



Keweenaw Bay Indian Community TRIBAL CODE TITLE FOUR JUVENILE DIVISION

An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purposes of updating the Juvenile laws and procedures and to ensure compliance with federal laws and procedures to allow the Keweenaw Bay Indian Community Department of Tribal Social Services to become a IV-E agency under Title IV, Part E of the federal Social Security Act.

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TITLE ONE JUVENILE DIVISION

CHAPTER 4.1 — GENERAL PROVISIONS

§4.101 Creation of Juvenile Division.

There is hereby created the Juvenile Division of the Tribal Court. The Juvenile Division shall be comprised of the judges and ancillary personnel of the Trial Division of the Tribal Court and shall be referred to as the Juvenile Division or Juvenile Court.

§4.102 Applicability of Rules of Judicial Procedure and Tribal Code.

All rules of judicial procedure established by the Trial Division, and all provisions of the Tribal Code of the Keweenaw Bay Indian Community, shall be equally effective in proceedings conducted before the Juvenile Division except as specifically provided to the contrary herein or therein.

§4.103 Purpose.

The purpose of the Juvenile Division of the Tribal Code, as set forth in this Title, is to insure that each juvenile who shall come within the jurisdiction of the Court shall receive such care and guidance, preferably in his own home, as shall best satisfy the spiritual, emotional, mental, and physical needs and welfare of the juvenile, and the best interests of the people of the Keweenaw Bay Indian Community; to preserve and strengthen the juvenile's family ties to the greatest extent possible, removing him from the custody of his parent(s) or guardian, and from his home, only when his welfare, or safety, or the protection of the public cannot be adequately achieved without removal; and when a juvenile is removed from his home to provide that juvenile with custody, care, and discipline which shall be as nearly equivalent to that which should have been provided by his parent(s) or guardian as shall be possible.

§4.104 Juvenile; Definition.

The terms juvenile and child shall be used interchangeably throughout the Tribal Code and shall have the meanings described as follows:

- A. For purposes of delinquency proceedings, a juvenile is any person under the age of seventeen (17) years. The Court shall have continuing jurisdiction for delinquency proceedings after a juvenile's seventeenth (17) birthday and through the juvenile's eighteenth (18) birthday, if the Court shall deem it appropriate and necessary to continue its jurisdiction to achieve its purposes set forth in §4.103.
- B. For purposes of placement with foster parent(s), adoptive parent(s), relative guardians, or any other out of home placement, a juvenile is a person under the age of eighteen (18) years.
- C. The definition of juvenile may also include persons under the age of twenty-one (21) years when the criteria of 42 U.S.C. §675(8) (A) are met.
- D. "Infant" shall mean an unborn child in utero from the beginning of the second trimester until the child reaches one (1) year old.

§4.105 Children within the Jurisdiction of the Court.

Definitions:

- A. A “dependent juvenile” shall mean any juvenile who is homeless or destitute, or without proper support, through no fault of his parent(s), guardian, or custodian.
- B. A “neglected juvenile” shall mean any juvenile who:
 - 1. is abandoned by his parent(s), guardian, or custodian; or
 - 2. lacks proper parental care by reason of the fault or habits of his parent(s), guardian, or custodian; or
 - 3. whose parent(s), guardian, or custodian refuse or neglect to provide proper and necessary food, clothing, shelter, education, or other care to preserve and develop the health, moral, or emotional and physical well-being of such juvenile; or
 - 4. whose parent(s), guardian, or custodian, neglect or refuse to provide such special care as may be necessary or appropriate by reason of the special mental or physical condition or needs of the juvenile.
 - 5. An infant that has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his body. Unless the substance is present due to medical treatment of the infant, or mother. If the substance is present due to medical treatment of the mother, the treating medical professional must have been informed of the pregnancy.
- C. A “delinquent juvenile” shall mean any juvenile who:
 - 1. is adjudicated of committing any offense enumerated in the Criminal Code of the Keweenaw Bay Indian Community, any violation of the laws of the United States, or any violation of the laws of any other jurisdiction when such child, after having been adjudicated a delinquent in another jurisdiction, shall be transferred to the jurisdiction of the Juvenile Court; or
 - 2. by reason of being habitually disobedient or incorrigible, repeatedly refuses to obey the reasonable commands and directives of his parent(s), guardian, or custodian, or
 - 3. is habitually truant from school or his place of residence; or
 - 4. habitually consumes intoxicants or controlled substances; or
 - 5. consistently conducts himself in a manner likely to endanger the health or safety of himself, or others.
- D. “Reasonable efforts” are those efforts by TSS, other agencies, and individuals to maintain the family unit. Reasonable efforts also include efforts to reunify the juvenile and the family, and to make or finalize alternate permanency plans in a timely manner when reunification is not appropriate or not possible.
 - 1. A reasonable efforts determination is required to be made by the Court:
 - a) within sixty (60) days of a juvenile being removed from his or her home;
 - b) to finalize a juvenile’s permanency plan within twelve (12) months of the date the juvenile entered into foster care;

2. A reasonable efforts determination shall not be required to be made with respect to a parent if a court of competent jurisdiction has determined:
 - a) the parent has subjected the child to aggravated circumstances which include but are not limited to abandonment, torture, chronic abuse, and sexual abuse; or
 - b) the parent has:
 - i. committed murder of another child of the parent, or committed voluntary manslaughter of another child of the parent, or
 - ii. aided or abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of another child of the parent, or
 - iii. committed a felony assault that results in serious bodily injury to another child of the parent, or
 - iv. the parental rights of the parent to a sibling of the child have been terminated involuntarily.

§4.106 Additional Definitions.

As used in this Code, the following words and phrases shall have the meanings ascribed to them below:

- A. “Abandon” or “abandonment”; refers to the willful desertion of a juvenile without ensuring the basic necessities of life are provided for the duration of the parent’s absence. Time is not an essential element of the act of abandonment, although the lapse of time may be evidence of an intention to abandon, and where it is accompanied by acts manifesting such an intention, it may be considered in determining whether there has been an abandonment.
- B. “Adult”; a person eighteen (18) years of age or older where §4.104(A) and (C) do not apply.
- C. “Custodial Detention” shall mean a juvenile who has been arrested for delinquency purposes and is in the custody of a police officer.
- D. “Custodian”; a person who has physical custody of a minor and who is providing, or who previously assumed the responsibility of providing the minor’s necessary food, shelter, and supervision.
- E. “Delinquent act”; an act, or omission, as described in the definition of a delinquent juvenile at §4.105(C).
- F. “Department of Tribal Social Services” or “TSS”; shall mean the Keweenaw Bay Indian Community Department of Tribal Social Services which is authorized to function in accordance with Title IV, Part E, of the federal Social Security Act as a IV-E agency. TSS has the responsibility for all activities relating to child care placement. TSS is responsible for advising the Court on all matters related to child care and placement. TSS may assign these duties and responsibilities to a TSS Designee when TSS believes such a designation or assignment is in the best interest of the child, family, or service plan.

- G. “TSS Designee”: shall mean a person or agency designated by the Keweenaw Bay Indian Community Department of Tribal Social Services to fulfill TSS’s duties or responsibilities in a particular case or service plan.
- H. “Guardian” is a person other than a juvenile’s parent, who is by law required to assume parental responsibilities as to the juvenile.
- I. “Habitual” or “habitually”; shall mean customary, usual, or of the nature of habit. It does not mean entirely or exclusively.
- J. “IV-E” and “Title IV-E”; shall be used interchangeably throughout this Code and shall mean Title IV, Part E, of the federal Social Security Act.
- K. “Interagency Agreement”; is a formal written agreement or an informal verbal agreement between agencies, or an agency and a tribe or state.
- L. “Least restrictive alternative”; means that dispositional or placement alternative which, while consistent with this Court’s objectives is the least restrictive method, in terms of restrictions to be placed upon a juvenile, of obtaining the Court’s objectives.
- M. “Near reservation designation” or “near reservation designated area” shall mean those counties near the L’Anse reservation in the state of Michigan as designated by the Bureau of Indian Affairs in the Federal Register at 58 FR 8882 and include:
 - 1. Baraga,
 - 2. Iron,
 - 3. Houghton,
 - 4. Marquette,
 - 5. Ontonagon,
 - 6. Dickinson,
 - 7. Gogebic, and
 - 8. Keweenaw.

CHAPTER 4.2 — THE JUVENILE COURT

§4.201 Jurisdiction.

- A. Original Jurisdiction - The Juvenile Court shall have exclusive, original jurisdiction in all proceedings in which a juvenile shall be alleged to be dependent, neglected, or delinquent. The jurisdiction of the Juvenile Court shall include jurisdiction over the juvenile and the parent(s), guardian, custodian, or any other adult with whom the child is placed with by the Court.
- B. Waiver of Jurisdiction - Under circumstances more fully described hereinafter, the Court may waive jurisdiction over an allegedly delinquent juvenile, in which case jurisdiction over such juvenile and the offense allegedly committed thereby shall be transferred from the Juvenile Division to the Trial Division of the Tribal Court.
- C. Voluntary Placements - The Juvenile Court shall also have exclusive, original jurisdiction in all voluntary placement proceedings. Voluntary placements are initiated by a juvenile’s parent(s), guardian, or custodian in which the parent(s), guardian, or custodian allege that he/she/they are unable to satisfy

the spiritual, emotional, mental, and physical needs of the juvenile. Before assuming jurisdiction, the Court shall determine that the parent(s), guardian, or custodian is genuinely unable to satisfy these needs despite good faith efforts to do so.

1. Having made this determination, no finding of neglect or abuse is required for jurisdiction under this subsection.
2. If it is the natural parent(s) of the juvenile who is initiating the proceeding, the Juvenile Court shall assume jurisdiction over the parent(s) for purposes of ordering counseling and or parental education classes with the goal of eventually reuniting the family and assisting the parent(s) in living up to the responsibilities of caring for the children. The Court shall have the discretion of determining on a case by case basis whether such counseling and or education is appropriate for guardians or custodians. At all times the Court shall attempt to fulfill the purposes set forth in §4.103.

§4.201a Voluntary Placement Agreements.

- A. For those cases eligible for funding under Title IV, Part E of the Social Security Act, the following shall apply:
 1. Juveniles subject to voluntary placements shall be ordered into the care, custody, and supervision of TSS.
 2. Voluntary placements shall be reviewed every ninety (90) days by the Court until the placement becomes permanent. At the review hearings, the Court is to make a finding whether or not the placement continues to be in the best interests of the juvenile.
 3. Once a voluntary placement becomes permanent, it shall be reviewed once a year, at which time the Court shall make a finding whether or not the placement continues to be in the best interests of the juvenile.
 4. If at any time the Court finds that a voluntary placement is no longer in the best interests of the juvenile, the Court shall remove the juvenile from that placement and re-commit the juvenile to the care, custody, and supervision of TSS for placement and other applicable services or return the juvenile to the care and custody of the parent(s), guardian, or custodian that entered into the voluntary placement agreement.
 5. If the parent(s), guardian, or custodian of the juvenile who entered into the voluntary placement agreement decides to revoke that voluntary placement, he or she must file a petition with the Court and a hearing must be held pursuant to §4.613.
- B. For those cases not eligible for funding under Title IV, Part E, of the Social Security Act, the Court may, upon its own motion or the motion of a party to the case order the following:
 1. Juveniles subject to voluntary placements may be ordered into the care, custody, and supervision of TSS.
 2. Voluntary placements may be reviewed every ninety (90) days by the Court until the placement becomes permanent. At the review hearings

the Court is to make a finding whether or not the placement continues to be in the best interests of the juvenile.

3. Once a voluntary placement becomes permanent, the Court may continue to review the placement once a year, at which time the Court will make a finding whether or not the placement continues to be in the best interests of the child.
4. If at any time the Court finds that a voluntary placement is no longer in the best interests of the juvenile, the Court shall remove the juvenile from that placement and re-commit the juvenile to the care, custody, and supervision of TSS for placement and other applicable services or return the juvenile to the care and custody of the parent(s), guardian, or custodian that entered into the voluntary placement agreement.
5. If the parent(s), guardian, or custodian of the juvenile who entered into the voluntary placement agreement decides to revoke that voluntary placement he or she must file a petition with the Court and a hearing must be held pursuant to §4.613.

§4.202 Adjudication of Delinquency Not Conviction of a Crime.

No adjudication by the Juvenile Court that a juvenile has committed a delinquent act or is a delinquent juvenile shall constitute a conviction of a crime except where:

- A. jurisdiction over a juvenile has been waived and transferred to the Trial Division of the Tribal Court, or
- B. the provisions of Tribal Code's sex offender registration laws apply to the adjudication.

§4.203 Cooperation with other Jurisdictions and Agencies.

- A. The Juvenile Court is authorized and directed to cooperate fully with Courts of similar jurisdiction created under the laws of other Indian Tribes, the State of Michigan or other states, or the Federal government as well as with private and public agencies, including TSS, for the purpose of insuring that each juvenile who shall come within the Court's jurisdiction shall have available the widest possible range of diversion, rehabilitation, or training programs, and the widest possible range of placement options.
- B. For those cases eligible for funding under Title IV, Part E, of the Social Security Act, to ensure maximum utilization of federal resources, if any conflicts are identified between the Juvenile Code and Title IV, Part E, of the Social Security Act and implementing regulations, the Title IV provisions shall control. This controlling authority only applies to cases eligible for funding under Title IV, Part E, of the Social Security Act and is not applicable in any other case or proceeding before this Court.

§4.204 Department of Tribal Social Services.

- A. For all matters related to foster care, adoption, guardianship, and/or out of home placement for persons under the age of twenty-one (21) within the Tribal Court's jurisdiction, TSS shall provide the following services to the Court: prevention, protective services for juveniles and adults, juvenile justice

and juvenile probation, foster care licensing, and supervision of tribally licensed foster homes. TSS is authorized to provide advocate, guardian ad litem, and other duties and or services as ordered by the Court or directed by Tribal Council. These services shall be provided by the TSS caseworker or TSS Designee as assigned by the TSS Department Head or as appointed by the Court.

- B. The Court may appoint someone other than a TSS caseworker or TSS Designee to provide the services identified above when the Court makes findings that such an appointment is in the best interests of the juvenile, vulnerable adult, or family involved.
- C. TSS is authorized to utilize IV-E funds, programs, and services for all eligible persons it serves.
- D. TSS caseworkers and TSS Designees are mandatory reporters for instances described in §4.1102 for all persons within the service area.

§4.205 Tribal Social Services Service Area.

- A. TSS shall provide services to members of the Keweenaw Bay Indian Community who reside on the L'Anse reservation and Keweenaw Bay Indian Community trust lands. TSS may provide services to members of the Keweenaw Bay Indian Community who reside within the Bureau of Indian Affairs' near reservation designated area pursuant to a court order or interagency agreement in compliance with §4.203 of this Code.
- B. TSS shall provide services to members of other federally recognized Indian tribes who reside on the L'Anse reservation and Keweenaw Bay Indian Community trust lands. TSS may provide services to members of other federally recognized tribes who reside within the Bureau of Indian Affairs' near reservation designated area pursuant to a court order or interagency agreement in compliance with §4.203 of this Code.
- C. TSS shall provide services to juveniles, as defined in §4.104, who are eligible for enrollment as members of the Keweenaw Bay Indian Community and who reside on the L'Anse reservation or the Keweenaw Bay Indian Community trust lands. TSS may provide services for juveniles, as defined in §4.104, who are eligible for enrollment as members in another federally recognized Indian tribe and who reside on the L'Anse reservation or the Keweenaw Bay Indian Community trust lands.

CHAPTER 4.3 — JUVENILE COURT PROCEDURES FOR DELINQUENCY

§4.301 Commencement of Delinquency Proceedings.

Delinquency proceedings shall be commenced by the filing of a petition with the Court by TSS, a police officer, the Tribal Prosecuting Attorney, or the juvenile's parent or legal guardian.

§4.302 Delinquency Petition; Contents.

The petition shall contain the following:

- A. A citation to the Code provision under which jurisdiction exists;
- B. A citation to the provision of the Code which the juvenile is alleged to have violated;
- C. The name, age, address, and tribal affiliation of the juvenile who is the subject of the petition, if known;
- D. The name of the juvenile's parent(s), guardian, or custodian, if known, and
- E. A plain and concise statement of the facts upon which the petition is based including the date and location of the acts giving rise to the petition.

§4.303 Judicial Review of Delinquency Petition.

Every petition shall be reviewed by a Judge at the earliest practicable time after filing.

- A. The Court shall review a delinquency petition and make a finding as to whether or not there is probable cause to bring the juvenile before the Court.
- B. Upon a finding of probable cause, the Court shall issue a custodial order directing that the juvenile be taken into custody and brought before the Court.
- C. If the petitioner asks for the juvenile to be removed from the juvenile's current placement, or if the juvenile was removed because of emergency circumstances, the Court shall make a reasonable efforts finding. A custodial order may be issued wherein the placement of the juvenile shall be maintained or adjusted based upon the Court's reasonable efforts determination.
- D. If probable cause is not found, the petition shall be dismissed.

§4.304 Allegedly Delinquent Juveniles Taken Into Custody.

A juvenile may be taken into custody by a police officer pursuant to the circumstances in section 4.305, or a custodial order has been issued directing that the juvenile be taken into custody.

§4.305 Custodial Detention Without A Custodial Order.

A police officer who shall take a juvenile into custody without a custodial order shall do the following:

- A. Forthwith advise the juvenile of the reason for his custodial detention and of his rights under the Indian Civil Rights Act and Tribal Code.
- B. Determine whether the juvenile, as a result of intoxication, consumption of controlled substances, or other reason requires immediate medical care. If so, such juvenile shall be transported to the nearest location where such care would be available.
- C. Notify the juvenile's custodial parent, guardian, or custodian that the juvenile has been taken into custodial detention and the reasons therefore.
- D. If, in the police officer's judgment, the juvenile shall pose a danger to himself or others upon release from the officer's custodial detention, the police officer may seek placement in an appropriate detention facility.

- E. The police officer shall cause a petition to be filed with, and the juvenile to be brought before the Juvenile Court within twenty-four (24) hours of the commencement of his custodial detention for a preliminary inquiry by the Court.
- F. In all other cases, the juvenile shall be delivered to the custody of his custodial parent, guardian, or custodian pending further juvenile proceedings.

§4.306 Custodial Detention With a Custodial Order Prior to the Preliminary Inquiry.

- A. A custodial order directing that a juvenile be taken into custody shall only be executed by a police officer when a Judge of the Juvenile Court can be available to conduct a preliminary inquiry within three (3) hours of the commencement of the juvenile's custodial detention by the police officer.
- B. A police officer who shall take a juvenile into custody with a custodial order shall do the following:
 - 1. Immediately contact the parent(s), guardian, or custodian of the juvenile and advise them of the reason for the juvenile's custodial detention, the juvenile's rights under the Indian Civil Rights Act and Tribal Code, and the time and place of the preliminary inquiry.
 - 2. Forthwith advise the juvenile of the reason for his custodial detention and his rights under the Indian Civil Rights Act and Tribal Code.

CHAPTER 4.4 – RESERVED

CHAPTER 4.5 — JUVENILE COURT PROCEDURES FOR DEPENDENCY AND NEGLECT PROCEEDINGS

§4.501 Petition.

Any person may file a petition with the Court alleging that a juvenile is dependent or neglected as elsewhere defined herein. The petition shall be signed by the petitioner and shall contain:

- A. A citation to the specific provisions of this Code upon which the Court's jurisdiction is based; and
- B. The name, age, address, and tribal affiliation of the juvenile who is the subject of the petition, if known; and
- C. The name and tribal affiliation of the juvenile's parent(s), guardian, or custodian, if known, and
- D. A plain and concise statement of the facts upon which the allegations are based, including, if possible, the date, time, and location at which the alleged facts occurred.

§4.502 Emergency Removal Procedures.

Upon a review of an emergency petition, the Court shall determine whether or not probable cause exists to support the allegations in the petition. If the Court finds probable cause to support the petition, the Court shall to on to determine whether or not it

would be contrary to the welfare of the juvenile to remain in the home, that foster care placement by TSS would be in the juvenile's best interest, and that reasonable efforts to maintain the family unit have been made or are not possible at the time of the emergency petition. Upon a finding of probable cause, the Court shall make a finding that the juvenile is dependent or neglected, and shall enter an order directing that the juvenile be taken and placed under the care and supervision of TSS.

§4.503 Custodial Detention; Circumstances.

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

- A. There are reasonable grounds to believe that the juvenile is a neglected or dependent juvenile and that he is in immediate danger from his surroundings;
or
- B. An order has been issued by the Court directing that the juvenile be taken into custody.

§4.504 Custodial Detention; Procedure.

The police officer shall do the following upon taking a juvenile into custodial detention:

- A. Forthwith advise the juvenile of the reason for his custodial detention.
- B. Determine whether the juvenile as a result of intoxication, consumption of controlled substances, neglect, or otherwise requires immediate medical care. If so, such juvenile shall be transported to the nearest location where such care would be available.
- C. Notify the juvenile's custodial parent(s), guardian, or custodian that the juvenile has been detained and the reason therefore.
- D. Forthwith bring the juvenile before the Court for a preliminary inquiry. If such custodial detention shall occur when a Tribal Judge shall be unavailable for a preliminary inquiry, the juvenile shall be delivered into the custody of TSS which shall arrange for shelter care for such juvenile as hereinafter provided.
- E. In the event that such juvenile was not detained because of a custodial order, the police officer shall immediately prepare a petition stating the basis for the juvenile's custodial detention. Such petition may be hand written and informal but shall state clearly the facts and circumstances which in the officer's judgment required custodial detention. At the earliest possible time, but prior to a preliminary inquiry, TSS shall file a formal petition with the Court.

§4.504a Duties of Tribal Social Service Caseworker.

Upon receipt of a petition prepared in accordance with this chapter, and upon transfer of the juvenile in the police officer's custody to the TSS caseworker, the caseworker shall have the following responsibilities:

- A. To forthwith place the juvenile in a shelter care facility appropriate to his needs, insuring that his immediate needs for food, clothing, and medical attention are met.
- B. To make every effort to notify the juvenile's parent, guardian, or custodian of the juvenile's whereabouts, and the reason for his detention.

§4.505 Preliminary Inquiry; Notification of Parent.

The detaining police officer and the Court staff shall make every reasonable effort to notify the juvenile's parent(s), guardian, or custodian of the time and date for the preliminary inquiry. Prior to the inquiry, the juvenile shall be given an opportunity to talk with his parent(s), guardian, or custodian and/or TSS.

§4.506 Preliminary Inquiry; Adjournment.

If the juvenile's parent, guardian, or custodian shall not be present at the preliminary inquiry the Juvenile Court shall determine whether or not satisfactory efforts have been made to notify and obtain their presence at the hearing. If the Juvenile Court finds that further efforts are likely to bring about the attendance at the preliminary inquiry of the juvenile's parent(s), guardian, or custodian, the Juvenile Court shall adjourn the hearing for a period not to exceed twenty-four (24) hours during which TSS or other persons directed by the Juvenile Court shall make continued efforts to obtain the presence of a parent, guardian, or custodian at the hearing. If the Court finds that further efforts are not likely to result in the attendance of the juvenile's parent(s), guardian, or custodian at the preliminary inquiry, the Juvenile Court shall make findings as to the facts and circumstances of the parent(s), guardian, or custodian's absence and direct TSS to make continuing efforts to locate the parent(s), guardian, or custodian of the juvenile, and the Juvenile Court shall proceed on the petition.

§4.507 Scheduling of Preliminary Inquiry When There is No Custodial Detention.

If a petition, filed pursuant to the provisions of this chapter, has not resulted in the custodial detention of the juvenile, the Juvenile Court shall insure that the juvenile and person in whose custody he resides are served with a copy of the petition and the notice of hearing with respect to the preliminary inquiry within forty-eight (48) hours of the filing of the petition. Further, the preliminary inquiry shall be scheduled within seventy-two (72) hours of the filing of the petition. Service of the petition and notice of hearing shall be by personal service.

§4.508 Contents of the Notice for Preliminary Inquiry.

The notice of hearing shall set forth the name of the Court, the title of the proceedings, the date, time, and location of the preliminary inquiry, and a statement of the rights of the juvenile, parent(s), guardian, or custodian, including their rights under the Indian Civil Rights Act and a statement requiring them to appear including potential penalties for their failure to appear.

§4.509 Preliminary Inquiry; Scope of Inquiry.

At the preliminary inquiry the Juvenile Court shall determine whether or not probable cause exists to support the allegations in the petition. Prior to the commencement of the hearing, the Juvenile Court shall advise the juvenile and the parent(s), guardian, or custodian of the nature of the allegations, the scope of the hearing, and their rights under the Indian Civil Rights Act. At the conclusion of the hearing, the Juvenile Court shall make a determination regarding the placement of the juvenile.

§4.510 Preliminary Inquiry; Procedure.

During the preliminary inquiry the Juvenile Court shall take testimony from the petitioner and any other witnesses. The petitioner has the right to present evidence, witnesses, cross examine witnesses, and testify on his or her own behalf. The juvenile and the juvenile's parent(s), guardian, or custodian shall have the right to present witnesses, cross examine witnesses, introduce evidence, or testify on his or her own behalf. However, the juvenile, and the juvenile's parent(s), guardian, or custodian has no obligation to testify or present a defense.

§4.511 Preliminary Inquiry; Limitation of Scope.

A. Generally:

1. A preliminary inquiry shall not be construed as being a trial, and the Court's inquiry shall be limited to the circumstances which gave rise to the petition or the taking of the juvenile into custody and the need for out of home placement.
2. Upon a finding of probable cause to believe that the allegations contained within the petition are true, the juvenile together with his parent(s), guardian, or custodian shall be ordered to appear at the adjudicatory hearing at a time, date, and location to be set by the Court.
 - a) Delinquency Petitions. The juvenile shall be released to the care and custody of the parent(s), guardian, or custodian unless the Court shall find:
 - i. There is reasonable cause to believe that the juvenile will run away or otherwise fail to be at the adjudicatory hearing, or
 - ii. The juvenile has a history of habitually disobeying the Court's orders, or
 - iii. The alleged delinquent act is serious enough to warrant continued detention or out of home placement, or
 - iv. There is probable cause to believe the juvenile will commit a serious offense involving property or injury to other persons or himself if released, or
 - v. That it is in the best interests of the juvenile to release him to a relative or other responsible adult who is not the parent(s), guardian, or custodian.
 - b) Dependency/Neglect Petitions. The juvenile shall be released to the care and custody of the parent(s), guardian, or custodian unless the Court shall find:
 - i. There is reason to believe the juvenile will run away or otherwise fail to be present at the adjudicatory hearing.
 - ii. There is reason to believe the juvenile is in immediate danger from his parent(s), guardian, or custodian and out of home placement is necessary for the juvenile's well-being.

- iii. There is reason to believe that the juvenile would be returned to living conditions that are such as could reasonably be expected to be detrimental to the juvenile's health, morals, welfare, or education.
- B. Upon a failure to find probable cause for the allegations in the petition, the Court shall dismiss the petition and return the juvenile to the care and custody of his parent(s), guardian or custodian.

§4.512 Finding of Probable Cause and Need for Detention.

- A. Upon a finding that probable cause exists that the allegations contained within the petition are true, and that there is a need for out of home placement, the Court shall be authorized to place the juvenile with a relative or other responsible adult. If the juvenile shall be twelve (12) years of age or older, his or her preference to such placement shall also be considered.
- B. The Court, prior to ordering out of home placement, or making any placement, shall secure the recommendations of the TSS caseworker or TSS designee as to appropriate placements.
- C. Within thirty (30) days after the removal of a child from the custody of the parent(s), guardian or custodian of the child, TSS shall exercise all due diligence to identify and provide notice to all adult grandparent(s), and other adult relatives of the child, including any other adult relatives suggested by the parent(s), subject to exceptions due to family violence, that:
 - 1. Specifies that the child has been or is being removed from the custody of the parent or parent(s) of the child;
 - 2. Explains the options the relative has under Tribal, Federal, and State law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
 - 3. Describes the requirements to become a foster family home and the additional services and supports that are available for children in such a home; and
 - 4. Describes how the relative guardian of the child may subsequently enter into an agreement with the Tribe for the kinship guardian assistance program.

§4.513 Failure to Find Probable Cause.

If probable cause to believe that the allegations contained within the petition is not found, the petition shall be dismissed and the juvenile shall be released to the custody of his parent(s), guardian, or custodian.

§4.514 Investigation by TSS Caseworker; Recommendations.

- A. In every case where a petition alleging dependency or neglect shall be filed, the TSS caseworker shall make an investigation to determine whether the interests of the juvenile and his parent(s), guardian, or custodian require that further action be taken subsequent to the preliminary inquiry. Such investigation shall be conducted informally, shall not be conducted in any fashion which would violate the rights of any parties, shall respect the right to

privacy of the juvenile and his family, yet shall involve communications with the juvenile, his family, and other persons having knowledge of the family's background, present circumstances, and future plans; and shall result in no matters related to the counselor in confidence being made public. Upon completion of his investigation, the TSS caseworker may recommend to the Court:

1. That the petition be dismissed without further proceedings; or
 2. That based upon the agreement of the juvenile's parent(s), guardian, or custodian to faithfully participate in a voluntary diversionary program, the petition be held in abeyance for a specified period of time; or
 3. That the petition previously filed be amended; or
 4. That proceedings upon the petition as filed continue.
- B. Acceptance of the TSS caseworker's recommendations shall be discretionary with the Court however, after consideration of such report and recommendations the Court shall enter an order setting forth the Court's decision as to how the matter shall proceed.

§4.515 TSS's Continuing Duties Upon A Petition Being Held in Abeyance.

- A. During the period of abeyance the TSS Caseworker shall meet regularly with the juvenile and his parent(s), guardian, or custodian, to ensure that the terms and conditions of abeyance are being followed and to ensure that progress in the selected diversionary program is being achieved.
- B. Upon the successful completion of the diversionary program, the TSS caseworker shall notify the Court and request dismissal of the petition.
- C. In the event that the TSS caseworker shall determine, at any time during the period of abeyance, that the juvenile and or the juvenile's parent(s), guardian, or custodian are not participating in the agreed upon diversionary program, or if participating, that no significant progress is being made, the TSS caseworker shall notify the Court to proceed with the petition.

§4.516 Guardian Ad Litem; Appointment.

The Court shall have the power to utilize the services of a Guardian Ad Litem/Juvenile Court Advocate, in such manner and in such cases as the court shall deem appropriate, in proceedings brought pursuant to this chapter.

CHAPTER 4.6 — PROCEEDINGS SUBSEQUENT TO PRELIMINARY INQUIRY

§4.601 Scheduling of Adjudicative Hearing.

- A. An Adjudicative Hearing shall be held:
 1. Within thirty (30) days of a finding of probable cause at a preliminary inquiry, or
 2. Within thirty (30) days of the date when the TSS caseworker notifies the Court to proceed on a petition previously held in abeyance.

3. The juvenile, the juvenile's parent(s), guardian, or custodian, may petition the court for an emergency review of placement hearing prior to the adjudicatory hearing if the juvenile is in out of home placement.
- B. In the event that the Adjudicatory Hearing is not held within the above specified period, the petition shall be dismissed and shall not be accepted for re-filing with respect to the same incident or incidents, unless:
1. The hearing was continued upon motion of the juvenile, juvenile's parent(s), guardian, or custodian; or
 2. The hearing was continued upon motion of TSS, which motion shall only be granted if the Court shall find that:
 - a) material evidence or witnesses will not be available within the thirty (30) day period; and
 - b) that the presenting officer has exercised due diligence to obtain the evidence, or the testimony of the witnesses; and
 - c) that reasonable grounds exist to believe that the material evidence or witnesses will be available within a reasonable time; and
 - d) that the juvenile, parent(s), guardian, or custodian of the juvenile will not be prejudiced by the proposed delay.

§4.602 Summons for Appearance.

Prior to the adjudicatory hearing, the Juvenile Court shall issue a summons to appear to the juvenile, the juvenile's parent(s), guardian, or custodian, the petitioner, the TSS caseworker or designee, any person previously requested by the juvenile or his parent(s), guardian, or custodian to be summoned and any person whose presence the Juvenile Court believes necessary. The summons shall state upon its face the name of the Court, the title of the proceeding, and the date, time, and location of the hearing. Such summons shall be personally served upon the juvenile and his parent(s), guardian, or custodian at least fifteen (15) days prior to the date of the hearing. The summons shall further notify the persons summoned that their failure to appear at the hearing may constitute a Contempt of the Court.

§4.603 Reserved.

§4.604 Adjudicatory Hearing.

- A. Purpose. The purpose of the adjudicatory hearing shall be to determine if the allegations contained within the petition are true, and if so, whether or not the juvenile in view of the truth of such allegations is a dependent, neglected, or delinquent juvenile.
- B. Procedure. The hearing shall be private and closed and all matters occurring during the course of the hearing, or things said, shall be confidential. An adjudicatory hearing shall be conducted pursuant to the criminal procedure sections of this code and conducted in the same manner as a criminal trial.
- C. Standard of Proof:
 1. The burden of proof shall be upon the petitioner to prove the allegations.

2. The petitioner in a juvenile delinquency case must prove the allegations beyond a reasonable doubt.
 3. The petitioner in a dependency or neglect case must prove the allegations by clear and convincing evidence.
- D. Right to Jury Trial. There shall be a right to a jury determination of the truth of such allegations at the adjudicatory hearing provided that a written request for a jury trial shall be filed with the Tribal Court at least ten (10) days prior to the scheduled date and time of trial. The right to a jury shall be deemed waived if demand therefore shall not be made as provided for in this section. In the event that the demand therefore shall be made after the preliminary inquiry, but prior to twenty-four (24) hours before the trial is scheduled to begin, the Court may adjourn the trial on its own motion for a period not to exceed fourteen (14) days to allow the empanelling of a jury.

§4.605 Adjudicatory Hearing - Advice of Rights

Prior to the commencement of proofs, the Court shall advise the juvenile and his parent(s), guardian, or custodian of their rights under the Constitution of the United States and the Indian Civil Rights Act.

§4.606 Admission of Allegations.

If at the adjudicatory hearing, or at any prior stage of the proceedings, the juvenile, his parent, guardian, or custodian shall admit that the allegations of the petition are true, the Court shall proceed to a dispositional hearing if the Court finds:

- A. The person making such admission fully understands his rights and the potential consequences of his admission; and
- B. Such person voluntarily, and understandingly admits all facts necessary to constitute a basis for acceptance of his admission; and
- C. The person making such admission has not, in his purported admission, set forth facts, which if found to be true, would constitute a defense to the allegations.
- D. The juvenile's parent(s), guardian, or custodian consents to the juvenile's admission in a delinquency case.

§4.607 Adjudicatory Hearing -Proceedings upon Completion.

- A. Upon a finding that the allegations of a petition have not been proven, the petition shall be dismissed and the parties discharged.
- B. Upon a finding that the allegations of the petition have been proved, the Court shall set a date for a dispositional hearing, to be conducted not more than ten (10) days thereafter and shall determine, based upon the factors set forth in 4.511(A)(2) the juvenile's placement pending the dispositional hearing.

§4.608 Dispositional Hearing; Pre-Hearing Investigation Report.

- A. Prior to the dispositional hearing the TSS caseworker shall prepare a report containing a recommended disposition or recommended alternatives to disposition. Such report shall contain a specific plan or plans for the placement of the juvenile, and if applicable for the rehabilitation of the family

calculated to resolve the problems which brought the juvenile before the Court.

- B. The report shall contain a summary of the data considered by the TSS caseworker in developing the report, the necessity for the proposed plan or plans of disposition, the goal sought to be achieved by the plan, and the proposed steps to be taken toward such goals under the proposed plan or plans.
- C. To the extent that there shall be less restrictive alternatives than that recommended as a disposition by the TSS caseworker, his report shall state the reasons for not recommending the less restrictive alternatives.
- D. At least forty-eight (48) hours prior to the dispositional hearing, the TSS caseworker shall file the pre-dispositional report with the Juvenile Court and provide copies thereof to the juvenile (in a delinquency case), any Counsel of record, and the juvenile's parent, guardian, or custodian.

§4.609 Dispositional Hearing; Notice.

Notice of the dispositional hearing shall be given to the juvenile, his representative, if any, his parent(s), foster parent, pre-adoptive parent, guardian, relative providing care, or custodian, and such other persons that the Court shall designate, by personal service at least forty eight (48) hours prior to the hearing. The Notice shall contain the name of the Court, the title of the proceedings, a statement that the hearing is to determine the disposition of the case, and the date, time, and place of the dispositional hearing.

§4.610 Dispositional Hearing; Manner of Conducting.

- A. Prior to proceeding with disposition the Court shall inform the juvenile and his parent(s), guardian, or custodian of their rights under the Constitution of the United States and the Indian Civil Rights Act.
- B. The Court may take testimony, on its own motion or upon the motion of any of the parties, the juvenile's parent(s), foster parent, pre-adoptive parent, guardian, relative providing care, or custodian.
- C. The Court shall consider the pre-disposition report submitted by the TSS caseworker and shall afford the juvenile's parent(s), foster parent, pre-adoptive parent, guardian, relative providing care, or custodian and anyone acting on their behalf an opportunity to comment upon the recommendations in the report.
- D. The Court may consider any alternative recommendations as to disposition submitted by the juvenile, the juvenile's parent(s), foster parent, pre-adoptive parent, guardian, relative providing care, or custodian.
- E. The Court shall enter a dispositional order stating its findings for the disposition ordered.

§4.611 Dispositional Alternatives.

- A. Delinquency Petitions:
 - 1. Prior to an adjudication of delinquency the TSS Caseworker may recommend the following alternative dispositions:

- a) That the petition be dismissed without further proceedings, or
- b) That based upon the agreement of the juvenile and the juvenile's parent(s), guardian, or custodian's agreement to faithfully participate in a voluntary diversionary program, the petition be held in abeyance for
 - i. up to 180 days, and
 - ii. which period may be extended only upon agreement of all the parties to the petition but may not exceed one (1) year, or
- c) The Petition may be waived into adult court upon motion of the TSS Caseworker in accordance with procedures set out in Chapter 4.9.

B. Dependency and Neglect Petitions:

1. Prior to adjudication as a dependent or neglected juvenile, the Court may make any of the following dispositions:
 - a) Allow the parent(s), guardian, or custodian to participate in a voluntary diversion program upon the admission by the parent(s), guardian, or custodian to the allegations in the petition and hold the petition in abeyance for a specified period of time not to exceed 180 days, or
 - b) Permit the juvenile to remain with his parent(s), guardian, or custodian subject to limitations and conditions as the Court may prescribe, or
 - c) Place the minor with a relative within the jurisdiction of the Court subject to limitations and conditions as the Court may prescribe. This shall be the Court's preferred placement option for minors not able to be placed under subsections (a) or (b) above; or
2. Place the juvenile in an approved foster home within the territorial jurisdiction of the Court subject to such limitations and conditions as the Court may prescribe; or
3. Place the juvenile in a shelter care facility approved by the Court, or
4. Place the juvenile in a foster home or a relative's home outside of the territorial jurisdiction of the Court subject to such limitations and conditions as the Court may prescribe; or
5. Place the juvenile back into the home the juvenile was removed from for a trial home visit. Trial home visits are for no longer than six months unless a longer visit is specifically authorized by Court order; or
6. Recommend that proceedings designed to terminate parental rights be initiated.

§4.612 Dispositional Order; Effective Period and Review.

- A. A dispositional order shall continue in effect for a period to be set by the Court provided that the juvenile is eligible for services.

- B. Dispositional orders shall be reviewed by the Court at least every ninety (90) days or sooner upon motion by a party or the Court. At which time the Court shall make the following findings:
 - 1. A determination as to the safety of the juvenile in the current placement,
 - 2. The continuing necessity for and appropriateness of the placement,
 - 3. The extent of compliance with the case plan by the juvenile, parent(s), guardian, custodian, foster, or adoptive parent(s),
 - 4. The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement, and
 - 5. A likely date by which the juvenile may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

§4.613 Modification of Dispositional Order.

- A. A dispositional order may be modified by the Court at any time for good cause shown upon the motion of the juvenile, the juvenile's parent(s), guardian, or custodian, or the TSS caseworker.
- B. Requirement for a hearing.
 - 1. A hearing shall be required upon a motion for modification of a dispositional order that would involve a change of custody.
 - 2. No hearing shall be required upon a motion for modification of a dispositional order when the proposed modification does not involve a change of custody.
- C. Hearing Notice Requirements. Where a proposed modification of a disposition shall involve a change in custody, all parties to the original proceeding shall be personally served at least forty-eight (48) hours prior to the hearing on the motion with a notice setting forth the name of the Court, the title of the proceedings, a statement that the hearing is to review the disposition, and the date, time, and location of the hearing.
- D. Hearing Procedure.
 - 1. The Court shall advise the juvenile, and his parent(s), guardian, or custodian of their respective rights under the Constitution of the United States and the Indian Civil Rights Act.
 - 2. The Court shall give each party the opportunity to address the Court upon the proposed modification to the dispositional order.
 - 3. The Court shall review the performance of the juvenile and his parent(s), guardian, or custodian under the original dispositional order.
- E. Order to Modify the Dispositional Order.
 - 1. Upon a finding of good cause for the modification, the Court may order the original dispositional order modified.
 - 2. If the Court does not find good cause for the modification, no change shall be made to the dispositional order and the motion to modify shall be dismissed.

CHAPTER 4.7 — TERMINATION OF PARENTAL RIGHTS

§4.701 Termination Proceedings; Petition.

Proceedings to terminate parental rights shall be instituted by a petition filed by the TSS caseworker or Tribal Prosecutor on behalf of the Keweenaw Bay Indian Community, when so ordered by the Court, when in his judgment termination of parental rights shall be the only appropriate dispositional alternative in a dependency or neglect proceeding, or may be filed by the parent(s), or legal guardian of a juvenile. The petition shall recite the following:

- A. The name, birth date, and residence address of the juvenile.
- B. The name and residence address of each of the juvenile's parent(s), or if none, his legal guardian or custodian; and if the child has been placed out of his home in detention or shelter care, the location thereof and the date when such out of home care began.
- C. The tribal affiliation and enrollment status, if known, of the juvenile and parent(s).
- D. The petition shall also clearly and concisely state the basis for the proposed termination of parental rights.

§4.702 Hearing.

Upon the filing of the petition the Court shall set a date for a termination hearing which shall be held not more than ten (10) days after the filing of the petition. The hearing may be continued upon motion of the juvenile's parent(s), guardian, or custodian; or upon motion of the TSS caseworker or Tribal Prosecutor upon a showing that material evidence or witnesses would be unavailable during the ten (10) day period; that he has exercised due diligence to obtain the material evidence or witnesses; that reasonable grounds exist to believe that the material evidence or witnesses will become available in the near future; and that no prejudice will result from a delay.

§4.703 Pre-termination Report.

- A. Within forty-eight (48) hours after the termination petition is filed, the Court shall order the preparation of a pre-termination report by TSS.
- B. TSS shall thereafter consult with the juvenile's parent(s) and all social services, Court, medical, educational, or other personnel who have had professional contact with the juvenile and his parent(s), guardian, or custodian. As a result of such investigation, and a review of any Tribal or other Court records relating to the juvenile or his parent(s) or legal guardian, TSS shall determine whether or not termination of parental rights is in the best interests of the juvenile.
- C. TSS shall prepare a written report summarizing the opinions of all persons with whom he has consulted with respect to the proposed termination; summarizing those Court records which he has reviewed; and summarizing all other records and persons or agencies which he has taken into consideration in developing his recommendation. Such written report, containing his recommendation, shall be filed with the Juvenile Court at least forty-eight (48) hours prior to the termination hearing.

§4.704 Summons; Issuance and Contents.

- A. At least five (5) days prior to the termination hearing the Court shall issue a summons to the juvenile, the juvenile's parent(s), foster parent, pre-adoptive parent, guardian, relative providing care, or custodian; any persons whom the juvenile's parent(s), guardian, or custodian requests be summoned; and any other person whom the Court believes to be necessary for a full and complete consideration of the merits of the petition.
- B. The summons shall contain the name of the Court, the title of the proceeding, and the date, time, and place of the hearing and shall have a copy of the petition for termination attached thereto.
- C. The summons shall be delivered personally and shall contain a statement that any person commanded to appear who shall fail to appear may be held in contempt of Court.

§4.705 Termination Hearing; Manner of Conducting.

The termination hearing shall be conducted for the sole purpose of determining whether or not parental rights shall be terminated. The hearing shall be private and closed and all proceedings shall be confidential.

§4.706 Advice of Rights.

- A. At the onset of the hearing, the Court shall inform the juvenile and his parent(s), guardian, or custodian of their right to retain counsel in accordance with the provisions of the Indian Civil Rights Act.
- B. Upon their request, the Court shall continue the proceedings in order to provide the juvenile, his parent(s), guardian, or custodian with an opportunity to secure counsel.
- C. If the parties appear to be unable to afford retained counsel, the Court shall inform them of all known legal services which may be available to them free of charge or at minimum charge.
- D. The juvenile and his parent(s) shall be advised that they may not be required to testify, but if they do testify, that they shall be subject to cross-examination.
- E. The Court shall provide the juvenile, his representative, if any, and his parent(s), guardian, or custodian an opportunity to confer prior to the hearing, the opportunity to introduce evidence, and the opportunity to testify if they should so desire.

§4.707 Termination of Parental Rights; Standards.

At the conclusion of the hearing, the Court may terminate the parental rights of the parent(s) to the juvenile by issuing an order stating the Court's findings, wherein the Court finds by clear and convincing evidence any of the following:

- A. The parent(s) have abandoned the juvenile. In the case of an infant, TSS or its designee shall make a petition for termination within sixty (60) days of the abandonment of an infant; or
- B. The juvenile has suffered physical injuries willfully and repeatedly inflicted by his parent(s) upon him which causes or creates a substantial risk of death,

disfigurement, or impairment of bodily function, or been found guilty of any of the felonies described in 42 U.S.C 675(5)(E) or 45 C.F.R. 1356.21(b)(3)(ii)

1. If the Court finds that the §4.707(B) applies, a reasonable efforts determination is not required.
 2. TSS shall file a petition for termination of parental rights of a parent who is convicted of a felony listed in §4.707(B)(1).
- C. The parent(s) have subjected the juvenile, or have allowed the juvenile to be subjected to, willful and repeated acts of sexual abuse, or been found guilty of any of the felonies described in 42 U.S.C 675(5)(E) or 45 C.F.R. 1356.21(b)(3)
1. If the Court finds that the §4.707(C) applies, a reasonable efforts determination is not required.
 2. TSS shall file a petition for termination of parental rights of a parent who is convicted of a felony listed in §4.707(C).
- D. The juvenile has been in the care and custody of TSS, the Michigan Department of Human Services, an equivalent tribal or state agency, or the agency's designee for fifteen (15) of the last twenty-two (22) months as a result of dependency, neglect, or abuse, and the ability of the juvenile's parent(s) to provide the juvenile with a fit and proper home environment has not substantially improved.
- E. The sole parent of the juvenile has been incarcerated for in excess of two years as a result of criminal conduct.
- F. Both parents have voluntarily and understandingly given their written consent to a termination of parental rights before the Court.
- G. Termination of the parental rights is in the best interests of the juvenile, despite reasonable efforts that were made to prevent or eliminate the need for the termination and to make it possible for the juvenile to remain in the juvenile's home.

§4.708 Dispositional Alternatives.

- A. If the Court shall not terminate parental rights, the petition shall be dismissed. Such dismissal shall not affect the status of the juvenile prior to the termination petition, nor shall it affect the Court's ability and authority to proceed with other dispositional alternatives.
- B. If parental rights with respect to the juvenile are terminated, the Court shall place the juvenile in an out of home placement until proceedings pursuant to the adoption provisions of the Tribal Code shall be initiated.
- C. Once the Court enters an order for termination of parental rights, TSS or its designee shall begin the process to identify a qualified adoptive placement for the child.

§4.709 Termination; No Effect on Enrollment Status.

No adjudication terminating parental rights shall affect the juvenile's enrollment status as a member of any Tribe, nor shall it affect the juvenile's degree of blood quantum for any tribe.

CHAPTER 4.8 — RECORDS

§4.801 Record of Proceedings; Confidentially.

A verbatim record of all judicial proceedings conducted pursuant to the provisions of this Code shall be made and preserved. All Juvenile Court records shall be confidential and shall not be open to inspection to anyone but the juvenile, the juvenile's parent(s), guardian, or custodian, TSS, and the Tribal Prosecutor. All Juvenile Court records, dockets, and other materials related to the juvenile division of the Court shall be kept and stored separately from those pertaining to adults.

§4.802 Law Enforcement Records.

Law enforcement records and files pertaining to juveniles shall be kept separate from law enforcement records and files pertaining to adults. All law enforcement records and files pertaining to juveniles shall be confidential and shall not be open to inspection to anyone but the juvenile, the juvenile's parent, guardian, or custodian, TSS, or the Tribal Prosecutor.

§4.803 Expungement.

A. Any person, twenty-one (21) years of age or older, who as a juvenile has been the subject of a delinquency, dependency, neglect, foster care, guardianship, or adoption proceeding may petition the Court for an order directing that both the Court and law enforcement records be destroyed. Upon a showing of good cause, such relief, may in the discretion of the Court, be granted in regards to all or some portion of the records.

B. Records which are the basis for the juvenile to register as a sex offender under the Tribal Code may not be expunged until the registration period has expired.

CHAPTER 4.9 — MISCELLANEOUS MATTERS

§4.901 Waiver of Jurisdiction; Time and Manner.

A. The Juvenile Division may, in delinquency proceedings, waive jurisdiction over any juvenile who may come before it and upon such waiver of jurisdiction over the juvenile and the offense or offenses charged, the jurisdiction shall be assumed by the Trial Division of the Tribal Court.

B. A waiver request may be initiated by TSS, the Tribal Prosecutor, or any other person whom the Court shall deem to have an interest in the matter.

C. No waiver request shall be considered by the Court after the commencement of the adjudicatory hearing.

§4.902 Waiver Proceedings; Procedure.

A waiver proceeding shall be initiated by the filing of a request for a waiver. The waiver request shall be attached to the delinquency petition which has brought the juvenile before the Court in a delinquency proceeding. The request for a waiver shall clearly and concisely state the rehabilitation efforts which have been made with respect to the juvenile in the past and shall have attached a certified copy of the juvenile's record in

the Juvenile Division of the Court, and from the Courts of such other jurisdictions as have in the past adjudicated the juvenile delinquent. The Court shall set a date and time for the hearing of the petition at least seven (7) days after its filing; if required, the adjudicatory hearing may be adjourned by the Court to a later date to allow the waiver petition to be considered prior thereto. Personal service of the waiver petition shall be made in the same manner and on the same persons as would be required to receive notice of the adjudicatory hearing and such service shall be accomplished at least five (5) days prior to the hearing date.

§4.903 Waiver; Factors to be Considered by the Court.

The following factors shall be considered by the Court when deciding whether or not to waive jurisdiction of a juvenile to the Trial Division of the Court:

- A. The nature and seriousness of the offense with which the juvenile is charged.
- B. The nature and condition of the juvenile, as evidenced by his age, mental, and physical condition, past record of offenses, and responses to past Juvenile Court efforts at rehabilitation.
- C. At the hearing, the Court shall take such testimony as may be offered by the petitioner and any witnesses called thereby; such testimony as may be offered by the juvenile or his family and such witnesses as may be called thereby; and shall consider a report which shall be prepared and submitted to the Court by TSS addressing the factors to be considered by the Court at the Waiver hearing.

§4.904 Waiver of Jurisdiction; Required Findings.

The Juvenile Court may waive jurisdiction of the juvenile to the Trial Division of the Court if the Juvenile Division shall find clear and convincing evidence of both of the following circumstances:

- A. There are no reasonable prospects for the rehabilitation of the juvenile through use of the resources available to the Juvenile Court; and
- B. The offense allegedly committed by the juvenile, if committed thereby, evidences a pattern of conduct which constitutes a substantial danger to the public.

§4.905 Waiver Denied; Manner of Proceeding.

In the event that the waiver petition shall be denied, the Court shall schedule the matter for an adjudicatory hearing in accordance with the provisions concerning the same elsewhere contained herein.

§4.906 Waiver Ordered; Manner of Proceeding.

In the event that the waiver petition shall be granted, the Court shall issue a written transfer order setting forth the reasons for its waiver of jurisdiction which order shall be forthwith filed with the Trial Division of the Court. Upon the filing of such order, the Tribal Prosecuting Attorney may initiate criminal proceedings against the juvenile in the same manner and fashion as if he were an adult and no juvenile division proceedings had occurred.

§4.907 Contempt of Court.

Any willful disobedience of, or interference with the performance of any order of the Juvenile Division shall constitute a contempt of court, whether committed by a juvenile or an adult. A contempt shall be processed in the same manner and fashion as any other offense, and in accordance with the same procedure set forth within the Tribal Code or Juvenile Code, whichever shall be applicable.

§4.908 Guardian Ad Litem/Juvenile Court Advocate; Circumstances of Appointment.

- A. In any juvenile proceeding whether founded upon delinquency, neglect, or dependency, the Court shall have the power to appoint a guardian ad litem for any involved juvenile. A guardian ad litem may be an attorney, but need not be an attorney. A guardian ad litem shall stand in the position of a parent or guardian with reference to the juvenile whose guardian ad litem he had been appointed, throughout the proceeding in which he is appointed. A guardian ad litem's role shall be to assist and guide the juvenile in deciding his position during the course of a juvenile proceeding and in deciding what he believes to be in his best interests.
- B. A guardian ad litem shall be appointed in any proceeding where the Court in its discretion, determines that the positions of the juvenile and his parent, guardian, or custodian are adversarial; a guardian ad litem may be appointed by the Court if it determines, in its discretion, that there is a reasonable likelihood that the positions of the juvenile and parent, guardian, or custodian shall during the course of the proceeding become adversarial.

§4.909 Bond for Appearance; Personal Recognizance.

When, during the course of a juvenile proceeding, the Court considers the question of whether or not a juvenile shall be detained or released to his parent(s), guardian, or custodian, the Court may, as a condition of release to a parent, guardian, or custodian require the posting of a bond in an amount to be set by the Court by some responsible person. There shall be a presumption that if the Court finds that circumstances warrant the release of a juvenile to his parent, guardian, or custodian only a personal recognizance bond should be required, however, such presumption may be overcome based upon the circumstances of any particular proceeding. The Court may impose such other conditions of bond as it finds reasonable in accordance with Chapter 2.6 of this Code.

§4.910 Physical, Mental, and Psychological Examinations.

The Juvenile Court may, at any time after conducting a preliminary inquiry at which probable cause to proceed upon a petition is found, order any involved juvenile, or his parent(s), guardian, or custodian to undergo a physical, mental, or psychological examination by a qualified professional. A report with respect to such professional findings shall be provided to the Juvenile Court. Non-receipt of such a report, where an examination has been ordered, shall be good cause for an adjournment of any pending hearing upon the Court's own motion.

§4.911 Fingerprinting and Line-ups.

Any time after a preliminary inquiry has been conducted, the Court may, if probable cause for proceeding was found, and upon the petition of any person, police department, or agency, require in a delinquency proceeding that a juvenile participate in a line-up or fingerprinting. Any evidence obtained thereafter shall be used in reference only to the matters alleged in the delinquency petition before the Court and any evidence of other delinquent acts committed by the juvenile not alleged in the pending petition, or directly and inextricably related thereto, shall be suppressed by the Court. Fingerprint records and line-up results not used as evidence in the delinquency proceeding in which they were developed shall automatically be destroyed by the Court at the conclusion of the adjudicatory phase of the proceeding; further, such records may be expunged as provided for in section 4.803.

CHAPTER 4.10 — OUT OF HOME PLACEMENT

§4.1001 Standards for Facilities.

- A. The Department of Tribal Social Services shall develop and enforce rules and regulations with respect to the qualification, selection, and operation of foster homes, detention facilities, child care institutions, and shelter care facilities to be utilized for out of home placements.
- B. TSS shall develop and implement training for foster parent(s) and foster homes licensed by the Tribe.
- C. Except where a juvenile is placed with a relative with the consent of his parent(s), guardian, or custodian, no juvenile shall be placed by the Court in any:
 - 1. foster home, detention facility, child care institution, or shelter care facility which shall not have first been licensed by the Tribe, the Inter-Tribal Council, Department of Social Services, the Michigan Department of Human Services, the Michigan Indian Child Welfare Agency, or another federally recognized Indian tribe or state, and
 - 2. no child shall be placed in a shelter care facility that has more than twenty-five (25) children in placement.
- D. TSS shall review at reasonable and specific time-limited periods to be established by TSS:
 - 1. The amount of payments made for foster care maintenance and adoption assistance to assure their continued appropriateness, and
 - 2. The licensing and approval standards for child care institutions and foster family homes.
- E. For juveniles age eighteen (18) or older and still eligible for placement and or assistance through the Court, the Court may place the juvenile in a supervised independent living setting.

§4.1002 Incarceration of Juveniles in Adult Jails.

- A. No juvenile under the age of fifteen (15) years shall in any case or under any circumstances be housed or lodged within an adult jail facility, even where a

separate room which would allow the juvenile to be isolated from adult prisoners is available.

- B. A juvenile who is fifteen (15) years of age, but not seventeen (17) years of age may be held in a jail facility, provided that he is lodged in a physically separate section of the jail where he will have no contact with adult prisoners, either physically or by sight or sound, provided that such incarceration may not be for a period in excess of forty-eight (48) hours, and provided further that no other juvenile shelter or detention facility is available which would, in the Court's judgment, assure adequate supervision and security.
- C. No juvenile shall be incarcerated in an adult jail facility except upon the written order of the Court.

§4.1003 Judgments of Support.

In any case where a juvenile has been removed from his normal place of residence, the Court shall take all appropriate steps to require that support be paid to TSS by the juvenile's parent(s), guardian, or custodian, to assist in paying costs related to the juvenile's care. Further, where the Court has required a physical, mental, or psychological examination, TSS has been required to purchase clothing for the juvenile, or has otherwise expended funds for the juvenile's benefit; the Court shall take all appropriate steps to secure payment to TSS therefore from the parent(s), guardian, or custodian.

- A. Where the parent, guardian, or custodian of a juvenile is entitled to child support payments or other contributions designated for the support of the juvenile, the Court shall take all appropriate steps to require that all monies so received during the period of out of home placement be forthwith delivered to TSS. Where an obligation for payment of support exists on the part of some third party, but such obligation is not being met, the Court shall take all appropriate steps to enforce, on behalf of the juvenile's parent, guardian, or custodian, such right to support.
- B. Where the Court finds that the parent(s), guardian, custodian, or any other person who shall have the obligation to support a juvenile whom the Court has removed from his normal place of residence, has the financial resources to contribute toward the juvenile's support, the Court shall take all appropriate steps to enter an order requiring support to be paid to TSS in a reasonable amount, and may enforce such order through its contempt powers.

§4.1004 Maximum Number of Children in Foster Care.

For each fiscal year, TSS shall set a goal, as to the maximum number of children who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months. This goal shall be expressed as an absolute number or as a percentage of the total children placed in foster care.

CHAPTER 4.11 – CHILDREN AND FAMILIES RECEIVING TITLE IV-E FUNDING AND OR ASSISTANCE

§4.1101 Fair Hearings.

Any person who has applied for Title IV-E funding and or assistance through TSS whose claim for benefits was denied or was not acted upon with reasonable promptness, may request a hearing on his or her claim. Such hearing shall be held in accordance with TSS's fair hearings policies and procedures. A final decision pursuant to TSS's fair hearings policies and procedures may be appealed to the Trial Division of the Tribal Court within fourteen (14) days of the final decision. The decision of the Trial Division of the Tribal Court shall be final and is not subject to further review.

§4.1102 Mandatory Reporting.

TSS shall report to the appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a juvenile receiving aid or assistance under this Chapter under circumstances which indicate that the juvenile's health or welfare is threatened thereby and provide such information with respect to a situation described above to the agency or official which TSS may have.

§4.1103 Placement of Siblings.

Reasonable efforts shall be made to place siblings together in the same foster care, kinship care guardianship placement, or adoptive placement unless such placement is contrary to the safety or best interests of any one of the siblings as best interests is defined at §5.103(F) of the Tribal Code.

§4.1104 Case Review System.

TSS shall utilize the Court to review cases once every ninety (90) days to ensure the safety of the juvenile, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the juvenile may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

CHAPTER 4.12 – EFFECTIVE DATE, SEVERABILITY AND REPEAL OF PRIOR CODES

§4.1201 Repeal of Prior Codes

Title Four, Juvenile Division of the 1996 edition of the Tribal Code is hereby repealed and replaced by this the 2012 version of Title Four, Juvenile Division, of the Tribal Code.

§4.1202 Effective date

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

§4.1203 Severability

If any provision of this Title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Title will not be affected thereby.

Legislative History: Ordinance 2012 - 04 was adopted on September 25, 2012.