

**TITLE 10**  
**CHILDREN, FAMILIES & ELDERS**

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**Chapter 1 - Children's Code Revised**

**§ 101 - Short Title, Purpose and Definition**

- (a) Short Title. This Code shall be entitled "The Revised Children's Code."
- (b) Purpose. The Children's Code shall be liberally interpreted and construed to fulfill the following expressed purposes:
  - (1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Grand Traverse Band of Ottawa and Chippewa Indians;
  - (2) To preserve the unity of the family, preferably by separating the child from his or her parents only when necessary;
  - (3) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the child and the best interest of the Tribe to prevent the abuse, neglect and abandonment of children;
  - (4) 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;
  - (5) To secure the rights of and ensure fairness to the children, parents, guardians, custodians and other parties who come before the Children's court under the provisions of this Code;
  - (6) To provide procedures for intervention in state court procedures regarding Indian children and for transfer of jurisdiction over Indian children from state and other tribal courts to this Tribal Court;
  - (7) To ensure compliance with all applicable federal laws and to provide a reasonable means by which cross- jurisdictional judgments and orders may be enforced with full faith and credit.

- (8) To recognize and acknowledge the tribal customs and traditions of the Grand Traverse Band regarding child-rearing;
- (9) To preserve and strengthen the child's cultural and identity whenever possible and to protect the sovereignty of the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### § 102 - Definitions

As used in this Code:

- (a) "Adult": A person eighteen (18) years of age or older or a person under the age of eighteen (18) who has been emancipated by order of a court of competent jurisdiction.
- (b) "Aggravated Circumstances": Incidents of abuse or neglect perpetrated upon a child which demonstrate such depraved indifference to the health and wellbeing of children, and the community's standards for the care of children, that reunification efforts are deemed inappropriate and termination of parental rights may be immediately sought by petition. Aggravated circumstances shall include: the use of a weapon in an act of child abuse, abandonment of a child, addiction at birth, conviction of homicide, sexual abuse of a child or physical abuse which results in permanent injury to, the maiming or death of a child.
- (c) "Anishinaabek Family Service": The Tribal agency responsible for administering the protective services provided for in this Children's Code, including but not limited to, investigating reports of abuse or neglect, planning and implementing reunification efforts, placement, monitoring family progress, permanency planning and serving as the representative services agency of the GTB government in all actions involving member children within other jurisdictions.
- (d) "Best Interests of the Child": As used in this Code, the sum total of the following factors to be considered, evaluated, and determined by the Court:
  - (1) The love, affection, and other emotional ties existing between the parties involved and the child.
  - (2) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
  - (3) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this 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 including the criminal history of any person living in the same household as the minor child.
  - (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.
  - (12) Any other factor considered by the Court to be relevant to a particular child custody dispute.
  - (13) The willingness to provide the child with a strong cultural identity and to expose the child to the customs, values and mores that may form the child's cultural.
- (e) "Child": A person under the age of eighteen (18) who has not been emancipated by order of a court of competent jurisdiction.
- (f) "Child Abuse": Includes but is not limited to:
- (1) Any case in which:
    - (A) The death of a child has occurred due to, or a child exhibits evidence of, skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures of any bone, head or spinal injury, soft tissue swelling; and
    - (B) Such condition is not reasonably explainable as due to accident or illness; or medically deemed not likely to be the result of an accident or illness; and
  - (2) A child is or has been subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution or exposure to other sexually inappropriate behavior of an adult in the presence of a child.

- (3) A child is, or may be placed at risk of sexual assault, molestation, contact or sexually inappropriate contact by prolonged or unrestricted contact with a person who has been convicted of a crime of sexual misconduct.
  - (4) The gross or intentional neglect of child's basic needs including but not limited to the provision of food, clothing, shelter, medical care and education to the degree that the child's development has been or is likely to be significantly adversely affected, or in which a child manifests severe physical or emotional pathology as a direct result of prolonged or severe neglect.
  - (5) Children are left without proper supervision for prolonged periods or in conditions or in a manner resulting in or likely to result in physical harm to the child.
- (g) "Child Born Out Of Wedlock": A child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined to have been conceived or born during a marriage but who is not the issue of that marriage, or a child who has not been legally adopted by any person.
- (h) "Child Neglect": Includes, but is not limited to, Intentional or unintentional negligent treatment or maltreatment of a child, by act or omission, by any person including one who is responsible for the child's health, welfare and/or safety under circumstances which indicate that the child is at risk for physical, emotional or developmental harm.
- (i) "Custodial Interference": Any action which obstructs the reasonable exercise of dominion and control over the life of child by that child's lawful custodian.
- (j) "Custody": Dominion and control over the daily life of a child conducted in the best Interests of the child.
- (k) "Dependent Child" is one:
- (1) For whom no adult person has the legal authority and responsibility to assume care and control over the child and to provide the basic necessities of food, clothing, shelter and a healthy environment in which to develop.
  - (2) Who has suffered or is likely to suffer physical, emotional or developmental harm inflicted by other than accidental means.
  - (3) Who has been deprived of adequate food, clothing, shelter, medical care, education, or supervision necessary for his or her health and well-being. The fact that some person is providing adequate food, clothing, shelter, medical care, education, or supervision necessary for the health and well-being of a child, shall not be a defense to allegations of neglect unless such care was arranged for by the Respondent for a time certain.
  - (4) Whose parent has or had a reasonable opportunity to prevent child abuse or neglect and failed to do so, or is or has been in the care and control of any adult person who

knew or should have known of a significant risk of harm to a child and intentionally failed to protect that child from harm;

- (5) Who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;
  - (6) Who has been sexually abused and/or who has been exposed to age inappropriate sexual conduct, sexually explicit materials including but not limited to all media products and objects;
  - (7) Who is born addicted to alcohol, cocaine or any other controlled substance or who substantially manifests symptoms or physical and/or developmental effects of such addition within the first ninety (90) days of life;
  - (8) Whose parents are separated or divorced and no court of competent jurisdiction has issued a temporary custody and support order;
  - (9) Whose parent custodian, or guardian has been convicted of a violent felony or sexual crime against children or a family member.
  - (10) Whose parent custodian or guardian has been convicted of a crime or series of crimes that are of a nature which demonstrates an inability, unwillingness and/or unfitness to adequately parent the child and protect the child from harm.
  - (11) A child who has been subjected to ongoing violence In the home whether or not directed toward the child.
- (l) (Reserved)
- (m) “Controlled Substance”: A controlled substance as defined now or hereafter by the Public Acts of Michigan. Currently such controlled substances are defined by Act No. 368 of the Public Acts of 1978, as amended, being Sections 333.7101 to 333.7544 of the Michigan Compiled Laws, including methcathinone (“cat”).
- (n) “Court” or “Children’s Court”: The Court of the Grand Traverse Band of Ottawa and Chippewa Indians asserting jurisdiction over matters involving children.
- (o) “Custodian”: A person other than a parent or guardian, to whom legal custody of the child has been sanctioned by a court of competent jurisdiction.
- (p) “Dependency”: A determination made by a court of competent jurisdiction after a hearing, that a child is at risk of, or has been subject to child abuse or neglect as defined in this Code.
- (q) “Domestic violence”: Any act or acts of physical, sexual or emotional abuse, assault, threats, intimidation, unreasonable economic deprivation, stalking, harassment, public embarrassment, sexual coercion perpetrated by one family member against another,

whether or not residing within the same household, however for purposes of this Code, all members of a household shall be considered “family members.”

- (r) “Domicile”: The usual and common residence of person defined by a clear intent to maintain residency continuously despite any periodic physical absence from the home. The domicile of a child is presumed to be that of the custodial parent, legal guardian or custodian.
- (s) “Extended Family”: A person who is the child’s grandparent, aunt, uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first, second cousin, or stepparent.
- (t) “Father”: A man legally married to the mother of a child at any time from a child’s conception to the minor’s birth; or
  - (1) A man who legally adopts a child; or
  - (2) A man whose paternity has been established in one of the following ways within time limits, when applicable, set by the Court pursuant to this chapter:
    - (A) The man joins with the mother of the child and acknowledges the child as his child in a writing, executed and acknowledged by them in the same manner provided by law for the execution and acknowledgement of ex parte court orders and recorded at any time during the child’s lifetime in the office of the Tribal Court or in any other court of competent jurisdiction.
    - (B) The man signs a declaration of paternity upon the birth of the child or the man and the mother file a joint, written request for a correction of the certificate of birth to name the declarant man as the child’s father, and such a revised birth certificate is issued.
    - (C) The biological father has abandoned a child and a man has held himself out as the father of the child and substantially fulfilled parental responsibilities during the course of the child’s life; or both a man and a child of at least eight (8) years of age have maintained a mutually acknowledged relationship of parent and child.
    - (D) A man, who by order of filiation, or by biological proof of paternity, is determined to be the father of the child in any court of competent jurisdiction.
- (u) “Guardian”: A person assigned by a court of competent jurisdiction, other than a parent, having the duty and authority to provide care and control of a child as set forth in § 128 of this Code.
- (v) “He/His”: The use of he/his means he or she, his or her, child/children, and singular includes plural.
- (w) “Immediate Family”: Parents, stepparents, siblings, half-siblings.

- (x) “Indian”: Any member of a federally recognized Indian tribe, band or community, or Alaska Natives, any member of an historic tribe or band recognized by the GTB or the State of Michigan or a person acknowledged by the community to be a Native American.
- (y) “Indian Child”: A child who is a member of a tribe or band that is acknowledged to exist as a tribe or band by the United States, the Secretary of the Interior or a member of an historic tribe or band recognized by the State of Michigan. A child who is eligible for such membership who is the natural child of at least one (1) parent who is an Indian as defined herein.
- (z) “Least Restrictive Alternative”: A placement alternative which creates the least disruption, upheaval or adverse effects upon the child and family; when considering the best interests of the child, for obtaining the objectives of the Court and this Code.
- (aa) “Legal Custodian”: One who by maternity, paternity or valid Order of a Court of competent jurisdiction has custody and control over a minor child.
- (bb) “Minor”: A person less than eighteen (18) years of age.
- (cc) “Multidisciplinary Team”: A team established to assist in the prosecution of sexual and physical abuse cases.
- (dd) “Parent”: A person who is legally responsible for the control and care of a child, including a natural or adoptive parent, a legal guardian or custodian; excluding persons whose parental rights have been terminated and/or a father whose paternity has not been acknowledged or established as provided for in this Code.
- (ee) “Parental Rights”: Legal rights attached to and associated with parenthood and all attendant responsibilities, duties and obligations including, but not limited to:
  - (1) Care, custody, maintenance and protection. Parent has the right to lawfully provide for a child’s care, custody, maintenance and protection according to his/her own beliefs, customs and values so long as the child is not placed at risk of physical, emotional or developmental harm.
  - (2) Adequate guidance. It is presumed that parental guidance is given in good faith and in the best interest of the child. This presumption may only be rebutted by clear and convincing evidence that guidance provided to a child has directly resulted in physical, emotional or developmental harm to the child,
  - (3) Right to discipline. Parent has right to correct the child by reasonable and timely punishment, including corporal punishment which must be corrective and not punitive and may not result in physical injury to the child. Deprivation of basic needs such as food, shelter, education, medical care or clothing shall not be considered lawful punishment.

- (4) Control of education. Parents may educate children as they see fit so long as the child's intellectual development is age appropriate and meets minimum community standards for academic progress.
- (5) Religious training. The religious training of minor children, or lack of it, is a matter solely within the parent's discretion.
- (6) The right to a child's services and earnings so long as the child is not exploited.
- (ff) "Parental Kidnapping": The act of a non-custodial parent denying or causing the denial of dominion and control over a child by one lawfully charged with custody of that child. The act of a non-custodial parent to remove a child from the jurisdiction of the Court which rendered or is in the process of rendering a custody or placement determination.
- (gg) "Parenting Time": Scheduled times in which a Respondent and other approved family members may engage in interaction with a child who has been removed from his or her domicile pursuant to this Code.
- (hh) "Party in Interest": In any court action pursuant to this Code, the Petitioner, the Respondent and the Child(ren) who are the subject of any legal proceeding arising from enforcement of this Code.
- (ii) "Permanency Plan": A plan for long-term placement and care of a child who has been adjudicated Dependent under the provisions of this Code and has remained in protective placement for a period of time that would indicate that long-term or permanent placement and care are in the best interests of the child.
- (jj) "Petitioner": The person, agency or entity seeking relief or remedy under the provisions of this Code.
- (kk) "Presenting Officer": The Tribal prosecuting attorney or an assistant Tribal prosecuting attorney who represents the Tribe in all matters related to this Code and the Indian Child Welfare Act 25 U.S.C. § 1901 et seq.; or one charged by the Chief Judge of Tribal Court to present cases involving abuse and neglect to the GTB Children's Court for adjudication and to represent the interests of GTB in court cases involving GTB member families.
- (ll) "Protective Placement": Provision of residence for a child outside of the child's domicile intended to be temporary pending investigation or adjudication of allegations of Child abuse or neglect as defined herein.
- (mm) "Protective Services Worker": The protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in § 110 of this Code.
- (nn) "Reasonable Efforts": The mandated responsibility of GTB to provide individually specific services in support of reunification which are conducive to altering individual and family behaviors and attitudes that pose a risk to children. Services should, whenever possible, be culturally specific and always remedial in intent.

- (oo) “Respondent”: The person or persons alleged to have violated provisions of this Code.
- (pp) “Reunification”: The preferred goal of remedial plans to eliminate or alleviate circumstances within family life that may cause or contribute to a risk of physical, emotional or developmental harm to the child.
- (qq) “Reunification Plan”: The plan for the provision of services, participation and compliance by parties in interest, placement, parenting time and other relevant factors that are reasonably designed to facilitate the eventual reunification of a family under provisions of this Code or to prevent the breakup of a family under provisions of this code.
- (rr) “Six-County Primary Service Area”: The U.S. Department of Interior’s administrative designation of Charlevoix, Antrim, Grand Traverse, Leelanau, Benzie and Manistee Counties as the Grand Traverse Band’s primary service area.
- (ss) “Termination of Parental Rights”: A judgment by a court of competent jurisdiction that, after trial and deliberation, it is in the best interest of a child to permanently terminate a respondent’s legal rights to custody and control over the child and to permanently place the child in the custody and care of a person or entity suited to assume the parental responsibilities of custody and care of a child,
- (tt) “Tribal Council”: The elected governing body, exercising the legislative and executive powers, of the Grand Traverse Band of Ottawa and Chippewa Indians as set forth in the GTB Constitution.
- (uu) “Tribal Court”: The Tribal Court of the Grand Traverse Band of Ottawa and Chippewa Indians. A court of general jurisdiction functioning within the Tribal Judiciary, the Appellate Court functioning within the Tribal Judiciary, the judicial branch of the Grand Traverse Band government as set forth in the GTB Constitution.
- (vv) “Tribe”: The Grand Traverse Band of Ottawa and Chippewa Indians.
- (ww) “Tribal Lands”: Lands owned by the Grand Traverse Band of Ottawa and Chippewa Indians; lands owned by the United States of America in Trust for the Grand Traverse Band of Ottawa and Chippewa Indians; lands within the exterior boundaries of the Grand Traverse Band; and Indian Country as defined in 18 U.S.C. § 1151.
- (xx) “Ward”: A child who has been adjudicated a dependent child, over whom the Tribal Court has jurisdiction. A dependent child is a temporary ward of the Court until the time the case is dismissed and/or jurisdiction terminates. In cases where parental rights are terminated, the child becomes a permanent ward of Tribal Court.

History: Revised Children’s Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, as enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603, enacted by Tribal Council on March 29, 2006; and amended by Tribal Council motion, enacted on July 27, 2016.

**§ 103 - Jurisdiction of the Children's Court**

- (a) Children's Court. There is for the Grand Traverse Band of Ottawa and Chippewa Indians, a court known as the Children's Court within the GTB judiciary. The jurisdiction of the Children's Court is civil in nature and retains the right to issue all orders and judgments necessary to insure the safety, well-being and best interests of children living within the GTB service areas. The Children's Court is empowered to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.
- (b) General Jurisdiction. The Children's Court is empowered to enforce the valid judgments and orders of the Courts of the State of Michigan and other jurisdictions pursuant to MCLA 722.1100 et seq. and MCR 2.615.
- (c) The Children's Court is empowered to assert jurisdiction over the following persons:
  - (1) An enrolled member of the Tribe or one eligible for enrollment who is under the age of eighteen (18) years, residing within the GTB's six (6) county primary service area and their family.
  - (2) Children who have come under the jurisdiction of a court outside that of the GTB Children's Court and whose cases have been transferred to Tribal Court; or those in which the Tribe has intervened or asserted rights pursuant to the applicable provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 1963, the Uniform Child-Custody Jurisdiction and Enforcement Act, MCL 722.1101, the Adoption and Safe Families Act 42 U.S.C. § 671 et seq. and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A.
    - (A) Exceptions: The application of specific time lines; placement requirements, foster care regulation and licensing, adoption procedures and permanency provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, MCL 722.1101, the Adoption and Safe Families Act 42 U.S.C. § 671 et seq. and the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, not expressly deemed applicable to Indian Tribes shall not be binding upon the GTB Children's Court. Similar provisions contained in or implied by State statutes shall be applicable under this Code only upon written directive of the Chief Judge of the Tribal Court.
  - (3) Child(ren) of enrolled member(s) of the Tribe or of other Indian Tribes, as defined in § 102 of this Code, residing on Tribal lands.
  - (4) Non-Indian Child(ren): child(ren) who is/are not an Indian child as defined herein, but who is residing or domiciled within the jurisdiction of the Children's Court.
  - (5) Any person causing a child to come within the jurisdiction of the Children's Court pursuant to this Code.
  - (6) A person who is residing on Tribal lands of the Grand Traverse Band who is pregnant and actively abusing alcohol or controlled substances.

- (7) The extended family residing or domiciled in the same household of a child who comes under the jurisdiction of this Code.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

#### **§ 104 - Transfer of Jurisdiction**

- (a) Application of the Indian Child Welfare Act. The Children's Court may apply the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. that do not conflict with the provisions of this Code. State Court procedures regarding the Indian Child Welfare Act shall not be binding upon the Children's Court except when specifically provided for in this Code.
- (b) GTB shall intervene in all ICWA cases involving member children and those deemed qualified for tribal enrollment. Acceptance of Transfer of jurisdiction to tribal court in ICWA cases shall be at the sole discretion of a Tribal Court Judge.
- (c) Transfer to State Court or Other Tribal Court. In any proceeding within the jurisdiction of the GTB Children's Court, the Court may transfer the proceedings to an appropriate state or tribal court when concurrent jurisdiction exists or upon a finding that another jurisdiction has a significant interest in the outcome and transfer of jurisdiction would be in the best interest of the child.
- (d) The Children's Court shall transfer jurisdiction to other jurisdictions when required pursuant applicable provisions of MCLA 722.1100 et seq.; the Kidnapping Prevention Act, 28 U.S.C. § 1738A or under the UCCJA (MCL § 722.1101 et seq.) or when the Court deems it appropriate as a matter of comity and/or full faith and credit pursuant to MCR 2.615.
- (e) Transfer from Other Courts. The Children's Court may seek, accept or decline transfer of jurisdiction from other jurisdictions pursuant to applicable provisions of the UCCJA (MCL § 722.1101 et seq.) or a judicial request so long as a determination is made for the record that the Children's Court is empowered by this Code to assert jurisdiction in the case proposed for transfer.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

#### **§ 105 - Procedures for Intervention and Transfer**

- (a) Receipt of Notice. The presenting officer shall be the agent for service of notice of the state court child custody proceedings, as required by the Indian Child Welfare Act.

- (b) Intervention. The presenting officer shall file a motion to intervene with the state court within five (5) days of receipt of notice upon certification by the GTB Membership Office that the child is an “Indian Child” pursuant to the Indian Child Welfare Act. Whenever possible, the presiding officer or a member of AFS will attend critical hearings either in person or upon appropriate motion, telephonically.
- (c) Investigation and Pre-Transfer Report. A trained and qualified Child Protection Worker shall investigate and assess all Notifications of ICWA proceedings and file a written report to the presenting officer. The presenting officer will use the report in determining levels of intervention and whether or not to seek transfer of jurisdiction to tribal court.
- (d) (Reserved)
- (e) Decision to Transfer. AFS Child Protection Worker shall make recommendations to the presenting officer regarding whether or not the Tribe should initiate transfer of jurisdiction to tribal court or to support a Motion for Transfer from state court. When determining if and when a Motion to Transfer Jurisdiction to Tribal Court is appropriate, the presenting officer shall consider:
  - (1) The best interests of the child;
  - (2) The best interests of the Tribe;
  - (3) Availability of services for the child and his or her family;
  - (4) Prospects for permanent placement of the child; and
  - (5) Conservation of tribal resources.
- (f) Notice to Court. If the presenting officer seeks transfer of jurisdiction to GTB Children’s Court, the presenting officer shall advise the Tribal Court of the intent to file or support a Motion for Transfer, indicating the County from which transfer will be sought.
- (g) Tribal Court Hearing. The Children’s Court may conduct a hearing to determine if the Court should accept transfer after a petition for transfer has been filed with the state court or immediately upon receipt of service of a Motion to Transfer Jurisdiction filed by any party in interest. The Tribal Court shall consider the following factors:
  - (1) The best interests of the child;
  - (2) The best interests of the Tribe;
  - (3) Availability of services for the child and his or her family;
  - (4) Prospects for permanent placement for the child; and
  - (5) Conservation of tribal resources.

- (6) The family's ties to the GTB or other Indian community
- (h) The Tribal Court has sole discretion to accept or deny transfers of jurisdiction from State courts. A Judge may accept transfer of jurisdiction without hearing when exigent circumstances are presented in an ex parte motion and indicate that the best interest of the child and GTB will be clearly served best by immediate transfer of jurisdiction. Subsequent to a hearing in State Court on a valid Motion to Transfer Jurisdiction resulting in a ruling in favor of transfer, the Court must make an immediate determination regarding acceptance or denial of acceptance of jurisdiction and notify the State Court in writing of its determination.
- (i) Motion for Transfer. A petition for Transfer of Jurisdiction generated by the GTB presenting officer shall be filed in state court with Notice of Filing to the Children's Court.
- (j) Hearings upon Transfer. Upon Transfer of Jurisdiction from state court and entry of Children's Court Order of Acceptance, the Court shall proceed in accordance with provisions of this Code within fifteen (15) days.
- (k) Transfers of Jurisdiction from other courts shall be by Petition to the Children's Court by a party in interest and acceptance of jurisdiction shall be determined by hearing within ten (10) days of date of filing.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603, enacted by Tribal Council on March 29, 2006; and amended by Tribal Council motion, enacted on July 27, 2016.

### **§ 106 - Full Faith and Credit; Conflict of Laws**

- (a) State Court Orders. State child custody orders involving children over whom the Children's Court may assert jurisdiction must be enforced whenever those orders comport with MCR 2.615, MCLA 722.1100 et seq. and the Children's Court has conducted an independent review of such state proceedings to determine if:
  - (1) The State Court has properly assumed jurisdiction over the child; and
  - (2) The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 1963, were properly executed; and
  - (3) Due process was provided to all interested parties participating in the state proceeding; and
  - (4) The state court proceeding does not violate the public policies, customs or common law of the tribe.
- (b) Court Orders of Other Tribal Courts. Orders of other tribal courts involving children over whom the Children's Court may assert jurisdiction shall be enforced by the Children's Court after the Court has determined:

- (1) That the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
  - (2) Due process was provided to all interested parties participating in the other tribal court proceeding.
- (c) Tribal Interest. Because of the vital interest of the GTB in its member children and those children who may become members, the statutes, regulations, public policies, customs and common law of the GTB shall control in any Children's Court proceeding involving an Indian Child as defined herein.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 107 - 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, not in conflict with this Code. In the absence of Tribal Court promulgated rules of procedure, the Michigan Rules of Civil Procedure shall be utilized as a guide.
- (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 appropriate foster care, shelter care, treatment or training program(s) which may be available, and to receive grants-in-aid to carry out the purposes of this Code. This authority is subject to the availability of funds.
- (c) Social Services. The Children's Court shall utilize such social services as may be furnished by any tribal, federal, or state or private agency provided that it is economically administered without unnecessary duplication and expense.
- (d) Contracts. The Children's Court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the Tribal Council for the care and placement of children before the Children's Court subject to the availability of funds and federal laws governing the custody and control of children.
- (e) Promulgation of Rules: The Chief Judge of the Tribal Court shall promulgate or cause to be promulgated, and maintain the Court Rules of Procedure which facilitate the efficient and fair execution of this Code.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

**§ 108 - Children's Court Personnel, Officers of the Court:**

- (a) Children's Court Judge. Shall preside over cases involving minor children and their families.
- (1) Appointment. The Children's Court Judge(s) shall be appointed in the same manner as the Tribal Court Judges.
  - (2) Qualifications. The general qualifications for Children's Court Judges shall be the same as the Tribal Court Judges.
  - (3) Powers and Duties. In carrying out the duties and powers specifically enumerated under this Code, judges of the Children's Court shall have the same duties and powers as judges of the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants. The Chief Judge shall retain the power to delegate certain administrative duties of the Children's Court to appropriate personnel.
  - (4) Disqualification or Disability. The rules of disqualification or disability of a Children's Court Judge shall be the same as those rules that govern Tribal Court Judges.
- (b) Presenting Officer. One charged by the Chief Judge of Tribal Court to present cases involving abuse and neglect to the GTB Children's Court for adjudication and to represent the interests of GTB in State court cases involving GTB member families.
- (1) Appointment. The Children's Court Presenting Officer shall be appointed in the same manner as the Tribal Prosecutor pursuant to the Tribal Prosecutor's Ordinance.
  - (2) Qualifications. The general qualifications for the presenting officer shall be the same as the qualifications for Tribal Prosecutor specified in the Tribal Prosecutor's Ordinance. The presenting officer must have education or experience in the adjudication of ICWA cases and be familiar with tribal court procedures.
  - (3) Powers and Duties. The Tribal presenting officer shall have the same powers and duties as the Tribal Prosecutor has in Tribal Court. The presenting officer shall represent the Tribe in all proceedings under this Code and the Indian Child Welfare Act. The presenting officer or an assistant presenting officer shall serve as legal counsel for the Anishinaabek Family Services Program.
  - (4) Removal; Disqualification or Disability. The rules of removal, disqualification or disability of the presenting officer shall be the same as those for the Tribal Prosecutor as enumerated in the Tribal Prosecutor's Ordinance.
- (c) Counsel for Parents, Parents may be represented at each stage of proceedings under this Code by an attorney or lay advocate at their own expense. Parents shall be notified of their right to representation in all dependency and termination proceedings.

## (d) Guardians Ad Litem (GAL).

- (1) Appointment. At any stage of proceedings conducted under this Code, the Court may appoint a guardian ad litem for the child. The GAL may be a lawyer, or a disinterested lay advocate approved by the Court.
- (2) Role of the Guardian Ad Litem. The duty of the guardian ad litem is to represent and assert the best interests of the child. A child fourteen (14) years of age or older is presumed capable of determining what is in his or her best interests and may direct the GAL accordingly. It is the duty of the guardian ad litem to represent the child's wishes in such cases. For children under the age of fourteen (14), the guardian ad litem shall make a determination as to the best interests of the child regardless of whether that determination reflects the wishes of the child. However, the wishes of the child are always relevant and shall be weighed according to the competence and maturity of the child and in consideration of the child's circumstances. The GAL is required to assert the best interests of the child and, when appropriate, the child's wishes in all placement and reunification planning procedures.
- (3) Duties of the Guardian Ad Litem. The guardian ad litem shall perform the following duties:
  - (A) Appear at all hearings and competently and diligently represent and assert the best interests of the child in all 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 which are material to determining the best interests of the child;
  - (D) Provide a written report of findings of best interests as defined herein to the Court and all parties in interest regarding placement, remedial efforts and reunification prior to dependency and termination hearings or as ordered by the Court.
  - (E) Seek specific and clear orders for evaluation and assessment when appropriate as well as services and treatment for the child that will advance the goal of reunification of the family whenever possible.
  - (F) Monitor development and implementation of reunification plans and court orders to determine whether plans and orders are, under the circumstances reasonable, timely executed and are designed to accomplish clear goals.
  - (G) Assert appropriate Court action if services are in adequate or not being made available to the child and/or the family, or if such services are not achieving their purposes;

- (H) Identify common interests among the parties and, when possible, promote a cooperative resolution of issues before the court;
  - (I) Consult with other professionals in identifying the child's best interests, current and future placements, and necessary services;
  - (J) Advocate for the best 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;
  - (K) Attend training programs as recommended and provided by the Court, Anishinaabek Family Services; and
- (4) Confidentiality. Except as otherwise directed by the Court, 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 Code or other Tribal law.
- (e) Officers of the Court.
- (1) All Court Personnel and attorneys practicing before the Court shall be considered Officers of the Court with duties of ethical and fair conduct in all dealings with the court in accordance with the Michigan Rules of Professional Conduct for attorneys. The Chief Judge shall ensure that each officer of the court upholds his or her duty to the court and that the independence and dignity of the Court is preserved.
  - (2) All GTB employees who are officers of the Court shall submit to background checks and shall adhere to all Court policies and procedures and shall uphold the law of the Grand Traverse Band of Ottawa and Chippewa Indians.
  - (3) Officers of the Court shall be immune from civil suit arising from any act or omission occurring pursuant to or in execution of their official duties as officers of the Court.
  - (4) (Reserved)
  - (5) Child Protective Services Worker: As described in § 110 of this Code shall be considered officers of the Court for purposes of final oversight and immunity in all matters brought before the Children's Court pursuant to this Code.
  - (6) Investigator: Any law enforcement officer or agent who has engaged in investigation of child abuse and neglect charges and/or assisted in determining the grounds for a Child Dependency Petition shall be considered officers of the court for purposes of immunity in all matters brought before the Children's Court pursuant to this Code.

- (7) Presenting Officer: As described in this code shall be considered an officer of the court for purposes of final oversight and immunity in all matters brought before the Children's Court pursuant to this Code.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603, enacted by Tribal Council on March 29, 2006; and by Tribal Council motion, enacted on July 27, 2016.

### **§ 109 – Family Service Policy and Procedure**

- (a) The Director of AFS shall be responsible to recommend policies and procedures for internal operations and for interactions with other agencies to Tribal Council for approval. The Director may work in conjunction with other departments as needed to develop and present recommendations.
- (b) The Director shall maintain a standard of criteria for foster care homes to satisfy in order to be licensed by the Department. The Director or a designee shall monitor licensed foster care homes to ensure compliance with the criteria.
- (c) Tribal Council shall convene as a critical incident/lethality review board if a child under the care of AFS is permanently injured or killed. Tribal Council may also convene as a lethality review board to review the death of a minor tribal member residing in the six-county service area.
  - (1) AFS shall present a report documenting the procedural processes of all agencies involved in the event. If Tribal Council deems it necessary and appropriate, it may appoint an independent investigator to present a report on all agencies involved and to make recommendations for mitigation and prevention.
  - (2) Critical incident/lethality review boards shall be presented in a closed portion of a Tribal Council meeting.
  - (3) AFS or the independent investigator shall present the report within thirty (30) days of receiving notice of death or critical incident. Incidents of abuse within the GTB foster care system shall be reported as critical incidents.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; and as amended by Tribal Act #0119.996, enacted by Tribal Council on May 16, 2001; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603, enacted by Tribal Council on March 29, 2006; and by Tribal Council motion, enacted on July 27, 2016.

### **§ 110 - Protective Services Workers**

- (a) Powers and Duties.

- (1) Employment. The Anishinaabek Family Services shall employ or contract for at least one (1) protective services worker.
- (2) Cooperation with Other Agencies. The Anishinaabek Family Services shall cooperate with such state and community services as are necessary to achieve the purposes of this Code. The Anishinaabek Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council.
- (3) Protocol. A Protective Services Worker shall:
  - (A) Receive from any source, oral or written, information regarding a child who may meet the definition of a Dependent Child as defined in sec. of this Code. The identity of the reporting party shall be kept confidential.
  - (B) Upon receipt of any report or information under § 110(a)(3)(A), initiate a prompt and thorough investigation within twenty-four (24) hours which shall include a determination of the nature, extent, and cause of any condition or circumstances which would demonstrate just cause to bring the child(ren) under the jurisdiction of the Children's Court.
  - (C) In conducting an investigation of child abuse or neglect, the protective service worker shall seek the assistance of, and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:
    - (i) Abuse or neglect is the suspected cause of a child's death;
    - (ii) A child is the suspected victim of sexual abuse, sexual misconduct or sexual exploitation;
    - (iii) Allegations of Abuse or neglect resulting in severe physical, mental or emotional injuries to a child which require medical treatment For purposes of this subsection, "severe injury" includes but is not limited to physical trauma, biological dysfunction medically determined to be caused by the act or omission of another, illness due to injury of undetermined origin for which abuse or neglect is a reasonably likely cause or causative factor.
    - (iv) Intervention is necessary to ensure the immediate protection of a child, a member of a allegedly abused or neglected child's household, the protective worker, a witness or reporting party, or another person involved in the investigation; or
    - (v) Any alleged perpetrator of the child's injury is not a person responsible for the child's health or welfare but resides in the same home as the child or has significant contact with the child.

- (vi) A child has committed an act which, if the child were an adult, would be considered a violent felony or the child demonstrates serious substance abuse that has not been addressed under the GTB Juvenile Code.
  - (D) Emergency Removal; In removing a child from the custody of his/her parents, legal guardian, or custodian, pursuant to § 114, Law enforcement officials shall cooperate with social services personnel and act to protect the child, members of the child's household and social services personnel whenever necessary to facilitate removal of a child into tribal custody;
  - (E) During and after investigation, assess the risk to any children remaining in the residence or domicile or those with whom the alleged perpetrator(s) are like to have contact, and all other facts or matters found to be material to, and probative of allegations of abuse and/or neglect;
  - (F) Substantiate and secure evidence of abuse and/or neglect and that which supports probable cause to believe that a child; has been abused or neglected, the identity of the perpetrator(s) and that removal is the least restrictive means by which the safety of the child may be secured;
  - (G) Offer to the child and family appropriate available services and assistance in obtaining services;
  - (H) Within thirty (30) days of referral or removal of a child submit a written report of the investigation and evaluation which shall be included in the official case files maintained by the Anishinaabek Family Services. The report shall include a determination as to whether the report of abuse or neglect was substantiated or unsubstantiated and disposition of placement; and
  - (I) Upon completion of investigation inform a person who initiates a report of abuse or neglect as whether the allegations have been substantiated or not. No other information may be imparted to a reporting party.
  - (J) Assist in developing individualized, reunification and concurrent permanency plans which reasonably anticipate both the success and failure and include contingency plans for each.
  - (K) Assist in determining when a reunification plan has been successful and when it has, for whatever reason, failed. When a reunification plan has failed, provide evaluation of the plan and make remedial recommendations as to any elements of the plan which appear to have failed because of systemic or procedural flaws.
- (4) Cooperation of Law Enforcement Officials. Law enforcement officials shall fully cooperate with protective services worker(s) and Anishinaabek Family Services in conducting investigations pursuant to this section. Law enforcement shall be

responsible for identifying and securing evidence and maintaining police procedures and the chain of custody of such evidence.

- (5) Substance Abuse by Pregnant Woman. If a report is received alleging abuse of alcohol or a controlled substance by a pregnant woman, protective services workers shall arrange for appropriate assessments and offer services. Services may include, but are not limited to, a referral for chemical dependency assessment and treatment, pre-natal care, and parenting classes. Protective services workers also may seek court ordered services under § 116. Protective services workers shall seek court ordered treatment under said § 116 if the voluntary services are refused or fail.
  - (6) In cases in which a child abuse or neglect report cannot be substantiated, or those in which informal intervention seems most appropriate, the protective services worker may meet informally with all interested parties to discuss concerns and remedies with the intent of preventing further intervention.
- (b) Limitations on Authority; Duty to Inform.
- (1) No Legal Authority. Before offering informal, preventative protective services to a family, a child protection worker shall inform the family that he/she has no legal authority to compel the family to accept such services.
  - (2) If Family Declines. If a family declines informal preventative protective services, the child protection worker(s) may request authorization from the presenting officer to initiate a Dependency petition in Children's Court if evidence warrants such action. If evidence remains insufficient to substantiate abuse or neglect the case shall be closed.
  - (3) No Limitation of Authority. Nothing in this section limits the authority of protective services worker(s) to act in emergency situations or to obtain a medical evaluation of the child pursuant to § 114.
  - (4) Communications between family members and AFS staff shall remain confidential. Nothing in this clause is intended to mitigate any mandated reporter's duty to report child abuse and neglect.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 111 - Reserved**

History: No § 111 was included in Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

**§ 112 - Duty to Report Child Abuse and Neglect**

- (a) **Duty to Report.** Any person who has reasonable cause to suspect that a child is or has been abused or neglected shall immediately make a report to the Anishinaabek Family Services or the Tribal law enforcement department. Those persons reporting, except those specified in § 112(b) below, may remain anonymous.
- (b) **Mandated Reporting.** The following persons are specifically required to report child abuse and neglect, and pregnant women suspected of abusing alcohol or controlled substances:
  - (1) All GTB employees, any physician, nurse, dentist, optometrist, or any other medical or mental health care professional, including community health representatives; school principals, school teachers, or other school officials; social workers; child day care center workers or other child care staff members, including GTB certified foster parents, residential care or institutional personnel; counselors; peace officers or other law enforcement officials. Any mandated reporter who has reasonable cause to suspect that a child may be a the victim of neglect or abuse shall immediately report the suspected abusive or neglectful situation condition or circumstances to Anishinaabek Family Services or Tribal law enforcement.
  - (2) A person mandated to report under § 112(b)(1) shall immediately report to Anishinaabek Family Services if the person knows or has reason to suspect that a woman who is pregnant has abused alcohol or used a controlled substance for a nonmedical purpose during pregnancy.
  - (3) Within seventy-two (72) hours after making the initial report, the mandated reporter shall file a written report with law enforcement or AFS. If the reporter is a GTB member, the staff of a clinic, hospital, agency or school, the reporter shall notify their immediate supervisor of the report. One (1) report from any person, department or agency shall be considered adequate for purposes of the reporting requirement. No mandated reporter shall be disciplined or suffer adverse consequences in the workplace for making a good faith report of abuse or neglect.
- (c) **Immunity From Liability.** All persons or agencies complying in good faith with the provisions of this Code shall be immune from civil liability and criminal prosecution in Tribal Court.
- (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 mandated report nor for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this Code.
- (e) **Penalty for not Reporting.** Any person mandated to report under § 112(b) who knowingly fails to do so or who willfully prevents someone else from doing so shall be subject to a charge of civil contempt with a penalty of up to ninety (90) days in jail and/or a fine of up to five thousand dollars (\$5,000).

- (f) Abuse and Neglect Reporting. Abuse and neglect written reports shall include the following information, if known:
- (1) Names, addresses, and tribal affiliation of the child and his/her parents, guardian or custodian including enrollment numbers;
  - (2) The child's age and birth date and social security number;
  - (3) The nature of the suspected abuse or neglect;
  - (4) Personal knowledge of previous history of abuse or neglect of a child and/or siblings;
  - (5) The name, age, and address of anyone suspected of perpetrating abuse or neglect on a child.
  - (6) The name and address of the person and/or agency making the report.
- (g) Medical Examination.
- (1) Court Order. The Anishinaabek Family Services may, upon a showing of good cause, request a court order for a medical evaluation of a child pursuant to § 114 of this Code. AFS or law enforcement is empowered to obtain an emergency medical evaluation without a court order if the child's life or limb is seriously endangered and a court order cannot reasonably be obtained. A medical evaluation shall be obtained in all incidents of suspected sexual assault on a child within twenty-four (24) hours or receipt of a report of such assault.
  - (2) Physician's Obligation. When a child suspected of being abused or neglected is examined by a physician, the physician shall make all necessary medical findings, which may require physical or psychological examinations, x-rays, photographs, laboratory studies, and other pertinent tests and diagnostic evaluations.
  - (3) Reporting Requirement. A physician shall, upon completion of a medical evaluation, immediately report the results to the Anishinaabek Family Services, law enforcement and the Court. A physician's written report shall contain summaries of medical findings, results of evaluations and a detailed report of any diagnostic tools used to reach the findings.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603, enacted by Tribal Council on March 29, 2006; and by Tribal Council motion, enacted July 27, 2016.

**§ 113 - Drug/Substance Abuse During Pregnancy**

- (a) **Jurisdiction.** The Children's Court may assume jurisdiction; upon a showing by a preponderance of the evidence, over a woman who is or has been abusing alcohol or controlled substances during her pregnancy.
- (b) **Court Order.** Upon assuming jurisdiction, the Court may enter orders requiring a pregnant woman to cease and desist any substance abuse, submit to reasonable measures to assure her nonuse, and to engage in community based or inpatient treatment programs and pre-natal care. Such court orders may be enforced through the Court's civil contempt powers.
- (c) **Privileged Information.** Information made available pursuant to a Children's Court order regarding a woman's drug/substance use during pregnancy may not be used in a criminal prosecution against the woman.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

**§ 114 - Investigation and Emergency Removal**

- (a) **Investigative Orders: Orders for Examination.** The Court may, upon a clear showing that probable cause exists to determine that a child meets the definition of an abused or neglected child, order investigation and discovery, including but not limited to, taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, conducted by a physician, dentist, psychologist, or psychiatrist. Such orders may be issued ex parte under exigent circumstances.
- (b) **Authority to Remove.** If the Court finds probable cause to believe a child is dependent as defined herein, and that conditions or circumstances present a substantial risk of harm to the child's life, physical health or mental well-being, the Court may issue ex parte orders to remove the child from the condition or circumstances and place the child under the protective care and custody of the GTB. The Court shall include in such an order:
  - (1) An authorization to enter a specified premises for purposes of removing a child and to gather evidence;
  - (2) To place the child in protective custody pending preliminary hearing; and
  - (3) An affidavit in support of the existence of probable cause that a child within a specific location meets the definition of a dependent child.
- (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(s) if reasonable cause exists that a child meets the definition of a Dependent child, and:
  - (1) Failure to remove the child may result in an immediate and substantial risk of death, serious injury, or serious emotional or developmental harm to the child; or

- (2) The parent, guardian or custodian is absent and the child will likely be deprived of the basic necessities of life, because no alternative arrangements for care and supervision have been made and removal is necessary to protect the child.



- (d) **Removal:** If it is clear at the time of contact with the child or family members that the risk of harm to the child outweighs the potential that the conditions or circumstances which form the grounds for removal can be substantially mitigated or eliminated by immediate and voluntary remedial efforts, the child and all children residing within the same domicile or residence shall be removed.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 115 - Notice of Removal**

- (a) **Notice to the Children's Court.** After removal of a child without a court order, the person who removed the child shall attempt to contact and notify the presenting officer within six (6) hours of the actual removal. Attempt(s) to contact and notify the presenting officer shall be documented in the case files. Actual notice of the removal of child shall be filed in Children's Court no later than 12:00 o'clock noon on the next official court business day following the removal.
- (b) **Notice to the Parent(s), Guardian or Custodian.** The person removing the child shall make diligent efforts to immediately notify the child's parents, guardian or custodian, of the removal of the child. Diligent efforts shall include personal, telephone and written contacts at their residence, place of employment, or other locations where parents, guardians or custodians are known to frequent. Notice shall be deemed adequate if, after failing to locate the parent(s), guardian or custodian within twelve (12) hours of removal, it is served upon an extended family member.
- (c) **Notice to Child's Tribe if Different than Grand Traverse Band.** If the Tribal Court asserts jurisdiction over a person who is a member of an Indian tribe or historic band other than the Grand Traverse Band, the Tribal Court shall immediately notify the appropriate Tribal Court that jurisdiction has been asserted by GTB.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 116 - Placement of Children**

- (a) **Restrictions.** A child alleged to be Dependent shall not be placed in a jail or other facility intended or used for the incarceration of adults charge with criminal offenses or for the detention of children alleged to be juvenile offenders, nor may a child be placed in a facility for psychiatric care, homelessness, domestic violence victims or substance abusers unless such services are clearly indicated as an immediate need of the child.
- (b) **Placement Priorities.** A child may be placed in the following community based sheltercare facilities listed in order of preference:

- (1) Members of the child's immediate family living in a household separate from that of the child.
  - (2) Members of the child's extended family;
  - (3) An Indian family of the Grand Traverse Band which is licensed as a foster home or an Indian family otherwise authorized by law to provide care for the child;
  - (4) A facility operated by a licensed Indian child welfare services agency; or
  - (5) Any other suitable placement which meets the standards for shelter care facilities established and so certified by the Child Protection Team.
- (c) Removal of the Alleged Perpetrator. If an alleged perpetrator of child abuse or neglect is identified and resides in the same household as victim, such perpetrator may be ordered from the home until further order of the court or the issuance of findings that allegations of abuse or neglect cannot be substantiated.
- (d) Least Restrictive Setting. Until reunification is deemed appropriate, a child shall be placed in the least restrictive setting which most approximates a family environment, and in which his/her special needs, if any, may be met. The child shall also be placed in reasonable proximity to his/her home, taking into account any special needs of the child and the continuity of education, and presuming that reasonable efforts to reunify the family include parental and sibling visitation.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Council Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

#### **§ 117 - Anishinaabek Family Services Informal Preventative Intervention**

- (a) Informal Conference. Anishinaabek Family Services may hold an informal conference with the child and the child's parent(s), guardian, or custodian, before or after the filing of a petition, to discuss alternatives to formal dependency adjudication if:
- (1) An informal intervention into family circumstances would be in the best interest of the child and the Tribe; and
  - (2) The child and the child's parent(s), guardian, or custodian consent to an informal preventative intervention conference after they have received an explanation of their rights.
- (b) No Authorization to Compel Involuntary Action. This section does not authorize the Anishinaabek Family Services to compel any involuntary action by the parties involved.
- (c) Options. At the informal preventative intervention conference, Anishinaabek Family Services, with the voluntary agreement of the parties, may:

- (1) Refer the child and the child's parent(s), guardian, or custodian to a community agency for assistance; or
  - (2) Suggest remedial strategies, including but not limited to referral to the peacemaking procedures, group or family counseling or other activities which are intended to prevent formal Dependency proceedings.
- (d) Report. Anishinaabek Family Services shall set forth, in writing, conference findings and the disposition agreed to by the parties. The report shall be made available to all parties in interest.
  - (e) Petition. If an informal preventative intervention plan is agreed upon, Anishinaabek Family Services may recommend holding a petition for Dependency Adjudication in abeyance, or withdrawal of a petition reserving the option to re-file at a later date.
  - (f) Duration. Any informal preventative intervention plan shall conclude within six (6) months of execution.
  - (g) Monitoring the Agreement. Anishinaabek Family Services shall review a child's progress in a preventative intervention plan every thirty (30) days. If, at any time AFS concludes that positive results are not being achieved, the protective services worker may request that the presenting officer file a petition for Adjudication of Dependency.
  - (h) Privileged Information. No statement during an informal preventative intervention conference may be admitted into evidence at a Dependency adjudication hearing, Termination of Parental Rights Hearing or any other tribal court proceeding involving the child.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Council Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 118 - Filing Child Protection Petition**

- (a) Authorization to File Petition.
  - (1) Who May File. Any person may file a complaint with Anishinaabek Family Services, the presenting officer or law enforcement alleging that child meets the definition of a Dependent child.
  - (2) Formal Proceedings. The presenting officer or the child protective services worker or the Anishinaabek Family Services program director (if the presenting officer is not available), may initiate formal child protection proceedings by filing a petition for adjudication of a Dependent child in Tribal Court on behalf of the Tribe and in the best interests of the child.

- (3) Emergency Action Not Precluded. Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency action under § 114 of this Code.
- (b) Time Limitations. If a child has been removed from his or her home, a petition shall be filed with the Children's Court within three (3) business days of the date of removal.
- (c) Contents of Petition. The petition shall set forth the following with specificity:
  - (1) The name, birth date, sex, address social security number and tribal affiliation of the child;
  - (2) The basis for the Court's assumption of jurisdiction over the child;
  - (3) The specific allegations against each Respondent named in the petition, which form the grounds for the assertion that the child meets the definition of a Dependent child under this Code;
  - (4) A plain and concise statement of the facts upon which the allegations contained in the petition are based, including the date, time and location at which the alleged facts occurred;
  - (5) The names, addresses, telephone numbers, social security numbers and tribal affiliation of the child's parents, guardians or custodians, if known;
  - (6) The names, relationship and addresses of all known members of the child's extended family and all former care givers, if known; and
  - (7) If the child is placed outside of the home, the name of person or agency with whom the child is placed, the facts necessitating the placement and the date and time of the placement.
  - (8) The specific provisions of the Children's Code alleged to be violated and the specific party alleged to have violated each provision.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, as enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 119 - Service of Summons, Notices of Hearings, Subpoenas, and Notice to Putative Fathers**

- (a) General. A party to a Petition to Adjudicate a Child as Dependent shall be given notice of all proceedings in Children's Court in any manner authorized by this Children's Code or rules of Tribal Court unless summons is required pursuant to § 119(b) below.
- (b) Service. A summons and petition shall be issued and served upon each parent, guardian or custodian, and/or any adult person with whom the child resides, if other than a parent or a

court-ordered custodian, directing such person(s) to appear before the court with the child on a date certain. The Court may direct that the child's appearance in Court is waived.

- (c) Contents of Summons. The summons shall direct the Party(ies) to whom it is addressed to appear with the child, unless the child's appearance has been waived, at a time and place specified by the Court and must:
  - (1) Identify the nature of proceeding;
  - (2) Include a prominent notice that the proceedings could result in termination of parental rights and/or the possible consequences of failure to appear; and
- (d) Manner of Serving Summons. A summons shall be served as follows:
  - (1) Personal Service. A summons required under this section must be served by delivering the summons into the hands of a named party and verified by affidavit or acknowledgement of acceptance of service or;
  - (2) Service by Mail. If personal service of the summons is impractical or cannot be achieved, the Court may direct that it be served by registered or certified mail, return receipt requested, addressed to the last known address of the party, and restricted delivery to the addressee.
  - (3) Substituted Service. The Court may direct any manner of substituted service, including publication if the Court finds that service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort.
- (e) Time of Service. A summons shall be served as follows:
  - (1) Personal Service: Seven (7) calendar days after issuance of the Summons and at least fourteen (14) calendar days before a hearing on a petition to terminate parental rights. Summons and petition for Adjudication of a Child as Dependent shall be served at least 10 days prior to the Adjudication hearing.
  - (2) Certified or Registered Mail. Fourteen (14) calendar days after issuance of the Summons, at least twenty-one (21) calendar days before a hearing on a petition to terminate parental rights. Summons and petition for Adjudication of a Child as Dependent shall be served at least ten (10) days prior to the Adjudication hearing.
  - (3) Publication. The published notice, which does not require publication of the petition itself, shall appear in a newspaper in the county where the party resides, if known, and if not, in the county of the party's last known address, if known, and if not, the county where the action is pending. The published notice must appear one or more times fourteen (14) calendar days before the hearing.
- (f) Notice of Hearing.

- (1) Persons Entitled to Notice. The Court shall require proof that the following persons have been notified of each hearing:
  - (A) The parent(s) legal guardian or custodian;
  - (B) The attorney for each parent;
  - (C) The child if age fourteen (14) or older or a designated advocate for the child;
  - (D) All named Respondents;
  - (E) The Petitioner;
  - (F) The guardian ad litem; and
  - (G) Any other party the Court may direct to be notified.
- (2) General. Notice of hearing must be served in writing or orally by the court and may be acknowledged on the record or mailed to the last known address at least seven (7) calendar days prior to any hearing.
- (3) Preliminary Hearing. When a child is placed outside of the home, diligent efforts shall be made to notify the parents, legal guardian or custodian or an extended family member pursuant to § 119(b) as soon as any hearing is scheduled. Notice may be in person, In writing, acknowledged on the record, or by telephone, and shall be documented and verified to the Court.
- (4) Termination of Parental Rights Proceedings. Written Notice of a hearing on a petition to terminate parental rights must be personally served on the parties or acknowledged on the record at least fourteen (14) calendar days before the hearing.
- (5) Failure to Appear. If a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summon, subpoena, or by order to show cause or the court may, upon verification of proof of service of Notice of Hearing:
- (6) Issue a Notice of Default to the party stating that because of the party's failure to appear at preliminary hearings allegations in the petition will be presumed to be true and the court will proceed accordingly. Notice of Default should include the date and time of the hearing and a warning that failure to file a Motion to Set Aside Default within receipt of Notice of Default will result in a default adjudication of the child as Dependent and/or a Termination of Parental Rights.
- (g) Subpoenas. The attorney for a party or the Court on its own motion may cause a subpoena to be served upon a person whose testimony or appearance is required. It is not necessary to tender advance fees to a person served in order to compel attendance. The court may use its civil contempt powers to enforce subpoenas.

- (h) Waiver of Service. Except regarding Termination of Parental Rights hearings, A person may waive notice of hearing or service of process. The waiver shall be in writing or may be acknowledged on the record.
- (i) Subsequent Notice. 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, either personally or by ordinary mail. A summons must be served prior to trial or termination hearing including a Notice of Hearing as provided by this Code.
- (j) Putative Fathers. If the Court determines that the child has no identified legal father as defined in § 102(o), the Court shall take appropriate action as follows:
  - (1) Initial Testimony. The Court shall take initial testimony regarding the identity and address of any putative father. If the Court finds just 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) A petition that has been filed with the Court;
    - (B) The time and place of hearing at which the putative father is to appear; and
    - (C) Notice that failure to attend the hearing may result in a default judgment or order adverse to the putative father and may be deemed to constitute a waiver of any claim to parental rights, a waiver of notice for all subsequent hearings.
  - (2) Hearing. After proof of service of notice upon the putative father is filed, the Court may conduct a hearing to determine if:
    - (A) Service and Notice was adequate to inform the putative father of the proceedings and his potential rights. If so, the Court may declare the putative father in default, order notice of default be served upon the putative father and all parties and proceed.
      - (i) Clear and convincing evidence establishes that the putative father is the natural father of the child; or
      - (ii) There is just cause to believe that another identifiable person is the biological father of the child. If so, the Court shall proceed under the rebuttable presumption that identified person is the biological father of the child in accord with this section; or
      - (iii) If, After diligent inquiry, the identity of the natural father cannot be determined. The Court may publish notice at least once in a manner calculated to alert any person who may be the father of the child. If no person comes forward within a time certain, the Court shall terminate the parental rights of the unknown father and proceed without further notice.

- (3) Waiver of Rights. The Court may find that by failing to appear and/or failure to comply with court orders to establish paternity, the putative father waives all rights to further notice, including the right to notice of termination of parental rights.
- (4) Default: When a default judgment or order is rendered by the Court, the defaulted party must file a Motion to Set Aside Default demonstrating good cause for failing to appear at previous hearings, within seven (7) days of receipt of Notice of Default. The Court may, ten (10) days after date of service of Notice of Default, enter the order or judgment and proceed.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 120 - Preliminary Hearing**

- (a) Child Released to Parent. If the child has been released to his/her parent, guardian or custodian, the Court shall conduct a preliminary hearing within seven (7) working days after the filing of the petition to determine whether probable cause exists to believe that the child continues to meet the definition of a Dependent child and if further services be provided.
- (b) Child Placed Out of Home. If the child is placed out-of-home, the Court shall conduct a preliminary hearing within three (3) business days after the filing of the petition to determine if:
  - (1) Just cause exists that the child met the definition of a Dependent child at the time of removal; and
  - (2) Conditions and circumstances which gave rise to the removal continue to present a substantial risk of harm to the child's life, physical health, emotional, developmental or mental well-being; and
  - (3) Any appropriate alternative, except continued placement of the child, is reasonably available to adequately safeguard the child from such risk.
- (c) Parent, Guardian or Custodian Not Present. If the child's parent, guardian, or custodian does not appear at the preliminary hearing, the Court shall inquire about the adequacy of efforts to notify and to obtain the presence of the party. If it appears that further efforts are likely to produce the party, 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 party. The preliminary hearing may be conducted in the absence of the party.
- (d) Preliminary Hearing Procedure. The Court shall:
  - (1) Read the allegations in the petition in open court, unless the reading of the allegation is waived by all parties;

- (2) Advise all Respondents, of the right to have counsel represent them, at their own expense;
  - (3) Advise all Respondents of their right to a trial on the allegations in the petition;
  - (4) Advise all Respondents of their right to remain silent; and
  - (5) Advise all Respondents of their right to plead responsible, not responsible, no contest or stand mute as to the allegations in the petition, and accept a plea on the allegations.
  - (6) Appoint a guardian ad litem for the child(ren) if deemed appropriate under the circumstances or upon request of any party in interest.
- (e) Establishing Probable Cause. The Court, in determining whether just cause exists that the child meets the definition of a Dependent child shall hear testimony and determine if:
- (1) At the time of removal and/or filing of the petition, the child(ren) were at risk of physical, emotional or developmental harm as defined in § 102 of this Code and that those named as Respondents to the petition were likely to have caused, by act or omission, the risk of harm.
  - (2) At the time of removal, or filing of the petition, the out-of-home placement of the child was the least restrictive means of ameliorating the risk of harm and remains an appropriate placement under the circumstances.
  - (3) At the time of the preliminary hearing, The child(ren) would remain at risk of harm if returned to the custody of Respondents and that adequate services are being provided to facilitate the reunification of the family.
- (f) Just Cause Not Found. If just cause that the child meets the definition of a Dependent child is not found to exist, either at the time of removal or at the time of hearing, the Court shall dismiss the petition and the child shall be released to the custody of any or all Respondents.
- (g) Just Found.<sup>1</sup> If the Court finds that just exists that the child meets the definition of a Dependent child, the Court:
- (1) Upon entry of a plea of responsible or no contest, by any or all Respondents, the Court shall set a time and date for Disposition hearing regarding the pleading parties.
  - (2) Shall order the Respondents who plead not responsible or stand mute to appear at an adjudication hearing on a date and time set by the Court; and

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<sup>1</sup> Editor's Note: So in original. Apparently should be "just cause."

- (3) May release the child to the custody of any or all Respondents under such reasonable terms and conditions as are necessary to ensure the physical, emotional, or mental and developmental well-being of the child; or
- (4) Upon entry of a plea, may order alternative placement of the child with someone other than any or all Respondents after determining that:
  - (A) Conditions of current placement of the child are inadequate to safeguard the child's health and welfare and serve the best interests of the child(ren) or that placement is not the least restrictive available as defined in this Code.
  - (B) A more appropriate or less restrictive placement has become available and the ability to needs of the child that would be met in alternative placement outweighs the adversity of transfer of placement.
  - (C) The alternative placement substantially meets GTB requirements and standards for the provision of care and criminal background check has been conducted on each person who will have care and control over the child.
- (h) Court Ordered Evaluations and Assessments. The Court may, at any time after conducting a preliminary hearing at which just cause to proceed upon a Petition for Adjudication of Dependency is found, order any involved child, parent, guardian, or custodian or any family member or extended family member, who may have contributed the conditions or situation that gave rise to the Petition to undergo a criminal background check, a physical, mental, psychological or substance abuse evaluation or assessment by a qualified professional.
- (i) Consistent with 42 U.S.C. § 670, Subchapter IV, Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services; and specifically, 42 U.S.C. § 671, State Plans for Foster Care placement and adoption, the Tribal Council hereby finds that since the Tribe is not a direct eligible recipient for Title IV-E funding, the Tribe will follow the federal regulations governing foster care placements under 45 CFR, Section 1356.21(c), which specifically provides that following:

“(c) Contrary to the welfare determination. Under Section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, of that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.”

Therefore, the Tribal Court shall make findings consistent with the above provisions of federal law for purposes of funding foster care placement.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006; as amended by Tribal Act #06-24.1729 enacted by Tribal Council on January 17, 2007.

### **§ 121 - Adjudication Of Dependency of a Child**

- (a) Purpose. The Court shall conduct an adjudication hearing for the purpose of determining if child meets the definition of a Dependent child and that reasonable efforts to reunify the family have been made by AFS and other service providers.
- (b) Commencement. The adjudication hearing shall commence as soon as possible but no later than forty-five (45) calendar days after the preliminary hearing. Any party in interest may request an expedited Adjudication of Dependency hearing by Motion.
- (c) Continuances. Continuance or adjournment of adjudication hearings may be granted by the Court upon oral or written Motion if:
  - (1) All parties stipulate to the continuance or adjournment;
  - (2) pretrial procedures cannot reasonably be completed;
  - (3) The Court finds that the testimony of a presently unavailable witness is needed and continuance or adjournment will facilitate the appearance of the witness;
  - (4) The Court determines that material, new evidence has or will become available and that continuance or adjournment would serve the interest of justice in facilitating the timely discovery process.
  - (5) A Respondent requests an opportunity to obtain legal counsel [one (1) time only for up to fourteen (14) calendar days]; or
  - (6) For good cause shown that continuance or adjournment would serve the best interests of the child and the interest of justice.
- (d) Closed Proceedings. The general public shall be excluded from the proceedings and only the parties, their counsel, witnesses, the guardian ad litem and other persons determined to be material to the proceedings by the Court shall be admitted. Witnesses may be excluded from the courtroom during the taking of evidence from other witnesses upon direction of the court and oral Motion by any of the parties. Parties may not be excluded from the courtroom.
- (e) Evidence.
  - (1) Formal Rules Do Not Apply. The formal rules of evidence shall not apply at Children's Court. All reliable, probative and material evidence may be admitted at the trial and may be relied upon by the Court. Hearsay evidence is not admissible except as provided for MRE 804 or pursuant to any general rules of evidence promulgated under authority of the GTB Civil and Criminal Codes. In determining

the admissibility of evidence, the court may use the Michigan Rules of Evidence as a guide.

- (2) Cross-examination. The parties shall be afforded an opportunity to examine and controvert all evidence presented including written reports received by the Court and shall be allowed to cross-examine individuals who generated the reports whenever those individuals are reasonably available.
  - (3) Speaker telephones. The Court may rely upon conference telephonic or other electronic devices to permit material and probative testimony by witnesses unable to appear in person to testify. The right to cross-examine telephonic witnesses must be preserved.
- (f) Burden of Proof. GTB has the burden of proving the allegations in a Petition for Adjudication of Dependency by clear and convincing evidence. If the Court finds that the Tribe has met its burden of proof, the Court shall make findings as to the specific grounds for Adjudicating a child to be Dependent and for the assumption of continued jurisdiction by the Tribal Court. The child shall become a temporary ward of the Tribal Court.(g) Allegations Not Sustained. If any or all allegations asserted as the grounds for Adjudication of a child as Dependent are not sustained, the Court shall dismiss the unsustained allegations and make findings on all remaining allegations. If all allegations are not sustained by clear and convincing evidence, the Petition for Adjudication of Dependency shall be dismissed and the child release from the custody of Tribal authority.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 122 - Disposition Hearing**

- (a) Purpose. A disposition hearing shall be subsequent to the entry of an Order of Dependency, conducted to determine a plan of remedial measures designed to achieve the reunification of the family or, concurrently a preliminary permanency plan for termination of parental right. Factors which shall determine disposition of a child adjudicated as dependent and a remedial plan shall include:
  - (1) A child is properly within the Court's jurisdiction, and when applicable;
  - (2) A Respondent who has been adjudicated to be responsible for the abuse or neglect of a child(ren) under the jurisdiction of the Court;
  - (3) Children residing within the same household as a child adjudicated as dependent or a child born during the period in which the Court retains jurisdiction over a child adjudicated to be Dependent.
- (b) Disposition Immediately Following Adjudication. A disposition hearing may be heard immediately after the adjudication. The interval, if any, between the adjudication and the disposition, is within the discretion of the Court but shall not to exceed 15 business days after the entry of Order of Dependency.

- (1) Child in Placement. When a dependent child is in placement, the interval between adjudication and disposition may not exceed thirty (30) business days except for good cause.
  - (2) Notice. If a disposition 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 § 119, Service of Summons, Notices of Hearings, Subpoenas, and Notice to Putative Fathers.
- (c) Proposed Case Service Plan. The Anishinaabek Family Services or its agents shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports and recommendations of protective service workers. The report shall contain a specific, concurrent plan for placement, care and assistance to the child, and reunification requirements for all parties. A plan shall include:
- (1) Detailed Explanation. The report shall contain a detailed explanation of the necessity for the proposed remedial or reunification plan requirements and projected benefits to the child and a rough time line for meeting requirements of the plan. Boilerplate plans are prohibited and each party shall receive individual consideration in executing plan requirements.
  - (2) Specific Reasons Underlying Placement Recommendation. If the report recommends out of home placement it shall state the specific reasons underlying the recommendation and state the proposed placement plan.
  - (3) Due Date. Anishinaabek Family Services or its agents shall present the case plan to the Court, the child advocate, and the presenting officer, the respondents' parents or the respondents' attorney(s) at least three (3) days before the disposition hearing.
  - (4) Children over the age of fourteen (14) may participate in planning and generating the reunification plan but shall participate in the planning or generation of preliminary permanency plans for termination of parental rights. All parties in interest shall be entitled to participate in the planning and generation of reunification plans but not in the planning and generation of preliminary permanency plans for termination of parental rights.
- (d) Evidence. All probative and material evidence, including oral and written reports, may be admitted, even though such evidence may not be admissible at trial. When issuing its Disposition Orders, the Court shall consider the case Disposition plan and any report by an agency responsible for the care and supervision of the child, concerning efforts to prevent the break up of the family, or to rectify conditions that caused removal of the child from the home.
- (1) Cross-examination. The parties shall be given an opportunity to examine and controvert evidence including written reports so received and may be allowed to cross-examine individuals generating reports. All reports entered into evidence for

purposes of Disposition Orders shall be admitted only upon establishment of proper foundation.

- (2) Speaker Phones. The Court may rely upon conference telephonic or other electronic devices that permit all those appearing or participating to hear and speak to each other.
  - (3) No Assertion of Privilege. No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the disposition, of materials prepared pursuant to a Court ordered examination, evaluation, assessment, interview or course of treatment.
- (e) Disposition Orders.
- (1) Order of Disposition. The Court shall enter Disposition Orders after considering the Disposition plan and other evidence offered bearing on disposition. The Court shall approve a Disposition Plan and may order compliance with all or part of the plan. The Court may enter such orders as it deems necessary in the best interests of the child(ren). Disposition Orders shall state whether reasonable efforts have been made to prevent the breakup of the family under the circumstances of the case. The Court will advise all parties that a concurrent, preliminary permanency plan for termination has been submitted to the Court for review and that the plan may be effectuated as to a particular Respondent if and when there is a showing of substantial non-compliance with the reunification plan.
  - (2) Disposition Priorities. If a child has been adjudicated as dependent, the Court may order, by priority:
    - (A) The child and other children residing within the same household to remain with any or all of the Respondents, subject to such conditions as the Court may prescribe;
    - (B) Placement of the child and other children residing within the same household with a relative within the primary service area of the GTB, subject to such conditions as the Court may prescribe;
    - (C) Placement of the child and other children residing within the same household in a licensed foster home within the primary service area of the GTB, subject to such conditions as the Court may prescribe placement of the child and other children residing within the same household in a group home or residential care facility designated by the Court;
    - (D) Placement of the child and other children residing within the same household with a relative outside of the GTB service area, subject to a plan for monitoring, visitation and coordination with other agencies within the jurisdiction of the placement; or

- (E) The presenting officer to file an expedited petition to terminate parental rights under this Code.
- (F) Acceptance or rejection of a disposition plan in its entirety.
- (f) Order for Reimbursement for Care. Respondents may be ordered by the Court to reimburse the Tribe and/or the Michigan Family Independence Agency for the cost of care and placement. Reimbursement will be based on State of Michigan Child Support Guidelines that have been adopted by the Tribal Council.
- (g) Child Support. Respondents may be ordered by the Court to make child support payments for children placed with relatives or friends who are not eligible for foster care payments or payments are not sufficient to cover the cost of caring for the children.
- (h) Amendments. As long as a child remains a ward of the Court, a Disposition Order may, upon Motion by any party in interest, be amended or supplemented at any time. Emergency Motions to modify or supplement a Disposition order may be granted ex parte upon a finding by the Court that just cause exists and the best interests of the child will be served. Notice of ex parte modifications or supplemental Orders must be served on all parties within forty-eight (48) hours of entry of the modification or supplemental order.
- (i) Objections to ex parte modifications or supplemental Disposition Orders must be filed with the Court within seven (7) days of entry of the Order. If objections are timely filed, the Court shall set an emergency hearing within three days from the date of the date of filing of objections. The Court may Notify the parties of the hearing by telephone so long as the Notice is duly recorded in the case file.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, as enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 123 - Dependency and Disposition Review Hearing**

- (a) Review. The Disposition Order shall be reviewed at least once every six (6) months.
- (b) Notice of Review. Notice of the review hearing shall be provided to all parties by acknowledgement on the record or by ordinary mail as provided in § 119(f).
- (c) Scope of Review. At a review hearing, the Court shall make findings regarding compliance by all parties with Disposition Orders prepared pursuant to § 122 and the previous orders of the Court, including:
  - (1) Services. Compliance with the reunification requirements of the Disposition Order with respect to services provided to the child and Respondents, and whether the parties have substantially complied with requirements and demonstrate progress toward reunification.

- (2) The adequacy and effectiveness of the services being provided to the family and the likelihood that specific services will result in improvement in the circumstances which led to removal of the children and eventual reunification.
  - (3) Visitation. Compliance with a reasonable reunification plan with respect to visitation between Respondents and child, child and siblings and child and extended family members. The Court shall make findings as to the cause of non-compliance with the orders and take action to ensure that children and their families receive appropriate and adequate visitation.
  - (4) Other Provisions. The extent to which a Respondent has complied with each provision of the Disposition Order, prior Court orders and the likelihood that compliance will continue shall be considered when extending, modifying or issuing new Disposition Orders.
  - (5) Continued Separation. Likely harm to the child(ren) if out of home placement is continues.
  - (6) Reunification. Likelihood of continued risk of harm to the child(ren) if returned to the custody of the Respondent(s).
- (d) Extent of Progress. After review of the reasonableness of reunification portion of the disposition plan, the Court shall determine the extent of progress made toward meeting the goals of the plan within the general timelines set forth in the plan. The Court may modify any part of the plan including, but not limited to, the following:
- (1) Additional Services. Additional services necessary to rectify the conditions and circumstances cited in the petition or new obstacles to reunification that have arisen since entry of the Order of Disposition.
  - (2) Additional Actions. Additional actions to be taken by the parties to rectify the conditions and circumstances that caused the child to become adjudicated as dependent.
- (e) Continued Placement. At a review hearing the Court shall determine the continuing necessity and appropriateness of the child's placement. The Court may continue the placement; order the return of the child; continue or modify the original Disposition Order, enter a new disposition order or commence procedures for Termination of Parental Rights including implementation of the preliminary permanency plan for termination of termination and setting a date and time for Termination hearing.
- (f) A Child Remaining in Placement. If Dependency is continued and the child remains in placement, the Court shall determine at each review hearing whether the placement should be reviewed before the next review hearing required under § 123(a) [at least every six (6) months]. In making this determination, the Court shall consider the following:
- (1) Respondent Motivation. The Respondents' demonstrated motivation to make necessary changes to provide a suitable environment for the child.

- (2) Possibility of Early Return Home. Whether there is a reasonable likelihood that the family will be reunified prior to the next review hearing required by § 123(a).
- (g) Return Without Hearing. If not less than seven (7) days' notice is given to all parties prior to reunification of the family, and no party objects within seven (7) days of receipt of, the Court may issue an Order of Reunification ex parte authorizing AFS to return the child to the custody of any or all Respondents.
- (h) Reunification Upon Waiver and Consent. If all parties waive notice of hearing and consent to reunification, the AFS or another agency designated by the Court may return the child to the custody of any or all Respondents. If reunification is executed in this manner AFS shall monitor the progress of the family for a period of thirty (30) days if no cause arises to continue the Dependency of the child, the presenting officer will seek dismissal of Orders of Dependency and closure of the case.
- (i) Agency Report. An agency report shall be filed with the Court at least three (3) working days prior to the review hearing and copies provided to all parties or their representatives. The report shall be offered into evidence.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

#### **§ 124 - Permanency Planning Hearing**

- (a) Timetable. If a child is adjudicated to be Dependent and either insufficient progress toward reunification has been made, or the Court has Ordered the implementation of a preliminary permanency plan, or aggravated circumstances apply, a Petition for Termination of Parental Rights may be filed. The Court shall conduct a permanency planning hearing not more than twelve (12) months after entry of Order of Disposition and at least thirty (30) days prior to any Termination hearing. A permanency planning hearing may be combined with a disposition review hearing under § 123.
- (b) AFS shall file a proposed final permanency plan at least ten (10) business days prior to the permanency planning hearing. Copies of the proposed plan shall be served upon all parties at least seven (7) days prior to the hearing.
- (c) The Concurrent Permanency Plan: Should include a detailed proposal for shall include a strategy for continued placement, services and any potential reunification requirements that would result in dismissal of Petition to terminate and actual reunification of the family. The plan should clearly specify the goals for permanent placement, provision of services to the child and strategies for achieving those goals in the event that parental rights are terminated.
- (d) Scope of Review. A permanency planning hearing shall be conducted to review the status of the child and the progress made toward successful completion of the reunification plan when the child has remained a ward of the Court for at least one year or when reunification efforts have been substantially unsuccessful and there is little likelihood that reunification

goals can be achieved through new or modified plans or when aggravated circumstances as defined in this Code warrant immediate termination procedures. The Court shall weigh any evidence to support either continuation or adjournment of Termination hearing, dismissal of Petition for Termination before proceeding with Termination Hearing.

- (e) Permanency Plan Options: Pursuant to a Permanency Planning Hearing, the Court may:
- (1) Parental Rights Not Terminated. Determine if reunification would presently cause a substantial risk of harm to the child's life, physical health, or mental well-being and issue appropriate Orders. The Court shall view substantial noncompliance with the terms and conditions of a Disposition Order as evidence that reunification efforts have failed and reunification is not in the best interest of the child or return of the child.
  - (2) If the Court finds, by clear and convincing evidence, that no substantial risk of harm exists and the Respondents have substantially complied with a reasonable reunification plan, the child shall be returned to the custody of the Respondents and the Petition for Termination of Parental Rights Dismissed.
- (f) Alternative Permanent Placement Plans. If the Court determines at a permanency planning hearing that reasonable reunification efforts have failed due to Respondent's substantial non-compliance with Disposition Orders or that abuse occurred under aggravated circumstances as defined in this Code, or that a child has been a ward of the Court for at least one year, it may order AFS to include any or all of the following in a final permanency plan:
- (1) That the child(ren) be placed permanently with an identified relative within the primary service area of the Tribe;
  - (2) That the child(ren) be placed permanently with an identified relative who is outside the primary service area of the Tribe;
  - (3) A Termination Hearing proceed and a plan for adoptive placement be presented to the Court, including time lines;
  - (4) That a petition for guardianship under this Code be filed by the current caretaker of the child, the child or the Anishinaabek Family Services; or
  - (5) If other children from the same household as the child adjudicated to be Dependent remain in placement at the time of permanency planning, the Court shall order the final permanency plan to include those children pursuant to § 124(d)(1)(2)or(3) or 124(d)(4)or(5).

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, as enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

## § 125 - 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 chapter shall be construed in a manner consistent with the philosophy that the family unit is of significant value to the community, and will preserve the family whenever possible. When the break up of a family is required to ensure the health, safety and wellbeing of a child and it has been clearly demonstrated that those charged with the rights and responsibilities of parenthood are unable to adequately provide a safe and nurturing environment in which children may grow into functioning and contributing adults, those rights of parenthood will be terminated and the responsibilities vested in those persons or entities who may adequately provide for children. Termination of the parent-child relationship 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 interests of the child concerned to proceed under this section.
- (b) Grounds for Involuntary Termination. The Court may terminate the parental rights of a parent to a child adjudicated as Dependent and to children living within the same household as child so adjudicated, if the Court finds, by clear and convincing evidence, one or more of the following:
- (1) Abandonment. The child has been abandoned under the following circumstances:
    - (A) A parent of a child is unidentifiable or has had substantially no contact with the child for twenty-eight (28) or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's name and location cannot be ascertained after reasonable efforts have been made to locate and identify the parent; or
    - (B) A parent has left a child in the care of others, including a legal custodian for at least thirty (30) days and has not provided for support of the child for a period of at least six (6) months. The failure to provide support and to communicate with a child for a period of at least six (6) months shall be presumptive evidence of intent to abandon the child.
  - (2) Physical Injury or Sexual Abuse. The child or a child's sibling has suffered physical injury, severe or prolonged physical or sexual abuse under either of the following circumstances:
    - (A) A Respondent's act or omission caused injury or abuse of a child and the Court finds that there is a reasonable likelihood that the child remains at risk of injury or abuse in the foreseeable future if reunified into respondent's custody and control; or
    - (B) A respondent who has or had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse reunited into the custody of the Respondent.

- (3) Un-rectified Conditions and circumstances. The Respondent was found to be subject to provisions of the Children's Code, which resulted in the adjudication of a child as dependent, and twelve (12) or more months have elapsed since the issuance of an initial Disposition Order, and the Court, by clear and convincing evidence, finds either of the following:
  - (A) The conditions and circumstances that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or
  - (B) Other conditions exist that cause the child to meet the definition of a dependent child. The Respondent has not substantially complied with a reasonable reunification portion of a Disposition Plan and has received notice of, all applicable hearings and procedures, and it is in the best interests of the child to terminate the parental rights of the Respondent.
- (4) Failure to Provide Proper Care. The Respondent, without regard to intent, has demonstrated an inability or unwillingness to adequately provide proper care or a nurturing environment for the child and efforts to reunify the family have failed because the Respondent shows no intent or inclination to substantially comply with a reasonable reunification plan, and it is in the best interests of the child that parental rights be terminated.
- (5) Conviction of Violent or Sexual Crime. A Respondent has been convicted of a violent or sexual crime in which a family member or another child was a victim.
- (6) Conviction of a Felony. A Respondent has been convicted of a felony that is of a nature as to clearly demonstrate the Respondent's unfitness as a parent.
- (7) Imprisonment for More than Two (2) Years. A Respondent is sentenced to serve actual time of incarceration of two (2) years or more and has not provided for the child's proper care and custody and support for the period of incarceration, and there is no reasonable expectation that the Respondent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- (8) Parental Rights to Siblings Terminated. Parental rights to one (1) or more siblings of a child, have been terminated within the past seven (7) years due to serious or chronic neglect, physical or sexual abuse, and prior attempts to rehabilitate the Respondent(s) have been unsuccessful. This provision does not apply to children born after parental rights have been terminated unless the after born child(ren) meet the definition of a Dependent child have as defined in this code.
- (9) Parental Kidnapping: A Respondent has absconded with a child from Court Ordered placement or has engaged in custodial interference with the Tribal Court's placement of a Dependent child.

- (c) Termination at Initial Disposition. If a petition to terminate parental rights is filed under § 125(b)(1)(B)(5 - 9), the Court may enter an order terminating parental rights under § 128 at the initial disposition hearing.
- (d) Quality of Evidence. The same rules of evidence which apply at Dependency adjudication shall apply in termination of parental rights proceedings.
- (e) Termination of Parental Rights Order. An order terminating parental rights under this Code may not be entered unless the Court makes findings of fact, states conclusions of law, and includes the statutory basis for the order. The Court may state the findings and conclusions on the record or include them in a written opinion. If the Court does not issue a decision on the record following a Termination hearing, it shall file its decision within twenty-eight (28) days after the taking of final proofs.
- (f) Voluntary Relinquishment of Parental Rights. Parental rights may be voluntarily terminated by written consent of both living parents, a legal guardian and custodian so long as parental rights of living biological parents have been terminated, executed in the presence, and with approval, of the Court. Relinquishment of Parental Rights shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of a child. The Court shall make findings of fact to ensure that the person seeking to terminate parental rights has been advised of and understands their rights and the consequences of voluntary termination prior to approving Orders of Termination. A person who wishes to relinquish parental rights shall be provided an interpreter if he/she does not understand English. Consent to voluntary termination of parental rights may be withdrawn prior to the entry of the final Order of Termination.
- (g) General Provisions of Orders of Termination: Child's Continued Right to Benefits. An order terminating the parent-child relationship shall not bar entitlement of a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this Code be deemed to affect any rights and benefits that child derives from the child's descent from a member of a federally recognized Indian tribe.
- (h) Advise of Right to Appeal. Immediately upon entry of an involuntary order terminating parental rights, the Court shall advise the respondent orally for the record or in writing of the right to appeal the final Order of Termination. 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.
- (i) Post Termination Review Hearings. If a child remains a ward of the Court following the termination of parental rights, the Court shall conduct a review hearing, at least every six (6) months to review and modify the final permanency plan. The Court shall make findings as to whether reasonable efforts have been made to establish permanent placement for the child in compliance with the final permanency plan and may enter such orders as it considers necessary in the best interests of the child.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

**§ 126 - Authorization of Medical Treatment**

- (a) Court Authorization. At any time, regardless of whether a child is under the custody of the Court, the Court may authorize medical or surgical care for a child when:
- (1) Parent Not Available. A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or
  - (2) Physician's Opinion. A physician informs the Court orally or in writing that in his/her professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian, or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life or health.
- (b) Religious and Traditional Healing. In making its order, the Court shall give due consideration to any treatment being given the child by prayer, through spiritual means alone or through other methods approved by tribal customs or traditions or religions or if the child or his parent, guardian, or custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices the tribal customs, traditions or religion which is relied upon for such treatment of the child.
- (c) Written Authorization. After entering any authorization under this section, the Court shall reduce the circumstances, finding 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. 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 the parent's, guardian's or custodian's authorization.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

**§ 127 - Emancipation**

- (a) Emancipation by Operation of Law. Emancipation occurs by operation of law:
- (1) When a minor is validly married;

- (2) During any period in which a minor is on active duty with the armed forces of the United States; and
  - (3) For the purposes of consenting to routine, non-surgical medical care or emergency medical treatment to a minor when the minor is in the custody of a law enforcement agency and the minor's parent, guardian, or custodian cannot be promptly located.
- (b) Emancipation by Court Order. An emancipation may also occur by Court order pursuant to a petition filed by a minor or children's advocate on behalf of the minor in the Children's Court.
- (1) Contents of Petition. The petition must be signed by the minor and must include an affidavit by an adult individual having personal knowledge of the minor's circumstances, who believes that under the circumstances emancipation is in the best interest of the minor.
  - (2) Investigation. After the petition is filed the Court may assign AFS to investigate any allegations of abuse or neglect which arise from a petition for emancipation; appoint legal counsel for the minor; appoint legal counsel for the minor's parents, guardian, or custodian if they are indigent; or dismiss the petition if the minor's custodial parent does not consent and is providing support or if it is apparent that emancipation would not be the minor's best interests.
- (c) Emancipation Order. The Court may issue an emancipation order if it determines by a preponderance of the evidence that emancipation is in the best interest of the minor and the minor establishes that:
- (1) The minor's parent, guardian, or custodian does not object to the petition;
  - (2) The minor is at least sixteen (16) years of age;
  - (3) The minor is a resident of the Tribe's six-county service area;
  - (4) The minor has demonstrated ability to manage his/her financial affairs, including proof of employment or other means of support;
  - (5) The minor has demonstrated the ability to manage his/her personal and social affairs; and
  - (6) The minor understands his/her rights and responsibilities as an emancipated minor.
  - (7) The minor remains engaged in an education program.
- (d) Right to Appeal; Rescission. The minor or a parent, guardian, or custodian of the minor may file an appeal from the Court's grant or denial of an emancipation petition or a minor emancipated by Court order may petition the Children's Court to rescind the order.

- (e) Rights of Emancipated Minor. A minor emancipated by operation of law or by Court order will be considered to have the rights and responsibilities of an adult except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, access to tribal minors' trusts, and other health and safety regulations relevant to the minor because of his/her age. A minor will be considered emancipated for the purpose of the following rights:
- (1) To enter into enforceable contracts;
  - (2) To sue or be sued in his/her own name;
  - (3) To retain his/her own earnings;
  - (4) To establish a separate domicile;
  - (5) To act autonomously, and with the rights and responsibilities of an adult, in all business relationships;
  - (6) To earn a living;
  - (7) To authorize his/her own preventive health care and mental health care;
  - (8) To apply for a driver's license or other state or tribal license;
  - (9) To register for school;
  - (10) To marry;
  - (11) To apply to medical assistance programs administered under the State of Michigan Social Welfare Act or Indian Health Service or tribal health services;
  - (12) To apply for welfare assistance;
  - (13) If a parent, to make decisions and give authority in caring for his/her own minor child; and
  - (14) To make a will.
- (f) Debts of Emancipated Minor. Parents of a minor emancipated by Court order are not liable for any debts incurred by the minor during the period of emancipation.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 128 - Delegations of Parental Authority**

- (a) Power of Attorney. A parent, guardian, or custodian, or Anishinaabek Family Services may, by a properly executed power of attorney, delegate to another person, certain parental

authority regarding the care, custody and property of a minor child. Said powers include but are not limited to: 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. Such delegation shall not include power to consent to marriage, non-emergency elective surgery or adoption. The delegation of parental authority shall be valid for no more than 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 Motion to extend the term of delegation of parental authority filed in the Children’s Court.

- (b) **Limited Guardianship.** The Court may by written order, appoint a temporary guardian under such terms and conditions as the Court sets forth. A temporary guardianship may be modified or termination upon determination by the Court that it is in the best interests of the child to modify or terminate the guardianship. The parent and the child’s extended family may be granted visitation rights with the child during the term of the guardianship by the Court. A temporary guardianship shall be established by parental consent only, and shall be terminated by the Court upon written Motion to Terminate a Guardianship. If the court finds that no visitation between parent and child shall occur during the term of the guardianship, the Court must make findings of fact to support suspension of visitation, and may direct AFS to investigate and reasonable belief that a child meets the definition of a Dependent child.
- (c) **Statutory Guardianship.**
  - (1) **Purpose.** The Children’s Court, when it appears necessary or convenient, may appoint guardians for persons under the Court’s jurisdiction. Unless otherwise specified by the Court, an appointed guardian 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 a Court of competent jurisdiction, or until the guardian is legally discharged.
  - (2) **Grounds.** The Court may appoint a statutory guardian for a child if:
    - (A) Parental rights of both parents or of the surviving parent have been terminated or suspended by prior Court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetence, by disappearance, abandonment, or by confinement in a place of detention; or
    - (B) The appointment is necessary for the immediate physical, mental or developmental well-being of a child.
  - (3) **Who May File.** Any person or entity with a vested interest in the wellbeing of a child, including Tribal human resources, mental health services providers and the Anishinaabek Family Services, the child, if age fourteen (14) or older, a child’s representative may file a petition for statutory guardianship. The petition may be

initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

- (4) Notice. Before appointing a guardian, the Court must reasonably provide notice of filing of a Petition for Statutory Guardianship to all interested parties, including but not limited to, parents custodians, agencies and person having responsibility for the care of the child, to the child, and to other relatives of the child as the Court may deem proper.
- (5) Contents of Petition. A petition for guardianship shall include the following to the best of the petitioner's knowledge, information and belief:
  - (A) The full name, sex, date, social security number and place of birth, residence and tribal affiliation of the proposed ward;
  - (B) The full name, address, tribal affiliation, social security number, relationship, if any, to the minor, and interest in the proceeding of the petitioner;
  - (C) The names and addresses of the minor's parents, if living, and of other persons known to have an interest in the petition for appointment of statutory guardian; the name and date of death of the minor's deceased parent or parents (certificate attached), if appropriate;
  - (D) A statement of the basis for the Court's assumption of jurisdiction;
  - (E) The name and address of the person or agency having legal or temporary custody of the proposed ward;
  - (F) A statement of the reason that the appointment of a guardian is sought and whom the petitioner recommends as guardian; and
  - (G) A full accounting 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 presently and in foreseeable future.
- (6) Certified Petition. All petitions must be dated, signed, and certified by the petitioner and notarized or witnessed by a clerk of the Court.
- (7) Statutory Guardianship Report. Upon the filing of a guardianship petition, the Court shall immediately request that the AFS, or other qualified agency provide a guardianship report including specific information regarding the proposed statutory guardian and the proposed ward.
  - (A) Contents of Report. The statutory guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward; and shall include but is not limited to: a criminal background check on all adults living in the proposed guardian's

household, a check of tribal and state records regarding any substantiated claims of child abuse and/or neglect.

- (B) When Report Due. No Orders granting Statutory Guardianship shall be issued until the statutory guardianship report has been completed, submitted to and considered by the Court. The report shall be submitted to the Court no later than ten (10) days before a Statutory Guardianship hearing. The Court may order additional reports as it deems necessary and extend the time for filing of those reports as deemed necessary.
- (8) Powers and Duties of Guardian. To the extent that it is not inconsistent with the terms of any order of the Court, a guardian has the following powers and duties:
- (A) The statutory 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 training, education, employment, medical care and rehabilitation. The statutory guardian shall be responsible for reasonable care of the ward's clothing, furniture, vehicles, and other personal property in the ward's possession during the term of the guardianship.
  - (B) In arranging for a ward's domicile, the statutory guardian shall give preference to places within the tribal reservation over places not on the reservation or within the GTB six-county service area, if potential domiciles are substantially equivalent. The guardian shall give preference to places that are not treatment facilities unless in-patient medical or psychological treatment has been necessary by appropriate medical evaluation. If the only available and appropriate domiciles are treatment facilities, the guardian shall give preference to tribally-based or approved treatment facilities.
  - (C) The statutory guardian shall have authority to consent to any medical, legal, psychological, or other professional care, counsel, treatment, or service on behalf of the ward. The statutory guardian may, with Court approval, give any other consent or approval on the ward's behalf that is reasonably required to ensure the health, safety and security of the ward, in the ward's best interest.
- (9) Reimbursement. The statutory guardian is entitled to reimbursement from the ward's estate for reasonable and proper expenditures incurred in the performance of his/her duties as guardian. The Court may order monthly reimbursement payments to the guardian upon written request, subject to the availability of funds and an annual accounting.
- (d) Conservatorship. The Court may, upon the filing of a Petition for Appointment of a Conservator appoint a conservator for a minor if, in the Court's opinion, a statutory guardianship is inadequate or not necessary to ensure the best interests of the child. A conservatorship shall not confer authority over the minor but shall provide the fiduciary power and duty to marshal and preserve the minor's assets and for paying the legitimate

expenses incurred in providing care and maintenance for the minor, subject to the availability of funds and annual accounting to the court.

- (e) Annual Reports. All limited guardians, statutory guardians and conservators shall file annual reports with the Tribal Court providing an update on the condition of the ward and an accounting of funds collected and funds expended on behalf of the ward. The reports shall be available for review by all parties demonstrating a justifiable interest in the ward.
- (f) Annual Review Hearings. Annual review hearings shall be scheduled in conjunction with the filing of annual reports by limited guardians, statutory guardians and conservators. Any party with a justifiable interest in the welfare of the ward may request additional hearings.
- (g) Resignation. Any limited guardian, guardian, or conservator who wishes to resign may petition the Court setting forth the reasons for the request. The Court shall review a final accounting prepared by the limited guardian, guardian, or conservator. If the Court is satisfied, It may accept the resignation, discharge the limited guardian, guardian, or conservator and appoint a successor. The limited guardian, guardian, or conservator remains liable for all matters occurring from the time of appointment to the time of discharge.
- (h) Appointment of Successors. Upon the removal, death, or resignation of a limited guardian, guardian, or conservator, the Court shall appoint a successor following the same criteria provided for in the original appointment.
- (i) Fiduciary Duty. All persons acting under a power of attorney, limited guardians, guardians, conservators and any person or agency appointed to act on behalf of a minor under this Code 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 a power of attorney, limited guardianship, statutory guardianship, or conservatorship, who breaches or his/her fiduciary duty shall be liable for up to treble damages resulting from such breach.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, as enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 129 - Adoption**

- (a) Purpose. The purpose of this section is to protect the rights and the welfare of Indian children, natural parents, and adoptive parents. It is the policy of the Tribal Council to promote the adoption of Indian children by members of the Tribe.
- (b) Jurisdiction. The Court shall have jurisdiction over all adoptions in which the person to be adopted ("adoptee") is an enrolled member of, or eligible for enrollment in the Grand Traverse Band of Ottawa and Chippewa; or is an Indian child living within GTB's six-county service area who has significant ties to the GTB community.

- (c) Who May File a Petition for Adoption. Any person over the age of twenty-one (21) may file an adoption petition. Married or cohabitating persons maintaining a domicile together must make a joint petition, except where one person is the adoptee's natural parent.
- (d) Parental Consent to Adoption. Adoption may be ordered by the Court upon filing of a Petition and written consent to voluntary termination of parental rights by both parents or legal guardian. The consent to termination must be executed in the presence of the Court or before a Notary Public. The Court make findings of fact that persons consenting to termination of parental rights for purposes of adoptive placement have been informed of the nature and consequences of their actions and that consent is both voluntary and informed.
  - (1) Minority-Age Status. The minority-age status of parent(s) shall not be a bar to the right of consent nor shall it invalidate such consent.
  - (2) Non-Consenting Natural Parents. The parental rights of non-consenting natural parents may be involuntarily terminated pursuant to § 128 of this Code. The Court may execute consent to adoptive placement of children of parents whose parental rights have been terminated.
- (e) Withdrawal of Consent. Consent to voluntary termination of parental rights for the purposes of adoption may be withdrawn by a parent(s) at any time before the entry of the final order of adoption.
- (f) Petition for Adoption. The petition for adoption shall be filed with the Court by the adopting parties. 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, social security number, and the tribal affiliation and degree of Indian blood of the adoptee;
  - (2) The full name(s), residence(s), date(s) and places(s) of birth, tribal affiliation and degree(s) of Indian blood, occupation(s), of the adoptive parents and the AFS certification of fitness.
  - (3) Proof of parental consent to the adoption and notice to the grandparents if applicable;
  - (4) A statement by the adopting parent(s) that it is the desire of the adopting parent(s) that the legal relationship of a parent and child be established between them and the adoptee; and
  - (5) A full description and statement of value of all property owned or possessed by the adoptee, to the best of the petitioner's knowledge.
- (g) Investigative Report. Upon the filing of a petition for adoption, the Court shall request the Grand Traverse Band's adoption worker to inquire into, investigate, and report to the Court and the Anishinaabek Family Services, within thirty (30) days regarding the stability of the adoptee for adoption, the financial ability, moral and physical fitness, and general

background of the adopting parent(s); and to make recommendations on the proposed adoption. A criminal background check is required. The Court may also request any local, state or federal agency to provide assistance in obtaining information as to the suitability of the adopting parent(s) for the adoption.

- (h) Recommendation of the Anishinaabek Family Services. Upon completion of the investigative report, the Tribe's adoption worker shall submit his/her report to the AFS in order to obtain a certificate of fitness to be included with the Petition for Adoption or Motion for Order of Adoptive Placement or Motion for Entry of Final Order of Adoption.
- (i) Initial Hearing. Within ten (10) days of the receipt of certification of fitness from AFS, the Court shall schedule a hearing on the petition for adoption.
  - (1) Notice. The adoptee, adopting parent(s), and all other interested parties shall be given notice of the hearing on petition for adoption.
  - (2) Appearance Mandatory. The adoptee and adopting parent(s) shall appear in person at the initial hearing.
- (j) Waiver of Trial Custody Period. If the adoptee has been in the custody of the adoptive parent(s) for more than six (6) months and AFS recommends adoption at the initial hearing on petition for adoption, the Court, upon a motion by the presenting officer, may waive the trial custody period and enter final adoption Orders. Any party in interest may file objections to waiver of trial custody period entry of final adoption orders within seven (7) days of hearing.
- (k) Final Hearing if Trial Custody Period Not Waived. Not less than ninety (90) days, nor more than one hundred twenty (120) days, after the adoptee has been in the custody of the adoptive parent(s), the adoptee and adoptive parent(s) shall appear before the Court. They shall report to the Court about the welfare of the adoptee, the current status of their home, and the desire of the adoptive parent(s) to finalize the adoption.
- (l) Final Adoption Order; 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 decree adoption may be entered. The Court may order, or adoptive parent(s) may request, a six (6) month extension of the trial custody period, after which a final adoption decree must be entered or the adoptee returned to the custody of the Court.
- (m) Effect of the Final Adoption Order.
  - (1) Parent and Child Relationship. After the final adoption order is entered, the relationship between the adoptive parent(s) and adoptee shall be vested with all rights, duties and other legal consequences of a relationship between natural parents and a child and shall thereafter exist between the adoptee and the adoptive parent(s).
  - (2) Tribal Status Not Affected. The status of an adoptee as a member of the Tribe shall not be affected by adoption. An adoptee who is eligible for membership in the

Grand Traverse Band shall be enrolled as a tribal member prior to the finalization of the adoption.

- (3) Natural parents Relieved of Parental Responsibilities. After the final decree of adoption is entered, the natural parents, except a natural parent who is the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such adoptee and have no right regarding the adoptee or right to inherit his/her property by descent or distribution.
- (4) Assumption of Surname. Minors adopted by order of the Court shall assume the surname of the person(s) by whom they are adopted, unless the Court orders otherwise.
- (5) Rights of Adoptees.
  - (A) Adoptees shall be entitled to the same rights of person and property as natural children or heirs of the adoptive parents.
  - (B) Adoptees shall be entitled to the society and companionship of their natural siblings.
- (n) Tribal Membership. Any child who is legally adopted by a member of the Grand Traverse Band shall have membership rights as though he/she were the natural child of the adopting parent(s) pursuant to Article II, Section 1(b)(4)a., of the Tribal Constitution.
- (o) Confidentiality of Proceedings and Record. Unless the Court otherwise orders, hearings held in proceedings under this section shall be confidential and shall be held in closed session, without the admission of any persons other than the interested parties and witnesses. All papers, records, petitions, or files pertaining to proceedings, except the final order of adoption, shall be maintained by the Court in locked files and shall not be released to anyone, except pursuant to Court order or consent of the adoptee executed after the adoptee attains the age of eighteen (18).

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 130 - Child Protection Records**

- (a) Children's Court Records. A record of all hearings under this Code shall be made and preserved. All Children's Court records shall be confidential and shall not be open to inspection to anyone except:
  - (1) A child who has come under the jurisdiction of the Children's court or the child's legal representative.
  - (2) The parent(s), guardian, or custodian; of a child who has come under the jurisdiction of the Children's Court

- (3) The prospective adoptive parent(s); of a child who comes within the jurisdiction of the Children's Court
  - (4) Children's Court personnel directly involved in the handling of the case; and
  - (5) An adult who, as a child, came within the jurisdiction of the Children's Court.
  - (6) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.
- (b) Law Enforcement and Anishinaabek Family Services Records. Law enforcement and AFS records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and the Anishinaabek Family Services records shall be confidential and shall not be open to inspection to anyone except:
- (1) The child; who is or was the subject of case opened by law enforcement or AFS.
  - (2) The parent(s), guardian, or custodian; of child who is or was the subject of case opened by law enforcement or AFS, so long as parental rights have not been terminated.
  - (3) The child's legal representative
  - (4) Law enforcement and human services personnel, including Anishinaabek Family Services, the Multi-Disciplinary Team and any tribal entity directly involved in the handling of the case;
  - (5) Children's Court personnel directly involved in the handling of the case; and
  - (6) An adult who was the subject of a case opened by law enforcement or AFS which came under the jurisdiction of the Children's Court.
  - (7) Any other person by order of the Court, having legitimate interest in the particular case or the work of the Court.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #0220.1147, enacted by Tribal Council in Special Session on August 28, 2002; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§ 131 - Rehearings**

- (a) Time and Grounds. A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within twenty-eight (28) days after entry of a final order. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the Court, or presented but not previously considered by the Court, which if true, would cause the Court to reconsider the matter.

- (b) Notice. All parties must be given notice of the motion for rehearing or new trial in accordance with § 119.
- (c) Response by Parties. Any response by parties must be in writing, filed with the Court, and served on the opposing parties within five (5) days after receipt of notice of the motion.
- (d) Procedure. The judge may affirm, modify, or vacate the decision previously made, in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion finds appropriate.
- (e) Hearings. The Court need not hold a hearing before ruling on a motion for rehearing or new trial. Any hearing conducted shall be in accordance with the rules for disposition hearings. The Court shall state the reason for its decision on the motion on the record or in writing.
- (f) Stay. The Court may stay any order pending a ruling on the motion.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999.

### **§ 132 - Appeals**

- (a) Who Can Appeal. Any party to a Children's Court proceeding may appeal a final decision of the Tribal Court with the GTB Appellate Court, except in those instances in which final order or judgment of the court was by consent of the parties. An order terminating parental rights is appealable by right.
- (b) Time for Taking Appeal. Any party seeking to appeal a final Children's Court order or judgment shall file a written notice of appeal with the Court within twenty-eight (28) days of entry of the final order.
- (c) Standard of Review. The clearly erroneous standard shall be used in reviewing final decisions of the Children's Court.
- (d) Record. For purposes of appeal, a record of proceedings shall be made available to all parties to the proceedings, legal counsel, and by court order, to those with a demonstrated interest in the outcome of the appeal. The party seeking the appeal shall pay all costs of obtaining the record.
- (e) Stay on Appeal. A final Tribal Court order or judgment may be stayed upon order of the Appellate Court.
- (f) Conduct of Proceedings. All appeals shall be conducted in accordance with the GTB Rules of Appellate Procedure as long as those provisions are not in conflict with the provisions of this Children's Code.

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #05-23.1603 enacted by Tribal Council on March 29, 2006.

### **§§ 133 through 136 - (Reserved)**

History: Revised Children's Code, adopted by Tribal Council on January 13, 1999; as amended by Tribal Council October 1, 1999.

## **Chapter 2 - Adoption of Certain Michigan Statutes**

### **§ 201 - Adoption of Certain Michigan Statutes**

The Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council hereby adopts and ratifies the following State of Michigan statutes and Acts to authorize the Tribal Court of the Grand Traverse Band to commit wards of the Court to the Department of Social Services for placement and supervision:

MCL 400.201;  
MSA 25.381;  
MCL 712.A.2;  
MSA 27.3178 (598.2);  
MCL 803.301 (Y.R.A.);  
MSA 25.399 (51);  
MCL 400.55 (h);  
MSA 16.455 (h);  
82 PA 398;  
74 PA 150.

History: Tribal Act #89-777, enacted by Tribal Council on November 18, 1989.

### **§ 202 - Adoption of Michigan Child Support Formula Manual**

**Legislative Background:** The preamble to the resolution adopting the State of Michigan's Child Support Formula Manual reads as follows:

**WHEREAS:** The Grand Traverse Band of Ottawa and Chippewa Indians (GTB) became federally recognized as an Indian Tribe having a government-to-government relationship with the United States effective May 27, 1980 (see 45 Fed. Reg. 18321-322 (March 25, 1980)); and

**WHEREAS:** GTB is organized under a Tribal Constitution approved by the Secretary of the Interior on March 29, 1988; and

**WHEREAS:** GTB has a full governmental Tribal Council currently consisting of George E. Bennett, Tribal Chairman; Melvin Wilson, Vice Chairman; Gregory Bailey, Treasurer; Joyce Duford, Secretary; John McSauby, Councilor; Helen Paul, Councilor; and Michael Shananaquet, Councilor; and

**WHEREAS:** Pursuant to Article IV, Section 1(a), of the Tribal Constitution, the Tribal Council has the power to promote and protect the health, education, and general welfare of the Tribe and its members; and

**WHEREAS:** Pursuant to Part D of Title IV of the social security act, 42 U.S.C. 651 to 669, 45 C.F.R. 300-399, and MCL 552-517 et al., and the Michigan Friend of the Court Act of 1982, State Court Administrative Office's Friend of

the Court Bureau have developed Michigan-based “formula to be used in establishing and modifying...child support.” MCL 552.519(3)(a)(vi), consistent with Title IV(D); and

**WHEREAS:** Howe v. Ellen Becker, 796 F.Supp. 1276 (D.S.D. 1992), 8 F.3d 1258 (8th Cir. 1993) held that the State and the United States Office of Child Support Enforcement must negotiate with Indian tribes to implement a tribal plan consistent with Title IV(D) or in the alternative negotiate cooperative agreements with Indian tribes concerning enforcement of child support obligations; and

**WHEREAS:** Shomin v. Raphael, File No. 91-2853-DP, is currently pending before the 13th Judicial Circuit Court for the County of Leelanau, State of Michigan, on a motion to vacate filed by the putative father based on the lack of subject matter jurisdiction; and

**WHEREAS:** The Tribal Council has filed a motion to intervene as amicus party; and

**WHEREAS:** The Tribal Council recognizes the validity of defendant putative father's motion and the holding in Howe; and

**WHEREAS:** The Tribal Council desires to adopt a Title IV(D) plan consistent with the State of Michigan.

- (a) The Tribal Council hereby adopts the Michigan Child Support Formula Manual [M.C.S.F.M.], attached hereto, 1997, as the Tribal plan for purposes of Title IV(D), 42 U.S.C. §§ 651-669.
- (b) The Tribal Council directs that the rules of decision for purposes of Tribal child support matters shall be governed by the guidelines in M.C.S.F.M. (1997).
- (c) Matters subject to the exclusive jurisdiction of the Tribal Court under Title IV(D) actions shall be handled consistent with the policies and procedures of the Michigan Friend of the Court.

History: Tribal Act #97-15.432, enacted by Tribal Council on February 25, 1997.

### **Chapter 3 - Uniform Reciprocal Enforcement of Support**

#### **§ 301 - Short Title**

This ordinance shall be known, and may be cited, as the “Uniform Reciprocal Enforcement of Support”.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

#### **§ 302 - Authority and Purposes**

This ordinance is adopted pursuant to Article IV, Sections 1(a), (b), (c), (f), (i) and (l) of the Tribal Constitution (the “Constitution”) of the Grand Traverse Band of Ottawa and Chippewa Indians (the “Grand Traverse Band”). The purposes of this ordinance are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 303 - Definitions**

As used in this ordinance, unless the context requires otherwise:

- (a) “state” includes any state, territory or possession of the United States and the District of Columbia and any federally-recognized Indian tribe having jurisdiction over divorce decrees and child support orders and any foreign state in which this or a substantially similar reciprocal law has been enacted.
- (b) “initiating state” means any state in which a proceeding pursuant to this or substantially similar reciprocal law is commenced.
- (c) “responding state” means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.
- (d) “court” means the chancery division of any of the circuit courts of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.
- (e) “law” includes both common and statute law.
- (f) “duty of support” includes any duty of support imposed or imposable by law, or by any court order, decree of judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial (legal) separation, separate maintenance or otherwise.
- (g) “obligor” means any person owing a duty of support.
- (h) “obligee” means any person to whom a duty of support is owed.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 304 - Remedies Additional**

The remedies herein provided are in addition to and not in substitution for any other remedies.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 305 - Duty of Support**

The duty of support imposed by laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in § 308 and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 306 - Demanding Surrender; Extradition Provisions Applicable**

- (a) The Tribal Council of the Grand Traverse Band may:
- (1) demand from the governor of any other state or the Tribal Council of any other federally-recognized Indian tribe the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state; and
  - (2) surrender on demand by the governor of any other state or Tribal Council of any federally-recognized Indian tribe any person found in this state who is charged in such other jurisdiction with the crime of failing to provide for the support of a person.
    - (A) The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand, although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom.
    - (B) Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other state.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 307 - Relieved of Extradition**

Any obligor contemplated by § 306 who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or non-support in the courts of this state during the period of such compliance.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 308 - Duties of Support Enforceable, Presumption**

- (a) Duties of support enforceable under this ordinance are those imposed or imposable under the laws of the any state where the alleged obligor was present during the period for which support is sought.

- (b) The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 309 - Reimbursement of Expenditures**

Whenever the state or a political subdivision thereof has furnished or is furnishing support to an obligee, it shall have the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 310 - Jurisdiction; Petition**

- (a) Jurisdiction of all proceedings hereunder shall be vested in the Grand Traverse Band Tribal Court. Proceedings for support hereunder may be initiated by petition filed in the Tribal Court of the Grand Traverse Band irrespective of the relationship between obligor and obligee.
- (1) In all instances in which a public support burden has been incurred or is threatened, it shall be the duty of the prosecuting attorney to represent the petitioner in initiating and conducting proceedings under this ordinance; provided, that the petitioner may be represented in any proceedings by private counsel, at his own expense.
  - (2) Payments made to Grand Traverse Band Tribal members, wherever they may reside, from per capita distributions shall be subject to attachment under this ordinance.
  - (3) County Friend of the Court offices shall be recognized as initiating parties under this section.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 311 - Petition; Verification; Contents; Information; Filing**

- (a) The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information.
- (b) The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent, including, but without limitation, by enumeration, a

photograph of the respondent, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, tribal enrollment number or social security number.

- (c) All petitions filed in accordance with this ordinance shall be filed by the clerk of the court as a miscellaneous matter.
- (d) A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without permission as next friend.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 312 - Petition; Copy to Court of Responding State; Forwarding and Filing**

- (a) If the Tribal Court of the Grand Traverse Band, acting as an initiating state, finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding state may obtain jurisdiction of the respondent or his property, he shall so certify and shall cause three (3) copies of the petition, the court's certificate and this ordinance, to be transmitted to the court in the responding state within the jurisdiction of which the respondent is alleged to reside or be present.
  - (1) If the name or address of such court is unknown, or if the respondent is no longer within the jurisdiction of the named court and the responding state has an information agency comparable to that established in the initiating state, such copies may be transmitted to the state information agency or other proper official of the responding state with request that it forward them to, and file them with, the proper court, and that such court acknowledge the receipt thereof to the initiating state.
  - (2) If the responding state is a foreign state, such copies shall be transmitted to the state department of social welfare for transmittal to the proper court of the responding state after determination concerning the statutes of reciprocity.
- (b) When the Tribal Court of the Grand Traverse Band, acting either as an initiating or responding state, has reason to believe that the respondent may flee the jurisdiction, it may:
  - (1) as an initiating state, request in its certificate that the court of the responding state obtain the body of the respondent by appropriate process if that be permissible under the law of the responding state; or
  - (2) as a responding state, obtain the body of the respondent by appropriate process.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 313 - Duty of Court**

- (a) When the Tribal Court of the Grand Traverse Band, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall:
- (1) docket the cause;
  - (2) notify the prosecuting attorney of the country, who shall be thereby charged with the duty of carrying on the proceedings;
  - (3) set a time and place for a hearing; and
  - (4) take such action as is necessary in accordance with the laws of this state to obtain jurisdiction.
- (b) If the Tribal Court of the Grand Traverse Band, acting as a responding state, is unable to obtain jurisdiction of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state. If the respondent has been located in some other county of this state it shall not be necessary to obtain and amended petition but the original petition shall be forwarded to the circuit court in chancery of the county where the respondent has been located which court shall have jurisdiction regardless of the language of the petition.
- (c) The court shall conduct proceedings under this ordinance in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 314 - Order to Furnish Support**

If the court of the responding state finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

**§ 315 - Orders Transmitted to Court of Initiating State**

The Tribal Court of the Grand Traverse Band, when acting as a responding state, shall cause to be transmitted to the court of the initiating state a copy of all orders of support or orders for reimbursement therefor.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### § 316 - Additional Powers of Court

- (a) In addition to the foregoing powers, the Tribal Court of the Grand Traverse Band when acting as the responding state has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:
- (1) **Recognizance.** To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the Court may deem proper to assure payment of any amount required to be paid by the respondent.
  - (2) **Payment; Report.** To require the respondent to make payments at specified intervals to the clerk of the court or the friend of the court, as specified in the order, and to report personally to such clerk or friend of the court at such times as may be deemed necessary and as required by such order.
  - (3) **Contempt; Punishment.** To punish the respondent who fails and refuses to obey and comply with the order of the court, having sufficient ability to comply, such punishment shall be imposed by the Court as a contempt of court, placing the respondent on probation or committing the respondent to jail for such period as said respondent shall continue to be in contempt, not to exceed one (1) year.
- (b) The Court may also order an assignment to the friend of the court of the salary, wages or other income of the person responsible for the payment of support and maintenance, which assignment shall continue until further order of the court.
- (1) The order of assignment shall be effective one (1) week after service upon the employer of a true copy of the order by personal service or by certified mail. Thereafter, the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the friend of the court until further order of the court.
  - (2) The person ordered to pay the support and maintenance shall inform the friend of the court immediately of any change which would affect the assignment of the disbursement thereof.
  - (3) An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee.
  - (4) Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected.
  - (5) The term "employer" as used in this section includes the state and any political subdivision thereof.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 317 - Duties of Court When Acting as Responding State**

The Tribal Court of the Grand Traverse Band, when acting as a responding state, shall have the following duties which may be carried out through the clerk of the court or the friend of the court, in counties having a friend of the court:

- (a) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state; and
- (b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the respondent.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 318 - Duties of Court When Acting as Initiating State; Receipt and Disbursement of Payments**

The Tribal Court of the Grand Traverse Band, when acting as an initiating state, shall have the duty which may be carried out through the clerk of the court or the friend of the court, in counties having a friend of the court, to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding state.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 319 - Husband and Wife Competent Witnesses**

Husband and wife are competent witnesses (and may be compelled) to testify to any relevant matter in connection herewith.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 320 - Orders of Support; Concurrent Jurisdiction**

- (a) Any order of support issued by a court of this state when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

- (b) Every circuit court in chancery of this state shall have concurrent jurisdiction with the court issuing an order of support under this ordinance for the purpose of enforcing the order.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 321 - Jurisdiction Not Conferred**

Participation in any proceedings under this ordinance shall not confer upon any court jurisdiction of any of the parties thereto in any other proceedings.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 322 - Foreign State, Declaration of Reciprocity; Revocation**

- (a) Where the social welfare commission is satisfied that reciprocal provisions will be made by any foreign state for the enforcement therein of maintenance orders made with this state, the social welfare commission, with the approval of the attorney general, may declare the foreign state to be a reciprocating state for the purpose of this ordinance.
- (b) Any such order may be revoked by the social welfare commission, and thereupon the state with respect to which the order was made shall cease to be a reciprocating state for the purposes of this ordinance.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 323 - Severability**

If any section or provision of this ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of this ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

### **§ 324 - Amendment or Repeal of this Ordinance**

This ordinance may be amended or repealed only by majority vote of the Tribal Council of the Grand Traverse Band in regular session.

History: Uniform Reciprocal Enforcement of Support Ordinance, adopted by motion by Tribal Council on December 20, 1994.

#### **Chapter 4 - Juvenile Code Revisited**

##### **§ 401 - Purpose of the Code**

The Grand Traverse Band of Ottawa and Chippewa Indians, referred to in this Code as “the Tribe,” has determined that children are the Tribe’s most valuable resource, and that the welfare of Tribal children is a vital concern of the Tribe;

- (a) It is essential that Tribal resources, identity, and culture be preserved by providing for enhancement and strengthening of the family as the primary means of securing a vital Tribal community;
- (b) The best interests of the Tribe and its children are served when the children of the Tribe receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; all of which will prepare them to become contributing members of the Tribe;
- (c) When problems involving Tribal children arise, the Tribal Court, with advice from Anishinaabek Family Services on neglect and abuse cases and the Tribal juvenile justice officer and/or the juvenile probation officer on juvenile offender matters, is best able to resolve the problems and provide Tribal children with the care and guidance that is necessary for their well-being;
- (d) Tribal Court, whenever practical, is preferable to state court for consideration of matters involving Tribal children;
- (e) When problems involving Tribal children arise and the Court must make a placement outside of the home, the best interests of the Tribe and its children are served by providing for their care and placement in an environment which will ensure that Tribal children receive the care and guidance necessary for their spiritual, emotional, mental, and physical development; and
- (f) When problems involving Tribal children arise, the best interests of the community are served if Tribal Court has jurisdiction over all persons in the family or household who are a part of the problem, and/or the solution.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #02-20.1147, as enacted by Tribal Council in Special Session on August 28, 2002; and by Tribal Council motion, enacted December 20, 2017.

##### **§ 402 - Definitions**

- (a) For purposes of this Code, the following definitions shall apply:
  - (1) Adult - A person eighteen (18) years of age or older.

- (2) Advocate - A lay person permitted to represent a juvenile offender by the Tribal Court who has received training provided by the Tribal Court.
- (3) Complaint - A formal or informal report to the prosecuting attorney containing allegations indicating that a juvenile under the jurisdiction of the Tribal Court has committed a delinquent act.
- (4) Counsel - An attorney licensed by any state to practice law and admitted to practice in Tribal Court who, as an officer of the Court, provides legal assistance to any party during the course of any proceeding under this Code.
- (5) Custodian - One who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.
- (6) Delinquent Act - Any act or omission by a juvenile that is:
  - (A) A violation of the Grand Traverse Band Criminal Code;
  - (B) A failure to follow the lawful commands of parent(s), guardians, custodians, teachers, and administrators;
  - (C) Truancy as defined by the school in which the juvenile is enrolled or should lawfully be enrolled; or
- (7) Detention - The placement of a juvenile in a physically restrictive facility.
- (8) Guardian - A person other than the juvenile's parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile.
- (9) Juvenile - A person under eighteen (18) years of age. The prosecutor shall have the discretion to charge any juvenile who is seventeen (17) years of age as an adult.
- (10) Juvenile Offender - A person who commits a delinquent act prior to his or her eighteenth (18<sup>th</sup>) birthday.
- (11) Least Restrictive Alternative - Restrictions placed on the juvenile must be reasonably related to the Court's objective of correcting the delinquent behavior, and must be the least intrusive manner of achieving that objective.
- (12) Notice - The method by which the Court informs the parties, counsel, and others of the time, and place of proceedings to be conducted by the Court.
- (13) Petition - The instrument, which commences proceedings in the Court.
- (14) Summons - The instrument with which the Court directs a party to appear before the Court.

- (15) Tribal Land - Land held in trust for the benefit of the Tribe by the United States; any land in which the Tribe has a beneficial ownership interest, and all lands designated as Indian Country in 18 U.S.C. 1151.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

### § 403 - Jurisdiction and Court Authority

- (a) Statement of Jurisdiction. The Tribal Court shall have jurisdiction over juvenile offender proceedings, if the juvenile is:
- (1) A member of the Tribe and
    - (A) The alleged offense occurred on Tribal land; or
    - (B) The juvenile's primary residence is on Tribal lands and the juvenile commits an offense while on a Tribally sponsored trip off Tribal lands; or
    - (C) Unless and until the Court transfers jurisdiction to the Adult Division of the Court, pursuant to § 414 of this Code; or
  - (2) Not eligible for membership in the Tribe but whose primary residence is on Tribal land and the alleged offense occurred on Tribal land or on a Tribally sponsored trip off Tribal land.
- (b) Transfers From State Courts. The Tribal Court may accept transfers of cases from state courts if the alleged juvenile offender is a Tribal member and resides on Tribal lands.
- (c) Transfers To State Courts. Upon the request of a parent or guardian, the Tribal Court may transfer a case to a state court if the alleged offense occurred on Tribal land, the alleged juvenile offender is a member of the Tribe or is eligible for Tribal membership, and the state court is willing to accept transfer.
- (d) Community Problem. The Tribal Court shall have jurisdiction over all members of the family or household who are a part of the problem or who may be a part of the solution to the problem.
- (e) Adjudication Classification. No adjudication of the status of any child under the jurisdiction of the Court shall be deemed criminal, unless the Court refers the matter to the Adult Division of Court.
- (f) Closed Proceedings. Juvenile proceedings shall be closed to the general public to protect the privacy interests of the parties. Disposition of any juvenile proceeding, and evidence presented at such proceedings, shall not be admissible as evidence against the child in any other proceeding heard by another division of the Tribal Court system, except when the evidence is discovered by independent means.

- (g) Authority to Cooperate. The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this code and may order any such non-tribal agency to be included in as interested parties in proceedings under this code.
- (h) Least Restrictive Alternative. The least restrictive alternative applies to all disposition actions taken by the Court under this Code.
- (i) Court Records.
  - (1) A record of all hearings under this Code shall be made and preserved.
  - (2) All Court records shall be confidential, and shall only be open to inspection by the following:
    - (A) The juvenile or his legal representative or advocate;
    - (B) The juvenile's parent(s), guardian, custodians, or their legal representatives or advocates.
    - (C) The Prosecuting Attorney.
    - (D) The Tribal Youth Intervention Specialist.
    - (E) Under 402(a)(6)(C), the Prosecuting Attorney and/or the Tribal Youth Intervention Specialist (or the designee of either) may coordinate with the school in which the juvenile is enrolled or should be enrolled and share information contained in court records sufficient to permit that school to provide intervention or services to the juvenile.
    - (F) A non-tribal agency pursuant to order of the court.
- (j) Law Enforcement Records.
  - (1) Law enforcement records and files concerning juveniles shall be kept separate from records and files of adults.
  - (2) All law enforcement records and files shall be confidential, and shall only be open to inspection by the following:
    - (A) The juvenile or his legal representative or advocate;
    - (B) The juvenile's parent(s), guardian, custodian, or their legal representative or advocate;
    - (C) The Tribal Prosecutor, who in actions under 402(a)(6)(C), may coordinate with law enforcement local to the school in which the juvenile is or should

be enrolled to permit an investigation into a complaint against the juvenile's parent(s), guardian, or custodian, provided that such information disclosed shall not be used to prosecute the juvenile for any offense unless gathered independently;

- (D) The Tribal Juvenile Justice Officer;
  - (E) The Tribal Youth Intervention Specialist;
  - (F) The Tribal Probation Officer.
- (k) Expungement. When a juvenile who has been the subject of any proceeding before the Court, other than those delinquency adjudications related to sexual offenses that count as convictions and require the offender to be registered as a sex offender as described in Section 42 U.S.C. § 16911(8), or in proceedings in which the juvenile has been tried as an adult under 10 GTBC § 414 and convicted, attains his or her twenty-first (21st) birthday, the Court shall destroy both the Court and law enforcement records relating to that juvenile.
- (l) Contempt of Court.
- (1) Willful disobedience of, or willful interference with, an order of the Court constitutes contempt of court.
  - (2) The Court may punish an adult for contempt of court with a fine not to exceed five hundred dollars (\$500.00), a jail term not to exceed thirty (30) days, or both.
  - (3) A juvenile may be punished for contempt of court with extension of probation, additional probation conditions, a fine not to exceed three hundred dollars (\$300.00), a jail term or detention not to exceed one (1) week or any combination thereof.
- (m) Medical Examination. The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.
- (n) Fingerprints. If latent fingerprints are found during the investigation of a offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint the juvenile for the purpose of immediate comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a petition is not filed against the juvenile.

- (o) Appeal.
  - (1) For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent(s), guardian, custodian or legal representative. The party seeking the appeal shall pay costs of obtaining this record.
  - (2) Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within twenty-eight (28) days of the final order of disposition.
  - (3) All appeals shall be conducted in accordance with applicable Tribal Codes and Court Rules.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; as amended by Tribal Act #08-26.1987, enacted by Tribal Council on December 17, 2008; ; and by Tribal Council motion, enacted December 20, 2017.

#### **§ 404 - Procedural Rights: Notice Requirements**

- (a) The notice and procedural rights listed in this Chapter shall be afforded parties in each of the following proceedings:
  - (1) Preliminary Hearing (§ 413).
  - (2) Transfer to Adult Division of Tribal Court (§ 414).
  - (3) Diversion (§ 415).
  - (4) Trial (§ 416).
  - (5) Disposition Hearing (§ 419).

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

#### **§ 405 - Notice**

- (a) Notice of proceedings shall be given to:
  - (1) The juvenile.
  - (2) The juvenile's parent(s), guardian, custodian, or legal representative.
  - (3) All legal counsel of record.
  - (4) The Tribal Youth Intervention Specialist.

- (b) Notice shall be given when a time for the proceedings has been established; provided at least ten (10) days is given before any non-preliminary hearing except in cases of emergency; provided further that notice is given as soon as possible in the case of preliminary hearings or in the event of an emergency.
- (c) The notice shall contain:
- (1) The name of the Court;
  - (2) The title of the proceeding;
  - (3) A brief statement of the substance of the allegations against the juvenile;
  - (4) The date, time, and place of the proceeding; and
  - (5) A statement of the right to counsel, as set forth in § 407(a) of this Code.
- (d) The notice shall be served in the following methods, if the Tribal Court feels it would be likely to provide actual notice to the party.
- (1) Hand delivery to the person, by a Tribal law enforcement officer or appointee of the Court;
  - (2) Certified mail, if the summons cannot be served upon the person; or
  - (3) By the following method(s), if the Tribal Court feels it would be likely to provide actual notice to the party:
    - (A) Service upon relatives, neighbors, friends, or others who are likely to know the party's whereabouts. If the person, who receives the summons, denies knowledge of the party's whereabouts, such service shall not be deemed adequate;
    - (B) Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
    - (C) Service by legal notice in a daily newspaper in the county of respondent's last known residence for a three- (3-) day period, the last day of which is at least ten (10) days prior to the hearing; and by posting the legal notice at the Tribal center.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

**§ 406 - Summons**

- (a) At least ten (10) days prior to a trial or disposition hearing, the Court shall issue summons to:
- (1) The juvenile;
  - (2) The juvenile's parent(s), guardian, legal representative, or custodian;
  - (3) Any person the Court believes necessary for proper adjudication of the matter(s) before the Court; and
  - (4) Any person the juvenile believes necessary for proper adjudication of the matter(s) before the Court; subject to the Court's discretion.
- (b) The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
- (c) A copy of the petition shall be attached to the summons. The summons shall be served in the following order of preference:
- (1) Hand delivery to the person, by a Tribal law enforcement officer or appointee of the Court;
  - (2) Certified mail, if the summons cannot be served upon the person; or
  - (3) By the following method(s), if the Tribal Court feels it would be likely to provide actual notice to the party:
    - (A) Service upon relatives, neighbors, friends, or others who are likely to know the party's whereabouts. If the person, who receives the summons, denies knowledge of the party's whereabouts, such service shall not be deemed adequate;
    - (B) Service by legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal center; or
    - (C) Service by legal notice in a daily newspaper in the county of respondent's last known residence for a three- (3-) day period, the last day of which is at least ten (10) days prior to the hearing; and by posting the legal notice at the Tribal center.
- (d) A person who has been issued a summons, who has received notice of hearing, and who fails to appear at the hearing, shall be held in contempt of court, unless good cause is shown why that person did not appear.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 407 - Rights of Parties**

- (a) Right to Counsel:
- (1) The judge shall inform the juvenile and the juvenile's parent(s), guardian, legal representative or custodian of their right to retain counsel by reading the following statement: "you have a right to have a lawyer or other person represent you at this hearing. However, you or your family must pay any fees for such representation."
  - (2) If the parties are unable to pay for counsel, the judge shall make known to them any available services providing representation of which the judge is aware.
  - (3) If the parties appear at the hearing without counsel, the judge, after informing the parties of their right to counsel and the availability of legal representation, may grant a continuance, if they need additional time to seek counsel.
- (b) The juvenile need not be a witness against, nor otherwise incriminate him/herself.
- (c) A parent, guardian, or custodian may not be compelled to give testimony against him/herself or against the juvenile, consistent with Section 1(d), Article X of the Tribal Constitution.
- (d) The Court shall give the juvenile, the juvenile's parent(s), legal representative, or custodian the opportunity to introduce evidence, to be heard on their own behalf, and to examine all witnesses.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 408 - Juvenile Offender Procedure**

- (a) Complaint. A complaint may be filed with the Tribal Prosecutor by a law enforcement officer or by a person who has knowledge of the facts alleged. The person who files the complaint shall sign the complaint, under oath. The complaint shall contain:
- (1) Name, age, date of birth, address, name of custodial parent or guardian, tribal affiliation, tribal ID # if applicable;
  - (2) A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
  - (3) A list of witnesses known to the person who files the complaint.
- (b) Petition. Proceedings under this Code shall commence upon the filing of a petition by the Tribal Prosecutor on behalf of the Tribe. The petition shall include:
- (1) The name, birth date, address, tribal affiliation and ID # if applicable.

- (2) The names and addresses of the juvenile's parent(s), guardians, or custodian;
- (3) Citation to the specific provision(s) of this Code which gives the Court jurisdiction of the proceedings;
- (4) Citation to the Tribal Criminal Code provision(s) which the minor is alleged to have violated;
- (5) If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
- (6) A statement of the facts which brings the juvenile within the jurisdiction of the Court; and
- (7) A list of witnesses known to the tribe upon filing of the petition.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

#### **§ 409 - Warrant**

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

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

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

#### **§ 410 - Custody**

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

- (a) The officer has reasonable cause to believe that a delinquent act has been committed and that the juvenile has committed the delinquent act; or
- (b) A warrant pursuant to § 409 of this Code has been issued for the juvenile.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 411 - Law Enforcement Officer's Duties**

A law enforcement officer who takes a juvenile into custody, pursuant to § 410 of this Code, shall proceed as follows:

- (a) Explain the following rights to any juvenile taken into custody prior to questioning:
  - (1) The juvenile has a right to remain silent;
  - (2) Anything the juvenile says can be used against the juvenile in court; and
  - (3) The juvenile has the right to the presence of an attorney or advocate during questioning.
- (b) Release the juvenile to the juvenile's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
  - (1) The juvenile is in danger of injury;
  - (2) The juvenile is under the influence of alcohol or controlled substances; or
  - (3) The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.
- (c) If the juvenile is not released, an officer shall make immediate and recurring efforts to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken into custody and inform them of their right to be present with the juvenile until a determination of the need for shelter care or detention is made by the Juvenile Justice Officer or the Juvenile Probation Officer.
- (d) If the juvenile is not released, the juvenile shall be taken, as soon as is practical, to the tribe's Juvenile Justice Officer or Juvenile Probation Officer for assistance with placement in detention or shelter.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 412 - Detention and Shelter Care**

- (a) A juvenile alleged to be a juvenile offender may be detained pending a court hearing, in any of the following locations, listed in order of preference:
  - (1) A foster care home on the reservation that has been approved by GTB Department of Human Services;
  - (2) A foster care facility on the reservation that has been approved by the GTB Department of Human Services;

- (3) A private family home on the reservation that has been approved by the GTB Department of Human Services;
  - (4) A licensed foster care home off the reservation that has been approved by the Tribe;
  - (5) A licensed foster care facility off the reservation that has been approved by the Tribe;
  - (6) A private family home off the reservation that has been approved by the Tribe; or
  - (7) An approved detention facility within the State of Michigan.
- (b) A juvenile who is sixteen (16) years of age or older may be detained in a jail or other licensed detention facility, used for the detention of adults only if:
- (1) A facility in § 412(a) is not available or would not assure adequate supervision of the juvenile;
  - (2) Detention is in a cell separate from adults; and
  - (3) Adequate supervision is provided twenty-four (24) hours a day.
- (c) A juvenile who is sixteen (16) years of age or older may also be detained in a jail or other licensed detention facility used for the detention of adults if that juvenile is intoxicated, provided that:
- (1) A foster care or juvenile detention facility is not immediately available or is not equipped to hold/supervise the intoxicated juvenile; and
  - (2) Detention is in a cell separate from adults; and
  - (3) The juvenile is released as soon as he or she is sober, unless further detention under § 411(b) is warranted.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

### **§ 413 - Preliminary Hearing**

- (a) If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within ten (10) days of the filing of the petition for the sole purpose to determine whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).
- (b) If a juvenile is placed in custody, detention or shelter care, the Court shall conduct a preliminary hearing within seventy-two (72) hours of the placement for the purpose of determining:

- (1) Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and
  - (2) Whether continued detention or shelter care is necessary pending further proceedings.
- (c) If the juvenile's parent(s), guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian. If it appears that further efforts are likely to produce the appearance of the juvenile's parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the tribal prosecutor to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian. If it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the juvenile during the pendency of the juvenile offender proceedings, the Court shall appoint legal counsel to serve until adjudication and disposition of the petition.
- (d) The Court shall hear testimony concerning:
- (1) The circumstances that gave rise to the petition and/or the taking of the juvenile into custody; and
  - (2) The need for detention or shelter care.
- (e) If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act, the juvenile shall be ordered to appear at a trial on a date and at a time set by the Court. The juvenile shall be released to his/her parent(s), guardian, or custodian unless the alleged act is serious enough to warrant detention or shelter care and:
- (1) There is reasonable cause to believe that the juvenile will run away and/or be unavailable for further proceedings; or
  - (2) There is a reasonable cause to believe that the juvenile will commit a serious act causing damage to person(s) or property.
- (f) If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on the release which may include but are not limited to: the posting of a bond; electronic monitoring; house arrest; travel restrictions; mandatory attendance at school; no contact with named individuals; banishment from Tribal programs or Tribal property.
- (g) The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. If the juvenile is fourteen (14) years of age or older, the juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release.

- (h) If the Court finds that probable cause exists to believe that the juvenile committed the alleged delinquent act and there is a need for detention or shelter care, the juvenile's detention or shelter care shall be continued. The Court shall consider recommendations prepared by the Tribe's juvenile justice officer or the Tribe's juvenile probation officer.
- (i) If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

#### **§ 414 - Transfer to the Adult Division of Tribal Court**

- (a) If the juvenile is seventeen (17) years of age at the time of the alleged delinquent act, the prosecutor shall have the option of filing the action as a juvenile offender proceeding or as an adult criminal matter. If the juvenile is between the ages of fourteen (14) and sixteen (16) and is alleged to have committed an act that would have been considered a crime if committed by an adult, the prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Court.
- (b) The Court shall conduct a hearing to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Court.
  - (1) The transfer hearing shall not be held more than ten (10) days after the petition is filed.
  - (2) Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent(s), guardian, or custodian and legal representative or counsel at least seventy-two (72) hours prior to the hearing.
- (c) Prior to the hearing, the Tribe's juvenile probation officer shall be responsible for an investigation and the preparation of a written report to be submitted to the Court.
- (d) The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Court:
  - (1) The nature and seriousness of the offense allegedly committed by the juvenile; and
  - (2) The juvenile's age, mental and physical condition, past record of offenses, and responses to previous Court efforts at rehabilitation.
- (e) The Court may transfer jurisdiction of the juvenile to the Adult Division of the Court if the Court finds clear and convincing evidence that both of the following circumstances exist:
  - (1) There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
  - (2) The alleged offense is serious and constitutes a substantial danger to the public.

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

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

### § 415 - Diversion

- (a) The Tribal prosecutor, with the concurrence of the Tribe's juvenile probation officer, and the Peacemaker coordinator, may choose to divert the juvenile rather than initiate a juvenile offender proceeding.
- (b) The Tribal prosecutor, the Tribal juvenile probation officer, and the Peacemaker coordinator may hold an informal conference with the juvenile and the juvenile's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:
- (1) The admitted facts bring the case within the jurisdiction of the Court;
  - (2) A diversion of the matter would be in the best interests of the juvenile and the Tribe; and
  - (3) The juvenile's parent(s), guardian or custodian voluntarily consent to the diversion conference after they have received an explanation of their rights.
- (c) This Section does not authorize the Tribal prosecutor to compel involuntary action of the parties involved.
- (d) The Tribal prosecutor, with the concurrence of the juvenile probation officer and the Peacemaker coordinator, shall set forth in writing the conference findings and the disposition agreed to by the parties.
- (e) Any disposition arranged through the diversion procedure of this Section shall be concluded within six (6) months unless an extension is agreed to by all parties.
- (f) The Tribe's juvenile probation officer shall monitor the progress of the juvenile. If at any time after thirty (30) days the juvenile probation officer concludes that positive results are not being achieved, the juvenile probation officer shall recommend that the presenting officer file a petition pursuant to § 408(b) of this Code.
- (g) No statement made during the diversion process may later be admitted into evidence at a trial or any other proceeding against the juvenile under this Code.
- (h) Upon successful completion of the diversion, the Tribe's juvenile probation officer will notify the Tribal prosecutor and no further action will be required.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 416 - Trial**

The Court shall conduct a bench trial for the sole purpose of determining the guilt or innocence of a juvenile. Such trial shall be closed to the public.

- (a) If the juvenile admits the allegations of the petition, the Court shall proceed to the disposition hearing only if the Court finds:
  - (1) The juvenile fully understands his/her rights as set forth in § 407 of this Code and fully understands the potential consequences of his/her admission(s);
  - (2) The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction; and
  - (3) The juvenile has not, in his/her admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- (b) The Court shall hear testimony concerning the circumstances which give rise to the petition.
- (c) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find that the juvenile is a juvenile offender and schedule a disposition hearing.
- (d) A finding that the juvenile is a juvenile offender shall constitute a final order for purposes of appeal.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

**§ 417 - Trial Continuances**

Continuances of a trial may be granted upon:

- (a) Motion of the juvenile for good cause shown;
- (b) Motion of the Tribal prosecutor that material evidence or witnesses are unavailable, a finding by the Court that the Tribal prosecutor has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear; or
- (c) Order of the Court during a period of diversion under § 415 of this code.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

**§ 418 - Predisposition Report**

- (a) The juvenile probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the juvenile, designed to resolve the problems presented in the petition.
- (b) The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the juvenile.
- (c) Preference shall be given to the disposition alternatives which are listed in § 420. The alternative least restrictive of the juvenile's freedom, consistent with the interests of the Tribe, shall be selected.
- (d) If the report recommends placement of the juvenile somewhere other than with the juvenile's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
- (e) The juvenile probation officer shall present the predisposition report to the Court, the juvenile's representative, and the Tribal prosecutor at least three (3) days before the disposition hearing.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 419 - Disposition Hearing**

- (a) A disposition hearing shall take place not more than twenty-one (21) days after the trial or after the admission of responsibility at the preliminary hearing.
- (b) The Court shall take testimony and receive evidence concerning proper disposition at the hearing.
- (c) The Court shall consider the predisposition report submitted by the Tribe's juvenile probation officer. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. The Court shall also consider the alternative predisposition report prepared by the juvenile or the juvenile's legal representative.
- (d) The disposition order constitutes a final order for purposes of appeal.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

**§ 420 - Disposition Alternatives**

If a juvenile has been found to be a juvenile offender, the Court may make the following disposition for any term until the juvenile reaches the age of nineteen (19):

- (a) Place the juvenile on probation subject to conditions set by the Court;
- (b) Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court;
- (c) Order the juvenile to perform community service work at the direction of the juvenile probation officer;
- (d) Order the juvenile to pay restitution, including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the minor's per capita trust to provide restitution upon the motion of the Tribal prosecutor or an aggrieved party based upon proper proofs offered at an evidentiary hearing;
- (e) Order any other measure the Court deems necessary and proper to correct the behavior of the juvenile offender and to insure the safety of the community.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

#### **§ 421 - Modification of Disposition Order**

- (a) A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may modify a disposition order at any time, upon motion of the following:
  - (1) The juvenile;
  - (2) The juvenile's parent(s), guardian, or custodian;
  - (3) The Tribal prosecutor; or
  - (4) The Tribal juvenile probation officer.
- (b) If the modification involves a change of custody, the Court shall conduct a hearing to review its disposition order as follows:
  - (1) The Court shall review the performance of the juvenile, the juvenile's parent(s), guardian, or custodian; and review the reports of the prosecutor and other persons providing assistance to the juvenile and the juvenile's family;
  - (2) If the request for review of disposition is based upon an alleged violation of a court order, the Court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999.

**§ 422 - Parental responsibility**

An Indian Tribe, a department of an Indian Tribe, a municipal corporation, county, township, village, school district, a state, a department of a state, person, partnership, corporation, association, or an incorporated or an unincorporated religious organization may recover damages in an amount not to exceed fifteen thousand dollars (\$15,000.00) in a civil action in Tribal Court against the parents or parent of an unemancipated minor, living with his or her parents or parent, who has maliciously or willfully destroyed real, personal, or mixed property which belongs to an Indian Tribe, a department of an Indian Tribe, a municipal corporation, county, township, village, school district, a state, a department of a state, person, partnership, corporation, association, or religious organization, incorporated or unincorporated, or who has maliciously or willfully caused bodily harm or injury to a person, property, or an animal.

History: Juvenile Code, adopted by Tribal Council in Special Session on January 13, 1999; as amended by Tribal Council October 1, 1999; and by Tribal Council motion, enacted December 20, 2017.

**Chapter 5 - GTB Family Code****§ 501 - Definitions**

- (a) “Alimony” is monetary support which one (1) spouse pays the other spouse for maintenance while they are separated or after they are divorced.
- (b) “Annulment” means the legal separation of man and wife because it is established that a marital status never existed.
- (c) “Divorce” means the legal separation of man and wife, totally dissolving the marriage relation, effected by the judgment or decree of the court.
- (d) “Emancipation” means termination of the rights of the parents to the custody, control, services and earnings of a minor.
- (e) “Marriage” means the legal union of one (1) man and one (1) woman as husband and wife for life or until divorced.
- (f) “Minor” means a person under the age of eighteen (18) years.
- (g) “Parents” means natural parents, if married prior or subsequent to the minor’s birth; adopting parents, if the minor has been legally adopted; the mother, if the minor is illegitimate; the child’s reputed blood parent who has expressly acknowledged paternity and makes a meaningful contribution to support the child; or a guardian by judicial decree.
- (h) A “Traditional Indian Marriage” means a marriage performed by an Indian person who claims the authority to solemnize and formalize marriages between Indian persons in accordance with commonly accepted Indian customs and traditions of any recognized Indian Tribe by accepted Indian customs and traditions of any recognized Indian Tribe by virtue of such person’s status as a medicine man or Indian spiritual leader.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 502 - Service of Process; Hearings**

- (a) Service of all process required by this chapter shall be governed by § \_\_\_ through § \_\_\_ of the GTB Civil Code. A “return” shall be filed with the court in compliance with § \_\_\_ of the GTB Civil Code.
- (b) When service of papers cannot reasonably be made, a party cannot be found, or for any other good cause, the court, on ex-parte application, may direct the manner and on whom service may be made.
- (c) Once a “return” has been filed with the court evidencing proper service, all further pleadings and notices involving the action may be served by first class mail to the address of the person stated on the pleadings or, if none, to the last known address of the affected person.
- (d) All hearings required by this code shall be held before a Tribal Court Judge sitting without a jury.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 503 - Marriage; Statement of Purpose**

The Grand Traverse Band of Ottawa and Chippewa Indians is committed to the promotion of legal marriages that are deemed to create stable family relationships and promote a positive moral climate on the Reservation.



History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

#### **§ 504 - Qualifications to Perform Marriages**

- (a) It is the express policy of the Grand Traverse Band of Ottawa and Chippewa Indians to recognize traditional marriages provided that the person who has been designated to solemnize or formalize the marriage is a member of the Grand Traverse Band recognized as a medicine man or traditional spiritual leader by a significant number of Indian persons and provided further, that such person shall be recognized by resolution of the Grand Traverse Band Tribal Council as being a medicine man or traditional spiritual Indian leader. Other persons recognized as a medicine man, traditional spiritual leader or other such equivalent designation by another governing body of a federally recognized tribe or by order of another tribal court of a federally recognized tribe shall be recognized as such by the Tribal Council. The Tribal Council may maintain a registry of those qualified to perform marriages.
- (b) The following persons shall be qualified to perform marriages under this Code:
  - (1) Any person having the authority to perform marriages under Michigan law;
  - (2) A medicine man or traditional spiritual leader as defined in Subsection (a) above;
  - (3) A Tribal Judge of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court; and
  - (4) A Tribal Judge of a Court of another federally recognized Tribe who is authorized by Tribal law to perform marriages; and
  - (5) The Tribal Chairperson of the Grand Traverse Band of Ottawa and Chippewa Indians or other Tribal Chairpersons of federally recognized tribes.
- (c) All persons qualified to perform marriages pursuant to Subsections (a) and (b) of this section must obtain a license to perform marriages from the Tribal Council. A license shall only be valid two (2) years from the date of issuance by the Tribal Council. A license shall be renewable only by motion of the Tribal Council. The Tribal Council reserves the right to charge a fee for each license upon motion of the Tribal Council.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; amended by Tribal Council on October 19, 1999; amended by Tribal Act #02-20.1137, enacted by Tribal Council in Special Session on July 31, 2002; and amended by Tribal Act #07-25.1838, enacted by Tribal Council on August 15, 2007.

#### **§ 505 - Recognition of Marriages**

- (a) The Grand Traverse Band of Ottawa and Chippewa Indians shall recognize as a valid and binding marriage any marriage between a man and a woman, formalized or solemnized in

compliance with the laws of the jurisdiction in which such marriage was formalized or solemnized.

- (b) Recognition may come about on the Court's own motion or upon the motion of any other person, and such order of recognition shall not be unreasonably withheld.
- (c) An order denying recognition shall be appealable in the same fashion and manner as any other order of the Court.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 506 - Marriage Between Indian Persons; License Required; Qualifications; Location**

- (a) Parties may not be married under this Code unless they obtain a valid marriage license issued by the Tribe or the State of Michigan.
- (b) A Tribal Court Judge or Tribal Court Clerk shall have the power to issue a marriage license where at least one (1) of the parties is a Native American man or woman, whether or not they are enrolled Tribal members.
- (c) Marriage licenses shall be issued within three (3) days of application following:
  - (1) Completion of an application prescribed by the Tribal Court;
  - (2) Payment of a license fee set by the Tribal Court; and
  - (3) Verification that at least one (1) party to the proposed marriage is a Native American.
- (d) Marriage licenses shall be effective for thirty (30) days from the date of issuance.
- (e) All requirements that the State of Michigan imposes on individuals to entitle them to marry within its jurisdiction are hereby adopted. Those seeking to be married:
  - (1) Must be at least eighteen (18) years of age, or be at least sixteen (16) years of age with the consent of their custodial parent(s) or legal guardian(s);
  - (2) Must freely consent to the marriage;
  - (3) Must have the mental capacity to marry;
  - (4) Must not have an existing spouse;
  - (5) Must not be blood relatives to each other in any of the following degrees:
    - (A) Parent and child;

- (B) Grandparent and grandchild;
  - (C) Brother and sister, or half-brother and half-sister;
  - (D) Aunt and nephew, or uncle and niece; or
  - (E) Cousins in the first degree; and
- (6) Persons wishing to be married must each undergo a counseling session of AIDS and communicable diseases.
- (f) A marriage performed pursuant to a tribal license by one (1) authorized to solemnize a marriage as herein provided may be performed at any location within the exterior boundaries of the Grand Traverse Band Reservation.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

**§ 507 - Maintenance of Permanent Records; Procedure for Recognition of Marriage After Solemnization**

- (a) All applications for marriage and copies of all marriage licenses issued shall be filed with the Tribal Court and maintained as permanent records of the Grand Traverse Band. Copies shall also be provided to the Clerk of Leelanau County.
- (b) Following the marriage ceremony, two (2) fully executed and conformed copies of the marriage license, executed by two (2) witnesses and the person who conducted the ceremony, shall be returned to the Tribal Court Clerk within fourteen (14) days.
  - (1) The Clerk of the Court must endorse upon each copy its date of receipt and deliver it to the Judge who authorized the issuance of the license.
  - (2) Upon delivery the Judge must examine the application for a marriage license, the license, and the certificate of the person performing the marriage to ensure that the information appearing is properly completed and that the marriage was performed in accordance with the provisions of the license.
  - (3) Upon a determination that the application, the license, and the certification are in proper form, and that there has been compliance with the terms of the license, the Court shall endorse its approval upon the license and shall cause a Certificate of Marriage to be issued.
- (c) A copy of the Certificate of Marriage shall be maintained in the same file as the related application for marriage license and marriage license.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

**§ 508 - Marriage Certificate; Recording or Filing of the Same**

- (a) The Tribal Court shall file the Certificate of Marriage with the Leelanau County Clerk for statistical purposes.
- (b) Should the parties to any marriage performed under the auspices of these provisions desire that a Marriage Certificate be filed or recorded in another jurisdiction, they may obtain certified copies from the Clerk of the Tribal Court at the normal and customary charge.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

**§ 509 - Divorce, Separate Maintenance; Annulment and Jurisdiction**

The Tribal Court shall have jurisdiction over annulment, divorce, separate maintenance, child custody, child support, division of property, or alimony issue where at least one (1) party has been a bona fide resident of the Grand Traverse Band Reservation for a period of at least one-hundred eighty (180) days prior to the filing of the action.

When matters relevant to this section of the Children's Code arise wherein concurrent jurisdiction exists between the Tribal Court and the Michigan State Court, and the petitioner attempts to file the initial proceedings with Tribal Court, the Tribal Court shall be required to inform the petitioner of the option to pursue such matter in Michigan State Court.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; amended by Tribal Council on October 19, 1999; and amended by Tribal Act #07-25.1832, enacted by Tribal Council on August 15, 2007.

**§ 510 - Annulment**

- (a) Within one (1) year of the date of marriage, following payment of a filing fee prescribed by the Court, one (1) or both parties may submit a petition for annulment to the Court, stating as grounds that:
  - (1) One (1) or both parties to the marriage were under sixteen (16) years of age at the time of the marriage;
  - (2) One (1) or both parties did not freely consent to the marriage;
  - (3) The parties were related to each other in a prohibited manner:
    - (A) Parent and child;
    - (B) Grandparent and grandchild;
    - (C) Brother and sister, or half-brother and half-sister;
    - (D) Aunt and nephew, or uncle and niece;

- (E) Cousins in the first degree;
  - (F) One (1) or both parties had an existing spouse at the time of the marriage; or
  - (G) One (1) or both parties lacked the requisite capacity to marry.
- (b) Petitions for annulment must be sworn before a notary public or other official designated to verify signatures, and must contain a proposed division of marital property and debt, and custody of children, if any.
- (c) If the non-petitioning spouse doesn't agree with the petition's allegations as to grounds for annulment, division of property, or custody of children, the non-petitioning spouse must file a response with the Tribal Court within thirty (30) days of receipt of the petition.



- (d) Such response must be sworn before a notary public or other official designated to verify signatures, and must contain an explanation of why there are no grounds for annulment, or why the proposed division of property or grant of custody contained in the petition is not appropriate.
- (e) A copy of the response must be served on the petitioning spouse.
- (f) Where such a response is received, the Tribal Court must hold a hearing to resolve the dispute.
- (g) Failure to respond shall constitute an admission to the allegations contained in the complaint, and shall lead to a default judgment against the defendant.
- (h) If no response is received within thirty (30) days, or, if the Tribal Court determines that there are valid grounds for annulment, then the Court shall enter a decree of annulment which provides for a division of property in an equitable manner and determine custody based on the best interests of the child(ren).

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

#### **§ 511 - Divorce; Grounds; Commencement of Action**

- (a) Filing for divorce:
  - (1) One (1) or both parties may file a signed complaint with the Tribal Court.
  - (2) Such complaint shall state the grounds for divorce.
- (b) Divorces shall be granted without regard to the fault of the parties. The Tribal Court shall grant a divorce upon finding that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed, and that there remains no reasonable likelihood that the marriage can be preserved; or
- (c) Commencement of action:
  - (1) An action for divorce shall be commenced by the filing of a complaint, the payment of the applicable fee, and the issuance of a summons.
  - (2) The complaint shall contain the following information, set forth in separately numbered paragraphs:
    - (A) The full legal name, address, social security number, and driver's license number of each party to the marriage;
    - (B) The Tribal affiliation/membership of each party to the marriage;

- (C) The names, ages, and birth dates of any children born of the marriage between the parties, or of any children born prior to the marriage when the husband is asserted to be the father of the child(ren);
  - (D) The Tribal affiliation/membership of each child;
  - (E) A statement as to whether or not the wife is pregnant at the time the complaint is filed;
  - (F) The maiden name of the wife and/or her name prior to the marriage if different;
  - (G) The date and location of the marriage;
  - (H) The date and location of the separation of the parties;
  - (I) A statement of the assets and liabilities of the parties that need to be allocated between them;
  - (J) A statement as to any pending court proceedings in other jurisdictions that could affect the minor child(ren);
  - (K) A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved;
  - (L) A statement that the Plaintiff desires the Court to enter a judgment of divorce; and
  - (M) A statement of the specific relief requested as to child custody, child support, visitation, alimony, proposed property settlement or other such relief.
- (d) Answer to complaint:
- (1) The defendant spouse shall file an answer to the complaint within twenty-one (21) days of receipt of the complaint if personally served or twenty-eight (28) days if served by mail.
  - (2) Such answer may seek a division of property, child custody arrangement, or other relief different than that proposed by the petitioner.
  - (3) A copy of the answer must be served on the plaintiff spouse.
- (e) Hearing:
- (1) Following a complaint for divorce, separate maintenance, or annulment, and after the opportunity for the defendant to answer, the Tribal Court shall hold a hearing.

- (2) Final divorce hearings may be held no less than within six (6) months after the filing of the complaint in actions involving the custody/welfare of minor children. Final divorce hearings may be held no less than two (2) months after the filing of the complaint in actions not involving the custody/welfare of minor children.
- (3) Where the custody of minor children is at issue, the Tribal Court may order that a home study be completed by a person appointed by the Court prior to the hearing, to aid the Court in determining the issue.
- (4) In determining who will have custody of the minor child(ren), the best interest(s) of the child(ren) shall control. Visitation shall be ordered to promote a positive parent-child relationship, whenever possible.
- (5) At the hearing, both spouses shall have an opportunity to testify, call witnesses, present evidence, and cross-examine their spouse and any other witnesses.
- (6) Once a final ruling has been made, parties seeking to alter the Court's decision must demonstrate that there has been a significant change in circumstances before the Court shall consider amending its prior ruling.
- (7) The intentional filing of groundless petitions shall result in the imposition of sanctions.
- (8) A final order of the Tribal Court shall be appealable in the same fashion and manner as any other order of the Court.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 512 - Division of Property**

When an annulment or divorce is granted, the Court shall order distribution of all real and personal property in an equitable fashion giving consideration to party fault, and shall allocate the marital financial obligations of the parties, in whole to either party, or partially to each party.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 513 - Alimony**

- (a) When an annulment or divorce is granted, the Court may order either party to make periodic alimony payments as necessary to provide for the support of the other party.
- (b) Such orders may be modified, on motion of either party, to reflect changes in either party's economic circumstances.
- (c) Groundless filings may result in the imposition of sanctions.

- (d) The Court, upon motion, shall terminate alimony to any spouse who has remarried or upon the death of either party.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

### **§ 514 - Child Custody, Visitation, and Support**

- (a) In any action concerning annulment, divorce, or paternity, the Tribal Court shall have the authority to determine the custody of any children under eighteen (18) years of age.
- (1) The Court may grant custody to one (1) parent, or may grant joint custody. The Court shall specify the period(s) when each parent shall have custody, and shall determine the visitation rights (if any) of the non-custodial parent.
  - (2) Visitation shall be designed to foster and expand the relationship between the non-custodial parent and the child(ren), whenever possible.
- (b) Child custody shall be based on the best interest of the child(ren) following a custody and home study evaluation and recommendation completed by a person appointed by the Court. There shall be no presumption that one (1) parent is better suited to be a custodial parent because of gender.
- (c) The Tribal Court shall have the authority to require the non-custodial parent to pay such sum as the Court may determine appropriate and proper for the support and maintenance of the child(ren).
- (d) The Tribal Court, upon petition of either party, or any third party to whom custody or visitation of the minor child may be awarded, may revise, amend, or alter any order concerning the care, custody, support, or visitation rights with any minor child(ren) consistent with their best interests.
- (e) In determining the best interests of the child(ren), the Court shall consider the following:
- (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 continue the education and raising of the child in his or her religion or creed, if any.
  - (3) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this 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 of the child and the parents.
- (11) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (12) Any other factor considered by the Court to be relevant to a particular child custody dispute.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

#### **§ 515 - Child Custody Actions Outside of Divorce and Annulment Proceedings**

- (a) The Tribal Court shall have authority to determine the custody and visitation of children as between parents and legal guardians, or as between parents and legal guardians and anyone who has actual physical custody of the child(ren). The authority shall exist whether or not there is a divorce or annulment proceeding pending.
- (b) Such proceeding shall commence upon the filing of a petition by the parent or legal guardian.
- (c) In ruling on a custody petition, the Court shall employ the standards set forth in § 514 of this Code, and may order periodic support payments as set forth in that section.
- (d) After the Court rules on the petition, neither party may file another petition for six (6) months, unless there has been a substantial change in circumstances, or where abuse, neglect or abandonment of the child is suspected.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

**§ 516 - Enforcement of Child Support Orders**

- (a) When the Court has ordered periodic support payments under this Code, and the parent does not pay as ordered, the Court shall use the same methods to collect these payments as it would to enforce any money judgment in a civil action, including contempt.
- (b) If the parent willfully refuses to make support payments as ordered by the Court, and the procedures set forth in Subsection (a) do not result in payment, the Tribe may initiate criminal proceedings.
- (c) A custodial parent who has a valid Tribal Court order for child support and is unable to collect due to non-payment by the other parent shall be informed by Tribal Court of the option to file the support order with Michigan Friend of the Court for purposes of collection and enforcement, consistent with MCR 2.615, Enforcement of Tribal Judgments.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; amended by Tribal Council on October 19, 1999; and amended by Tribal Act #07-25.1832, enacted by Tribal Council on August 15, 2007.

**§ 517 - Temporary Interim Orders**

- (a) The Court may issue temporary orders during the pendency of all proceedings involving child custody, child support, visitation, alimony, and the possession of real and personal property.
- (b) Such orders may be granted upon the motion of either party, or on the Court's own motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists, or a party cannot be found, in which case such orders may be issued ex-parte.
- (c) Emergency may be interpreted to include, but not be limited to:
  - (1) A danger of physical abuse to the spouse or the party's child(ren);
  - (2) Severe emotional abuse;
  - (3) A lack of means for interim subsistence; or
  - (4) The danger that the child(ren) will be removed from the jurisdiction.
- (d) If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

History: GTB Family Code, adopted by Tribal Council on March 25, 1998; and as amended by Tribal Council October 19, 1999.

**Chapter 6 - Tribal Paternity and Putative Parents**

**§ 601 - Short Title**

This chapter may be referred to as the “Tribal Paternity and Putative Parent Act.”

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.



**§ 602 - Purpose**

The purpose of this Act is to determine the natural father of a child. Such a determination may be sought for any reason by parties eligible under this Act [see §§ 606-607], including, but not limited to: financial support and tribal membership eligibility. It is the intent of the Tribal Council that this Act also serve to assist the Tribal Court in determining any rights that a putative parent may have.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

**§ 603 - Definitions**

- (a) “Blood or tissue test” means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person’s blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American Association of Blood Banks. A blood test may include, but is not limited to, determinations of red cell antigens, red cell isoenzymes, serum proteins, the human leukocyte antigen test, and/or DNA probe technology.
- (b) “Child” means a person under the age of eighteen (18) years old.
- (c) “Court,” unless otherwise specified, means the Tribal Court of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (d) “Filiation” means the relation of a child to his or her father.
- (e) “Guardian *ad litem*” means the Court-appointed legal representative for a child. A guardian *ad litem* is only responsible for the child’s interests in a Court action under this Act.
- (f) “Informal hearing” means the informal pre-trial proceeding outlined in § 612 of this Act.
- (g) “Judgment or order” or “support order” means an order of the Court given under § 617 of this Act.
- (h) “Natural father” means the biological father of a child, except as otherwise provided in § 605 of this Act.
- (i) “Natural mother” means the biological mother of a child.
- (j) “Paternity” means a determination that a man is the natural father of a child.
- (k) “Putative parent” means a person who is alleged or reputed to be the parent of a child.

- (l) “Tribal enrollment number” means the enrollment identification number of an individual in an Indian tribe recognized by either the federal government or the Grand Traverse Band of Ottawa and Chippewa Indians.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 604 - Presumption of Paternity**

- (a) A person is presumed to be the natural father of a child under any of the following circumstances:
  - (1) The person and the child’s natural mother are, or were, married to each other and the child was born either during the marriage or within ten (10) months after the marriage was terminated for any reason;
  - (2) Prior to the child’s birth, the person and the child’s natural mother married, or attempted to marry, each other in a legally-recognized marriage - regardless of whether or not that marriage was actually valid;
  - (3) The child’s natural mother and the child’s alleged father acknowledged the paternity of the alleged father in a notarized or Court-recognized writing;
  - (4) With the alleged father’s consent, he is named as the child’s father on the child’s birth certificate;
  - (5) The alleged father is or has been obligated to support the child under either a voluntary written agreement or a Court Order;
  - (6) Scientific evidence from a blood or tissue test shows a ninety-five percent (95%) or higher statistical probability of paternity; or
  - (7) The alleged father is considered the natural father of the child according to the laws of the Indian reservation, state, or country in which the child was born.
  - (8) The child’s natural mother and the child’s alleged father acknowledge the alleged father’s paternity in a voluntary paternity acknowledgment form issued by a state or tribal government. The Tribal Court shall make available, accept, and file any completed forms submitted to it. As part of this voluntary acknowledgment process, the Tribal Court shall make information available to the parents on rights and responsibilities associated with paternity. If another person is presumed under this section to be the child’s natural father, this voluntary acknowledgment shall only be effective with the written consent of the presumed father, or after that, presumption has been rebutted. A presumption of paternity is created when the acknowledgment is filed with the department.
- (b) Any acknowledgment of paternity recognized under this Act is binding upon the parties executing it, regardless of whether or not a party is a minor.

- (c) Rebuttals of presumption. Except for presumptions of paternity that are conclusive in the opinion of the Court, or irrebuttable under § 604(d), a presumption under this section may be rebutted by:
  - (1) A preponderance of evidence in a Court action (or administrative action, if available); or
  - (2) Scientific evidence resulting from a blood or tissue test that determines the alleged father is not the child's natural father.
- (d) A voluntary acknowledgment of paternity, as provided in either § 604(a)(3) or 604(a)(8) of this Act, is, as a matter of tribal law, an irrebuttable presumption of paternity for the purposes of this Act, provided that:
  - (1) The acknowledgment has not been rescinded under any procedures established by the Court; and
  - (2) No Court has, by order or judgment, recognized any other person as the child's natural father.
- (e) An irrebuttable presumption of paternity under this section has the same force and effect as a Tribal or other Court judgment determining paternity and may only be set aside under a showing of fraud, duress, or material mistake of fact.
  - (1) The burden of proof is on the person seeking to set the presumption aside.
  - (2) Except for good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending the outcome of an action to set aside the presumption.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 605 - Artificial Insemination**

- (a) If a woman is inseminated artificially with semen donated by a person who is not her husband, her husband is treated by law as if he were the natural father of the child conceived by artificial insemination as long as he:
  - (1) Knew of the artificial insemination at the time it took place; and
  - (2) Did not file for divorce or otherwise separate from his wife prior to the birth of the child.
- (b) The law treats the donor of semen used in an artificial insemination as if he were not the natural father of a child conceived by artificial insemination, unless there is clear and convincing evidence of an agreement providing otherwise between the donor and the artificially inseminated woman.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### § 606 - Who May Bring Action on Behalf of a Minor

- (a) An action may be brought under this Act by:
- (1) A child, or his/her legal representative, legal guardian, or custodian, who wishes to establish the paternity of his or her father;
  - (2) A mother of a child, on behalf of her child;
  - (3) A person alleging, or alleged, to be a child's father;
  - (4) The personal representative, or parent, of an alleged father if the alleged father has died or is a minor; or
  - (5) The Grand Traverse Band of Ottawa and Chippewa Indians, through one of its departments or agencies, in cases where the child has no parent, legal guardian or custodian.
- (b) Judicial determination, or an irrebuttable presumption, of paternity of a father to a child also applies to any full-blood siblings of that child unless another provision of law provides otherwise. Siblings do not need to be a party to a paternity suit in order for the determination of paternity to be applicable to them.
- (c) Regardless of its terms, an agreement between an alleged or presumed father and the mother or child does not bar an action under this Act. This provision does not apply to a Court-approved agreement such as provided for in § 617 of this Act.
- (d) Upon rebuttal of a presumption of paternity, paternity of a child by another man may be determined in the same action if the other man has been made a party to the action.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### § 607 - Who May Bring Action in Cases Involving Adults

- (a) In paternity or putative parent cases involving adults who are seeking a paternity declaration for themselves and where the primary object of having filiation or paternity determined is to establish or prove Tribal descendancy and/or Indian blood quantum for Tribal membership purposes, only the following parties may commence an action under this Act:
- (1) An adult eighteen (18) years of age or older who is trying to enroll with a federally-recognized Indian tribe (or any tribe that is recognized by the Grand Traverse Band); or
  - (2) Any of an adult's descendants who is eighteen (18) years of age or older and who is trying to enroll with a federally recognized Indian tribe (or any tribe that is

recognized by the Grand Traverse Band). In an action by a descendant, the Court is limited to a finding of whether or not the plaintiff is a biological descendant of a Tribal member; no filiation or paternity finding regarding persons not parties to the action may be declared.

- (A) It is the intent of the Tribal Council that this subsection be used simply to allow an individual to request a Court finding that paternity or filiation existed between that individual's parent and a Tribal member.
  - (B) Such Court finding of paternity or filiation between a plaintiff's parent and a tribal member shall not be the basis for any legal action other than Tribal enrollment eligibility.
- (b) In paternity or putative parent cases where an adult is seeking to establish paternity or filiation for him or herself for tribal membership purposes, the Court shall not issue any support judgments or orders, nor order any past expenses to be paid, unless unique circumstances dictate such arrangements. Absent unique circumstances, cases involving adults shall be limited only to determinations of paternity or filiation, which the plaintiff adult may then use for enrollment purposes.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

#### **§ 608 - When Action May Be Brought**

- (a) An action under this Act may be commenced at any time by a party listed under § 606(a) or § 607(a). However, if the child has not been born by the time a trial has been scheduled, the case shall be continued until after he or she has been delivered, unless both the mother and the alleged or putative father agree otherwise.
- (b) This section does not extend the time in which a person may claim a right of inheritance or a right to succession under any applicable laws governing distribution, closing of a decedent's estate, or determination of heirship.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

#### **§ 609 - Jurisdiction; Venue**

- (a) The Grand Traverse Band Tribal Court has exclusive jurisdiction of any action brought under this Act. Such an action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.
- (b) Personal jurisdiction over an individual under this Act may be established in Tribal Court if:
  - (1) The child for whom paternity is seeking to be established is or may become, contingent upon paternity, an enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians;

- (2) The child for whom paternity is seeking to be established is or may become, contingent upon paternity, a member of any other Indian tribe, band or community;
- (3) The natural mother of the child is a member of any Indian tribe, band or community;
- (4) The alleged father is a member of the Grand Traverse Band;
- (5) The alleged father is a member of any tribe recognized by either the federal government or the Grand Traverse Band and he resides on Grand Traverse Band trust lands;
- (6) The individual submits to the jurisdiction of the Tribal Court by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction; or
- (7) There is any other basis for personal jurisdiction under the Grand Traverse Band Tribal Constitution or tribal statutes.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

#### **§ 610 - Parties**

- (a) The child must be made a party to the action.
- (b) A minor must be represented in Court by either the minor's general guardian, a legal representative, or a guardian *ad litem* appointed by the Court. The child's mother or father may represent the child as guardian or otherwise unless the Court determines, upon a showing of good cause, that such representation may not be in the best interests of the child.
- (c) The following parties must be made parties to the action or, if not subject to the jurisdiction of the Tribal Court, must be given notice of the action according to Court guidelines and must be given an opportunity to be heard:
  - (1) The child's natural mother;
  - (2) Any person presumed to be the child's natural father under § 604 of this Act; and
  - (3) Any person alleged to be the child's natural father.
- (d) Evidence offered by the alleged father concerning a person who is not subject to the jurisdiction of the Grand Traverse Band Court and who may have had sexual intercourse with the mother at or about the probable time of conception is admissible evidence only if the alleged father has undergone, and made available to the Court, blood or tissue tests the results of which do not exclude the possibility of the alleged father's paternity of the child. The burden of proof for evidence under this subsection shall be clear and convincing.

- (e) A person who is identified and is subject to the jurisdiction of the Court must be made a defendant in the action.
- (f) The Court may align the parties according to its discretion.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 611 - Actions Brought by Putative Father; Termination of Parental Rights**

- (a) In cases where a putative father commences an action to establish his paternity or filiation regarding one or more children, the Court must determine both the issue of paternity or filiation as well as whether or not the parental rights of such putative father have been terminated.
- (b) The provision of this Act shall apply to the Court in determining paternity or filiation of a putative father initiating an action.
- (c) In the event that a Court determines paternity or filiation on the part of a putative father, the Court may still find that his parental rights to the child or children in question have been terminated according to the provisions of the following subsections.
- (d) The Court may terminate the parental rights of any putative father who has not established a custodial relationship with the child and who has provided no support for the mother or child prior to the notice of hearing if the Court finds, after examining the father's fitness and ability to properly care for the child, "that it would not be in the best interests of the child to grant custody" to him.
- (e) The Court may not terminate the parental rights of any putative father who has established some kind of custodial or support relationship prior to the notice of hearing, unless the Court finds by clear and convincing evidence, one or more of the following:
  - (1) Abandonment. The child has been abandoned under either of the following circumstances:
    - (A) A parent of a child is unidentifiable and has deserted the child for twenty-eight (28) or more days and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent; or
    - (B) A parent of the child has abandoned the child without provision for his support or without communication for a period of at least six (6) months. The failure to provide support or to communicate for a period of at least six (6) months shall be presumptive evidence of the parent's intent to abandon the child.

- (2) Physical Injury or Sexual Abuse. The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:
  - (A) A parent's act caused the physical injury or physical or sexual abuse and the Court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or
  - (B) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse, failed to do so and the Court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.
- (3) Unrectified Conditions. The parent was a respondent in a proceeding brought under this Children's Code, twelve (12) or more months have elapsed since the issuance of an initial disposition order, and the Court, by clear and convincing evidence, finds either of the following:
  - (A) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child; or
  - (B) Other conditions exist that cause the child to be a child-in-need-of-care. The parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
- (4) Failure to Provide Proper Care. The parent, without regards to intent, fails to provide proper care or custody for the child 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.
- (5) Conviction of Violent or Sexual Crime. A parent of the child is convicted of a violent or criminal sexual crime against the other parent or a sibling of the child.
- (6) Conviction of a Felony. A parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child.
- (7) Imprisonment for More Than Two (2) Years. The parent is imprisoned for over two (2) years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.
- (8) Parental Rights to Sibling Terminated. Parental rights to one (1) 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.

- (f) An action brought under this section shall be brought within six (6) years of the date of the birth of the child. Failure to bring an action within six (6) years of birth shall constitute an irrefutable presumption of abandonment of parental rights.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 612 - Blood or Tissue Tests**

- (a) The Court may, or upon request of a party shall, require the child, mother, or alleged father to submit to blood or tissue tests.
  - (1) The tests shall be performed by an expert qualified as an examiner of blood types and agreed upon by both parties.
  - (2) If the parties cannot agree upon an expert, the Court shall choose one for the parties.
- (b) The Court, upon reasonable request by a party or under its own discretion, shall order that independent tests be performed by other experts qualified as examiners of blood or tissue types.
- (c) If a party objects to the blood or tissue test results, such objection must be filed with the Court within thirty (30) days after service of the blood or tissue results was made to both parties to the case.
  - (1) Upon a reasonable objection being filed, the Court shall order an additional blood or tissue test. The reasonability of any objection shall be left to the Court's discretion.
  - (2) Such additional test may be conducted by the same experts who administered the test being disputed, unless the objecting party requests that the additional test be conducted by different experts, provided that different experts are available to conduct the test on a timely basis. The definition of "timely" shall be determined by the Court, but shall not be interpreted to mean less than the time which had been required by the test being disputed.
- (d) The costs of any additional testing resulting from objection to the original test shall be the responsibility of the objecting party or parties.
  - (1) If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

**§ 613 - Failure to Answer or Appear**

- (a) Upon an action being commenced regarding paternity or a putative parent, the Court shall issue a summons to the defendant(s) in the action. No proceedings on the action may take place before thirty (30) days after issuance of the summons, unless the defendant(s) agree to an earlier date.
- (b) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood test, and upon proof that the father was served with the summons, the Court shall send one additional summons which includes a notice to the father informing him that if he fails to answer or appear, he could be declared the legal father of the child in question.
- (c) After service of the second summons, and only upon proof that the father was served with both summonses provided for in this section, the Court may enter an order declaring the alleged father to be the legal father of the child.
  - (1) Such an order declaring paternity, upon failure of the alleged father to appear, may only be made by the Court upon clear and convincing evidence.
  - (2) A Court Order declaring paternity after the failure of the alleged father to appear is not mandatory and the Court, upon good reason, can choose not to enter an order of paternity.
- (d) The Court may not enter an order under this section if there is more than one (1) alleged father unless the default applies to only one of them and all others have been excluded by the results of blood or tissue testing.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

**§ 614 - Judgment or Order**

- (a) The judgment or order of the Court determining the existence or nonexistence of the parent-child relationship is determinative for all purposes.
- (b) If the judgment or order of the Court conflicts with the child's birth certificate, the Court shall order a new birth certificate to be issued, which will take the place of the original.
- (c) The judgment or order shall contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.
  - (1) The judgment or order must contain a provision concerning the duty of child support. Such provision may also contain relevant past expenses, such as childbirth, in the discretion of the Court.
  - (2) The Court shall structure support judgments or orders as periodic payments. However, if the best interests of the child or other good reason dictates otherwise,

the Court may order lump sum support judgments or any other appropriate payment structure.

- (3) The Court may limit the father's liability for past support of the child to any proportion or amount that the Court finds is just.
- (d) To determine a support judgment or order, as well as its length of time, the Court shall take into consideration all relevant facts, which include the following:
- (1) The child's age;
  - (2) The child's educational needs;
  - (3) The child's medical needs;
  - (4) Standard of living and circumstances of the parents;
  - (5) Earning ability of parents;
  - (6) Financial resources and earning capabilities of the child;
  - (7) Responsibility of parents for support of others, including elders, extended family, or any one else;
  - (8) Cost of day care for the child;
  - (9) Any custody arrangement decided upon by the parties or ordered by the Court; and
  - (10) Any relevant tribal or traditional customs.
- (e) A support judgment or order issued under this section must comply with the provisions of both: the Michigan Child Support Formula Manual, as adopted by the Tribal Council and codified at 10 GTBC § 202; and the Uniform Reciprocal Enforcement of Support Act, codified at 10 GTBC Chapter 3 (§ 301 *et seq.*).
- (f) The provisions and guidelines of this section shall be adhered to in all support judgments or orders handed down by the Court - including those orders which are entered upon default when a party fails to appear.
- (g) If the Court determines that a support order calculated using the guidelines of this section is unjust or inappropriate, it shall state its reasons for its determination. Similarly, if the parties have agreed upon a support amount that varies from the amount which the guidelines would suggest, they must also state the reasons behind their amount.
- (h) If the Court does not order a parent owing a duty of support to a child to pay anything for the child's support, it shall state its reasons for not ordering child support and provide the parties with a written copy of those reasons.

- (i) Upon a Court finding of paternity, or establishment of a support judgment or order, such judgment or order must include a provision requiring the parties to file with the Court, and update as necessary, the following information:
  - (1) Identity of the party;
  - (2) Tribal identification number;
  - (3) Residential and mailing addresses;
  - (4) Telephone number;
  - (5) Driver's license number; and
  - (6) Name, address and telephone number of the party's employer.
- (j) Upon the failure of a party to supply or properly update the information required in subsection (i) above, the Court may order a fine of no more than fifty dollars (\$50.00).

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

#### **§ 615 - Modification of Judgment or Order**

- (a) The Court has continuing jurisdiction to modify or revoke a judgment or order:
  - (1) For future education and support;
  - (2) On the basis of any of the issues contained in § 616; or
  - (3) For any good reason identified by the Court.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

#### **§ 616 - Liens on Tribal Per Capita Accounts**

- (a) The Court may create a lien on a tribal member's per capita account in order to satisfy a child support debt under this Act, if such debt has existed for at least six (6) months.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

CROSS-REFERENCE: See also 18 GTBC § 1607 ("Child Support Obligations").

#### **§ 617 - Prior Agreements**

An agreement, understanding, or other form of settlement concerning child support or custody between the mother, child or anyone authorized on their behalf and the alleged or putative father

shall not be legally binding unless a Court with jurisdiction over the parties has determined that such arrangements are sufficient for the child's support and are in the child's best interests.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 618 - Confidentiality**

Regardless of any other law or regulation concerning public hearings or records, any hearing, trial or other proceeding held under this Act shall take place in closed Court. All papers and records, other than the final judgment, are subject to inspection only upon consent of the Court and all parties - or in unique cases, upon the order of the Court upon a showing of good cause.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 619 - Mother and Child Relationship; Declaration**

- (a) Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.
- (b) The provisions of this Act shall also apply to such a maternity action.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 620 - False Actions; Penalty**

Any party who knowingly commences an action against a party who is not the father of the child or children in question, or any party who aids or abets such a false action, shall be guilty of a misdemeanor and subject to a corresponding punishment by the Court.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

### **§ 621 - Burden of Proof**

The burden of proof for all proceedings under this Act, unless otherwise indicated, shall be that of a preponderance of evidence.

History: Tribal Paternity and Putative Parents, adopted by Tribal Council on October 19, 1999.

## **Chapter 7 - Elders Trust Fund; Returned or Undeliverable Checks Ordinance**

### **§ 701 - Returned or Undeliverable Checks**

The Elders Trust Fund and procedures was established pursuant to 1.01 P.L. 105-143 (d)(1)-(7)(e)(1)(2) and GTB Resolution No. 02-20.1110. If an Elders Trust Fund check is returned and/or undeliverable, the following procedures shall apply:

- (a) If an Elders Trust Fund check is returned within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a “Returned Elders Trust Fund Account” where the funds will be maintained until the Tribe receives a request for disbursement by the Elder.
- (b) If an Elders Trust Fund check is returned to the Tribe as undeliverable, the trust funds will be immediately deposited into a “Returned Elders Trust Fund Account” where the funds will be maintained until the Tribe receives a request for disbursement by the individual.
- (c) If after a two (2) year period the Elder has not come forward to claim the returned or undeliverable Elders Trust Fund check, then the funds shall be credited to the corpus of the Elders Trust Fund Account, to be distributed in accord with the provisions of P.L. 105-143.
- (d) If the Tribe receives independent confirmation, by way of a death certificate, for the Elder within the two (2) year holding period in Subsection (c) herein, then the returned or undeliverable Elders Trust Fund check shall be immediately credited to the corpus of the Elders Trust Fund Account, to be distributed in accord with the provisions of P.L. 105-143.

History: Tribal Act #04-22.1468 enacted by Tribal Council on January 25, 2005.