be verified by each petitioner and shall contain the following information:

1. The name, date and place of birth, and place of residence of each petitioner, including the maiden name of the adopting mother.
2. The name, date and place of birth, and place of residence if known of the adoptee.
3. The relationship, if any, of the adoptee to the petitioner.
4. The full name by which the adoptee shall be known after adoption.
5. The full description of the property, if any, of the adoptee.
6. The names of the parents of the adoptee and the place of residence of each living parent if known, and whether, to the best of Petitioner's knowledge, the parents intend to consent to adoption by petitioner.
7. The name and place of residence of the guardian or attorney of the person or estate of the adoptee, if any has been appointed.
8. Simultaneously with the Petition or as soon as practicable thereafter, the petitioner shall file with the Court a copy of a pre-placement assessment prepared in accordance with section IV [WOTC 5.304] of this statute, of the petitioner completed or updated within 1 year before the petition is filed with a finding that the petitioner is suitable to be a parent of an adoptee.

(Source: WOS 2000-09, July 23, 2000, Section III)

5.304 PRE-PLACEMENT ASSESSMENT

A. 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.

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

1. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any;
2. 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;
3. Physical and mental health, including any history of substance abuse;
4. Educational and employment history and any special skills and interests;
5. Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual;
6. Reason for wanting to adopt;
7. 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;
8. Whether the individual has ever been convicted of a crime; and
9. 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.

(Source: WOS 2000-09, July 23, 2000, Section IV)

5.305 CONSENT OF BIOLOGICAL PARENTS

A. 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.

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

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

a. The consent may result immediately in a pre-adoptive 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 VI [WOTC 5.306] of this Statute.

b. 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 ordered under Section V [WOTC 5.306] of this Statute.

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

2. 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 voluntarily executed and that the parent fully understood the ramifications set out in subsection III(A)(1) above.

C. Consent conditioned on open adoption. A 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 VI [WOTC 5.306] of this Statute.

(Source: WOS 2000-09, July 23, 2000, Section V)

5.306 OPEN ADOPTION AGREEMENTS

Simultaneously with, or prior to, the 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 members of the child’s biological family. Upon accepting a 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 the provisions of the Child Welfare Code (WOTC 5.101 *et seq.*)

(Source: WOS 2000-09, July 23, 2000, Section VI)

5.307 PRE-ADOPTIVE PLACEMENT AND ASSESSMENT

A. After holding a hearing on the Petition, finding that the pre-placement assessment indicates the suitability of the Petitioner to adopt the child, accepting the consent of the parent, and, if applicable, entering an open adoption agreement order, the Court shall order a pre-adoptive placement of the child with Petitioner. During the pre-adoptive placement, Petitioner’s rights to care for the child shall be equivalent to those of a legally appointed guardian. The parent and/or members of the child’s biological extended family, shall have no rights to visit the child unless specified in an agreement ordered by the Court under Section VI [WOTC 5.306].

B. Between 150-180 days from the commencement of the pre-adoptive placement, the Tribal Social Services Department shall prepare and file in the Court a pre-adoptive placement assessment to update the information contained in the pre-placement assessment and assess the functioning of the child while actually in the care and custody of petitioner. The assessment may be prepared by a social services agency of a different jurisdiction if approved by the Tribal Social Services Department.

(Source: WOS 2000-09, July 23, 2000, Section VII)

5.308 FINAL ADOPTION ORDER

A. No sooner than six months after the commencement of the pre-adoptive placement the Court shall hold a hearing to determine whether to enter a final order of adoption. If the pre-adoptive placement assessment finds petitioner suitable to adopt the child, and petitioner reaffirms his/her commitment to adopt the child thereby assuming full legal and moral responsibility for the parental care and upbringing of the child, the Court shall enter an order terminating the parental rights of the biological parent and a final order of adoption naming petitioner as the adoptive parent of the child. If the child is an enrolled member, or eligible to be an enrolled member in the Little Traverse Bay Bands of Odawa Indians, such final order shall contain a provision prohibiting the adoptive parent from disenrolling or failing to enroll the child.

B. Effect of Final Order of Adoption. Upon entry of the final order of adoption, the adoptive parent shall from that date forward have the same legal relationship with, authority over, and responsibility for, the adopted child as would a biological parent over a child. From that date forward the biological parent shall have no legal relationship to the child, and the parent and child's biological family shall have no legally enforceable right to visit the child except as stated in a Court ordered open adoption agreement under Section VI [5.306].

C. Tribal membership. Unless otherwise specified in Tribal law, membership rights are determined by the child's biological family, and are not affected by adoption of the child.

(Source: WOS 2000-09, July 23, 2000, Section VIII)

5.309 RETURN OF CHILD TO PARENT

If for any reason petitioner is unable or unwilling to carry through with the adoption, the Court shall order the child returned to the care and custody of the child's biological parent unless the child is also placed outside of parental care pursuant to an involuntary proceeding under the Child Welfare Code (WOTC 5.101 *et seq.*).

(Source: WOS 2000-09, July 23, 2000, Section IX)

5.310 ADOPTION RECORDS

Until the adoptee reaches the age of eighteen, records of adoption proceedings may only be accessed by the adoptive parent or subsequent legal guardian of the child for good cause, which shall include family related medical information, and by the Tribal Enrollment Department or enrollment departments of other Indian tribes, to the extent necessary to confirm eligibility for enrollment. Enrollment Departments shall keep such records strictly confidential. At any time after reaching the age of eighteen, the adoptee may review and/or copy any records in his/her adoption file.

(Source: WOS 2000-09, July 23, 2000, Section X)

Chapter 4. Juvenile Justice

5.401 SHORT TITLE

A. This Statute shall be entitled “The Juvenile Justice Statute”. It repeals and replaces the Waganakising Odawak Statute 2006-013. This Statute shall comply with all provision of the Little Traverse Bay Bands of Odawa Indians Constitution.

(Source: WOS 2007-011, January 3, 2008, Section I)

5.402 PURPOSE

The Little Traverse Bay Bands of Odawa Indians, referred to in this Statute as “the Tribe”, has determined that:

- A.** Juveniles are valuable Tribal resources, and that the welfare of juveniles is a vital concern of the Tribe;
- B.** It is essential that Tribal resources, identity, and culture be preserved by providing for enhancement and strengthening of the family as the primary means of securing a vital Tribal community.
- C.** The best interests of the Tribe and its juveniles are served when the juveniles of the Tribe receive the care and guidance necessary for their spiritual, emotional, mental, and physical development, all of which will prepare them to become contributing Citizens of the Tribe;
- D.** When concerns involving juveniles arise, the Tribal Court, with advice from the Tribal Community Justice Coordinator, is best able to resolve the concerns and provide juveniles with the care and guidance that is necessary for their well-being;
- E.** Tribal Court, whenever practical, is preferable to state court for consideration of matters involving juveniles;
- F.** When the Court must make a placement outside of the home, the best interests of the Tribe

and its juveniles are served by providing for their care and placement in an environment which will ensure that juveniles receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; and

G. When concerns involving juveniles arise, the best interests of the community are served if the Tribal Court has jurisdiction over all persons in the family or household who is a part of the concern giving rise to the jurisdiction, or who may be part of the solution to the concerns.

(Source: WOS 2007-011, January 3, 2008, Section II)

5.403 DEFINITIONS

For purposes of this Statute, the following definitions shall apply:

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

B. “Citizen” means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

C. “Community Justice Coordinator” means the staff person within the Tribal Court system whose duties include those described in this Statute.

D. “Counsel” means any licensed attorney admitted to practice in Tribal Court, who as an officer of the Court provides legal assistance to any party during the course of any proceeding under this Statute.

E. “Custodian” means one who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.

F. “Delinquent Act” means any act by a juvenile identified under the “Juvenile Offender” and “Juvenile in Need of Supervision” definitions of this Statute.

G. “Detention” means the placement of a juvenile in a physically restrictive facility.

H. “Diversion” means a method of dealing with a juvenile without the need of a formal court proceeding.

- I.** “Guardian” means a person other than the juvenile’s parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile.
- J.** “Incident Report” means a report to the Prosecuting Attorney containing allegations indicating that a juvenile under the jurisdiction of the Tribe has committed a delinquent act.
- K.** “Juvenile” means a person under eighteen (18) years of age.
- L.** “Juvenile Offender” means any juvenile who commits the following acts:
- 1.** A violation of any Tribal criminal statutes; or
 - 2.** Possession or consumption of alcohol or tobacco (this does not include the use of tobacco for traditional purposes).
- M.** “Juvenile in Need of Supervision” means any juvenile who commits the following acts:
- 1.** A juvenile who repeatedly absents himself or herself from school or other learning program intended to meet the juvenile’s educational needs, or repeatedly violates rules and regulations of the school or other learning program;
 - 2.** A juvenile who repeatedly disobeys reasonable and lawful commands or directives of the juvenile’s parent, legal guardian, or another custodian; or
 - 3.** A juvenile who willfully and voluntarily is absent from home without the consent of the juvenile’s parent, guardian, or another legal custodian.
- N.** “Juvenile Petition” means the formal instrument that commences proceedings in the Court.
- O.** “Least Restrictive Alternative” means restrictions placed on the juvenile must be reasonably related to the Court’s objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.

P. “Notice” means the method by which the Court informs the parties, attorneys, and others of the date, time, and place of proceedings to be conducted by the Court.

Q. “Parent” means the mother, father or legal guardian of a juvenile who has the responsibility for the health, welfare, care, maintenance and supervision of the juvenile at the time the juvenile allegedly committed the delinquent act.

R. “Summons” means the instrument with which the Court directs a party to appear before the Court.

S. “Tribal Land” means all land that is held in trust by the United States government for the benefit of the Tribe.

(Source: WOS 2023-018, October 10, 2023, Section III, Amendment)

5.404 JURISDICTION AND COURT AUTHORITY

A. A. Jurisdiction over Juveniles.

1. Mandatory Jurisdiction. The Tribal Court shall have jurisdiction over juvenile offenders and juveniles in need of supervision proceedings if the juvenile is a member of a federally recognized Indian Tribe and:

- a.** The alleged act or offense occurred on Tribal land;
- b.** The juvenile’s primary residence is on Tribal lands and the juvenile commits an offense while on a Tribally-sponsored event off Tribal lands;
or
- c.** A case is transferred to Tribal Court from any state or tribal court, unless the Court transfers jurisdiction to the Adult Division of the Court pursuant to Section VII(H) of this Statute; or

2. Discretionary Jurisdiction. The Tribal Court may exercise jurisdiction over a juvenile who is not a member of a federally recognized Indian Tribe if:

- a. The juvenile’s primary residence is on Tribal lands;
- b. The alleged act or offense occurred on Tribal land; and
- c. The Tribal Court determines that exercising jurisdiction is necessary to protect the Tribe’s sovereign interest in the welfare of the juvenile.

B. Jurisdiction over the Family/Household. The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the concerns giving rise to jurisdiction, or who may be a part of the solution to the concerns.

C. Transfers from Other Courts. The Tribal Court may accept transfer of a case from any other court if the alleged juvenile offender or juvenile in need of supervision is a Tribal member, or is a non-member juvenile who resides on Tribal trust lands.

D. Transfers to Other Courts. The Tribal Court may transfer a case to another court if the alleged offense occurred on Tribal land and the alleged juvenile offender or juvenile in need of supervision does not reside on Tribal land, and the other court is willing to accept transfer.

E. Adjudication Classification. No adjudication of the status of any juvenile under the jurisdiction of the Court shall be deemed criminal, unless the Court refers the matter to the Adult Division of the Court.

F. Closed Proceedings. Juvenile proceedings shall be closed to the general public to protect the privacy interests of the individuals and families involved.

G. Authority to Cooperate. The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this Statute.

H. Least Restrictive. The least restrictive alternative applies to all placement disposition actions taken by the Court under this Statute.

I. Court Records.

1. A record of all hearings under this Statute shall be made and preserved.
2. All Court records shall be confidential and shall only be open to review by the following:
 - a. The juvenile or the juvenile's legal representative;
 - b. The juvenile's parent(s), guardian, custodians or their legal representatives;
 - c. The Tribal Prosecutor;
 - d. The Tribal Community Justice Coordinator;
 - e. The Court staff; and
 - f. The Judge or Justices involved in the case.

J. Sealing Court Records. When a juvenile who has been the subject of any proceeding before the Court turns twenty-one (21) years of age, the Court shall seal both the Court and law enforcement records relating to that juvenile.

K. Civil Contempt of Court. For the purposes of this Statute:

1. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
2. The Court may fine an adult for contempt of court with a fine not to exceed one hundred dollars (\$100.00).
3. A juvenile may be fined for contempt of court with extension of probation,

additional probation conditions, and a fine not to exceed one hundred dollars (\$100.00).

L. Medical Examination. The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender or juvenile in need of supervision if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.

M. Fingerprints. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint that juvenile for the purpose of immediate comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a juvenile petition is not filed against the juvenile.

N. Appeal.

1. For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent(s), guardian, custodian or legal representative. The party seeking the appeal shall pay costs of obtaining this record.

2. Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within twenty-eight (28) days of the final order of disposition.

3. All appeals shall be conducted in accordance with applicable Tribal statutes and court rules.

(Source: WOS 2023-018, October 10, 2023, Section IV, Amendment)

5.405 PROCEDURAL RIGHTS; NOTICE REQUIREMENTS

A. Applicability. The notice and procedural rights listed in this Chapter shall be afforded parties in each of the following proceedings:

1. Preliminary Hearing under Section VII(G);
2. Transfer to the Adult Division of Tribal Court under Section VII(H);
3. Trial under Section VII(J); and
4. Disposition Hearing under Section VII(N).

B. Notice

1. Notice of proceedings shall be given to:
 - a. The juvenile;
 - b. The juvenile's parent(s), guardian, custodian or legal representative; and
 - c. All legal counsel of record.
2. Notice shall be given when a time for the proceedings has been established; provided at least ten (10) days is given before any non-preliminary hearing except in cases of emergency; provided further that notice is given as soon as possible in the case of a preliminary hearing or in the event of an emergency.
3. The notice shall contain:
 - a. The name of the Court;
 - b. The title of the proceeding;
 - c. A brief statement of the substance of the allegations against the juvenile;
 - d. The date, time, and place of the proceeding; and
 - e. A statement of the right to counsel, as set forth in Section V(D) of this Statute.

C. Summons

1. At least ten (10) days prior to a trial or disposition hearing, the Court shall issue summons to:
 - a. The juvenile;
 - b. The juvenile's parent(s), guardian, legal representative, or custodian;

- c. Any person the Court believes necessary for proper adjudication of the matter(s) before the Court; and
 - d. Any person the juvenile believes necessary for proper adjudication of the matter(s) before the Court; subject to the Court’s discretion.
- 2. The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
- 3. A copy of the juvenile Petition shall be attached to the summons.
- 4. The summons shall be served in the following order of preference:
 - a. Hand delivery to the person, by a Tribal Law Enforcement Officer or appointee of the Court;
 - b. First (1st) Class mail, if the summons cannot be served upon the person; or
 - c. By the following method[s], if the Tribal Court feels it would be likely to provide actual notice to the Respondent:
 - i. Service upon relatives, neighbors, friends, or others who are likely to know the Respondent’s whereabouts. If the person, who receives the summons, denies knowledge of the party’s whereabouts, such service shall not be deemed adequate;
 - ii. Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
 - iii. Service by legal notice in a daily newspaper in the county of Respondent’s last known residence for a three (3) day period, the last day of which is at least ten (10) days prior to the hearing; and by posting the legal notice at the Tribal center.
- 5. If a person who has been issued a summons fails to appear at the hearing, the Court shall hold the person in contempt of court, unless good cause is shown why that person did not appear.

D. Rights of Parties.

1. Right to Counsel:
 - a. The Judge shall inform the juvenile, the juvenile’s parent(s), guardian, or custodian of their right to retain counsel by reading the following statement: “you have a right to have an attorney represent you at this hearing. However, you or your family must pay any fees for such representation.”
 - b. If the parties are unable to pay for an attorney, the Judge shall make known to them any available services providing representation of which the Judge is aware.
 - c. If the parties appear at the hearing without an attorney, the Judge may grant a continuance if they need additional time to seek an attorney.
2. The right to a trial by a Judge (bench trial).
3. The juvenile need not be a witness against him/herself and no inferences can be made if the juvenile exercises the right to remain silent.
4. A parent, guardian, or custodian may not be compelled to give testimony against him/herself or against the juvenile, consistent with the Tribal Constitution and the Indian Civil Rights Act.
5. The Court shall give the juvenile, the juvenile’s parent(s), legal representative, or custodian, the opportunity to introduce evidence, to be heard on their, own behalf, and to examine all witnesses.

(Source: WOS 2007-011, January 3, 2008, Section V)

5.406 PARENTAL RESPONSIBILITY

A. Parental Responsibility.

1. The parent of any juvenile has a continuous responsibility to exercise reasonable control and supervision over the juvenile and prevent the juvenile from committing or participating in the commission of any delinquent act.
2. The parental responsibility to exercise reasonable control includes, but not limited, to the following duties:

- a. To keep drugs out of the home and out of the possession of the juvenile, except those drugs duly prescribed by a licensed physician or other authorized medical professional;
- b. To keep firearms out of the possession of the juvenile except those used for hunting in accordance with Tribal, local and state law governing juveniles hunting under the supervision of an adult;
- c. To know the curfew law of the Little Traverse Bay Bands of Odawa Indians and require the juvenile to observe the curfew laws;
- d. To require the juvenile to attend regular school sessions and to prevent the juvenile from being absent from school without parental or school permission;
- e. To prevent the juvenile from maliciously or willfully damaging, defacing or destroying real or personal property belonging to others, including that belonging to any governmental entity of the Tribe;
- f. To prevent the juvenile from engaging in theft of property or keeping in his or her possession property known to be stolen;
- g. To ensure the juvenile adheres to the rules of safety and regulation regarding use of any four or two-wheeled recreational vehicles; and
- h. To make reasonable efforts to prevent the juvenile from possession or consumption of alcohol.

B. Notification of Parent and Court. If a juvenile is arrested or detained by Tribal Law Enforcement, Tribal Law Enforcement shall notify the juvenile's parent, guardian, or custodian and the Court as soon as reasonably possible. Tribal Law Enforcement shall maintain a record of their notification efforts.

C. Violation and Penalty.

1. If the juvenile of a parent residing within the jurisdiction of the Tribe commits a delinquent act, the parent shall be guilty of a violation of this Section if:

a. It is proven that any action, word or non-exercise of parental responsibility by the parent encouraged, caused or allowed to occur the commission of the delinquent act by the juvenile; or

b. It is proven that the parent knew or reasonably should have known that the juvenile was likely to commit a delinquent act, but failed to take timely and appropriate action to prevent the commission of the delinquent act by the juvenile. If at any time within forty-five (45) days following the giving of notice as provided in section C. above, the juvenile to whom said notice related or applied commits a delinquent act as provided in this article, it shall be presumed that the juvenile committed the delinquent act with the knowledge, allowance, permission or sufferance of the parent.

2. Any person in violation of any subsection of the Article may be subject of a fine assessed by the Court not to exceed five hundred (\$500.00) dollars.

D. Recovery of Damages from Parents. Any party aggrieved by the actions of a juvenile, who has not been emancipated, may recover reasonable compensatory damages in Tribal Court against the parents or parent of the juvenile, living with his or her parents or parent, who has maliciously or willfully destroyed real, personal, or mixed property of a party, or who has maliciously or willfully caused bodily harm or injury to a person or an animal.

(Source: WOS 2007-011, January 3, 2008, Section VI)

5.407 JUVENILE PROCEDURE

A. Incident Report. Tribal Law Enforcement may file an Incident Report with the Tribal Prosecutor. The Incident Report shall contain:

1. Name, age, date of birth, address, name of custodial parent or guardian, Tribal

affiliation, Tribal ID # if applicable;

2. A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
3. A list of witnesses known to the person who files the complaint.

B. Juvenile Petition. Proceedings under this Statute shall commence upon the filing of a juvenile petition by the Tribal Prosecutor on behalf of the Tribe. The juvenile petition shall include:

1. The name, birth date, address, Tribal affiliation and ID# if applicable.
2. The names and addresses of the juvenile's parent(s), guardians, or custodian;
3. Citation to the specific provision(s) of this Statute which gives the Court jurisdiction of the proceedings;
4. Citation to the Tribal criminal statutory provision(s) which the juvenile is alleged to have violated;
5. If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
6. A statement of the facts which brings the juvenile within the jurisdiction of the Court; and
7. A list of witnesses known to the Tribe upon filing of the juvenile petition.

C. Warrant. The Court may enter an order called a warrant, directing that a juvenile be taken into custody if:

1. The Court finds probable cause to believe that the juvenile committed the delinquent act alleged in the petition and there is probable cause to believe that the juvenile will fail to appear for a hearing on the matter; or
2. The juvenile is not taken into custody she/he is likely to endanger himself/herself or others.

D. Custody. A juvenile may be taken into custody by a law enforcement officer if:

1. The officer has reasonable cause to believe that a delinquent act has been committed

and that the juvenile has committed the delinquent act; or

2. A warrant pursuant to Section VII (C) of this Statute has been issued for the juvenile.

E. Law Enforcement Officer's Duties. A law enforcement officer who takes a juvenile into custody, pursuant to Section VII (D) of this Statute, shall proceed as follows:

1. Explain the following rights to any juvenile taken into custody prior to questioning:

a. The juvenile has a right to remain silent;

b. Anything the juvenile says can be used against the juvenile in court; and

c. The juvenile has the right to the presence of his parent or guardian, and/or attorney during questioning.

d. Release the juvenile to the juvenile's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:

i. The juvenile is in danger of injury;

ii. Is pending placement; or

iii. The juvenile is under the influence of alcohol or controlled substances; or

iv. The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.

e. If the juvenile is not released, an officer shall make immediate and recurring efforts to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken into custody.

f. If the juvenile is not released, the juvenile shall be placed in detention or shelter.

F. Detention. A juvenile alleged to be a juvenile offender or juvenile in need of supervision may be detained pending a court hearing in an approved Tribal or State of Michigan detention facility.

1. A juvenile who is sixteen (16) years of age or older may be detained in a jail or other licensed detention facility, used for the detention of adults only if:
 - a. A facility in Section 1.606 is not available or would not assure adequate supervision of the juvenile;
 - b. Detention is in a cell separate from adults; and
 - c. Adequate supervision is provided twenty-four (24) hours a day.

2. A juvenile who is sixteen (16) years of age or older may also be detained in a jail or other licensed detention facility used for the detention of adults if that juvenile is intoxicated, provided that:
 - a. A juvenile detention facility is not immediately available or is not equipped to hold/supervise the intoxicated youth;
 - b. Detention is in a cell separate from adults; and
 - c. The juvenile is released as soon as he or she is sober, unless further detention under Section VII (E) is warranted.

G. Preliminary Hearing.

1. If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within ten (10) days of the filing of the juvenile petition to determine whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).

2. If a juvenile is placed in custody or detention the Court shall conduct a preliminary hearing within seventy-two (72) hours of the placement for the purpose of determining:
 - a. Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and

 - b. Whether continued detention is necessary pending further proceedings.

 - c. If the juvenile's parent(s), 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(s), guardian, or custodian. If it appears that further efforts are likely to produce the appearance of the juvenile's

parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Tribal Prosecutor to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian, if it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the juvenile during the pendency of the juvenile offender or juvenile in need of supervision proceedings, the Court shall appoint an attorney to serve until adjudication and disposition of the petition.

- 3.** The Court shall advise the juvenile as follows:
 - a.** Explain the nature of the proceedings.
 - b.** Read the allegations in the petition unless waived.
 - c.** Advise the juvenile of right to an attorney.
 - d.** Advise the juvenile of the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile.
 - e.** Advise the juvenile that parents, guardians, or custodians may not be compelled to give testimony against himself or herself or the juvenile.
 - f.** Advise the juvenile that he or his legal representative may introduce evidence, to examine (confront) witnesses against him or her, and be heard on their own behalf.
 - g.** The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
- 4.** If the juvenile admits the allegations in the juvenile petition, the Court shall proceed to the disposition hearing only if the Court finds:
 - a.** The juvenile fully understands his/her rights as set forth in Section V(D) of this Statute and fully understands the potential consequences of his/her admission; and
 - b.** The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction.
- 5.** If the juvenile denies the allegations in the juvenile petition, the Court shall hear

testimony concerning:

- a.** The circumstances that gave rise to the juvenile petition and/or the taking of the juvenile into custody; and
 - b.** The need for detention.
- 6.** If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act:
 - a.** The juvenile shall be ordered to appear at a trial on a date and at a time set by the Court; and
 - b.** The juvenile shall be released to his/her parent(s), guardian, or custodian unless the alleged act is serious enough to require detention. The Court may order the juvenile to detention, if:
 - i.** There is reasonable cause to believe that the juvenile will run away and/or be unavailable for further proceedings; or
 - ii.** There is reasonable cause to believe that the juvenile will commit a serious act causing damage to persons or property.
- 7.** If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on the release which may include but not limited to: the posting of a bond; electronic monitoring; house arrest; travel restrictions; mandatory attendance at school; no contact with named individuals; or a juvenile may be prohibited from participating in non-essential Tribal programs or entering designated Tribal property.
- 8.** The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. If the juvenile is fourteen (14) years of age or older, the juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release.
- 9.** If the juvenile pleads guilty to the charges, the Court may take the plea under advisement and refer the juvenile to the Community Justice Coordinator for a pre-disposition investigation report. The Court will proceed with the disposition and place the juvenile on probation. If the juvenile successfully completes the terms and conditions of probation within the prescribed time, the Court may dismiss the matter without entering a judgment of disposition. If the juvenile does not successfully complete probation the Court

will then enter a judgment of disposition into the records of the Court.

10. If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

H. Transfer to the Adult Division of Tribal Court.

1. If the juvenile is at least sixteen (16) years of age at the time of the alleged delinquent act, the Prosecutor shall have the option of filing the action as a juvenile offender proceeding or as an adult criminal matter. If the juvenile is between the ages of fourteen (14) and sixteen (16) and is alleged to have committed an act that would have been considered a crime if committed by an adult, the Prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court. No juvenile under the age of fourteen (14) years of age shall be eligible for transferring to Adult Division of the Court.

2. The Court shall conduct a hearing to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Court.

3. The Court shall hold a transfer hearing within ten (10) days after the petition to transfer to the adult division is filed.

4. Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent(s), guardian, legal representative, or custodian at least seventy-two (72) hours prior to the hearing

5. Prior to the hearing, the Tribe's Community Justice Coordinator shall be responsible for an investigation and the preparation of a written report to be submitted to the Court. .

6. The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Court:

a. The seriousness of the offense and the offense would need to be violent in nature and considered a felonious crime if committed by an adult; and

b. The juvenile's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation.

7. The Court may transfer jurisdiction of the juvenile to the Adult Division of the

Court if the Court finds clear and convincing evidence that both of the following circumstances exist:

- a.** There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
- b.** The alleged offense is serious and constitutes a substantial danger to the public.

8. When a juvenile is transferred to the Adult Division of the Court, the Court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal

I. Diversion.

1. The Tribal Prosecutor may choose to divert the juvenile rather than initiate a formal juvenile offender or juvenile in need of supervision proceeding.

2. The Tribal Prosecutor shall hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss diversion in lieu of filing a juvenile petition if:

- a.** The admitted facts bring the case within the jurisdiction of the Court;
- b.** Diversion of the matter would be in the best interests of the juvenile and the Tribe; and
- c.** The juvenile's parent(s), guardian or custodian voluntarily consents to the diversion after they have received an explanation of their rights.

3. This Section does not authorize the Tribal Prosecutor to compel involuntary action of the parties involved.

4. The Tribal Prosecutor and the Community Justice Coordinator shall set forth in writing the diversion agreed to by the parties.

5. Any disposition arranged through the diversion shall be concluded within six (6) months unless an extension is agreed to by all parties.

6. The Community Justice Coordinator shall file monthly progress reports with the Prosecutor. If at any time after thirty (30) days the Tribal Prosecutor concludes that positive

results are not being achieved, the Prosecutor may file a juvenile petition pursuant to Section VII (B) of this Statute.

7. No statement made during the diversion process may later be admitted into evidence at a trial or any other proceeding against the juvenile under this Statute.

8. Upon successful completion of the diversion, The Community Justice Coordinator will notify the Tribal Prosecutor and no further action will be required.

J. Trial. The Court shall conduct a bench trial for the purpose of determining whether the Court has jurisdiction over the juvenile. The trial shall be closed to the public. The Court shall hear testimony concerning the circumstances that give rise to the juvenile petition.

K. Burden of Proof

1. If the allegations of the juvenile petition are sustained by proof beyond a reasonable doubt, the Court shall find that the juvenile is a juvenile offender and schedule a disposition hearing.

2. If the allegations of the juvenile petition are sustained by clear and convincing evidence, the Court shall find that the juvenile is a juvenile in need of supervision and schedule a disposition hearing.

3. A finding that the juvenile is a juvenile offender or juvenile in need of supervision shall constitute a final order for purposes of appeal.

L. Trial Continuances. Continuances of a trial may be granted upon:

1. Motion of the juvenile for good cause shown; or

2. Motion of the Tribal Prosecutor that material evidence or witnesses are unavailable, a finding by the Court that the Tribal Prosecutor has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear.

M. Pre-disposition Report.

1. The Community Justice Coordinator shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the juvenile, designed to resolve the problems presented in the juvenile petition.

2. The report shall contain a detailed explanation of the necessity for the proposed disposition and its benefits to the juvenile.
3. Preference shall be given to the disposition alternatives that are listed in Section VII (O). The alternative least restrictive of the juvenile's freedom, consistent with the interests of the Tribe, shall be selected.
4. If the report recommends placement of the juvenile somewhere other than with the juvenile's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
5. The Community Justice Coordinator shall review the pre-disposition report with the Court, the juvenile's legal representative, and the Tribal Prosecutor prior to the disposition hearing.

N. Disposition Hearing.

1. A disposition hearing shall take place not more than twenty-eight (28) days after the trial or after the admission of responsibility at the preliminary hearing
2. The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
3. The Court shall consider the pre-disposition report submitted by the Tribe's Community Justice Coordinator. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the juvenile or the juvenile's legal representative.
4. The judgment of disposition order shall constitute a final order for purposes of appeal.

O. Disposition Alternatives. The dispositional focus of a youth depends upon whether the youth is found to be a juvenile offender as defined in Section III (L) or a juvenile in need of supervision as defined in Section III (M) in all cases the Court shall look to methods of rehabilitation of both the juvenile and the family unit. The dispositional focus of a youth found to be a juvenile offender is the reformation and rehabilitation of the offender and the family as well as the reintegration of the juvenile offender into the community. The dispositional focus of a youth

deemed to be a juvenile in need of supervision is to pursue the best interest of the youth while strengthening family and community solutions to the youth misconduct. If a juvenile has been found to be a juvenile offender or juvenile in need of supervision, the Court may make the following disposition for any term until the juvenile reaches the age of nineteen (19) and shall include rehabilitation services for the youth and his or her family, i.e. mental health, substance abuse, educational services, etc.:

1. Place the juvenile on probation subject to conditions set by the Court;
2. Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court;
3. Order the juvenile to perform community service work at the direction of the Community Justice Coordinator;
4. Order the juvenile to pay restitution, court fines and court costs including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the juvenile's per capita trust or distributions, if otherwise allowed by the Tribe's Revenue Allocation Plan, to provide restitution upon the motion of the Tribal Prosecutor or an aggrieved party based upon proper proofs offered at an evidentiary hearing; or
5. Order any other measure the Court deems necessary and proper to correct the behavior of the juvenile offender or juvenile in need of supervision to insure the safety of the community.

P. Modification of Disposition Order. A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify an order of disposition at any time, upon motion of the following:

1. The juvenile;
2. The juvenile's parent(s), guardian, or custodian;
3. The Tribal Prosecutor; or
4. The Tribal Community Justice Coordinator.

Q. Probation Supervision.

1. Probation/Diversion Responsibility. The Community Justice Office is supervised by the Court. The Community Justice Coordinator will be responsible for supervising probationers and juveniles released on pre-dispositional release. Terms of release or probation will be set by the Court upon recommendation of the Community Justice Coordinator.
2. Power to Take Into Immediate Custody for Violation of Pre-Dispositional Release. The Community Justice Coordinator may, upon direct knowledge or receipt of reliable information, take into immediate custody, a juvenile who has violated terms of pre-dispositional release.
3. Power to Take Into Immediate Custody for Probation Violation. The Community Justice Coordinator may, upon direct knowledge or reliable knowledge, take a probationer into immediate custody for violation of the terms of probation. The Community Justice Coordinator must file a motion for a Show Cause Hearing, listing the reasons for violation and the basis for violation.
4. Terms Subject to Modification. The Community Justice Coordinator or the Prosecutor may motion the Court to alter any term of probation at the discretion of the Community Justice Coordinator.
5. Facility Visits Discretionary. The Community Justice Coordinator may visit any juvenile who is in jail or in a treatment facility.

(Source: WOS 2007-011, January 3, 2008, Section VII)

5.408 SAVINGS CLAUSE

In the event that any section, subsection or phrase, this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

(Source: WOS 2007-011, January 3, 2008, Section VIII)

5.409 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or, if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2007-011, January 3, 2008, Section IX)

Chapter 5. Bullying Prohibition

5.501 PURPOSE

The purpose of the Statute is to prohibit the act of bullying on the lands of the Tribe.

(Source: WOS 2011-004, February 22, 2011, Section I)

5.502 DEFINITIONS

A. “Bullying” means the repeated use, by one or more minor and/or adults, of a written, verbal or a physical act or gesture or any combination thereof, directed at a victim that causes physical or emotional harm to the victim or damage to the victim’s property or places the victim in reasonable fear of harm to themselves or damage to their property. Bullying can also be defined as the use of information and communication technologies to support deliberate, repeated, and hostile behavior by an individual or group that is intended to harm others.

B. “Minor” means a person under the age of 18 years.

C. “Tribe means the Little Traverse Bay Bands of Odawa Indians

D. “Tribal property” means property either owned of leased by the Tribe or property that is held in trust for the benefit of the Tribe.

E. “Victim” means a person whom bullying, retaliation or stalking has been perpetrated against.

(Source: WOS 2011-004, February 22, 2011, Section II)

5.503 PROHIBITION OF BULLYING

A. Bullying shall be prohibited on any Tribal property and shall be deemed a civil offense.

B. A law officer has the authority to issue a notice of violation citation when:

2. When the violation is committed in the officer's presence;
3. If an officer investigating the violation has reasonable cause to believe that the alleged perpetrator involved has committed a violation.

C. Retaliation against a person who reports bullying, provides information during an investigation of bullying, witnesses or has reliable information about bullying shall be prohibited and shall be deemed a civil offense.

D. Minors or adults who knowingly make a false accusation of bullying or retaliation shall be subject to a civil offense.

(Source: WOS 2011-004, February 22, 2011, Section III)

5.504 PARENTAL RESPONSIBILITY

A. The parent of any juvenile has a continuous responsibility to exercise reasonable control and supervision over the juvenile and prevent the juvenile from committing or participating in the commission of any bullying act.

B. A law officer has the authority to issue a notice of violation citation to parents for lack of reasonable control and supervision over their juveniles.

(Source: WOS 2011-004, February 22, 2011, Section IV)

5.505 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.

(Source: WOS 2011-004, February 22, 2011, Section V)

5.506 EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2011-004, February 22, 2011, Section VI)

Chapter 6. Paternity and Custody

5.601 PURPOSE AND TITLE

The purpose of this Statute is to determine paternity and/or the custody and care of a child, less than eighteen (18) years of age, born to unmarried parents. The Tribe encourages the protection and preservation of the continuity of family, but recognizes that in the event of a child born to parents that live separately or later become separated, the care of the child needs to be established.

(Source: WOS 2015-010, June 17, 2015, Section I)

5.602 DEFINITIONS

- A. **“Child” or “Children”** means a son(s) or daughter(s) considered in relation with the father or mother.
- B. **“Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- C. **“Marriage”** means the legal and voluntary union of two persons to the exclusion of all others.
- D. **“Parenting Time”** means the time that the non-custodial parent spends with a child, and is often set according to a schedule as a result of a court order.
- E. **“Putative Father”** generally means a man whose legal relationship to a child has not been established but who is alleged to be or claims that he may be the biological father of a child who is born to a woman to whom he is not married at the time of the child’s birth.
- F. **“Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”** means *“areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat.621.”* Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

G. “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2015-010, June 17, 2015, Section II)

5.603 JURISDICTION

The Court shall have jurisdiction over determination of paternity and/or child custody, child support, and visitation where at least one (1) parent to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least one hundred eighty (180) days prior to the filing of the action.

(Source: WOS 2015-010, June 17, 2015, Section III)

5.604 ESTABLISH PATERNITY

A. Presumption that the Father is the Putative Father if either of the following occurs:

- 1.** He and the child’s mother are or were married to each other and the child is born during the marriage.
- 2.** With his consent, he is listed as the father on the child’s birth certificate and he has acknowledged his paternity in writing by and has signed an [Affidavit of Parentage](#) along with the mother’s signature.

B. If the presumption is disputed then the person establishing or denying paternity may request a court order for DNA testing.

(Source: WOS 2015-010, June 17, 2015, Section IV)

5.605 AUTOMATIC CUSTODY

An unmarried mother, who gives birth to a child, shall have full legal and physical custody from the time the child is born, unless the Putative Father has established paternity.

(Source: WOS 2015-010, June 17, 2015, Section V)

5.606 CHILD CUSTODY, VISITATION AND SUPPORT

A. After paternity is established, the Court shall have the authority to determine the custody of any child less than eighteen (18) years of age. Custody is the care, control and maintenance of a child which includes legal and physical custody.

- 1.** Legal custody is the decision making authority.
- 2.** Physical custody is the caregiving authority.

B. The Court shall have jurisdiction to award custody of a minor child to one of the parents, or both of the parents.

C. The court must order joint physical custody of a child to both parents unless the court determines that joint physical custody is not in the best interests of the child as set forth in this Statute.

D. A person who is giving legal custody may make important life decisions for a child, such as health care, education, child care and general welfare.

- 1.** Joint legal custody gives both parents the right to make these decisions.
- 2.** Sole legal custody gives one parent all decision-making responsibilities.

E. A person who is giving physical custody has actual physical residency of a child.

- 1.** Joint physical custody means that each parent will have specific times with a child.
- 2.** Sole physical custody means that one parent provides for the day-to-day care for the child and the non-custodial parent may be given parenting time.

F. In determining the best interest of the child, the Court shall consider all relevant factors including:

- 1.** The love, affection, and other emotional ties existing between the parent involved and the child.
- 2.** The capacity and disposition of the parent to give the child love, affection, and guidance and to continue the child's education.
- 3.** The capacity and disposition of a parent, for reasons other than poverty, to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child's health and well-being.
- 4.** The ability of a parent to provide a stable and satisfactory environment for the child.
- 5.** The mental and physical health of the parent.
- 6.** The home, school, and community record of the child.
- 7.** The wishes of the child may be weighed by the Court, but are not controlling to the Court's decision. The Judge will meet with the child in his or her chambers to discuss the child's wishes.
- 8.** The interaction and interrelationship of the child with siblings and any other person who may significantly affect the child's best interest.
- 9.** The willingness and ability of each of the parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- 10.** Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- 11.** Any other factor considered by the court to be relevant to a particular child custody dispute.

G. The Court shall not consider conduct of a proposed custodian that does not affect his or her relationship to the child.

H. The Court shall have no presumption that one parent is better suited to be a custodian because of gender.

I. Differences in financial circumstances alone shall not be a deciding factor in the determination of custody.

J. The Court shall have the authority to require the non-custodial parent to pay such sum as the Court may determine appropriate and proper for the support and maintenance of the child.

K. The Court shall designate visitation for the non-custodian parent or parent(s) and shall provide for the foster and expansion of the relationship between the non-custodial parent(s) and the child whenever possible, unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental or emotional health.

L. The Court, upon petition of either parent to whom custody or visitation of the minor child may be awarded, may revise, amend or alter any order concerning the care, custody, support or visitation rights with any child consistent with the best interests of the child.

M. Changes in domicile where the custodial parent wants to move out-side of the Tribal Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the following factors:

- 1.** Consent of both parents.
- 2.** Prospective advantages of the move for improvement of the general quality of life for the custodial parent and child.
- 3.** The likelihood of the custodial parent complying with the Tribal Court Order once he or she in no longer resides within the Tribal Territory.

4. The extent to which there will be a realistic opportunity for non-custodial visitation which can continued to foster the relationship between the non-custodial parent(s) and the child.

N. Both custodial and non-custodial parents shall notify the Court of any changes in domicile or residency.

O. When the Court has ordered periodic support payments under this code, and the parent does not pay as ordered, the Court shall use the same methods to collect these payments as it would to enforce any money judgment in a civil action, including contempt.

(Source: WOS 2015-010, June 17, 2015, Section VI)

5.607 TEMPORARY INTERIM ORDERS

A. The Court may issue temporary orders during the pending of all proceedings involving child custody, child support and visitation.

B. Such orders may be granted upon the motion of either parent or on the Court's own motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists or a parent cannot be found, in which case such orders may be issued ex-parte.

C. Emergency may be interpreted to include, but not limited to:

- 1.** A danger of physical abuse to the spouse or child.
- 2.** Severe emotional abuse.
- 3.** A lack of means for interim subsistence.
- 4.** Danger that child will be removed from jurisdiction.

D. If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

(Source: WOS 2015-010, June 17, 2015, Section VII)

5.608 ENFORCEMENT

When either parent fails willfully to comply with an order of the Tribal Court, the other parent may file a petition with the Court alleging such failure. The Court shall then issue notice to the parent, which shall include a copy of the petition, and set a date for the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and issue any order which it shall deem just and proper under the circumstances.

(Source: WOS 2015-010, June 17, 2015, Section VIII)

5.609 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2015-010, June 17, 2015, Section IX)

5.610 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2015-010, June 17, 2015, Section X)

Chapter 7. Grandparent and Grandchild Visitation Statute

5.701 PURPOSE

The purposes of this statute are to establish a cause of action for Grandparent and Grandchild Visitation, and to set forth the criteria for granting a request for Grandparent and Grandchild Visitation. This statute repeals and replaces Waganakising Odawak Statute 2021-015.

(Source: WOS 2023-010, October 6, 2023, Section I)

5.702 DECLARATION OF VALUES AND GRANDCHILD’S RIGHTS

- A.** Grandchildren are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well-being of its grandchildren.

- B.** Grandchildren have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development by preserving their interest in the culture, history and traditions of the Tribe. Feeling pride from their identity as Odawak will help them grow into adult Tribal Citizens who are strong, healthy and responsible.

(Source: WOS 2023-010, October 6, 2023, Section II)

5.703 DEFINITIONS

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

- A.** “Grandchild” means 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 under Article V, Subsection A of the LTBB Constitution.

- B.** “Grandparent” means the parent of the grandchild’s father or mother, who is a Tribal citizen.

C. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

D. “Tribal Citizen” means a person who is an enrolled member of the Little Traverse Bay Bands of Odawa Indians.

E. “Tribal Court” means the Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

F. “Tribe” or “LTBB” means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-010, October 6, 2023, Section III)

5.704 JURISDICTION

A. Tribal Court shall have jurisdiction if:

1. The action involves a grandchild who resides within the Tribe’s territorial jurisdiction and the petition is filed by a grandparent who resides within the Tribe’s territorial jurisdiction, requesting a court order for Grandparent and Grandchild Visitation within the Tribe’s territorial jurisdiction; or

2. A petition for Grandparent and Grandchild Visitation is filed by a grandparent, and the grandchild’s parent(s), guardian(s), or custodian(s) consent to the Tribal Court’s jurisdiction.

B. Jurisdiction once exercised by the Court is continuing and exclusive unless terminated by the Court. Full faith and credit shall apply to the Court’s order for Grandparent and Grandchild Visitation.

(Source: WOS 2023-010, October 6, 2023, Section IV)

5.705 CAUSE OF ACTION

A. A cause of action is created when a grandparent seeks Grandparent and Grandchild Visitation involving a grandchild under one or more of the following circumstances:

- 1.** An action for divorce, separate maintenance, or annulment involving the grandchild's parents is pending before the court.
- 2.** The grandchild's parents are divorced, separated under a judgment of separate maintenance, or have had their marriage annulled.
- 3.** The grandchild's parent who is a grandchild of the grandparents is deceased.
- 4.** The grandchild's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage, or by a determination by a court of competent jurisdiction that the individual is the father of the grandchild.
- 5.** The legal custody of the grandchild has been given to a person other than the grandchild's parent, or the grandchild is placed outside of and does not reside in the home of a parent, with the exception of a placement of a grandchild for adoption that terminates the right of a grandparent to commence an action for Grandparent and Grandchild Visitation.

B. A court shall not permit a parent of a father who has never been married to the grandchild's mother to seek an order for Grandparent and Grandchild Visitation, unless the father has completed an acknowledgment of parentage, or the father has been determined to be the father by a court of competent jurisdiction.

C. The court shall not permit the parent of a putative father to seek an order for Grandparent and Grandchild Visitation unless the putative father has provided substantial and regular support or care in accordance with the putative father's ability to provide the support or care.

D. Adoption of a grandchild by a stepparent, does not terminate the right of the parent of a deceased parent of the grandchild to commence an action for Grandparent and Grandchild

Visitation with that grandchild.

(Source: WOS 2023-010, October 6, 2023, Section V)

5.706 FILING OF PETITION

- A.** A grandparent seeking a Grandparent and Grandchild Visitation order shall commence an action for Grandparent and Grandchild Visitation by filing a petition with Tribal Court.
- B.** The petition for Grandparent and Grandchild Visitation shall be accompanied by an affidavit setting forth facts supporting the requested order.
- C.** The grandparent shall give notice of the filing to each person who has legal custody of the grandchild.
- D.** A party having legal custody may file an opposing affidavit.
- E.** By the Court on its own motion, the Court may utilize alternative dispute resolution or Peacekeeping, or may hold a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.
- F.** The grandparent must show that the grandparent has established custodial environment for the grandchild.
- G.** In order to give deference to the decisions of fit parents, it is presumed that a fit parent's decision to deny Grandparent and Grandchild Visitation does not create a substantial risk of harm to the grandchild's spiritual, emotional, mental and physical health, and preserves interest in the culture, history and traditions of the Tribe. To rebut the presumption, a grandparent filing a petition must prove by a preponderance of the evidence that the parent's decision to deny Grandparent and Grandchild Visitation creates a substantial risk of harm to the grandchild's spiritual, emotional, mental and physical health and preserves interest in the culture, history and traditions of the Tribe. If the grandparent does not overcome the presumption, the court shall dismiss the petition.

H. If both fit parents sign an affidavit stating that they oppose an order for grandparenting time, the court shall dismiss the petition seeking an order for Grandparent and Grandchild Visitation. This does not apply if one of the fit parents is a stepparent who adopted a grandchild and the grandparent seeking the order is the natural or adoptive parent of a parent of the grandchild who is deceased.

I. If the court finds that a grandparent has met the standard for rebutting the presumption of preponderance of the evidence, the court shall consider whether it is in the best interests of the grandchild to enter an order for Grandparent and Grandchild Visitation. If the court finds by a preponderance of the evidence that it is in the best interests of the grandchild to enter a Grandparent and Grandchild Visitation order, the court shall enter an order providing for reasonable grandparenting time of the grandchild by the grandparent by general or specific terms and conditions, including supervised or unsupervised visitation.

J. In determining the best interests of the grandchild, the court shall consider all of the following:

- 1.** The love, affection and other emotional ties existing between the grandparent and the grandchild.
- 2.** The length and quality of the prior relationship between the grandchild and the grandparent, the role performed by the grandparent, and the existing emotional ties of the grandchild to the grandparent.
- 3.** The grandparent's moral fitness.
- 4.** The grandparent's mental and physical health.
- 5.** The grandchild's reasonable preference, if the court considers the grandchild to be of sufficient age to express a preference.
- 6.** The effect on the grandchild of hostility between the grandparent and the parent of the grandchild.

7. The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the grandchild and the parent or parents of the grandchild.
8. Any history of physical, emotional, or sexual abuse or neglect of any grandchild by the grandparent.
9. Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the grandchild's well-being or is for some other unrelated reason.
10. To preserve the opportunity for the grandchild to learn about their culture and heritage, and to become productive adult members of the Tribe, by experiencing their culture on an ongoing basis.
11. Any other factor relevant to the physical and psychological well-being of the grandchild.

(Source: WOS 2023-010, October 6, 2023, Section VI)

5.707 PROHIBITIONS

- A. A grandparent may not file a petition more than once every two years in this court or any court of competent jurisdiction, unless the grandparent can show good cause. If the court finds there is good cause to allow a grandparent to file more than one petition in a two-year period, the court shall allow the filing and shall consider the petition; otherwise the court shall automatically dismiss the petition.
- B. A Grandparent and Grandchild Visitation order does not create parental rights in the individual or individuals to whom Grandparent and Grandchild Visitation are granted. The entry of a Grandparent and Grandchild Visitation order does not prevent a court of competent jurisdiction from acting upon the custody of the grandchild, the parental rights of the grandchild, or the adoption of the grandchild.

(Source: WOS 2023-010, October 6, 2023, Section VII)

5.708 MODIFICATION OR TERMINATION

A. A court shall not modify or terminate a Grandparent and Grandchild Visitation order unless it finds by a preponderance of the evidence, on the basis of facts that have arisen since entry of the Grandparent and Grandchild Visitation order or were unknown to the court at the time it entered that order, that a change has occurred in the circumstances of the grandchild or his or her custodian and that a modification or termination of the existing order is necessary to avoid creating a substantial risk of harm to the grandchild’s spiritual, emotional, mental and physical health and preserves interest in the culture, history and traditions of the Tribe.

B. The court modifying or terminating a Grandparent and Grandchild Visitation order shall include specific findings of fact in its order in support of its decision.

(Source: WOS 2023-010, October 6, 2023, Section VIII)

5.709 COURT RECORD

The Court shall make a record of its analysis and findings including the reasons for granting or denying a Grandparent and Grandchild Visitation petition.

(Source: WOS 2023-010, October 6, 2023, Section IX)

5.710 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.

(Source: WOS 2023-010, October 6, 2023, Section X)

5.711 EFFECTIVE DATE

Effective upon signature of the Executive or thirty (30) days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-010, October 6, 2023, Section XI)

Chapter 8. Qualified Expert Witness Designation

5.801 PURPOSE

The Little Traverse Bay Bands of Odawa Indians creates this Statute to designate, and set forth the qualifications of, the qualified expert witness for child welfare proceedings in which a qualified expert witness is necessary or required by Tribal, State or Federal law.

(Source: WOS 2018-003, March 23, 2018, Section I)

5.802 DEFINITIONS

- A. “Department of Human Services” means the Little Traverse Bay Bands of Odawa Indians Human Services Department.
- B. “Employee” means an individual employed by the Little Traverse Bay Bands of Odawa Indians including Tribal Government Administration, commercial entities, sub-entities and the Odawa Casino Resort and ancillary enterprises and activities beginning on the first day of work and after the employment process and issuance of a temporary gaming license.
- C. “Indian Child Welfare Act” means 25 UCS 1903 *et seq.* (“ICWA”) or its successor statute.
- D. “Michigan Indian Family Preservation Act” means MCL 712B.1-41 (“MIFPA”) or its successor statute.
- E. “Qualified Expert Witness” means the individual designated by the Tribe to testify on behalf of the Tribe in ICWA or MIFPA proceedings, or other similar proceedings.
- F. “Tribal Chairperson” means the Tribal Chairperson of the Little Traverse Bay Bands of Odawa Indians.
- G. “Tribal Citizen” means an individual who is enrolled with the Little Traverse Bay Bands of Odawa Indians.
- H. “Tribal Council” The Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

I. “Tribe” means the Little Traverse Bay Bands of Odawa Indians and includes any Tribal entity or sub-entity of the Tribe.

(Source: WOS 2018-003, March 23, 2018, Section II)

5.803 DESIGNATION OF QUALIFIED EXPERT WITNESS

The Tribal Chairperson shall designate a Tribal Citizen as the qualified expert witness for the Tribe consistent with the qualifications set forth in this statute, to testify in Federal or State Court child welfare proceedings in which a qualified expert witness is necessary or required by Tribal, State or Federal law.

(Source: WOS 2018-003, March 23, 2018, Section III)

5.804 QUALIFICATIONS OF THE QUALIFIED EXPERT WITNESS

The qualified expert witness shall have the following qualifications:

- A.** Must be an enrolled Citizen of the Little Traverse Bay Bands of Odawa Indians.
- B.** Must be at least twenty-five years of age.
- C.** Must demonstrate knowledge and proficiency in Odawa cultural and social norms, history and traditional practices.
- D.** Must possess knowledge of and experience with Indian childrearing practices.
- E.** Must not be an employee of the Little Traverse Bay Bands of Odawa Indians Department of Human Services, Tribal Law Enforcement, Tribal Court or Prosecutor’s Office.

(Source: WOS 2018-003, March 23, 2018, Section IV)

5.805 PUBLICATION AND NOTIFICATION

A. The Tribal Chairperson, or their designee, shall notify any tribal, state or federal agency responsible for implementing ICWA or MIFPA with the identity and contact information of the Tribe's designated qualified expert witness.

B. The Tribal Chairperson, or their designee, shall publish, or cause to be published, the identity and contact information for the Tribe's designated qualified expert witness on the Tribe's website.

(Source: WOS 2018-003, March 23, 2018, Section V)

5.806 REGULATIONS

In accordance with the Administrative Procedures Act, WOS 2015-019, the Tribal Chairperson shall submit regulations to the Tribal Council within one-hundred and twenty (120) days of the enactment of this statute which shall at a minimum set forth the selection process and criteria the Tribal Chairperson shall utilize in selecting the qualified expert witness.

(Source: WOS 2018-003, March 23, 2018, Section VI)

5.807 SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2018-003, March 23, 2018, Section VII)

5.808 EFFECTIVE DATE

Effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative

vote of seven (7) members of the Tribal Council, override a veto by the Executive.

(Source: WOS 2018-003, March 23, 2018, Section VIII)

5.809 OTHER RELATED STATUTES

See WOS 2015-019 Administrative Procedures Act, WOS 2012-010 Child Protection Statute, WOS 2012-011 Child Welfare Commission, WOS 2000-09 Direct Consent and Open Adoptions, or as may be amended.

(Source: WOS 2018-003, March 23, 2018, Section IX)