

**JUVENILE CODE**  
Ordinance # 99-900-02

**Section 1. Title and Purpose.**

1.01. *Title.* This Code shall be titled the Juvenile Code.

1.02. *Purpose.* This Juvenile Code is established by the Tribal Council of the Little River Band of Ottawa Indians to address the issues of juveniles in the Children's Court.

**Section 2. Cases to be Heard.**

2.01. *Cases.* The cases to be heard before the Children's Court shall include all juvenile status and non-status offenses.

2.02. *Proceedings.* The proceedings under this code shall be civil in nature and will be held for the purposes of achieving the goals delineated in Section 3.02.

**Section 3. Philosophy and Goals.**

3.01. *Philosophy.* The philosophical basis of the Juvenile Code is to address the spiritual, emotional, mental, and physical well being of the juvenile and all other persons affected by the juvenile's behavior. This focus shall be on healing the parties rather than punishing the juvenile for the inappropriate behavior, and to provide appropriate options at all levels of the proceedings for treatment, healing and rehabilitation of the minors, their families, and victims.

3.02. *Goals.* The goals of the Juvenile Code include:

- a. providing a continuum of services including prevention and early intervention.
- b. providing procedures for intervention in state court proceedings involving juveniles and for transfer of jurisdiction over minors from state and other tribal courts to the Little River Band of Ottawa Indians Tribal Court.
- c. helping the juvenile deal with the problems that have led to the offense.
- d. taking such actions that will best serve the emotional and physical healing of the juvenile and whenever possible, preserving and strengthening the minor's cultural and ethnic identity.
- e. focusing on strengthening families and communities by encouraging responsible thinking and at all times possible using community based alternatives to keep juveniles within their homes and communities.
- f. securing the rights of and ensuring fairness to the minors, parents, guardians, custodians, victims and other parties who come before the Court under the provisions of this Code.
- g. separating the juvenile from the home only when necessary for the juvenile's welfare and in the interests of public safety.

**Section 4. Components and Process.**

4.01 *Components.*

- a. *Creation of the Case Intake Team.* The Case Intake Team (CIT) is created for

the purpose of assisting juveniles, their families, and the community at the earliest point of intervention. The Case Intake Team shall promote the stability and security of the Tribe and its families by fully exercising the Tribe's rights and responsibilities under this Code and the Indian Child Welfare Act of 1978 (25 U.S.C. ss. 1902-1963). See *Section 6 of this Code*.

b. *Creation of Peacemaking.* Peacemaking is created in this Code for the purpose of providing a traditional conflict resolution process to children, youth and families. The vision of Peacemaking is to provide opportunities for resolution and healing to the parties involved which will promote healthier life-styles and relationships. See Odenaang Enjinoojimoying (*"A Place of Healing Many Hearts"*), *the Peacemaking Guidelines*.

4.02. *Process.* The process explained in this section provides a broad overview of this Code. All other provisions in this Code that appear to be in conflict with this Section shall govern.

a. The Presenting Officer shall determine the type of offense (status or non-status) that the juvenile allegedly committed and if it falls under the jurisdiction of the Tribe. If the case falls under Tribal jurisdiction, the Presenting Officer shall forward it to the Peacemakers or Case Intake Team. See Odenaang Enjinoojimoying - *Peacemaking Guidelines and Section 6 of this Code*.

b. The following cases shall be immediately referred to the Peacemakers:

1. when a case represents the juvenile's first appearance before the Little River Band of Ottawa Indians' Children's Court on a status offense. This section applies regardless of whether the juvenile has committed a status and/or nonstatus offense in another court in the past.

c. All other cases shall be forwarded to the Case Intake Team who shall forward it to the appropriate investigator. The investigator shall investigate the allegations and write a report that shall include recommendations. This report will then be presented to the Case Intake Team.

d. The Case Intake Team shall convene on a regular basis and determine if the case should: (1) be investigated; (2) be delayed for prosecution in order to develop and implement an appropriate plan; or (3) be forwarded for prosecution in the Tribal Court.

e. If the case is not immediately referred to the Tribal Court, the Case Intake Team shall develop an appropriate plan for the juvenile and/or family and review it on a regular basis. The plan may include Peacemaking sessions and counseling sessions.

f. A case shall be referred to the Court for adjudication if rejected by the Case Intake Team or within nine months of when the alleged inappropriate behavior occurred. See *Section 11.03(b) of this Code*.

## Section 5. Definitions.

### 5.01. As used in this Code:

- a. *"Adult."* A person eighteen (18) years of age or older or otherwise emancipated by order of a court of competent jurisdiction.
- b. *"Calendar Days."* Consecutive days of the year.
- c. *"Child/Children."* A person or persons less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- d. *"Children's Court."* An informal Division of the Tribal Court of the Little River Band of Ottawa Indians.
- e. *"Controlled Substance."* A controlled substance as defined by the Public Act of Michigan. Currently controlled substance is defined in the Michigan Statutes and means a drug, substance, or immediate precursor included on the list of five schedules. See No. 368 of the Public Act of 1978, as amended and currently located in M.C.L.A. ss. 333.7104(2), 333.7201, 333.7214, 333.7216, 333.7218, and 333.7220.
- f. *"Custodian."* A person, other than a parent or guardian who has physical custody of the juvenile and is providing shelter and supervision to the juvenile.
- g. *"Domicile."* A person's permanent home, legal home or main residence. The domicile of a juvenile is generally that of the custodial parent, guardian or other person with legal custody. Domicile includes the intent to establish a permanent home or the place where the parent, guardian or custodian considers to be the permanent home.
- h. *"Extended Family."* A person who is the juvenile's grandparent, aunt, uncle, brother, sister, brother in-law, sister-in-law, niece, nephew, first cousin, second cousin, stepparent, other kinship or non-kinship relations recognized by immediate family members.
- i. *"Father."*
  1. a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock.
  2. a man who legally adopts the minor; or
  3. a man whose paternity is established in one of the following ways within time limits, when applicable, set by the Court pursuant to the following:
    - a. the man and the mother of the minor acknowledge that he is the minor's father in writing executed, notarized and filed in the Tribal or probate court; or
    - b. the man and the mother file a joint written request for a correction of the certificate of the birth pertaining to the minor that results in issuance of a substituted certificate recording birth; or
    - c. the man acknowledges the minor without the acknowledgment of the mother with the written approval of the Court; or
    - d. a man who by order of affiliation or judgment of paternity is

determined to be the father of the minor.

- j. *"Foster Care Home."* A facility licensed and approved pursuant to Tribal or state law.
- k. *"Guardian."* A person, other than a parent, to whom custody of the child has been given under Tribal law or custom or by order of any court.
- l. *"Immediate Family."* A person who is the juvenile's parent, stepparent, siblings, stepsiblings, and half siblings.
- m. *"Inappropriate Behavior."* A juvenile shall have committed inappropriate behavior if he/she:
  - a. has violated any municipal ordinance or law of the Little River Band of Ottawa Indians, the United States, or any other jurisdiction; or
  - b. has been habitually disobedient or repeatedly refuses to obey the reasonable commands and directives of his/her parent(s), guardian, or custodian, or refuses to learn or adhere to the minor's traditional or cultural ways; or
  - c. is habitually truant from school or minor's place of residence without sufficient cause; or
  - d. consumes intoxicants or controlled substances; or
  - e. consistently acts in a manner likely to endanger the health or safety of themselves, or others.
- n. *"Indian."* Any member or person eligible for membership of a federally recognized Indian Tribe, band or community or Alaska Natives, any member of a historic Tribe or band, or a person considered by the community to be North American Indian.
- o. *"Juvenile."* A juvenile is a minor.
- p. *"Legal Custody."* The right to care, custody, and control of a juvenile and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a juvenile and, in an emergency, to authorize surgery or extraordinary care. The parent(s) of a juvenile are vested with legal custody unless such custody is taken from the parent(s) or limited by Court Order. Only the parents with legal custody may give temporary physical and/or legal custody of a juvenile to an adult member or the immediate or extended family unless such rights are limited by Court Order.
- q. *"Minor."* A person less than eighteen (18) years of age.
- r. *"Non-Status Offense."* A non-status offense is an offense regardless of the age of the offender. (For example: shoplifting and assault).
- s. *"Parent."* A person who is legally responsible for the control and care of the minor, including the mother, father, guardian or custodian including a natural or adoptive parent but does not include persons whose parental rights have been terminated nor does it include the unwed father whose paternity has not been acknowledged or established.
- t. *"Parental Rights."* Legal rights which include responsibilities, duties and

obligations between the parent and the child. See *Children's Code for examples, Ordinance #98-900-01*.

u. *"Preponderance of the Evidence."* A burden of proof that requires the finder of fact to determine that the alleged facts in the petition were more likely than not to have occurred.

v. *"Presenting Officer."* The attorney who represents the Tribe in all matters related to this Code (including the Indian Child Welfare Act) and acts as the prosecutor in the Tribal Court.

w. *"Status Offense."* A status offense is an offense only because of the age of the offender. These acts would not be considered offenses if committed by an adult. (For example: truancy and curfew).

x. *"Tribe."* The Little River Band of Ottawa Indians.

y. *"Tribal Council."* The elected governing body, exercising the legislative powers of the Tribe as set forth in the Tribe's Constitution.

z. *"Tribal Court"* The Tribal Court of the Little River Band of Ottawa Indians.

aa. *"Tribal Lands."* Lands owned by the Little River Band of Ottawa Indians or by any subdivision of the Tribal government; lands owned by the United States of America in Trust for the Little River Band of Ottawa Indians; and Indian Country of the Little River Band of Ottawa Indians as defined in 18 U.S.C. § 1151.

bb. *"Working Days."* A working day is any day that the offices of the Tribal Government are opened for normal business hours, excluding holidays, Saturdays and Sundays.

## **Section 6. Case Intake Team (CIT).**

6.01. *Membership.* The CIT shall include, but not be limited to, the following Little River Band service providers and/or the person's designee from his/her department. (1) Tribal social worker; (2) Presenting Officer; (3) Peacemaker; (4) a client advocate from the community; and any other necessary service providers.

6.02. *Non-Tribal Service Providers.* Non-Tribal service providers may be invited to the meetings to provide information and guidance in certain cases. The CIT may decide by consensus to include a non-Tribal service provider to be a member of the team, but the person would not have voting privileges.

6.03. *Confidentiality of CIT Meetings.*

a. *Generally.* Meetings of the CIT shall not be open to the public except for persons authorized to attend by the entire team. Confidentiality of case information shall be maintained. CIT members are subject to the same standards of confidentiality as Court personnel, social service workers and other professionals.

b. *Records of Proceedings.* Case materials and all other CIT records shall be maintained in a confidential manner. Case summaries may only be provided to CIT members at the meeting.

6.04. *Voting.* Actions by the CIT will be decided by a majority of those present at the meeting. Non-Tribal service providers shall not be eligible to vote.

- 6.05. *Duties of the CIT.* The responsibilities of the CIT shall include:
- a. meeting a minimum of two times per month and more often as requested by Team members.
  - b. reviewing the initial written report and recommendations of the investigator regarding the juvenile.
  - c. determining the scope of further investigations and who should be assigned to do all or part of it.
  - d. being advised of pending state court proceedings involving juveniles and making recommendations regarding intervention in such proceedings and transfer of jurisdiction from state court to the Tribal Court.
  - e. making recommendations regarding the juvenile and family in state court cases where the Tribe has intervened in the proceedings.
  - f. determining if the case shall proceed to adjudication in the Tribal Court or remain with the CIT.
  - g. developing an appropriate service plan for the juvenile and his/her family.
  - h. reviewing and modifying the service plan as necessary.
  - i. networking with other Tribal and state agencies to identify and access services for juveniles and their families.
  - j. identifying resources within the Tribal community that are not currently available and informing the appropriate department head.
  - k. cooperating with state and community agencies in other jurisdictions and negotiating agreements for accessing service provisions. Such agreements shall be subject to the ratification of the Tribal Council, unless otherwise delegated.
  - l. making recommendations to authorize the filing of status and non-status offense petitions regarding juveniles in the Tribal Court pursuant to this Code.
  - m. engaging in further activities to protect and improve the welfare of the juveniles and members of the Little River Band of Ottawa Indians.
- 6.06. *CIT Facilitating Services.* The CIT shall also provide assistance to families by:
- a. identifying available community resources, programs and services.
  - b. providing recommendations to agencies concerning services needed by families or individuals.
  - c. promoting cooperation, communication and consistency among agencies.
  - d. providing a forum for debating what actions would best promote the well-being of Indian juveniles.
  - e. responding to inquiries from the community, area child protection teams and other individuals and groups.
  - f. assisting in the development and implementation of strategies by communities to promote the dignity, self-worth, self-respect and self-sufficiency of community members.

## **Section 7. CIT Investigation, Review and Time Frame.**

7.01. *CIT Investigation.* The Presenting Officer shall receive or be forwarded all complaints. He or she shall present complaints to the CIT at the next meeting or fourteen (14) calendar days from when the complaint is received, whichever is sooner. The CIT initial investigation shall be completed within twenty (20) working days of when the complaint is received from the Presenting Officer. The investigator shall be a person from the Family Services Department or other appropriate person. The investigation shall include, but not be limited to, interviewing the juvenile, gathering family background and conducting a home assessment. The investigator shall also talk to the victim(s) and gather information and recommendations regarding the incident. Based upon the information gathered, the investigator shall write a report which shall include recommendations and present it to the CIT.

a. The CIT shall review all recommendations and shall:

1. decide not to proceed with any action;
2. refer the matter to Peacemaking;
3. develop a case plan for the juvenile; or
4. refer the matter to Tribal Court for adjudication.

b. *Removal.* The CIT cannot remove a juvenile from his/her home without a preliminary hearing being held.

7.02. *Review.* The CIT shall review the juvenile's progress every thirty (30) calendar days. The CIT shall request and the Presenting Officer shall file a Petition for formal adjudication upon a finding by the CIT that the plan has not been substantially followed.

7.03. *Time Frame.*

a. *Petition Pending.* Any case plan that is developed when a petition is pending before the Tribal Court shall be concluded within nine (9) months, unless otherwise extended by the Court.

b. *No Petition Pending.* Any case plan that is developed without a petition pending before the Court must be completed within nine (9) months. A petition for the juvenile's alleged inappropriate behavior cannot be filed after nine (9) months of when the alleged behavior occurred. See *Section 11.03(b)*.

## **Section 8. Peacemaking.**

8.01. *Guidelines Governing Peacemaking.* The Tribal Judiciary shall promulgate the guidelines governing Peacemaking. See *Odenaang Enjinoojimoying - the Peacemaking Guidelines*.

8.02. *Cases to be Heard.* The Peacemakers have the authority to hear:

- a. all juvenile cases involving a first time status offense in the Little River Band of Ottawa Indians Tribal Court system;
- b. all other cases referred by the Case Intake Team;
- c. all other cases that are referred by the Tribal Court; and
- d. cases from persons requesting to voluntarily access Peacemaking.

8.03. *Case Denial.* Peacemakers have the right to refuse any case after it has been referred and denied in writing by two Peacemaking groups. See *Odenaang Enjinoojimoying - the Peacemaking Guidelines.*

## **Section 9. Transfer of State Court Proceedings.**

9.01. *Notice and Transfer Decisions.* The Presenting Officer shall be the agent for service of notice of state court juvenile custody proceedings. The Presenting Officer shall provide copies of the notice to the Case Intake Team and the Tribal Family Services Department within three (3) working days after receipt of such notice.

a. *Intervention.* The Presenting Officer shall file a Notice of Intervention with the state court within five (5) working days upon certification by the Little River Band membership office that the minor is an Indian child pursuant to the Indian Child Welfare Act (25 U.S.C. § 1901-1963)

b. *Investigation and Pre-transfer Report.* The Tribal Family Services Department shall conduct an investigation and file a written report with the Presenting Officer and the CIT.

c. *Decision to Request Transfer.* The Case Intake Team shall make written recommendations regarding whether or not the Tribe should petition for transfer from the state court. The Case Intake Team shall consider all of the following factors:

1. The best interests of the juvenile.
2. The best interests of the Tribe.
3. Availability of services for the juvenile and the family.
4. The circumstances of the inappropriate behavior.
5. The best interests of the victim.

d. *Petition for Transfer.* The Tribal petition for transfer shall be filed in the state court by the Presenting Officer within five (5) calendar days of receipt of the CIT's recommendation for transfer.

9.02. *Transfer of Jurisdiction to Other Courts.* In all proceedings before the Children's Court, the Court (on its own or by motion by any party) may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian Tribe has a significant interest in the juvenile and the transfer would be in the best interest of the juvenile.

## **Section 10. Jurisdiction and Procedures of the Children's Court.**

10.01. *Children's Court.* There is established for the Little River Band of Ottawa Indians, an informal division of the Tribal Court known as the Children's Court. The jurisdiction of the Children's Court is civil in nature and includes the right to issue all orders necessary to carry out the purposes of this Code.

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

10.03. *Subject Matter Jurisdiction.* The Children's Court has original jurisdiction over the

following proceedings:

- a. proceedings in which a minor is alleged to have committed a status or non-status offense or committed inappropriate behavior.

10.04. *Continuing Jurisdiction of the Children's Court.* Jurisdiction, once exercised by the Children's Court over a proceeding involving a juvenile, is continuing and exclusive unless terminated by the Court in one of the following ways:

- a. the minor becomes an adult, except where a juvenile becomes an adult during the proceedings under this Code.
- b. when the Children's Court enters an order terminating its jurisdiction or transferring jurisdiction to another court.

10.05. *Persons Subject to Jurisdiction of the Children's Court.* The Children's Court may exercise personal jurisdiction over the following categories of persons:

- a. any juvenile who is an enrolled member of the Tribe or eligible for enrollment who is under the age of eighteen (18) years residing in the Counties of Kent, Manistee, Mason, Lake, Muskegon, Newaygo, Oceana, Ottawa and Wexford, in the State of Michigan;
- b. a juvenile who is an enrolled member of the Tribe or eligible for enrollment in the Tribe who is involved in a delinquency proceeding or other status offense proceeding which is transferred to the Tribal Court pursuant to Section 9.
- c. a non-Indian or non-member juvenile domiciled or residing within the Tribal lands of the Little River Band of Ottawa Indians in the home of an enrolled member of either the Little River Band of Ottawa Indians or any other Indian Tribe.
- d. any person causing a juvenile to come within the jurisdiction of this Code, including parent(s), guardian(s) and custodian(s) of juveniles coming under the jurisdiction of this Court pursuant to paragraph (b) of this section.

## **Section 11. Authorization to File Petition.**

11.01. *Complaint.* Any person may file a complaint in writing with the CIT, Family Services Department, Presenting Officer or law enforcement alleging that a juvenile has committed inappropriate behavior. The complaint shall immediately be forwarded to the Presenting Officer unless already presented to him/her. If the allegation of inappropriate behavior is one that if committed by an adult would constitute an offense under Article XIX of the Law and Order – Criminal Offense Ordinance, Ordinance #03-400-03, then the CIT shall, upon a finding a probable cause that the allegations are true, recommend that the Prosecutor file a formal petition with the Tribal Court.

11.02. *Petition.* After an appropriate investigation is conducted pursuant to Section 7.01, the CIT shall decide if a petition should be filed against the juvenile. The Presenting Officer is responsible for filing the petition. The petition shall be filed with the Clerk of the Children's Court.

11.03. *Time Limitations for filing a Petition.*

- a. If a juvenile has been removed from the home, a petition shall be filed with the Children's Court within forty-eight (48) hours, excluding Saturdays, Sundays and

legal holidays, or the juvenile must be returned to his/her home; or

b. If a juvenile has not been removed from the home, a petition shall be filed within nine (9) months of when the alleged inappropriate behavior occurred.

11.04. *Contents of Petition.* The petition shall set forth the following with specificity:

a. the name, birth date, sex, residence and Tribal affiliation of the juvenile;

b. the basis for the Court's jurisdiction;

c. the specific allegations of the juvenile's inappropriate behavior, including the date, time and location at which the alleged facts occurred;

e. the names, residence and Tribal affiliation of the juvenile's parents, guardians or custodians, if known;

f. the names, relationships and residences of all known members of the juvenile's extended family and all former care givers, if known. If the identity, residence or location of any parent, guardian, or custodian is unknown, the name, relationship and address of any known adult relative(s) residing in the same city or county as the juvenile;

g. if the juvenile is placed outside of the home the following information must be stated in the petition:

1. where the juvenile is placed;

2. the facts surrounding the placement; and

3. the date and time of the placement.

h. the name of the Presenting Officer and the date and time presented;

i. the type of relief requested, including whether temporary or permanent custody is sought.

j. if any matters required to be set forth in subsections (a) through (i) of this section are not known, a statement that they are not known must be made.

11.05. *Dismissal of Petition.*

a. *Dismissal.* Unless a continuance is granted pursuant to Subsection (b) or Section 13.03(e), a petition alleging that a juvenile has committed inappropriate behavior shall be dismissed with prejudice if a preliminary hearing is not held within:

1. two (2) working days from the date the petition is filed if a juvenile is taken into custody; or

2. twenty (20) working days from the date the petition is filed when a juvenile is not in custody or released to his/her parent, custodian or guardian.

b. *Continuance.* Notwithstanding the time limitations specified in paragraph (a), above, the time for holding the preliminary hearing may be continued upon motion of the Presenting Officer if the custodial parent, guardian or custodian or other material evidence and/or witnesses are unavailable. The motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of unavailable persons or other witnesses. A continuance will be granted only upon a showing by the Presenting Officer that

he/she has exercised due diligence in his/her attempt to secure the evidence and/or attendance of witnesses. If a proper showing of due diligence is not made, and the preliminary hearing is not held within the time period required in paragraph (a), the petition must be dismissed with prejudice. If a continuance is granted, the preliminary hearing must be held within five (5) calendar days from the date the petition was filed, if the juvenile was taken into custody, or within twenty (20) calendar days, if a juvenile is not in custody.

11.06. *Notice and Service of Summons.*

a. *General.* A party may be given notice of a proceeding in the Children's Court in any manner authorized by this Juvenile Code unless a party must be summoned as provided in Section 11.07.

11.07. *Summons.* Except as otherwise provided in this Code, the Children's Court shall direct the services of a summons in all proceedings in the Children's Court. That summons shall be issued and served on the: (1) juvenile, (2) parents, (3) guardian and (4) custodian with whom the juvenile resides if applicable, directing the person to appear with the juvenile for trial or other proceeding.

11.08. *Contents of Summons.* The summons shall direct the person to whom it is addressed to appear with the juvenile, at a time and place specified by the Court and must:

- a. identify the nature of the proceeding; and
- b. have a copy of the petition attached to the summons; and
- c. explain that the juvenile has a right to an attorney at his/her own expense and a right to a trial.
- d. comply with all applicable Tribal Court Rules of Civil Procedure.

11.09. *Manner of Serving Summons.* The Summons shall be served in a manner consistent with the Tribal Court Rules of Civil Procedure. See Chapter Two (2) of the Tribal Court Rules of Civil Procedure.

11.10. *Time of Service.*

- a. A summons shall be personally served or sent by mail at least:
  1. Twenty one (21) calendar days before adjudicatory hearing or dispositional hearing.
  2. Ten (10) calendar days before any other hearing, including preliminary hearings, except in the case of preliminary hearings following the juvenile's removal from the home which must comply with Sections 13.01 and 13.02(a)-(b).
- b. If service is by publication, the notice shall appear in a newspaper in the county where the party resides, if known, and if not, in the county where the action is pending. The published notice does not require publication of the petition but must appear one or more times fourteen (14) calendar days prior to the hearing, except in the case of preliminary hearings following the juvenile's removal from the home which must comply with Sections 13.01 and 13.02(a)-(b).

## **Section 12. Hearing**

### **12.01 Notice of Hearing.**

a. Persons entitled to notice from the Court shall insure that the following persons are notified of each hearing:

1. the parent(s);
2. the juvenile;
3. the attorney for the juvenile, if any;
4. the legal guardian or custodian other than the parent(s), if any;
5. the petitioner;
6. the juvenile's tribe, if different from the petitioner;
7. any other person the Court may direct to be notified.

12.02. *General.* Notice of hearing must be given in writing or in Court on the record at least fourteen (14) calendar days prior to the hearing unless otherwise provided in this Code.

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

12.04. *Waiver of Notice.* A person may waive notice of hearing or service of process. The waiver shall be in writing.

12.05. *Subsequent Notices.* After a party's first appearance before the Court, the notices of proceedings and pleadings shall be served on that party or, if the party has an attorney, on the attorney for the party, either personally or by ordinary mail.

## **Section 13. Preliminary Hearing.**

13.01. *Preliminary Hearing; Emergency Removal.* A juvenile shall not be removed from the home unless he is a threat to himself and for the public safety of the community. If a juvenile is placed out of the home, reasonable efforts shall be made to notify the parents or extended family of the preliminary hearing following emergency removal as soon as the hearing is scheduled. The notice may be in person, in writing, on the record or by telephone. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

13.02. *Time Period Within Which Preliminary Hearing Must be Held.*

a. *Juvenile Released to Parent, Guardian or Custodian; Hearing Date.* If the juvenile is taken into custody and released to the parent(s), guardian or custodian, the Court shall conduct a preliminary hearing within seven working (7) days after filing of the petition. See Section 11.05(a)(2). After the preliminary hearing is concluded, the Court may determine on its own motion, or based upon the recommendation of the CIT and the Court's acceptance, that a plan be developed for the juvenile, the petition shall be held in abeyance until the proceedings conclude or the petition is dismissed.

b. *Juvenile Taken into Custody for Out-of-home Placement; Hearing Date.* If the

juvenile is taken into custody and placed in out of home placement, the Court shall conduct a preliminary hearing within two (2) working days from the date the petition is filed. See *Section 11.05(a)(1)*. After the preliminary hearing is concluded, the Court may determine on its own motion, or based upon the recommendation of the CIT and the Court's acceptance, that a plan be developed for the juvenile, the petition shall be held in abeyance until the proceedings conclude or the petition is dismissed.

c. *Juvenile not taken into custody.* If the juvenile is not being detained for the alleged inappropriate behavior then the Court shall conduct a preliminary hearing within twenty (20) working days from the date the petition is filed. See *Section 11.05(a)(2)*. After the preliminary hearing is concluded, the petition shall be held in abeyance until the Court determines, on its own motion or by recommendation of the CIT, whether a plan can be developed for the juvenile.

### 13.03 *Preliminary Hearing Procedures.*

*Purpose.* At the Preliminary Hearing, the Children's Court must determine:

- a. whether the juvenile and parent(s), and, if applicable, guardian or custodian of the juvenile have been notified of the hearing; and
- b. whether probable cause exists to believe that the juvenile committed the alleged inappropriate behavior; and
- c. whether the juvenile poses a substantial risk of harm to himself or the community; and

d. whether the current placement is appropriate or it needs to be changed in compliance with Section 16 of this Code.

e. *If Parent, Guardian or Custodian are not present at the Preliminary Hearing.* The Court shall determine if the juvenile's parent, guardian or custodian has been notified of the hearing in accordance with Section 12 of this Code. If the parent is not present, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the juvenile's parent, guardian or custodian, the Court shall recess for not more than seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, and direct the petitioner to make continued efforts to obtain the presence of the juvenile's parent, guardian or custodian. The preliminary hearing may be conducted in the parent's absence.

f. the Court shall make a preliminary finding to determine whether the juvenile's interests are adequately represented by the parties to the proceeding and may appoint a guardian ad litem to represent the juvenile.

g. *Court Testimony.* The Court shall hear testimony concerning:

1. the circumstances that gave rise to the petition; and
2. if the juvenile has been placed, the need for continued placement.

h. *Plea of Admission or No Contest.* A juvenile may make a plea of admission or of no contest to the allegations contained in the petition, including an amended petition, which would establish the juvenile has committed the alleged offense. The

plea may be taken at any time after the filing of the petition. Before accepting a plea of admission or plea of no contest, the Court must advise the juvenile on the record or in writing that is made a part of the record:

1. of the allegations in the petition;
  2. of the right to an attorney at the juvenile's expense;
  3. that if the Court accepts the plea, the juvenile will give up rights to: a trial by judge, to have the petitioner prove the truth of allegations by a preponderance of the evidence, to have witnesses against him/her appear and testify under oath, to cross-examine witnesses against him/her, and have witnesses which might support his/her defense be subpoenaed to testify in Court; and
  4. of the consequences of the plea.
- i. The Court shall not accept a plea of admission or no contest until it satisfies itself that the allegations contained in the petition are supported and that the plea is knowingly, understandingly, and voluntarily made. Following acceptance and entry of a plea of admission or no contest, the Court shall schedule a disposition hearing in accordance with Section 17 of this Code.
- j. *Petition Authorization.* At the preliminary hearing, the Court shall decide whether to authorize the filing of the petition.
- k. *No Probable Cause.* If at the end of the preliminary hearing, probable cause to believe the juvenile has not committed the alleged inappropriate behavior, the petition shall be dismissed and the juvenile shall be released.
- l. *Probable Cause.* If the Court finds that probable cause exists to believe that the juvenile may have committed the alleged inappropriate behavior the Court:
1. may hold the case in abeyance and request the CIT to develop an appropriate case plan for the juvenile.
  2. may refer the case to Peacemaking.
  3. may order the juvenile, parent, guardian or custodian to appear at an adjudication hearing (See *Section 14*) on a date and time set by the Court; and
  4. may release the juvenile to the custody of either of the juvenile's parents, guardian or custodian under such reasonable terms and conditions as are necessary for either physical, emotional or mental well being of the juvenile; or
  5. may order a placement of the juvenile, in the least restrictive environment and pursuant to the placement priorities in Section 16, with someone other than a parent, guardian or custodian if the Court, after hearing, determines that either of the following conditions exist:
    - a. that the juvenile poses a substantial risk of harm to himself and the community; or
    - b. if removal is necessary to safeguard the juvenile's health and welfare.

6. May change the placement, where the juvenile has been removed from the home, and such placement does not comply with Section 16 of this Code.

m. *Medical or Psychological Exam.* The Court may at any time after conducting a preliminary hearing at which probable cause to proceed upon a petition is found, order the juvenile to undergo a medical or psychological examination by a qualified professional.

## **Section 14. Adjudication Hearing.**

14.01. *Purpose.* The Court shall conduct an Adjudication Hearing for the purpose of determining whether the juvenile committed inappropriate behavior.

14.02. *Hearing.* The Adjudication Hearing shall commence as soon as possible but not later than forty-five (45) calendar days after the petition is filed with the Court unless continued pursuant to Section 14.03.

14.03. *Continuances.* Continuances of an Adjudication Hearing may be granted by the Court but only:

- a. upon stipulation of the parties; or
- b. where process cannot be completed; or
- c. if the Court finds that the testimony of a presently unavailable witness is needed; or
- d. one time only for up to fourteen (14) calendar days at a parent's request for parents to obtain counsel; or
- e. *Adjudication Hearing Adjourned if referred to CIT.* If, after the filing of a petition, the judge refers the case to the CIT to develop a plan for the juvenile, the proceedings on the petition may be held in abeyance and the adjudication hearing adjourned until the informal proceedings conclude or the petition is dismissed.
- f. for good cause shown.

## **Section 15. Evidence**

a. *Introduction of Evidence.* In a proceeding on a petition a party may introduce evidence, confront and cross-examine witnesses and admit or deny allegations made in the petition.

b. *Admissibility.* The Court may accept reports and other public records into evidence where such evidence is otherwise unavailable. All relevant evidence may be received or relied upon at the Court's discretion. The Court shall take into consideration, the case service plan and any report by an agency responsible for the care and supervision of the juvenile.

c. *Privilege.* At the Disposition phase of the case, materials prepared pursuant to a Court ordered examination, interview or course of treatment can be received and used by the Court.

## **Section 16. Placement.**

16.01. *Least Restrictive Setting.* If a juvenile cannot be returned to the custodial parent(s), custodian(s), or guardian(s), the juvenile shall be placed in the least restrictive setting which most approximates a family and in which the special needs, if any, may be met. Consistent with the placement priorities described below, efforts shall be made to place the juvenile in a home or facility within the Michigan counties of Kent, Manistee, Lake, Mason, Muskegon, Newaygo, Oceana, Ottawa and Wexford, or in other areas in which culturally appropriate services are available. Efforts shall also be made to place the juvenile in reasonable proximity to his/her home, taking into account any special needs of the juvenile.

16.02. *Placement Priorities.* A juvenile may be placed outside of the home of the custodial parent(s), custodian(s), or guardian(s), pending a Court hearing, according to the following in order of preference. Placement priorities may be deviated from by the Court based upon a finding of good cause that it is in the juvenile's best interest and: (1) give preference to the juvenile regarding his/her placement; and for (2) the Court finds that the home of the non-custodial biological parent listed in Subsections (b) and (c) is an appropriate placement.

- a. members of the juvenile's immediate or extended family, who are members of the Little River Band of Ottawa, Grand River Band of Ottawa or other Michigan Ottawa, Chippewa or Potawatomi Tribes; or
- b. members of the juvenile's immediate or extended family, who are members of a federally recognized or state historic tribe which is located outside of the State of Michigan, or who are members of a Canadian Indian tribe or Band; or
- c. other members of the juvenile's immediate or extended family; or
- d. an Indian family of the Little River Band of Ottawa Indians which is licensed by the State or a Tribe as a foster care home or an Indian Family otherwise authorized by law to provide care for the juvenile; or
- e. a facility operated by a licensed Indian child welfare services agency; or
- f. any other suitable placement that meets the standards established by the Tribal government.
- g. an approved juvenile detention facility.

16.03. *Adult Detention Facility.* A juvenile who is alleged to have committed a violent crime may be detained in a jail or other licensed detention facility used for the detention of adults only under exceptional circumstances, where a facility in Section 16.02(g) is unavailable or would not assure adequate supervision of the juvenile. Such detention must satisfy the following criteria:

- a. *Detention:* The detention of the juvenile must be in a cell separate from adults; and
- b. *Supervision:* Adequate supervision of the juvenile is provided twenty-four (24) hours a day; and
- c. *Common Areas:* The juvenile may not share common areas with adults.

## **Section 17. Disposition Hearing.**

17.01. *General.* The Court shall hold a hearing and enter an order of disposition after considering the case service plan and other evidence offered at Disposition. The Court shall approve a case service plan and may enter such orders, as it considers necessary in the interest of the juvenile.

a. *Placement.* If a juvenile has been found to have committed inappropriate behavior, the Court may make the following dispositions, consistent with the placement priorities and least restrictive environment described in Section 16.

1. permit the juvenile to remain with the parent(s), guardian or custodian, subject to such conditions as the Court may prescribe;

2. place the juvenile with a relative subject to such conditions as the Court may prescribe;

3. place the juvenile in a group home, residential care facility or juvenile detention facility designated by the Court;

c. *Amendments to Orders.* If a juvenile remains under the jurisdiction of the Court, an order may be amended or supplemented within the authority granted to the Court in this Code at any time as the Court considers necessary.

17.02. *Proposed Case Plan.*

a. *Alternative Dispositions Report.* The Little River Band Family Services Department shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports from the CIT and the Indian Child Welfare Worker. The report shall contain a specific plan for the care of and assistance to the minor and/or the minor's parent(s), guardian or custodian designed to resolve the problems presented in the petition.

b. *Necessity and Benefits Findings.* The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.

c. *Placement Recommendations Requirements.* 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, including any reason(s) for deviating from the placement priorities and least restrictive environment provisions as defined in Section 16 of this Code.

d. *Time Frame.* A CIT member shall present the case plan to the Court at least three (3) calendar days before the disposition hearing.

17.03. *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 eighteen (18) or the Court no longer has jurisdiction over the case.

a. place the juvenile on probation subject to conditions set by the Court;

b. order additional services that are necessary to rectify the conditions that caused the juvenile to commit the inappropriate behavior and continue to have problems.

- c. order additional actions to be taken by the juvenile, parent(s), guardian or custodian to rectify the conditions.
- d. order the juvenile to perform community service work at the direction of the juvenile probation officer;
- e. order the juvenile to pay restitution, including costs related to detention, or to provide restitutive services to the injured party or parties.
- f. 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, where such measure is in the best interest of the juvenile and consistent with the philosophy and goals of this Code.

## **Section 18. Disposition Review Hearing.**

18.01. *Time Frame.* The disposition Order is to be reviewed at the discretion of the Court but at least once every six (6) months.

18.02. *Notice.* Notice of the review hearing shall be provided on the record or by ordinary mail as provided in this Code.

18.03. *Matter Subject to Review Hearing.* At a review hearing the Court shall review on the record the compliance with the case service plan prepared and the previous orders of the Court including:

- a. services provided or offered to the juvenile and the parent(s), guardian or custodian and whether the juvenile, parent(s), guardian or custodian has complied with and the case service plan.

18.04. *Action Following Review Hearing.* After review of the case service plan, the Court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the juvenile to commit the inappropriate behavior. The Court may modify any part of the case plan.

18.05. *Review Hearing Regarding Juvenile in Placement.* At a review hearing, the Court shall determine the continuing necessity and appropriateness of the juvenile's placement and shall order the return of the juvenile to the custody of the parent(s), continue the disposition order, modify the disposition order or enter a new disposition order. If the juvenile remains in placement, the Court shall determine at the disposition hearing and at each review hearing whether the case should be reviewed before the next review hearing required under this section. In making this determination, the Court shall consider, but not be limited to, all of the following:

- a. whether there is a reasonable likelihood that the juvenile may be returned to the home prior to the next review hearing required by this section.
- b. whether a placement which better meets the placement priorities described in Section 16 of this Code is available and in the best interests of the juvenile.

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

18.06. *Modification of Disposition Order.* A disposition order of the Court may be modified, for good cause, upon a showing of a change of circumstances. The Court may

modify a disposition order at any time, upon motion of the following:

- a. the juvenile;
- b. the juvenile's parent(s), guardian, or custodian;
- c. the Tribal Presenting Officer; or
- d. the Tribal Juvenile Probation Officer.
- e. if the modification involves a change of custody, the Court shall conduct a hearing to review its disposition order as follows:
- f. the Court shall review the performance of the juvenile and review the reports of the Presenting Officer and other persons providing assistance to the juvenile and the juvenile's family;
- g. 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.

### **Section 19. Authorization of Medical Treatment.**

19.01. *Conditions Under Which Court May Authorize Medical Treatment.* At any time the Court may authorize medical, psychological or surgical care for a Juvenile when:

- a. a physician informs the Court orally or in writing that in the physician's professional opinion, the life of the child would be greatly endangered without certain treatment; and
- b. a parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case; or
- c. the parent(s), guardian or custodian refuses or fails to consent.
- d. if time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing but this hearing shall not be allowed to further jeopardize the juvenile's life or health.

19.02. *Authorization Types.*

- a. *Oral.* Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital.
- b. *Written.* After entering any authorization under this Section, the Court shall reduce the circumstances, finding and authorization in 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.

### **Section 20. Rehearing.**

20.01. *General.* The Rules of Civil Procedure shall govern where they are not in conflict with this Code.

20.02. *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) calendar days after the decision of disposition or supplemental disposition. The Court may entertain an untimely motion for good cause shown. A motion will not be considered unless a matter

not previously presented to the Court which if true would cause the Court to reconsider the case.

20.03. *Notice.* All parties must be given notice of the motion in accordance with this Code.

20.04. *Response.* Any response by parties must be in writing and filed with the Court and opposing parties within five (5) calendar days after notice of the motion.

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

20.06. *Hearings.* The Court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for disposition hearings. The Court shall state the reasons for its decision on the motion on the record or in writing.

20.07. *Stay.* The Court may stay an order pending a ruling on the motion.

## **Section 21. Children's Court of Appeals.**

21.01. *General.* The Tribal Court Rules of Civil Procedure shall govern where they are not in conflict with this Code.

21.02. *Who can Appeal.* Any party to a Children's Court hearing may appeal a final Children's Court order to the Little River Band Appellate Court.

21.03. *Time Limit for Appeal.* Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the Court within twenty-eight (28) calendar days of the final order.

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

21.05. *Record.* For purposes of appeal, a record of proceedings shall be made available to the child, the parent(s), guardian or custodian, the juvenile's counsel and others upon Court order. The party seeking the appeal shall pay costs of obtaining this record.

21.06. *Stay.* A stay of execution of the judgment may be ordered either by the lower court or upon order of the appellate court if denied by the lower court.

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**CERTIFICATION**

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Juvenile Code adopted by the Tribal Council on July 27, 2011.

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