

**WAGANAKISING ODAWAK STATUTE 1998016**

**CHILDREN'S CODE**

Enacted December 20, 1998

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

- A.** While proceeding under this Code, the Court shall be termed the Children's Court Division of the Little Traverse Bay Bands Tribal Court.
- B.** Proceedings under this Code shall not be deemed to be criminal proceedings.

**SECTION II. PURPOSE**

- A.** Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity as Odawak will help them grow into strong, healthy responsible adult Tribal members.
- B.** The purpose of this Code is to ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children when necessary for their care. Specifically:
  - 1.** The Court shall protect the rights and interests of its young by proceeding with a course of action that will provide for the welfare, care and protection of its Children and their Families;
  - 2.** To preserve the unity of the family, by separating the children from their parents and siblings, only as a course of last resort;
  - 3.** To take action that will best meet the spiritual, emotional, mental, and physical needs of the Children, and preserve the interest and culture of the Tribe;
  - 4.** To recognize and acknowledge the traditional customs and practices of the Little Traverse Bay Bands of Odawa Indians regarding child rearing;

5. To preserve and strengthen children's cultural ethnic identity whenever possible;
6. To provide procedures for intervention in state court proceedings involving Indian Children and for the transfer of jurisdiction over Indian children from state and other tribal courts to the Little Traverse Bay Bands Tribal Court.
7. To secure the rights of and ensure fairness to the children, their parents, guardians, custodians, extended family members, and other parties who come before this Court under the provisions of this Code.
8. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community based alternatives; and
9. To transfer appropriate cases to any traditional or alternative dispute resolution body created by the Tribe.

### **SECTION III. DEFINITIONS**

**For the purposes of this Statute, the words and phrases shall have the meanings delineated below.**

- A. "Abandon"** When the parent leaves a child without communication or fails to support the child and there is no indication of the parent's willingness to assume their parental role for a period exceeding six (6) months.
- B. "Adult"** A person eighteen(18) years of age or older, or otherwise emancipated by order of a Court of competent jurisdiction.
- C. "Child"** An 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. The plural encompasses the singular, and the singular encompasses the plural wherever appropriate.
- D. "Child born out of wedlock"** A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise

to have been conceived or born during a marriage but who is not the issue of that marriage.

**E. "Child in need of care". A child:**

1. Who has no parent, guardian or custodian available and willing to care for him/her.
2. Who has suffered or is likely to suffer a physical injury, inflicted upon him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
3. Whose parent, guardian or custodian has not, for reasons other than poverty, provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his/her health and well being;
4. Who has been sexually abused or exploited by a parent, guardian or custodian either intentionally, or negligently;
5. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;
6. Who has been emotionally abused or emotionally neglected; or
7. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child.

**F. "Child offender" is a child who:**

1. Has committed an act which is designated as a crime, if committed by an adult under the laws of the Little Traverse Bay Bands of Odawa Indians, or under the laws of the United States applicable to the Reservation of the Little Traverse Bay Bands of Odawa Indians;
2. Has violated a tribal law, including laws relating exclusively to minors, within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians;
3. Is habitually truant;

4. Is unamenable to parental control;
  5. Is a runaway; or
  6. So deports self as to injure or endanger the health or well being of self or others.
- G. "Child Protection Team"** A team established to involve and coordinate the child protection services of various agencies as set forth in Section IX of this Code.
- H. "Child Welfare Commission"** A Commission created by Tribal Statute and appointed by the Tribal Council to protect the interests of the children of the Tribe.
- I. "Controlled Substance"** any substance defined or described as such in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as amended.
- J. "Children's Court"** The Little Traverse Bay Bands Tribal Court when exercising jurisdiction under this Code, abbreviated in this Code as "the Court."
- K. "Children's Court Judge"** Any duly appointed judge of the Little Traverse Bay Bands Tribal Court when exercising jurisdiction under this Code.
- L. "Commit"** Means to transfer legal custody.
- M. "Custodian"** A person, other than a parent or guardian, to whom legal custody of a child has been given.
- N. "Domicile"** A person's permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent, guardian or custodian. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers to be his/her permanent home.
- O. "Extended Family"** A person who is the child's grandparent, great aunt or uncle, aunt or uncle, brother or sister, step-brother or step-sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step parent, or other individual considered part of the child's extended family by Tribal tradition and custom.

**P. "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 Code:
  - 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.

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

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

**S. "Indian Child"** A child who is a member of a tribe, or eligible for membership in a tribe, or a child domiciled on the LTBB reservation whose parent is an LTBB member.

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

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

**V. "Probation Officer"** Staff person/s of the Court who monitor and supervises the restrictions related to probationary status imposed by the Court.

**W. "Protective Services Worker"** The protective service worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities as set forth in Section VIII of this Code.

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

**Y. "Tribe"** The Little Traverse Bay Bands of Odawa Indians.

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

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

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

## **SECTION IV. JURISDICTION**

**A. JURISDICTION OF THE CHILDREN'S COURT DIVISION.** Except as provided herein, the Children's Court Division of the Tribal Court shall have:

1. Exclusive jurisdiction, regardless of any other Court proceeding, involving any Little Traverse Bay Bands of Odawa Indians child who commits an act as a child offender within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation; and
2. Exclusive jurisdiction over any Indian child alleged to be in need of care who is found or resides within the exterior boundaries of the Reservation of the Little Traverse Bay Bands of Odawa Indians, except that if the child is a member of another federally recognized tribe, jurisdiction may lie either with LTBB or the tribe that the child is enrolled in.
3. Jurisdiction over the child's extended family residing in the household, whenever the Court deems it appropriate and necessary to carry out its responsibility to protect the child and prevent family dysfunction. Jurisdiction requires that such person be provided notice and opportunity for hearing.
4. Jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the jurisdiction of the Court.
5. Jurisdiction over any proceeding which is transferred to the Children's Court by a state court or the tribal court of another tribe.
6. Once the Court asserts jurisdiction over a person under this Code, the Court retains jurisdiction over that person even if he/she leaves the physical boundaries of the Reservation.
7. Once the Court asserts jurisdiction over a child under this Code, jurisdiction shall be retained until dismissed by order of the Court.
9. Proceedings seeking to terminate parental rights to a minor, who is either a member, or is eligible for membership in the Little Traverse Bay Bands of Odawa Indians.
10. Jurisdiction for the issuance of orders of support of minor children.

## SECTION V. TRANSFER OF JURISDICTION

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

**B. 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 Indian tribe has a significant interest in the child, and the transfer would be in the best interest of the child.

**C. TRANSFER FROM OTHER COURTS.** The Children's Court may accept or decline, under the procedures set forth in this Code, transfers of child welfare cases from federal, state or other tribal Courts.

### **D. PROCEDURES FOR TRANSFER FROM STATE COURTS.**

1. **Receipt of Notice:** The tribal agency for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Social Services Department.

2. **Intervention:** If the notice involves a child who is a member, or eligible for membership, in the Tribe, the Tribal Social Services Department shall cause a motion to intervene to be filed with the state Court within five (5) days of the receipt of notice.

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

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

- a. The best interest of the child,

- b. The best interest of the Tribe,
- c. Availability of services for the children and their family, and;
- d. The prospects for permanent placement for the children.

**5. Petition for Transfer:** The tribal petition for transfer shall be filed by the tribal attorney within five (5) days of the receipt of the determination from the Child Welfare Commission with a copy sent to the tribal Court. If there is no tribal attorney, the Child Welfare Commission shall file the petition for transfer.

**6. Acceptance of Transfer:** The Children's Court has discretion whether to accept or deny the transfer.

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

**E. FULL FAITH AND CREDIT; CONFLICT OF LAWS.**

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

- a. The state Court had jurisdiction over the child; and
- b. The provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, were properly followed; and
- c. Due process was provided to all interested persons participating in the state proceeding; and
- d. The state Court proceeding does not violate the public policies, customs, or common law of the Tribe.

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

Children's Court after the Court has determined:

- a. That the other Tribal Court exercised proper subject matter jurisdiction over the parties, and;
- b. Due process was accorded to all interested parties participating in the other Tribal Court proceeding.

#### **SECTION VI. PROCEDURES AND AUTHORIZATIONS**

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

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

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

#### **SECTION VII. CHILDREN'S COURT PERSONNEL**

**A. Counsel for Parents and Child Offenders.** Parents and those children alleged to be child offenders under Section XVI. May be represented at each stage of proceedings under this Code by an attorney or lay advocate at their own expense. The Court may appoint an attorney or advocate to represent a party if funding is available for such purpose.

**B. Court Appointed Attorney for Child.** At every stage of the proceedings conducted under this Code, the Children's Court may appoint a lawyer or advocate for the child.

## **SECTION VIII. PROTECTIVE SERVICE WORKERS AND PROBATION OFFICERS**

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

1. Receive from any source, oral or written, information regarding a child who may be a child in need of care.
2. Upon receipt of any report or information under subsection(1), within twenty four (24) hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and course of any condition which is contrary to the child's best interest and the name, age, and condition of other children in the home.
3. In conducting the investigation, the protective service worker shall seek the assistance of and cooperate with law enforcement officials within twenty four (24) hours after becoming aware that one or more of the following conditions exist:
  - a. Abuse or neglect is the suspected cause of a child's death.
  - b. The child is the victim of suspected sexual abuse or sexual exploitation.
  - c. Abuse or neglect resulting in severe physical injury to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well being of a child.
  - d. Law enforcement intervention is necessary for the protection of the child, the protective service worker, or another person involved in the investigation.
  - e. The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.
4. Take a child into temporary custody if necessary pursuant to Section XI. Law enforcement officials shall cooperate with protective services personnel to remove a child from the custody of his parents, guardian or custodian when necessary.

5. 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.

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

7. 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.

8. Within thirty (30) days after a referral of a potential child in need of care, submit a written report of his/her investigation and evaluation which shall be included in the files maintained by the protective services division of the Tribal Social Services Department and shall include a determination as to whether the report is substantiated or unsubstantiated. Upon completion of the investigation by the local law enforcement agency or the protective services worker, the law enforcement agency or protective services worker may inform the person who made the report as to the disposition of the report.

**B. COOPERATION FROM LAW ENFORCEMENT.** Law enforcement officials shall cooperate with the protective services worker and the Tribal Social Services Department in conducting investigations pursuant to this Section.

**C. LIMITATIONS OF AUTHORITY; DUTY TO INFORM.** Before offering protective services to a family, a worker shall inform the family that he/she has no legal authority to compel the family to receive such services. If the family declines the offered services, the worker may request authorization to initiate a child protection petition in the Children's Court. Nothing in this Section limits the authority of the protective services worker to act in emergency situations pursuant to Section XI or to obtain a medical evaluation of the child pursuant to Section XXIV.

**D. DUTIES OF THE PROBATION OFFICER.** The Probation officer shall have the following duties:

1. Investigate and make dispositional recommendations to the Court of all cases involving child offenders.

2. Attend all hearings involving a child offender and supervise implementation of dispositional orders.
3. Schedule case review hearings for child offenders and advise the Court of the efforts of the child and his/her family in complying with the Court's dispositional orders.
4. Provide support, preventive and supervisory counseling to all child offenders and their families placed on probation by the Court order.
5. Provide information and supportive services to agencies and Courts who work with child offenders, subject to Children's Court jurisdiction.
6. Provide supervision to child offenders and alleged child offenders in secure detention.
7. Assist in the development and implementation of programs and services to prevent and rehabilitate children who are at risk of anti-social, and/or criminal behavior.
8. Inform offenders and their families, as to the cost, constraints, and responsibilities of maintaining House Arrest electronic monitoring equipment. Provide installation services in the offenders home, Communicate with the Electronic monitoring equipment agency, and assist law enforcement in monitoring the actions of the offender.

#### **SECTION IX. CHILD PROTECTION TEAM**

The Child Protection Team is technical and advisory in nature and is not intended to replace the authority and responsibility of the Child Welfare Commission, individual agencies, or the Court. It is designed to promote cooperation, communication and consistency among agencies. The Child Protection Team shall facilitate the decision making process. Confidentiality shall be maintained by all team members.

##### **A. Team Duties.** The Child Protection Team shall:

1. Monitor child abuse and neglect cases to ensure that adequate preventive, protective and corrective services are provided.

2. Review and track all child abuse and neglect cases which have been referred by the protective services worker for case plan recommendations.

3. Monitor, review and recommend case plans for children subject to Court jurisdiction and for tribal children subject to the jurisdiction of another Court. Case plans for children subject to the jurisdiction of the Children's Court Division shall be filed with the Court.

**B. Team Membership.** Members of the Child Protection Team shall be designated by the Child Welfare Commission and shall include, but not be limited to, persons with knowledge and experience in the following matters: Medical/ health, mental health, substance abuse, social services, law enforcement, protective services, and law. The Team may request the assistance of any other person in carrying out its responsibilities.

**C. Service Facilitation.** The Child Protection Team shall undertake the following in carrying out its duties under subsection (A):

1. Identify available community resources, programs and services.

2. Provide recommendations to various pertinent agencies.

3. Promote cooperation, communication and consistency among agencies.

4. Provide a forum for debating what actions would be best to promote the well-being of Indian Children.

5. Respond to inquiries from the community, area Child protection teams and other individuals, and groups.

**D. Team Technical Assistance.** The Child Protection Team shall provide the following types of technical assistance for the Tribe:

1. Develop procedures to provide effective and efficient preventive, protective and corrective child abuse and neglect services.

2. Provide information and technical recommendations to decision making agencies.

3. Educate communities about child abuse, neglect problems and solutions.
4. Identify high risks practices which prompt intervention and/or preventive actions.
5. Assist in the development and implementation of plans to promote the long term well being of children and their families.
6. Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, and rewarding lives. These environments should promote dignity, self worth, self respect, and self sufficiency of and for community members.

#### **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 "in need of care" shall immediately make a report to the Protective Services Division of Tribal Social Services or to the Tribal Law Enforcement Department. Any person so reporting may remain anonymous, unless such person is in a category listed in subsection (B) below.

**B. Specific Duty to Report.**

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

2. Within seventy two (72) hours after making an oral report the reporting person shall file a written report. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of said entity of his finding and that the report has been made and shall make a copy of the written report available to the person in charge. One report from a hospital, agency or school shall be considered adequate

to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this Section or for cooperating in an investigation.

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

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

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

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

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

1. Names, addresses, and tribal affiliation of the child and his/ her parents, guardian or custodian.
2. The children's age.
3. The nature and content of the child's abuse or neglect.
4. Previous abuse or neglect of the child and/or siblings.
5. Name and address of the person alleged to be responsible for the child's abuse or neglect.
6. Name and address of the person or agency making the report.

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

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

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

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

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

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

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

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

3. **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

a. Failure to remove the child may result in a substantial risk of death, serious

injury, or serious emotional harm, or;

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

**C.** If grounds for removal are corrected, the child may be returned to the parent by the person originally authorizing removal or by the protective service worker.

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

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

## **SECTION XIII. PLACEMENT OF CHILDREN**

**A. Restrictions.** A child alleged to be a child in need of care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to have committed an act which would be criminal if committed by an

adult.

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

1. Members of the child's extended family;
2. An Indian family of the same tribe as the child, which is approved by the Commission or an Indian family otherwise authorized by law to provide care for the child;
3. A facility operated by a licensed child welfare services agency or an Indian tribe; or
4. Any other suitable placement which meets the standards for shelter care facilities established by the Tribe.

**C. Least Restrictive Setting.** If a child cannot be returned to his/her parents, the child shall be placed in the least restrictive setting which most approximates a family and in which his/her special needs if any, may be met. The child shall also be placed in reasonable proximity to his/her home, taking into account any special needs of the child.

#### **SECTION XIV. INFORMAL ADJUSTMENT CONFERENCE**

**A.** After the filing of a petition, the Children's Court may hold an informal conference with the child and parent, guardian or custodian to discuss alternatives to going forward with the petition if:

1. An informal adjustment of the matter would be in the best interest of the child and the Tribe; and
2. The child and the child's parent, guardian or custodian consent to an informal adjustment conference after they have received an explanation of their rights.

**B.** This Section does not authorize the Children's Court to compel any involuntary action of the parties involved.

**C.** At the informal adjustment conference(with the voluntary agreement of the parties) the Court may:

1. Refer the child and the child's parent, guardian or custodian to a community agency for assistance; or
2. Define terms of supervision calculated to assist and benefit the child, which regulates the child's activities and are within the ability of the child to perform.

**D.** The Children's Court shall set forth in writing conference findings and the disposition agreed to by the parties. The report shall be made available to and signed by the child, the child's parent, guardian or custodian. The child advocate and parent's attorney shall also receive copies of the report.

**E.** If an informal adjustment is agreed to, the Children's Court shall hold the petition in abeyance or order it dismissed to be re-filed, if at all, at a later date without prejudice.

**F.** Any disposition arranged through the informal adjustment procedure of this Section shall be concluded within six (6)months.

**G.** The Child Welfare Commission or its designee shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Commission concludes that positive results are not being achieved, the Commission shall direct the protective service worker to file a petition for a formal adjudicatory hearing.

**H.** No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding involving the child under this Code.

#### **SECTION XV. FILING CHILD PROTECTION PETITION**

**A. Authorization to File Petition.** Upon authorization by the tribal prosecutor, the child protective service worker shall initiate formal child protection proceedings by filing a child protection petition on behalf of the Tribe and in the best interest of the child. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section XI of this Code.

**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 12:00 PM of the second working day following the removal.

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

1. The name, birth date, sex, residence and tribal affiliation of the child;
2. The basis for the Court's jurisdiction;
3. The specific allegation which cause the child to be a child in need of care;
4. A plain and concise statement of the facts upon which the allegations of a child in need of care are based, including the date, time and location at which the alleged facts occurred;
5. The names, residence and tribal affiliation of the child's parents, guardians or custodians, if known; and
6. If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

#### **SECTION XVI. FILING CHILD OFFENDER PETITION**

**A. Authorization to File Petition.** The Tribal Prosecutor shall initiate child offender proceedings on behalf of the Tribe. Nothing in this Section shall preclude law enforcement or protective services personnel from taking emergency action under Section XI of this Code.

**B. Contents of Petition.** The child offender petition shall set forth the following with specificity, which may be incorporated through the attachment of a citation issued or incident report prepared by law enforcement personnel.

1. The name, birth date, age, 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 offender;
4. A plain and concise statement of facts upon which the allegations of child offender are based, including the date, time, and location at which the alleged facts occurred;
5. The names, residence and tribal affiliation of the child's parents, guardians, or custodians, if known; and
6. If the child is in emergency detention, the location of placement and the facts on which the determination to place was based, including the time and date of placement.

**C. Time Limitations.** If a child has been placed in emergency detention, the child offender petition shall be filed with the Children's Court no later than 12:00 p.m. of the second working day following placement.

**D. Transfer To Adult Tribal Court.**

1. The presenting officer or the minor may file a petition requesting the Children's Court to transfer the minor to Adult Tribal Court if the minor is fourteen (14) years of age or older, and is alleged to have committed an act that would have been considered a crime if committed by an Adult.
2. The Children's Court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to Adult Tribal Court.
  - a. The transfer hearing shall be held not more than ten (10) days after the petition is filed.
  - b. Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least seventy two (72) hours prior to the hearing.
3. Prior to the hearing, a study and a report in writing shall be submitted to the Children's Court by the Tribal Dept. of Social Services, or the Child Welfare Commission.
4. The following factors shall be considered when determining whether to transfer jurisdiction of the minor to Adult Tribal Court.

- a. The nature and seriousness of the offense with which the minor is charged.
  - b. The nature and condition of the minor, as evidenced by his/her age, mental and physical condition; past record of offenses; and responses to past Children's Court efforts at rehabilitation.
5. The Children's Court may transfer jurisdiction of the minor to adult tribal Court if the Children's Court finds clear and convincing evidence that both of the following circumstances exist:
- a. There are no reasonable prospects for rehabilitating the minor through resources available to the Children's Court; and
  - b. The offense allegedly committed by the minor is serious and constitutes a substantial danger to the public.
6. When a minor is transferred to adult tribal Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

#### **SECTION XVII. NOTICE AND SERVICE OF SUMMONS**

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

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

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

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

- a. Identify the nature of the hearing;
- b. Include a prominent notice that the hearing could result in termination of parental rights; and
- c. Have a copy of the petition attached to the summons.

**3. Manner of Serving Summons.**

- a. Except as provided in subsections (b) and (c) below, a summons required under Section XVII must be served delivering the summons to the party personally.
- b. If personal service of the summons is impracticable or cannot be achieved, the Court may direct that it be served by registered or certified mail addressed to the last known address of the party, return receipt requested, and restricted to the addressee.
- c. If the Court finds service cannot be made because the whereabouts of the person/s to be summoned has not been determined after reasonable effort, the Court may direct any manner of substituted service reasonably calculated to provide notice, including publication.

**4. Time of Service.**

- a. A summons shall be served at least:
  - i. seven (7) days prior to adjudication,
  - ii. Fourteen (14) days prior to a hearing on a petition to terminate parental rights.

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

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

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

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

- a.** The parent or parents,
- b.** The attorney for the parent,
- c.** The child or the advocate for the child,
- d.** The legal guardian or custodian other than the parent, if any,
- e.** The Tribal Prosecuting Attorney,
- f.** The responsible child placement agency.
- g.** The CASA of a party appointed pursuant to this Code,
- h.** Any other person the Court may direct to be notified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**a.** He fails to appear after proper notice, or

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

## **SECTION XVIII. PRELIMINARY HEARING**

### **A. Time for Hearing. If a child:**

**1.** Has been released to his/her parents, guardian or custodian, the Court shall conduct

a preliminary hearing within seven (7) days after filing of the petition.

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

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

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

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

**B. Conduct of Preliminary Hearing.** The Court shall read the allegations in the petition in open Court, unless waived and shall advise the parent of the right to have counsel represent them, at their own expense, and their right to a trial on the allegations in the petition. After advising the parent of the right to remain silent, the Court shall allow the parent an opportunity to deny or admit the allegations and make a statement of explanation. The same procedure shall be followed for a preliminary hearing involving a child alleged to be a child offender, provided that the rights stated herein for parents shall be afforded to the child in such a hearing.

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

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

2. The need for continued placement.

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

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

1. Shall order the parent, guardian or custodian to appear at an adjudicatory hearing on a date and time set by the Court; and
2. May release the child in the custody of either of the child's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well being of the child; or
3. May order placement of the child with someone other than a parent, guardian or custodian if the Court, after hearing, determines that both of the following conditions exist:
  - a. Custody of the child with a parent, guardian or the custodian presents a substantial risk of harm to the child's life, physical health or mental well being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk; and
  - b. Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

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

#### **SECTION XIX. ADJUDICATORY HEARING**

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

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

**C. Continuances.** Continuances of an adjudicatory hearing may be granted by the Court but

only for any of the following purposes:

1. Upon stipulation of the parties;
2. Where service of process cannot be completed;
3. The Court finds that the testimony of a presently unavailable witness is needed;
4. One time only for up to fourteen (14) days at a parent's request for the parent to obtain counsel, or for an alleged child offender to obtain counsel; or
5. For good cause shown.

**D. Exclusion of Public.** The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the Court Appointed Special Advocate (CASA), and other persons determined necessary or useful to the proceedings by the Court shall be admitted.

**E. Evidence and Conduct of Hearing.**

1. The formal rules of evidence shall not apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial and may be relied upon by the Court to the extent of its probative value.
2. The parties shall be afforded an opportunity to examine and controvert written reports received by the Court and shall be allowed to cross examine individuals who made the reports.

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

**SECTION XX. DISPOSITIONAL HEARING**

**A.** A dispositional hearing is conducted to determine measures to be taken by the Court with

respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

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

**C. Proposed Disposition (Case Plan).**

1. The Little Traverse Bay Bands Social Services Department, and/or other agency designated by the Court shall prepare and submit a proposed disposition/case plan in writing to the counsel of record, the CASA, and the Tribal Prosecutor at least three (3) days prior to the dispositional hearing.

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

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

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

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

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

1. The parties shall be given an opportunity to examine and controvert written reports so received and may cross examine individuals making reports.
2. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the disposition phase, or material prepared pursuant to a Court ordered examination, interview, or course of treatment.

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

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

1. Permit the child to remain with his/her parent, guardian or custodian, subject to such conditions as the Court may prescribe;
2. Place the child with a relative within the primary service area of the Tribe, subject to such conditions as the Court may prescribe;
3. Place the child in a licensed foster home within the Tribe's primary service area, subject to such conditions as the Court may prescribe;
4. Place the child in a foster home, or home of a relative, outside of the primary service area of the Tribe, subject to such conditions as the Court may prescribe;
5. Place the child in a group home or residential care facility designated by the Court;
6. Place the child in a juvenile offender facility designated by the Court; or

7. Direct the Tribal Prosecutor to file a petition to terminate parental rights under this Code.

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

## **SECTION XXI. DISPOSITIONAL REVIEW HEARING**

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

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

**C. Purpose and Content of Review.**

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

a. Service provided or offered to the child and his/her parent, guardian or custodian and whether the parent, guardian or custodian has complied with and benefitted from those services.

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

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

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

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

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

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

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

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

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

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

## **SECTION XXII. PERMANENCY PLANNING HEARINGS**

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

**B. Frequency of Hearings.** The Court shall conduct a permanency planning hearing not more than twenty four (24) months after entry of the order of disposition and every twelve (12) months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section XXI of this Code.

**C. Determination.**

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

**2. Child not Returned.** If the Court determines at a permanency planning hearing that the child should not be returned to his/her parent, the Tribal Social Services Department and the Child Welfare Commission shall each propose one of the following alternative permanent placement plans:

a. The child be placed permanently with a relative within the primary service area of the Tribe.

b. The child be placed permanently with a relative who resides outside the primary service area of the Tribe.

c. The child remain in long term foster or residential care.

d. A petition for guardianship under the Tribal code be filed by the current caretaker of the child, the child, or the Tribal Social Services Department.

**3.** If the Court recommends permanency , a petition to terminate parental rights under this Code be filed by the Tribal Social Services Department.

**SECTION XXIII.           TERMINATION OF PARENTAL RIGHTS**

**A.     Purpose.** The purpose of this is to provide for the voluntary and involuntary termination of the parent child relationship and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family 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, all efforts have failed to avoid termination and it is in the best interest of the child concerned and of the Tribe to proceed under this Section.

**B.     Grounds for Involuntary Termination.** The Court may terminate the parental rights of a parent to a child adjudicated as a child in need of care if the Court finds, beyond a reasonable doubt, one or more of the following exist:

1.     The parent of the child has abandoned the child without provisions for his/her support and without communication for a period of at least six (6) months. The failure to provide support and to communicate for a period of at least six (6) months shall be presumptive evidence of the parent's intent to abandon the child.
  
2.     The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
  - a.     A 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.     A 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.
  
3.     The parent was a respondent in a proceeding brought under this Code, twelve (12) or more months have elapsed since the issuance of the initial dispositional order, and the Court, finds beyond a reasonable doubt, that either of the following exist:

a. The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child, 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; or

b. Other conditions exist that cause the child to be a child in need of care, 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. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

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

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

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

**E. Termination of Parental Rights Order.** An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states its conclusions of law, and includes the legal basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court shall state the findings and conclusions in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within sixty (60) days after the taking of final proofs.

**F. Voluntary Relinquishment of Parental Rights.** Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the

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

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

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

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

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

#### **SECTION XXIV. AUTHORIZATION OF MEDICAL TREATMENT**

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

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

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

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

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

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

#### **SECTION XXV. COST OF SUPPORT AND CARE**

With the exception of permanent custody orders, in the event that a child is removed from his/her home by an order of the Children's Court, the child's parent, guardian or custodian may be ordered by the Court to pay the costs of the child's support. Such payments are to be made to the Clerk of the Tribal Court, who shall in turn release the support money to the person or organization with whom the child is placed. Whenever the Court enters such a reimbursement order and the parent, guardian or custodian refuses to pay, that person may be punished under the contempt powers of the Tribal Court.

**SECTION XXVI. EMANCIPATION**

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

**SECTION XXVII. POWER OF ATTORNEY**

A parent, legal custodian, or guardian (including Tribal Social Service Agencies), by a properly executed power of attorney, may delegate to another person for a period not exceeding six (6) months, any of the parent's, legal custodian, or guardian's child, except the power to consent to marriage, or adoption of a child and the power to release a child for adoption.

**SECTION XXVIII. LIMITED GUARDIANSHIP**

The Court may appoint a temporary guardian under such terms and conditions as the Court sets forth in the written order. A temporary guardianship may be terminated if the Court determines that it is in the best interest of the child to change custody from the temporary guardian to a new guardian or to return the child to the parent, guardian or custodian. The parent and the child's extended family shall be granted visitation rights unless deemed inappropriate by the Court. A temporary guardianship shall be established by parental consent only, and shall be revocable by the Court upon parental request.

**SECTION XXIX. CHILD PROTECTION RECORDS**

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

1. The Child;
2. The child's parent, guardian or custodian;
3. The child's counsel or Court appointed special advocate;
4. The Children's Court personnel directly involved in the handling of the case;

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

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

1. The Child;
2. The child's parent, guardian or custodian;
3. The child's counsel or Court appointed special advocate.
4. Law enforcement and human service personnel, including the Child Welfare Commission and Child Protection Team, Tribal Prosecuting Attorney, directly involved in the handling of the case.
5. The Children's Court personnel directly involved in handling of the case.
6. Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

**C. Access to Child Protection Records.** Upon written request to the protective services worker, child protection records shall be released under the following procedures:

1. Records may be released only to a person identified in subsection (B) above. All information in the record shall be released, unless mental health records in the file are subject to a statement from the mental health provider that such records contain information which, if released, might be harmful to the mental health client or others.
2. The Tribal Social Services Department shall review the record to determine which sections may be shared without revealing the identity of the reporting person.
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 files shall be clearly designated as confidential.

**D. Unauthorized Release of Confidential Information.** Any person who permits or encourages the unauthorized dissemination of information subject to this Section shall be subject to a civil remedial forfeiture, not to exceed \$5,000.00 for each action or omission. The Court may remit all or a portion of the forfeiture to any person demonstrating harm from the unauthorized release and dissemination of confidential information.

#### **SECTION XXX. REHEARINGS**

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

**B. Notice.** All parties must be given notice of the motion in accordance with Section XVII.

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

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

**E. Hearings.** The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The Court shall state the

reasons for its decision on the motion on the record or in writing.

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

#### **SECTION XXXI. APPEALS**

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

**B. Time Limit for Appeal.** Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the Court clerk within thirty (30) days of the final order.

**C. Review of Standard.** The clearly erroneous standard shall be used in reviewing the findings of the Children's Court on appeal.

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

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

#### **SECTION XXXII. EFFECTIVE DATE**

This Statute shall take effect on January 1, 1999.

#### **SECTION XXXIII. SAVINGS CLAUSE**

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of or governing the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph,

subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

**Certification**

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on December 20, 1998, at which a quorum was present, by a vote of

6 in favor, 0 opposed, and 0 abstentions as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	<u>✓</u>	_____	_____	_____
Frank Ettawageshik	<u>✓</u>	_____	_____	_____
Barry Laughlin	<u>✓</u>	_____	_____	_____
Shirley Oldman	<u>✓</u>	_____	_____	_____
Rita Shananaquet	<u>✓</u>	_____	_____	_____
Alice Yellowbank	<u>✓</u>	_____	_____	_____

Date: 1-10-99

\_\_\_\_\_  
Frank Ettawageshik, Tribal Chairman

\_\_\_\_\_  
Barry Laughlin, Tribal Secretary