

**WAGANAKISING ODAWAK STATUTE # 2021-\_\_\_\_\_**  
**Child Protection Statute**

**SECTION I. CHILDREN'S COURT DIVISION**

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

**B.** 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 in 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.

**SECTION II. 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.

### **SECTION III. 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.

### **SECTION IV. 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.

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

**HH.** "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.

**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, "Tribal" 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.

## **SECTION VI. 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 exterior boundaries of the Reservation;
- 2.** Any child transferred to Tribal Court pursuant to the Indian Child Welfare Act;
- 3.** Any child residing within Tribal Trust Lands;
- 4.** 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.** Child found or residing within Trust Lands. When a child is found or resides within Tribal Trust Lands, the Tribe has original jurisdiction over all cases and exclusive

jurisdiction over Tribal children, so the Court may not defer to the jurisdiction of another Court unless it transfers jurisdiction over a non-Tribal child under Section VII.

**2.** Tribal Child found or residing on the Tribal Reservation outside of Trust Lands. In accordance with the LTBB Constitution, Tribal jurisdiction over Tribal children in need of care is exclusive within the exterior boundaries of the Reservation. Therefore, the Tribal Court shall accept transfer of all such cases that may have arisen in state court.

**3.** Indian Child from a tribe other than LTBB found or residing on the Tribal Reservation outside of Trust Lands. The Court may exercise jurisdiction over non-LTBB Indian children found or residing outside of Trust Lands within 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.

**4.** 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.

## **SECTION VII. 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. The Tribal Prosecutor does not have discretion on whether or not to file the request for intervention.

**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 file a request for transfer in state court. The Tribal Prosecutor does not have discretion on whether or not to file the request. 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 the exterior boundaries of the reservation 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.

## **SECTION VIII. 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.

## **SECTION IX. 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 Part 2(iii) of this Section, 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.

## **SECTION X. 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.

## **SECTION XI. 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.** The Department shall offer to the family the Family Preservation Court services as described in Section XIX and as set forth in this Statute.

**D.** 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.

## **SECTION XII. INVESTIGATION AND EMERGENCY REMOVAL**

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

### **SECTION XIII. NOTICE OF REMOVAL**

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

#### **SECTION XIV. 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.

#### **SECTION XV. 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 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.



## **SECTION XVI. 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.

## **SECTION XVII. 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.** The CASA of a party appointed pursuant to this Statute; and
- h.** Any other person the Court may direct to be notified.

**2.** Preliminary Hearing. When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family pursuant to Section XIII as soon as the hearing is scheduled. The notice may be in person, in writing, on the record, 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:



## **SECTION XVIII. 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 hearing evidence both for and against removal, determines 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.

## **SECTION XIX. 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.

## **SECTION XX. 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.

## **SECTION XXI. 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.

## **SECTION XXII. 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.

### **SECTION XXIII. 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.

#### **XXIV. 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.

## **SECTION XXV. 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.

## **SECTION XXVI. TERMINATION OF PARENTAL RIGHTS**

**A.** Purpose. The purpose of this Section is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit is of 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.

## **SECTION XXVII. 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.

## **SECTION XXVIII. 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.

## **SECTION XXIX. 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.

### **SECTION XXX. 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.

### **SECTION XXXI. SEVERABILITY**

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

**SECTION XXXII. EFFECTIVE DATE**

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

**SECTION XXXIII. OTHER RELATED STATUTES**

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

## CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 8, 2021 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington Jr.	X	_____	_____	_____
Fred Kiogima	X	_____	_____	_____
Tamara Kiogima	X	_____	_____	_____
Melissa Pamp	X	_____	_____	_____
Leroy Shomin	X	_____	_____	_____
Marty Van De Car	X	_____	_____	_____
Marcella R. Reyes	X	_____	_____	_____
Julie Shananaquet	_____	_____	_____	X
Emily Proctor	X	_____	_____	_____

Date: 07/08/21

\_\_\_\_\_  
Emily Proctor, Legislative Leader

Date: 07/08/21

\_\_\_\_\_  
Julie Shananaquet, Tribal Council Secretary

Received by the Executive Office on 07/09/21 by \_\_\_\_\_

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on \_\_\_\_\_ by \_\_\_\_\_