

**WAGANAKISING ODAWAK STATUTE # 2012-010
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, on motion of a party, closes the proceedings to the public during the testimony of a child based on the nature of the proceedings; the age, maturity, and preference of the child witness.
- C.** This Statute repeals and replaces any previous Child Welfare Code, including Waganakising Odawak Statute 1998016, and Waganakising Odawak Statute 2006-018 as amended.

SECTION II. PURPOSE

- A.** Children are the Tribe's most vital and cherished resource. The Tribe's future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental and physical development. Feeling pride from their identity as Odawak will help them grow into strong, healthy responsible adult Tribal Citizens.
- B.** The purpose of this Statute is to ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children out-of-home when necessary for their care. 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 the children from their parents and siblings, only as a course of last resort;
 3. To take action that will best meet the spiritual, emotional, mental, and physical needs of the Children, and preserve the interest and culture of the Tribe;
 4. To recognize and acknowledge the Tribal customs and practices of;
 5. To preserve and strengthen children's cultural ethnic identity whenever possible;
 6. To provide procedures for intervention in state court proceedings involving Indian children and for the transfer of jurisdiction over Indian children from state and other Tribal courts to the Little Traverse Bay Bands of Odawa Indians Tribal Court;
 7. To secure the rights of and ensure fairness to the children, their custodians, and other
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parties who come before the Court under the provisions of this Statute;

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

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

SECTION III. CHARACTER INVESTIGATIONS

Pursuant to the Indian Child Protection and Family Prevention Act, 25 U.S.C. § 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; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

SECTION IV. DEFINITIONS

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

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

C. "Active Efforts" means: Exhaustive proactive assistance to custodians in developing and completing service goals.

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

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

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

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any;

3. The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of the Tribe in place of medical care, and other material needs;
4. The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity;
5. The permanence, as a family unit, of the existing or proposed custodial home or homes;
6. The moral fitness of the parties involved;
7. The mental and physical health of the parties involved;
8. The home, school, and community record of the child;
9. The reasonable preference of the child, if the Court considers the child to be of sufficient age to express preference;
10. The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents;
11. Domestic violence, regardless of whether the violence was directed against or witnessed by the child; and
12. Any other factor considered by the Court to be relevant.

E. "Best Interest of the Tribe" mean: Is to protect the best interests of Indian children and to promote the stability and security of Indian Tribes and families.

F. "Child" mean: 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.

G. "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 through the intentional acts or negligence of the custodian;
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, or supervision necessary for the health and well-being of a child, does not excuse

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the neglect of the offending custodian;

4. Who has been sexually abused or exploited by a custodian either intentionally, or negligently;
5. Whose parent had the opportunity to prevent physical injury or physical or sexual abuse, failed to do so;
6. Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;
7. Who has been emotionally and/or psychologically abused or neglected by their custodian;
8. Who is born addicted to alcohol or exposed to a controlled substance, which has resulted in physical and/or mental harm to the child;
10. Whose custodial parent or parent exercising visitation rights is being charged with or has been convicted of a violent or criminal sexual crime;
11. Whose custodial parent or parent exercising visitation rights is being charged with or has been convicted of a crime that demonstrates the parent's unfitness to adequately parent the child;
12. Who has a parent whose parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse;
13. Who is found under conditions that would support grounds for involuntary termination of parental rights found in Section XXIV;
14. Who is a court ward less than twenty years of age, in foster care, and who is a full time high school student or actively pursuing a GED.
15. Who, is exposed to an environment where adults are manufacturing, selling, or illegally using a controlled substance.
16. 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.
17. Whose drug, alcohol or substance abuse creates an unreasonable risk of harm to the child.

H. "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.

I. "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."

J. "Children's Court Judge" means: Any duly appointed judge of the Little Traverse Bay Bands of Child Protection Statute

Odawa Indians Tribal Court when exercising jurisdiction under this Statute.

K. "Commit" means to transfer legal custody.

L. "Conservator" means: A person appointed by a court to manage the estate and financial affairs of a minor or someone who is legally incapable of doing so.

M. "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.

N. "Custodian" means: A parent, legal guardian, or other person with legal custody of a child.

O. "Department" means: The Human Services Department of the Little Traverse Bay Bands of Odawa Indians.

P. "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.

Q. "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.

R. "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.

S. "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.

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

U. "Indian" means: Any enrolled or eligible citizen of a federally recognized Indian tribe, band, community, or Alaskan Native entity.

V. "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.

W. "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.

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

Y. "Parent" means: A mother, father, 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

Z. "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 those duties;
2. Advise the child. Law presumes that advice is given in good faith and in the best interest of the child;
3. Right to discipline. Parents may use discipline that is reasonable;
4. Control of education. Parents may choose where the child attends school;
5. Religious training. The religious training of the child, or lack of it, is a matter solely within the parent's control;
6. The right to a child's services and earnings. Parents have the fiduciary responsibility to act in good faith and in the best interest of the child; and
7. The right to direct the child's activities and make decisions regarding the child's care and control, education, health and religion.

AA. "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 know within this Statute as Tribal Presenting Officer.

BB. "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.

CC. "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.

DD. "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.

EE. "Tribal Council" means: The Tribal Council of the Little Traverse Bay Bands of Odawa Indians.

FF. "Tribal Court" means: The Tribal Court of the Little Traverse Bay Bands of Odawa Indians.

GG. "Tribe, "Tribal" or "LTBB" means: The Little Traverse Bay Bands of Odawa Indians.

HH. "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 V. JURISDICTION

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

1. Any 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.

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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. 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 VI.A

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 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 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.

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 VI. 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. Except as provided in Section V(D)(1), the Children's Court may accept or decline, under the procedures set forth in this Statute, transfers of cases that may fall under the purview of this Statute from federal, state or other Tribal courts.

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D. Procedures for Intervention and Transfer from State Courts.

1. **Receipt of Notice:** The Tribal agency for service of notice of state court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Tribal Prosecutor, and the appropriate federal official shall be so notified for the purpose of Federal Register publication.
2. **Intervention:** If the notice involves a Tribal child, the Tribal Prosecutor shall forthwith file a notice of intervention, or a motion to intervene if necessary, with the state court.
3. **Investigation and Pre-Transfer Report:** The Department shall conduct an investigation and provide a Pre-transfer report to the Child Welfare Commission and Prosecutor. The Commission shall provide its written recommendation with regard to transfer to the Department which will be placed in the official Department case file and be considered part of the Department record of the case.
4. **Decision to Transfer:** The Child Welfare Commission may make recommendations to the Tribal Prosecutor on whether the Tribe should petition for a transfer of proceedings from the state court, or not. The Child Welfare Commission's recommendation shall be considered, but is not binding on the independent decision making process of the Tribal Prosecutor, 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 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 Prosecutor shall make the determination on whether to file a request for transfer in state court. Upon receipt of the state court's granting of the transfer request, the Tribal Prosecutor shall file a request to accept the transfer in the Tribal Court.
6. **Acceptance of Transfer:** The Children's Court has discretion whether to accept or deny the transfer of cases arising outside of the exterior boundaries of the reservation 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.
7. **Hearing/s:**
 - 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 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.
- 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 VII. PROCEDURES AND AUTHORIZATIONS

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

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

C. Social Services. The Department shall be the primary provider for child and family services and may 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.

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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.

SECTION VIII. COURT APPOINTED ATTORNEYS

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

- 1.** Role of the Guardian Ad Litem. The duty of the guardian ad litem is to represent the interests of the child.
- 2.** Duties of the Guardian Ad Litem. The guardian ad litem shall perform the following duties:
 - a.** Appear at all hearings to competently represent the interests of the child in proceedings before the Court;
 - b.** Conduct an independent investigation, including interviewing the child, parents, social workers, school personnel, care providers, and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is in-need-of-care within the jurisdiction of the Court;
 - c.** Ascertain the interests of the child, taking into consideration the child's wishes according to the competence and maturity of the child;
 - d.** Provide a written report of findings and recommendations to the Court at each hearing held before the Court;
 - e.** Urge that specific and clear orders are entered for evaluation, assessment, services and treatment for the child and his or her family;
 - f.** Monitor implementation of case plans and disposition orders to determine whether services ordered by the Court are actually provided, are provided in a timely manner, and are accomplishing their desired goal;
 - g.** Inform the Court if the services are not being made available to the child and/or family, if the family fails to take advantage of such services, or if such services are not achieving their purposes,
 - h.** Identify the common interests among the parties and, to the extent possible, act as mediator to promote a cooperative resolution of the matter;
 - i.** Consult with other professionals liberally in identifying the child's interests, current and future placements, and necessary services;

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

k. Attend training programs as recommended and provided by the Court.

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

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

SECTION IX. 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 provide to 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 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 Child Protection Statute

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 XXVII 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 X. 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 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 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 exist:

- a. Abuse or neglect is the suspected cause of a child's death;
- b. The child is the victim of suspected sexual abuse or sexual exploitation;
- c. Abuse or neglect resulting in severe physical injury to the child that requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child;
- d. Law enforcement intervention is necessary for the protection of the child, the protective service worker, or another person involved in the investigation; or
- e. The alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare.

4. Schools and other institutions shall cooperate with 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 in Tribal Law Enforcement or the Department have reason to believe that an Indian child 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 multi-disciplinary team.
- d. Cooperation; Information Sharing. All tribal departments, agencies and programs shall cooperate with Tribal social services in investigations of a report of child abuse or neglect. This includes the sharing of information without the need of signed releases for the development of case service plans and monitoring compliance with such plans.

5. Take a child into temporary custody if necessary pursuant to Section XI. Law enforcement officials shall cooperate with the Department to remove a child from the custody of his parents, guardian or custodian when necessary.

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

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

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

9. Within thirty (30) days after a referral of a potential child in need of care, submit a written report which shall be included in the records maintained by the Department and shall include a determination as to whether the report is substantiated or unsubstantiated. Upon completion of the investigation by Tribal Law Enforcement or the Department, they may inform the person who made the report as to the disposition of the report.

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

C. Limitations of Authority; Duty to Inform. Before offering 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 XI or to obtain a medical evaluation of the child pursuant to Section XXVII.

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, 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 and that the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well-being the Court may order the child be taken into custody. The Court may include in such an order:

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

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

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

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

2. The 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 custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

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 Custodian. The person removing the child shall make reasonable efforts to notify the 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 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 asserts jurisdiction over a person who is a citizen of an Indian tribe other than the Little Traverse Bay Bands of Odawa Indians, the Tribal Court shall notify the court of the other tribe that jurisdiction has been asserted over a child enrolled in their tribe.

SECTION XIII. 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;

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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 which meets the needs of the child.

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

B. Power of Attorney. A parent, legal custodian, or by a properly executed power of attorney, may delegate any powers of a parent regarding the care, custody and property of a minor child to another person. Said powers include but are not limited to the following: the consent to admission to a hospital or school, consent to secure routine dental care, non-surgical medical care and emergency dental, medical or surgical treatment. The delegation does not include power to consent to marriage, non-emergency elective surgery or adoption. The delegation shall be valid for six (6) months from the date of execution and may be revoked in writing, at 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. Voluntary guardians 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

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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. The parties to the 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.

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.

C. 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 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; the name and date of death of the minor's deceased parent or parents, if applicable;
- d. The basis for the Court's jurisdiction;
- e. The name and address of the person or agency having legal or temporary custody of the proposed ward;
- f. A statement of the reason that the appointment of a full guardian is sought and whom the petitioner recommends to have appointed as full guardian; and
- g. A full description and statement of value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income and accounts receivable to which the proposed ward is entitled.
- h. Any petition brought pursuant to this Section shall be signed and dated by the petitioner.

6. 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's to provide for the physical and emotional well-being of the child;
- e. Any other information deemed relevant by the Department.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

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

SECTION XV. FILING CHILD PROTECTION PETITION

A. Authorization to File Petition. The Tribal Presenting Officer shall initiate formal child protection proceedings to protect the best interest 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 XI 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 Child Protection Statute

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 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. 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 person/s to be noticed has 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 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 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. Contents. The notice shall direct the person to whom it is addressed to appear, and the Court may direct the appearance of the child if it deems necessary, at a time and place specified by the Court and 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 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 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 IV(R), 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.

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2. After notice to the putative father the Court may conduct a hearing and determine that:
 - a. The putative father has been personally served or served in some other manner which the Court finds to be reasonably calculated to provide notice to the putative father. If so, the Court may proceed in the absence of the putative father;
 - b. There is probable cause to believe that another identifiable person is the natural father of the child. If so, the Court shall proceed with respect to the other person in accord with this subsection (F); and
 - c. If after diligent inquiry, the identity of the natural father cannot be determined. The Court shall publish a notice at least once, in a manner calculated to alert a person who may be the father of the child. If no person comes forward the Court shall terminate the parental rights of the unknown father and proceed without further notice.
3. The Court may find that the putative father waives all rights to further notice, including the right to notice of termination of parental rights if;
 - a. He fails to appear after proper notice; and
 - b. He appears, but fails to establish paternity within the time set by the Court.

SECTION XVII. PRELIMINARY HEARING

- A. Purpose of preliminary hearing. The purpose of the preliminary hearing is to determine:
 1. Whether probable cause exists to believe the child is subject to the jurisdiction as a child in need of care; and
 2. Whether the home conditions continue to be such as there is no alternative to removal to adequately safeguard the child.
 3. Whether reasonable efforts to prevent the removal of the child from the home have been made, and what reasonable efforts occurred.
 4. Whether it is contrary to the welfare of the child to remain in the home.
- B. Time for Hearing. If a child:
 1. Has been released to his/her 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 noon on the second work day following the placement.

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 Court shall read the allegations in the petition in Court, and shall advise the custodian of the rights unless waived to have counsel represent them, at their own expense, 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. The Court shall hear testimony concerning:

1. The circumstances that gave rise to the petition; and
2. The need for continued placement.

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

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

1. Shall order the 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 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 custodian if the Court, after hearing, determines that both of the following conditions exist:
 - a. Custody of the child with a custodian presents a substantial risk of harm to the child's life, physical health or mental well-being and no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk; and
 - b. Conditions of custody of the child away from the custodian are adequate to safeguard the child's health and welfare.

H. 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, 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. Except if current law, Court Rule or Court policy provide for Court appointed attorneys for custodians at the Court's expense, under income eligibility guidelines or otherwise, the Court shall so inform the custodian;
2. To examine Court records, Law Enforcement records and Department records in the case in accordance with Section XXVI of this Statute;
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 probable cause to proceed upon a petition is found 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.

SECTION XVIII. ADJUDICATORY HEARING

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

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

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

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

D. Evidence and Conduct of Hearing.

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

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

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

SECTION XIX. 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 XVI (Notice).

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

1. The Department and/or other agency designated by the Court shall prepare and submit a proposed disposition/case service plan in writing to the counsel of record, and the Tribal Presenting Officer at least three (3) days prior to the dispositional hearing.

2. The Department shall prepare a written report with its recommendations. The report shall contain a specific plan for the care of and assistance to, the child and/or the child's custodian designed to resolve the problems presented in the petition. The report shall contain a detailed explanation of the necessity for the recommended 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 somewhere other than with the child's custodian, it shall state the specific reasons underlying its placement recommendations.

4. Each case service plan shall be reviewed by the Child Welfare Commission; the Commission shall advise the Presenting Officer in writing of the disposition which is recommended by a vote of its members. The Commission shall also provide its written recommendation to the Department which will be placed in the official Department case file and be considered part of the Department record of the case.

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, 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 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.

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

G. Child Support. Parents, custodians or guardians may be ordered by the Court to make child support payments. The Court shall have the authority to establish a procedure for receipt and distribution of child support payment made pursuant to this Section.

H. Amended Orders. If a child remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Children's Court in this Statute upon motion of an interested party. The Court shall hold a hearing on the motion in accordance with the provisions of this Statute.

SECTION XX. 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 dispositional review hearing shall be provided on the record or by ordinary mail as provided in Section XVI (B).

C. Purpose and Content of Review.

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

a. Services provided or offered to the child and his/her custodian; whether the custodian has complied with and benefitted from those services, active efforts to provide services; and

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

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visitation did not occur or was infrequent.

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

- a. Prescribing additional services that are necessary to rectify the conditions that caused the child to become a child in need of care;
- b. Prescribing additional actions to be taken by the 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 dispositional 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 Department, and shall order the return of the child to the custody of the custodian, 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 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:

- a. The custodian's 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 dispositional review hearing required by this Section.

D. Return of Child Without Hearing. 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 XVI. 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.

SECTION XXI. PERMANENCY PLANNING HEARINGS

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

B. Frequency of Hearings. The Court shall conduct a permanency planning hearing one year after entry of the order of disposition. A permanency planning hearing may be combined with a disposition review hearing under Section XX of this Statute.

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C. Request for Termination or Suspension of Parental Rights; Notice. If the Tribal Presenting Officer intends to seek termination or suspension of parental rights, the Tribal Presenting Officer shall provide notice to the parent(s) in accordance with the provisions of this Code.

D. Determination.

1. Child Returned. 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 case service 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 case service plan but circumstances exist that do not make it in the child's best interest for an immediate return home, 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, termination or suspension are in the best interest of the child.

3. 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 terminate or suspend the custodian(s) rights and order permanency placement for the child. Permanency placement options shall be the following:

- a. Place the child in a full guardianship;
- b. Place the child in a pre-adoptive placement;
- c. Place the child in 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. Emancipate the child.

SECTION XXII. PERMANENCY REVIEW HEARINGS

A. Purpose. The Court shall conduct a Permanency Review Hearing to review the child's placement
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and welfare, and to determine whether continued Court jurisdiction in the case is necessary.

B. Frequency. The Court shall conduct a Permanency Review Hearing within twelve (12) months of the Permanency Planning Hearing and every twelve (12) months thereafter, so long as the child continues to be a child in need of care.

C. Reports Required. Before every Permanency Review Hearing the Department shall file a written report regarding the child's education, health and overall welfare.

SECTION XXIII. EMANCIPATION

A. A child who is 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 in the best interest of the child.

B. 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 in the petitioner's best interest;
9. Signature of the petitioner.

C. 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 LTBB Presenting Officer, if the petitioner is the subject of an active child welfare case;
5. The petitioner's guardian ad litem, if the petitioner is the subject of an active child welfare case.

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

SECTION XXIV. TERMINATION OF PARENTAL RIGHTS

A. Purpose. The purpose of this Section is to provide for the voluntary and involuntary termination of the parent child relationship and for the substitution of parental care and supervision by judicial process. This Section shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family 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. Mandated Request for Termination of Parental Rights. The Tribal Presenting Officer shall include a request for termination of parental rights within the initial petition filed with the Court, if the parent is a suspected perpetrator or a parent is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk. If one or more of the following circumstances is alleged in the initial petition, the Court shall consider the request for termination at the initial dispositional hearing:

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

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

1. The child has been deserted under either of the following circumstances:
 - a. The child's parent is unidentifiable, has deserted the child for 28 or more days,

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and has not sought custody of the child during that period. For the purposes of this Section, a parent is unidentifiable if the parent's identify cannot be ascertained after reasonable efforts have been made to locate and identify the parent.

b. The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

2. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

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

b. The parent who had the opportunity to prevent the physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

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

d. 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.

3. 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.

4. Conviction of Violent or Sexual Crime. A parent of the child is convicted of a violent or criminal sexual crime.

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

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

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

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E. Termination of Parental Rights Order. An order terminating parental rights under this Statute may not be entered unless the Court makes findings of fact, states its conclusions of law, and includes the legal basis for the order. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient. The Court shall state the findings and conclusions in a written opinion. If the Court does not issue a decision on the record following hearing, it shall file its decision within thirty (30) days after the taking of final proofs.

F. Termination through 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. 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 the 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 in the best interest 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.

G. 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 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 by clear and convincing evidence that such consent was obtained by fraud or duress.

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

I. Advice 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.

SECTION XXV. ADOPTION

A. Jurisdiction. When the Court has exercised jurisdiction over a child in need of care under this Statute and ordered a pre-adoptive placement under Section XXI, the Court may proceed with an adoption under this Section.

B. Types. The Tribe recognizes the following types of adoption:
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1. Open. The parental rights of the biological parents will be 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 will be 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;
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; and
4. Closed Traditional. Parental rights will be granted to the adoptive party and the biological parent's rights will not be terminated. The adoptive parents will have the sole parental authority to make all decisions regarding the care and upbringing of the adopted child(ren). The visitation rights of the parents and/or other named members of the child's biological family will not be maintained. All contact by the biological parents and/ or family will be forbidden.

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 persons consenting have been informed of the nature and consequences of their actions. The minority-age status of parent (s) shall not be a bar to the right of consent nor shall it invalidate such consent.

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

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 adopting parent(s);

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3. Proof of parental consent to the adoption;
4. A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee;
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, i.e open, closed, open traditional, 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:

1. Age, nationality, race or ethnicity, any religious preference, and tribal affiliation, if any.
2. Marital and family status and history, including the presence of other children or adults in the household and the relationship of those individuals to the adoptive parent.
3. Physical and mental health, including any history of substance abuse.
4. Educational and employment history and any special skills and interests.
5. Property and income, including outstanding financial obligations as indicated in a current financial report provided by the individual.
6. Reason for wanting to adopt.
7. 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 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 after the Court explains:

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

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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, or 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 shall be 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 Child Protection Statute

admission of any persons other than the interested parties and witnesses. Any papers, records, petitions, or files pertaining to proceedings, 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 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 XXVI. CHILD PROTECTION RECORDS

A. Children's Court Records. All Children's Court records are open unless deemed confidential by the Court. 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. Any other person by order of the Court, 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 services 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 abuse of children may provide information and records to those agencies of any Indian tribe, any State, or the Federal Government that need to know the information in performance of their duties. Indian tribal governments shall be treated the same as other Federal Government entities;
 5. The Tribal Prosecutor;
 6. Any other person by order of the Court upon petition from a person or entity having
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legitimate interest in the particular case.

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

1. Records may be released only to a person identified in subsection (B) above. All information in the record shall be released, unless mental health records in the file are subject to a statement from the mental health provider that such records contain information which, if released, might be harmful to the mental health client or others.
2. The 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 XXVII. 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 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 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
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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 performance of care or treatment in reliance on the Court's authorization, and any function performed there under shall be regarded as if it were performed with the child's and/or the custodian authorization.

SECTION XXVIII. 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 XXIX. 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 XXX. 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.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on August 5, 2012 at which a quorum was present, by a vote of 5 in favor, 0 opposed, 0 abstentions, and 4 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Belinda Bardwell	X			
Bill A. Denemy				X
Kevin Gasco	X			
John Keshick				X
Aaron Otto				X
Winnay Wemigwase				X
John Bott	X			
Regina Gasco Bentley	X			
Melvin L. Kiogima	X			

Date: 8/12/12 _____
 Legislative Leader Melvin L. Kiogima

Date: 8-5-12 _____
 Regina Gasco Bentley, Secretary

Received by the Executive Office on 8-7-12 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: 8-31-12 _____
 Dexter McNamara, Tribal Chairperson