

**TITLE XII  
THE SAGINAW CHIPPEWA JUVENILE CODE**

**CHAPTER 12.1**

**PURPOSE OF THE CODE; EFFECTIVE DATE; AND PRIORITY OF CODE**

- 12.101**      **Purpose.** The Purpose of this Code is to ensure that Tribal juveniles, receive the care and guidance necessary for their spiritual, emotional, mental, and physical development and to provide a mechanism for the Tribal Court for the regulation of juvenile matters and to provide Tribal juveniles with the care and guidance necessary for their well being.
- 12.102**      **Effective Date.** This Code shall become effective immediately upon the date it is adopted by formal action of the Tribal Council.
- 12.103**      **Priority of Code.** This Code shall be controlling as to juvenile proceedings in the event this Code conflicts with any other Tribal Code or Ordinance.

**CHAPTER 12.2**

**DEFINITIONS**

For purposes of this Code, the following definitions shall apply:

- 12.201**      **Adult** – A person seventeen (17) years of age or older, except that any person seventeen (17) years of age or over under the continuing jurisdiction of the Court, or who is before the Court for an alleged delinquent act committed prior to his/her seventeenth (17<sup>th</sup>) birthday shall be referred to as a juvenile.
- 12.202**      **Adult Division of the Tribal Court or Adult Division** – means the Saginaw Chippewa Indian Tribe of Michigan Tribal Court when exercising jurisdiction under Title I and other applicable Tribal law which regulates and pertains to Adults.
- 12.203**      **Advocate** – A layperson permitted to represent an alleged juvenile offender or an alleged juvenile in need of supervision by the Tribal Court.
- 12.204**      **Counsel** – Any licensed attorney who provides legal assistance to any party during the course of any proceeding under this Code.
- 12.205**      **Custody** – A juvenile taken into the Tribal Police Department’s care and control for inspection, preservation, and security for a period not to exceed six (6) hours

while alternate placement for the juvenile is located or the juvenile is released without charge.

- 12.206**      **Custodian** – One who has physical custody of a juvenile and is providing food, shelter, and supervision to that juvenile.
- 12.207**      **Delinquent Act** – Any act by a juvenile identified under the “Juvenile Offender” and “Status Offense” definitions of this Code.
- 12.208**      **Detention** – The placement of a juvenile in a facility which physically confines the juvenile and limits his/her freedoms.
- 12.209**      **Dispositional Hearing** – A hearing to determine what order of disposition should be made concerning a juvenile adjudicated as a juvenile offender or a juvenile in need of supervision. Such hearing may be part of the proceeding which includes the trial or it may be held at a time subsequent to the trial.
- 12.210**      **Diversion** – Alternative methods of dealing with an alleged juvenile offender or alleged juvenile in need of supervision in the case of 12.210A or a juvenile offender or juvenile in need of supervision as determined by the Court in the case of 12.210B.
- A.      Diversion to Tribal Family Services** – A process of referral of an alleged juvenile offender or an alleged juvenile in need of supervision, who has no previous juvenile offender or juvenile in need of supervision matters in the Court, to Tribal Family Services in lieu of the Tribal prosecutor filing a juvenile complaint. The juvenile would be transferred to the care of Tribal Family Services where they would monitor, guide, and aid with spiritual, emotional, mental, and/or physical development of the juvenile.
- B.      Court Ordered Diversion** - A process of referral of a juvenile offender or a juvenile in need of supervision to Tribal programs, in lieu of the Court ordering a disposition upon a disposition hearing. Such Court ordered diversion may be granted by the Court on its own motion or upon request to the Court by the Tribal prosecutor.
- 12.211**      **Foster Care Home or Foster Care Facility** – A facility licensed and approved pursuant to applicable Tribal law. If such facility is located outside the Tribe’s jurisdiction, it shall be licensed or approved as required by the jurisdiction in which the facility is located.
- 12.212**      **Guardian or Legal Guardian** – A person other than the juvenile’s parent, appointed by a court of competent jurisdiction, who is legally responsible for that juvenile and can exercise powers over the person of the juvenile.

- 12.213 Juvenile or Tribal Juvenile** – A person who satisfies one of the following:
- A. is under seventeen (17) years of age; or
  - B. is seventeen (17) years of age or older concerning whom proceedings are commenced in Court prior to his/her seventeenth(17<sup>th</sup>) birthday; or
  - C. is seventeen (17) years of age or older who is under the continuing jurisdiction of the Court pursuant to this Code.
- 12.214 Juvenile Complaint (Petition)** – A formal legal instrument drafted and presented to the Court by the Tribal prosecutor on behalf of the Tribe which commences proceedings under this Code.
- 12.215 Juvenile Division of the Tribal Court or Juvenile Division or Tribal Court or Court** – means the Saginaw Chippewa Indian Tribe of Michigan Tribal Court when exercising jurisdiction under this Code.
- 12.216 Juvenile Offender** – Any juvenile who commits any of the following acts:
- A. A violation of the Tribal Criminal Code;
  - B. Possession or consumption of alcohol or tobacco products (this does not include the use of tobacco for traditional or cultural purposes).
- 12.217 Juvenile in Need of Supervision** – Any juvenile who commits a Status Offense.
- 12.218 Law Enforcement Officer(s) or Tribal Law Enforcement** – Police officer(s) of the Saginaw Chippewa Indian Tribe of Michigan Police Department.
- 12.219 Tribal Family Services** – The Anishnaabeg Child & Family Services of the Saginaw Chippewa Indian Tribe of Michigan that provides child, family and human services to the membership and residents of the Saginaw Chippewa Indian Tribe of Michigan’s reservation.
- 12.220 Parent** – means natural parents, if married prior or subsequent to the minor's birth; adopting parents, if the minor has been legally adopted; the mother, if the minor is illegitimate; the child's reputed blood parent who has expressly acknowledged paternity and makes a meaningful contribution to support the child; or a guardian by judicial decree.
- 12.221 Report to Prosecutor** – A formal report by a law enforcement officer to the Tribal prosecutor containing allegations indicating that a juvenile under the jurisdiction of the Tribe has committed a delinquent act.

- 12.222 Reservation** – Means the area within the external boundaries of the Saginaw Chippewa Indian Tribe of Michigan Reservation.
- 12.223 Shelter Care** – The temporary care of a juvenile in a physically unrestricted facility pending Court disposition or execution of a Court order for placement.
- 12.224 Status Offense** – means any one or more of the following acts:
- A. Repeated absences from school or other learning program intended to meet the juvenile’s educational needs, or repeated violations of rules and regulations of the school or other learning program as determined by the juvenile’s supervisor at such school or other learning program;
  - B. Repeatedly disobeying reasonable and lawful commands or directives of his or her parent(s), guardian, or custodian as determined by the juvenile’s parent(s), guardian or custodian; or
  - C. Willfully and voluntarily being absent from his or her home without the consent of his or her parent(s), guardian, or custodian for a substantial length of time or without the intent to return.
- 12.225 Tribal Land** – Any land within the exterior boundaries of the Isabella and Saganing Indian Reservations, any land held in trust for the benefit of the Tribe by the United States, and all other land considered “Indian Country” as defined by 18 U.S.C. § 1511.
- 12.226 Tribe** – When capitalized, means the Saginaw Chippewa Indian Tribe of Michigan.
- 12.227 Tobacco Products** – Tobacco Products shall include, but not be limited to: cigarettes, whether pre-rolled or hand rolled, chewing tobacco, cigars, cigarillos, snuff, or other commercially produced tobacco marketed and used for personal consumption.

### **CHAPTER 12.3**

#### **JURISDICTION AND COURT AUTHORITY**

- 12.301 Establishment.** There is hereby established for the Saginaw Chippewa Indian Tribe, a division of the community court to be known as the Saginaw Chippewa Juvenile Court or the Juvenile Division, herein defined in accordance with Section 12.215 and having the jurisdiction set forth in this Chapter 12.3.
- 12.302 Statement of Jurisdiction.** The Tribal Court shall have jurisdiction over juvenile offender and juvenile in need of supervision proceedings under this Code, if the juvenile is:

- A. A Tribal Juvenile and
  - 1. the alleged offense occurred on Tribal land; or
  - 2. a case is transferred to Tribal Court from any state or tribal court, provided that the Tribal Court determines it otherwise has jurisdiction.
- B. The Tribal Court shall have jurisdiction under subsection A. above, unless and until the matter is initiated in or jurisdiction is transferred to the Adult Division of the Tribal Court, pursuant to Section 12.509 of this Code.

**12.303 Transfers From State Courts.** The Tribal Court may accept transfers of cases from state courts if the Tribal Court determines it otherwise has jurisdiction pursuant to section 12.302 above.

**12.304 Jurisdiction Over Associated Parties.** In any case filed under this Code, the Court shall have the authority to exercise jurisdiction over a Tribal juvenile, any adult member of the Tribe and/or any adult member of any other federally recognized tribe associated with the alleged juvenile offender, alleged juvenile in need of supervision, juvenile offender, or juvenile in need of supervision to the extent necessary to make proper disposition of the case concerning such alleged juvenile offender, alleged juvenile in need of supervision, juvenile offender, or juvenile in need of supervision.

**12.305 Adjudication Classification.** No adjudication of any juvenile under the jurisdiction of the Court shall be deemed criminal, unless the matter is initiated in or transferred to the Adult Division of the Tribal Court pursuant to section 12.509 of this Code.

**12.306 Closed Proceedings.** Juvenile proceedings shall be closed to the general public to protect the privacy interests of the parties. Disposition of any juvenile proceeding, and evidence presented at such proceedings, shall not be admissible as evidence against the juvenile in any other proceeding heard by another division of the Tribal Court system, except when the evidence is discovered by some other independent means.

**12.307 Authority to Cooperate.** The Court is authorized to cooperate with any court or federal, state, tribal, public, or private agency; to participate in any diversion, rehabilitation, training programs, or other service programs; and to receive grants-in-aid to carry out the purposes of this Code.

**12.308 Court Records.** Court Records shall mean those documents submitted to and held by the Court concerning all matters of juveniles; alleged juvenile offenders,

alleged juveniles in need of supervision, juvenile offenders, and juveniles in need of supervision and/or any reports of proceedings held under this Code, including but not limited to filed papers, transcripts, and/or exhibits.

- A. A record of all hearings under this Code shall be made and preserved.
- B. All Court Records shall be confidential, and shall only be open to inspection by the following, unless otherwise ordered by proper order of the Tribal Court:
  - 1. The juvenile's parent(s), guardian, custodian, or his/her legal representatives or advocates.
  - 2. The Tribal prosecutor.
  - 3. The Tribal juvenile probation officer.
- C. Except as otherwise provided by Section 12.308 B. of this Code, the Tribal Court shall not authorize the release of Court Records to any person unless such a request is made pursuant to a subpoena or valid state, federal or tribal court order.

**12.309 Law Enforcement Records and Files.**

- A. Law enforcement records and files shall mean those records and files held by the Tribal Police Department concerning juveniles; alleged juvenile offenders, alleged juveniles in need of supervision, juvenile offenders, and juveniles in need of supervision and/or records which are submitted to the Court by the Tribal Police Department that are the subject of or in response to a juvenile complaint filed with the Court.
- B. Law enforcement records and files concerning juveniles shall be kept separate from records and files concerning adults.
- C. All law enforcement records and files shall be confidential, and shall only be open to inspection by the following, unless otherwise ordered by proper order of the Tribal Court:
  - 1. The juvenile's parent(s), guardian, custodian, or his/her legal representative or advocate.
  - 2. The Tribal prosecutor.
  - 3. The Tribal juvenile probation officer.

**12.310**

**Expungement of Court Records.**

- A. **Expungement.** Expungement shall mean the removal of convictions from a person's Court record.
1. Any person who has a matter adjudicated under this Code may petition the Court for the expungement of his/her record.
    - a) An expungement petition shall be filed no sooner than two years after the date of termination of the Court's jurisdiction over the person. An expungement may only be filed prior to the expiration of two years from the date of termination of the Court's jurisdiction by agreed stipulation of all parties.
  2. Upon the filing of an expungement petition, the Court shall set a date for a hearing and shall notify the Tribal prosecutor and anyone else whom the Court has reason to believe may have relevant information related to the expungement of the record.
  3. The Court shall order sealed all records in the petitioner's case in the custody of the Court and any records in the custody of any other Tribal agency or official, if at a hearing the Court finds that:
    - a) The subject of the hearing has not been convicted of a felony or of a misdemeanor involving moral turpitude and has not been adjudicated under this Code since the termination of the Court's jurisdiction;
    - b) No proceeding concerning a felony or a misdemeanor involving moral turpitude or a petition under this Code is pending or being instituted against him; and
    - c) The rehabilitation of the person has been attained to the satisfaction of the Court.
  4. Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person and the Court may properly reply that no record exists with respect to such person upon any inquiry in the matter.
  5. Copies of the order shall be sent to each agency or official named therein.

6. Inspection of the records included in the order may thereafter be permitted by the Court only upon petition by the person who is the subject of such records and only to those persons named in such petition.
7. In any proceeding occurring under this Code in which a Court orders the juvenile complaint dismissed, the Court may order the records expunged. Such order of expungement may be entered without delay upon petition of expungement by any party or upon the Court's own motion.

**12.311 Contempt of Court.**

- A. Willful disobedience of, or willful interference with an order of the Court constitutes contempt of court.
- B. The Court may punish an adult for contempt of Court with a fine not to exceed One Hundred (\$100.00) Dollars, and/or a jail term not to exceed thirty days.
- C. A juvenile may be punished for contempt of Court with extension of probation, additional probation conditions, a fine not to exceed Three Hundred (\$300.00) Dollars, a jail term/detention not to exceed one (1) week or any combination thereof.

**12.312 Medical Examination.** The Court may order a psychiatric or psychological examination of a juvenile who is alleged to be a juvenile offender or a juvenile in need of supervision if issues of competence to stand trial or insanity are raised by the defense, or for any other reason that the Court deems appropriate. Reports shall be available to the defense and prosecuting attorney.

**12.313 Fingerprints.** If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a juvenile in custody, the officer may fingerprint that juvenile for the purpose of immediate comparison with the latent fingerprints; provided that the law enforcement officials have obtained the written approval of the Court prior to the taking of prints. Copies of the fingerprints shall be immediately destroyed if the comparison is negative or if a juvenile complaint is not timely filed against the juvenile.

**12.314 Appeal.**

- A. For purposes of appeal, a record of the proceedings shall be made available to the juvenile, the juvenile's parent(s), guardian, custodian, or

legal representative. The party seeking the appeal shall pay costs of obtaining this record.

- B. Any party to a Court hearing may appeal a final order or disposition of a case by filing a written notice of appeal with the Court within twenty-eight (28) days of the final order or disposition.
- C. All appeals shall be conducted in accordance with applicable Tribal law and court rules.

## **CHAPTER 12.4**

### **PROCEDURAL RIGHTS; NOTICE REQUIREMENTS**

**12.401**     **Applicability.** The notice and procedural rights listed in this Chapter shall be afforded to parties in each of the following proceedings:

- A. Preliminary Hearing (12.508)
- B. Transfer to the Adult Division of the Tribal Court (12.509)
- C. Trial (12.511)
- D. Disposition Hearing (12.514)

**12.402**     **Notice.**

- A. Notice of proceedings shall be provided to:
  - 1. The juvenile;
  - 2. The juvenile's parent(s), guardian, custodian, or legal representative.
  - 3. All legal counsel of record.
- B. The Tribal Court shall provide notice to the parties at least ten (10) days prior to all non-preliminary and non-emergency hearings. The Tribal Court shall provide notice to the parties at least two (2) days before preliminary hearings and as soon as possible for emergency hearings.
- C. The notice shall contain:
  - 1. The name of the court;

2. The title of the proceeding;
  3. A brief statement of the substance of the allegations against the juvenile;
  4. The date, time, and place of the proceeding; and
  5. A statement of the right to counsel, as set forth in Section 12.404A of this Code.
- D. A Tribal law enforcement officer or an appointee of the Court shall deliver the notice by personal delivery or certified mail. Beyond the Court's jurisdiction, notice may; be provided through other law enforcement agencies, by personal delivery, certified mail, or in the manner and preference provided in Section 12.403 D.2 herein.

**12.403 Summons.**

- A. At least ten (10) days prior to a trial or disposition hearing, the Court shall issue summons to the juvenile and provide notice of the summons to the juvenile's parent(s), guardian, legal representative, or custodian.
- B. The summons shall contain the name of the Court and title of the proceedings; and the date, time, and place of the hearing.
- C. A copy of the juvenile complaint shall be attached to the summons.
- D. The summons shall be served in the following manner:
  1. Personal delivery or by certified mail.
  2. Upon petition to the Court to serve by publication, if the Tribal Court feels there is good cause to disclose the information and such disclosure would likely provide actual notice to the party, service may be provided:
    - a) By legal notice in a daily publication or mailing of the Tribe circulated to the Tribal membership; and by posting the legal notice at the Tribal Court; or
    - b) By legal notice in a daily newspaper in the county of respondent's last known residence for three (3) consecutive days, the last day of which is at least ten (10) days prior to the hearing but not more than twenty-one (21) days prior to

the hearing; and by posting the legal notice at the Tribal Court.

- E. A person, who has been issued a summons, who has received notice of hearing, and who fails to appear at the hearing, may be held in contempt of court, pursuant to Section 12.311 of this Code, absent good cause shown why that person did not appear.

**12.404 Rights of Parties.**

- A. Right to Counsel:
  - 1. The juvenile and the juvenile's parent(s), guardian, legal representative or custodian shall be notified by the Court of their right to retain counsel. However, the juvenile and the juvenile's parent(s), guardian, legal representative or custodian must pay any fees for such legal counsel, and/or appointed counsel. The Tribe shall not be responsible for any fees for any legal and/or appointed counsel under this Code.
  - 2. If the parties appear at the hearing without counsel, the Court, after informing the parties of their right to counsel, may grant a continuance, if they need additional time to seek counsel.
- B. The right to a trial by jury, in accordance with the provisions of the Tribe's Title III except as modified by this Code, or a trial by a judge (bench trial).
- C. The juvenile need not be a witness against, nor otherwise incriminate himself/herself in any proceeding under this Code.
- D. A parent, guardian, or custodian may not be compelled to give testimony against himself/herself or against the juvenile.
- E. The Court shall give the juvenile, the juvenile's parent(s), legal representative, or custodian; the opportunity to introduce evidence, to be heard on their own behalf, and to examine all witnesses.

**CHAPTER 12.5**

**JUVENILE OFFENDER and JUVENILE IN NEED OF SUPERVISION  
PROCEDURE**

- 12.501 Filing Report to Prosecutor.** A Report may only be filed with the Tribal prosecutor by a law enforcement officer. The Report shall contain:

- A. Name, age, date of birth, address, name of parent(s), custodian or guardian, and Tribal affiliation, if applicable;
- B. A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged act(s) occurred; and
- C. A list of witnesses known to the law enforcement officer who files the report.

**12.502 Discretion to file a Juvenile Complaint.** The Tribal prosecutor shall have discretion as to whether a juvenile complaint shall be filed on behalf of the Tribe against the juvenile upon receipt of a report to the Tribal prosecutor from a law enforcement officer.

**12.503 Juvenile Complaint (Petition).** Proceedings under this Code shall commence upon the filing of a juvenile complaint by the Tribal prosecutor on behalf of the Tribe. The juvenile complaint shall include:

- A. The juvenile's name, birth date, address, Tribal affiliation, if applicable.
- B. The names and addresses of the juvenile's parent(s), guardians, or custodian;
- C. Citation to the specific provision(s) of this Code which gives the Court jurisdiction of the proceedings;
- D. Citation to any of the following which apply:
  - 1. The Tribal Criminal Code provision(s) which the juvenile is alleged to have violated; and/or
  - 2. The Status Offense(s) which the juvenile is alleged to have committed; and/or
  - 3. Any other delinquent act as defined herein that the juvenile is alleged to have committed.
- E. If the juvenile is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
- F. A statement of the facts which brings the juvenile within the jurisdiction of the Court; and

- G. A list of witnesses known to the Tribe upon filing of the juvenile complaint.

**12.504 Warrant.** The Court may issue a warrant, directing that a juvenile be taken into custody if:

- A. the Court finds probable cause to believe that the juvenile committed the delinquent act alleged in the complaint and there is probable cause to believe that the juvenile will fail to appear for a hearing on the matter; or
- B. in the Court's judgment, the juvenile is likely to endanger himself/herself or others if not taken into custody; or
- C. the Court is unable to locate the juvenile after reasonable attempts.

**12.505 Custody.** A juvenile may be taken into custody by a law enforcement officer if:

- A. The officer has reasonable cause to believe that a delinquent act has been committed and that the juvenile has committed the delinquent act; or
- B. The Court has issued a warrant pursuant to Section 12.504 of this Code.

**12.506 Law Enforcement Officer's Duties.** A law enforcement officer who takes a juvenile into custody, pursuant to Section 12.505 of this Code, shall proceed as follows:

- A. Make immediate and recurring efforts, if needed, to notify the juvenile's parent(s), guardian, or custodian to inform them that the juvenile has been taken into custody and to inform them of their right to be present with the juvenile until the juvenile is released or a determination of the need for shelter care or detention is made by the law enforcement officer and the Court.
- B. If the juvenile's parent(s), guardian, or custodian cannot be notified, the law enforcement officer will make every effort to locate and notify an adult next of kin of the juvenile or, in the event an adult next of kin cannot be located, will ask for the Court's involvement to appoint a legal guardian for the juvenile.
- C. Explain the following rights to both the juvenile and the juvenile's parent(s) or other adult notified of the juvenile being taken into custody, from sections 12.506A-B above, prior to questioning the juvenile or investigating the alleged offense(s):
  - 1. The juvenile has a right to remain silent;

2. Any statement made by the juvenile can be used against the juvenile in Court; and
  3. The juvenile has the right to the presence of his parent or guardian, an attorney, or advocate during questioning.
- D. Release the juvenile from custody to the juvenile's parent(s), guardian, custodian, or next of kin and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:
1. The juvenile is in danger of injury;
  2. The juvenile is under the influence of alcohol or controlled substances; or
  3. The juvenile will not cease illegal conduct and release is likely to result in injury to the juvenile or others.
- E. If the juvenile is not released to the juvenile's parent(s), guardian, custodian, or next of kin, the juvenile shall be placed in detention or shelter care as determined by the law enforcement officer and the Court.

**12.507**

**Detention and Shelter Care.** A juvenile taken into custody pursuant to sections 12.505 and 12.506 above, may be detained pending a Court hearing.

- A. A juvenile taken into custody pursuant to sections 12.505 and 12.506 above, may be detained in any one of the following places:
1. A foster care facility on the reservation approved by the Tribe; or
  2. A detention home on the reservation approved by the Tribe; or
  3. A private family home on the reservation approved by the Tribe; or
  4. A state-licensed detention facility in Isabella or any adjacent county; or
  5. A Tribal Police Department juvenile holding cell for up to six (6) hours while alternate placement for the juvenile is located.
- B. A juvenile who is sixteen (16) years of age or older may also be detained in a jail or facility on the reservation or in Isabella County and used for the detention of adults only if:

1. A juvenile detention facility in Section 12.507A is not immediately available or would not assure adequate supervision of the juvenile; and
  2. Detention is in a cell separate from adults; and
  3. Adequate supervision is provided twenty-four (24) hours a day.
- C. The Court may issue an Order of restitution against the parent(s), legal guardian and the juvenile for costs incurred for the detention or shelter care of such juvenile.

### **12.508 Preliminary Hearing**

- A. If a juvenile has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary hearing within ten (10) days of the filing of the juvenile complaint for the sole purpose of determining whether probable cause exists to believe that the juvenile committed the alleged delinquent act(s).
- B. If a juvenile is placed in custody, detention or shelter care, the Court shall conduct a preliminary hearing within seventy-two (72) hours of the placement for the purpose of determining:
1. Whether probable cause exists to believe that the juvenile committed the alleged delinquent act; and
  2. Whether continued detention is necessary pending further proceedings.
- C. If the juvenile's parent(s), guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian.
1. If it appears that further efforts are likely to produce the appearance of the juvenile's parent(s), guardian, or custodian, the Court shall recess for not more than twenty-four (24) hours and direct Tribal law enforcement or an appointee of the Court to make continued efforts to obtain the presence of the juvenile's parent(s), guardian, or custodian.
  2. If it does not appear that further efforts are likely to produce the parent(s), guardian, or custodian, or if it appears that the parent(s), guardian, or custodian is/are unable or unwilling to provide

effective support or guidance to the juvenile during the pendency of the juvenile offender or juvenile in need of supervision proceedings, the Court shall appoint legal counsel to serve until adjudication and disposition of the petition.

D. The Court shall advise the juvenile as follows:

1. Explain the nature of the proceedings;
2. Read the allegations in the juvenile complaint unless waived;
3. Advise the juvenile of right to an attorney;
4. Advise the juvenile of the privilege against self-incrimination and that any statement by the juvenile may be used against the juvenile;
5. Advise the juvenile that a parent(s), guardian, or custodian may not be compelled to give testimony against himself or herself or the juvenile;
6. Advise the juvenile that he/she or his/her legal representative may introduce evidence, to examine (confront) witnesses against him or her, and be heard on their own behalf; and
7. The circumstances that gave rise to the juvenile complaint and/or the taking of the juvenile into custody.

E. The Court shall hear testimony, and/or may accept an affidavit for testimony, concerning:

1. The circumstances that gave rise to the juvenile complaint and/or the taking of the juvenile into custody; and
2. The need for detention or shelter care, if applicable.

F. If the Court finds that probable cause exists to believe that the juvenile committed the delinquent act:

1. The juvenile shall be ordered to appear at a trial on a date and at a time set by the Court; and
2. The Court shall determine whether the juvenile is to be released, with or without conditions, or detained based upon the following factors:

- a) The juvenile's family ties and relationships;
  - b) The juvenile's prior delinquency record;
  - c) The juvenile's record of appearance or nonappearance at Court proceedings;
  - d) The violent nature of the alleged offense;
  - e) The juvenile's prior history of committing acts that resulted in bodily injury to others;
  - f) The juvenile's character and mental condition;
  - g) The Court's ability to supervise the juvenile if placed with a parent or relative;
  - h) Any other factor indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.
3. The Court must state the reasons for its decision to grant or deny release on the record or in a written memorandum. The Court's statement need not include a finding on each of the enumerated factors in Section 12.508F.2.

G. If a juvenile is released to his parent(s), guardian, or custodian, the Court may impose conditions on such release which may include, but are not limited to, one or more of the following:

1. the posting of a bond;
2. electronic monitoring;
3. house arrest;
4. travel restrictions;
5. mandatory attendance at school;
6. no contact with named individuals;
7. temporary exclusion from Tribal programs or specific property owned by the Tribe.

- H. The Court may release a juvenile to a relative or other responsible adult Tribal member, if the parent(s), guardian, or custodian consents to the release. The juvenile and the juvenile's parent(s), guardian, or custodian must consent to the release if the juvenile is fourteen (14) years of age or older.
- I. If the juvenile pleads guilty to the charges, the Court may take the plea under advisement and refer the juvenile to the juvenile probation officer for a pre-disposition investigation report. The Court will proceed with the disposition and place the juvenile on probation. If the juvenile successfully completes the terms and conditions of probation within the prescribed time frame, the Court may dismiss the matter without entering a judgment of disposition. If the juvenile does not successfully complete probation the judgment of disposition will then be entered upon the records of the Court.
- J. If the Court does not find probable cause to believe that the juvenile committed the alleged delinquent act, the petition shall be dismissed and the juvenile released.

**12.509 Transfer to the Adult Division of the Tribal Court.**

- A. The Tribal prosecutor may, at his/her own discretion, file a complaint to initiate proceedings either as a juvenile offender proceeding under the Juvenile Division of the Tribal Court or as an adult criminal matter under the Adult Division of the Tribal Court, if the juvenile is sixteen (16) years of age at the time of the alleged offense and the offense would be considered a crime if committed by an adult.
- B. The Tribal prosecutor may file a petition requesting the Court to transfer the juvenile to the Adult Division of the Tribal Court if the juvenile is fourteen (14) years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.
  - 1. On a petition filed by the Tribal prosecutor requesting transfer pursuant to 12.509B, the Court shall conduct a hearing, no later than ten (10) days after a transfer request is made, to determine whether jurisdiction of the juvenile should be transferred to the Adult Division of the Tribal Court.
  - 2. The Court shall give written notice of the transfer hearing to the juvenile and the juvenile's parent(s), guardian, legal representative, or custodian at least seventy-two (72) hours prior to the hearing.

3. Prior to the transfer hearing, the Tribe's juvenile probation officer shall be responsible for an investigation and the preparation of a written report to be submitted to the Court.
4. The following factors shall be considered in determining whether to transfer jurisdiction of the juvenile to the Adult Division of the Tribal Court:
  - a) The nature and seriousness of the offense allegedly committed by the juvenile;
  - b) The juvenile's age, mental and physical condition; and
  - c) The juvenile's past record of offenses, and responses to previous Court efforts at rehabilitation.
5. The Court may transfer jurisdiction of the juvenile to the Adult Division of the Tribal Court only if the Court finds clear and convincing evidence that both of the following circumstances exist:
  - a) There are no reasonable prospects for rehabilitating the juvenile through resources available to the Court; and
  - b) The alleged offense is serious enough to constitute a substantial danger to the public.
6. Upon transfer of a juvenile to the Adult Division of the Tribal Court, the Court shall issue a written transfer order containing the Court's findings of fact and conclusions of law. The transfer order constitutes a final order for purposes of appeal.

**12.510 Diversion Process.**

- A. A juvenile may be diverted in one of the following ways:
  1. **Diversion to Tribal Family Services.** The Tribal prosecutor may choose to refer the juvenile to Tribal Family Services for services, rather than initiate a formal juvenile offender or juvenile in need of supervision proceeding, if:
    - a) the facts bring the case within the jurisdiction of the Court; and

- b) Diversion of the matter would be in the best interests of the juvenile and the Tribe; and
- c) The juvenile's parent(s), guardian or custodian voluntarily consent to the diversion after they have received an explanation of their rights; and
- d) Tribal Family Services gives their written consent to accept the referral after consultation with the Tribal prosecutor.

2. **Court Ordered Diversion.** If a formal juvenile complaint has been filed by the Tribal prosecutor and the juvenile has been determined to be a juvenile offender or a juvenile in need of supervision on such formal juvenile complaint, the Tribal prosecutor may request, or the Court may order on its own motion, a Court ordered diversion if:

- a) the facts bring the case within the jurisdiction of the Court;
- b) Diversion of the matter would be in the best interests of the juvenile and the Tribe; and
- c) The juvenile's parent(s), guardian or custodian voluntarily consents to the diversion after they have received an explanation of their rights.

B. If the Tribal prosecutor diverts the juvenile to Tribal Family Services, pursuant to Section 12.510A.1., the following shall apply:

- 1. Tribal Family Services shall set forth in writing the terms and conditions of the diversion agreed to by the parties, including but not limited to the type, location and duration of services which will be administered to the juvenile.
- 2. Any disposition arranged through the diversion to Tribal Family Services shall be concluded within six (6) months unless an extension is agreed to by all parties.
- 3. Tribal Family Services shall file monthly progress reports with the Tribal prosecutor. If at any time after thirty (30) days the Tribal prosecutor concludes that positive results are not being achieved, the Tribal prosecutor may file a juvenile complaint pursuant to Section 12.503 of this Code.

4. No statement made by Tribal Family Services or the juvenile during the course of the juvenile's services obtained or administered as a result of the diversion may later be admitted into evidence at a trial or any other proceeding against the juvenile under this Code.
5. Upon successful completion of the diversion disposition, Tribal Family Services will notify the Tribal prosecutor in writing of such completion and no further action will be required.

**12.511**

**Trial.** The Court shall conduct a trial for the sole purpose of determining whether the Court has jurisdiction over the juvenile. Such trial shall be closed to the public. The juvenile is entitled to a jury trial, in accordance with the provisions of the Tribe's Title III except as modified by this Code, or a bench trial. The verdict of the six (6)-member jury must be unanimous.

- A. If the juvenile admits the allegations in the juvenile complaint, the Court shall proceed to the disposition hearing only if the Court finds:
  1. The juvenile fully understands his/her rights as set forth in Section 12.404 of this Code and fully understands the potential consequences of his/her admission(s);
  2. The juvenile voluntarily, knowingly, and intelligently admits to all facts necessary to constitute a basis for Court jurisdiction; and
  3. The juvenile has not, in his/her admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.
- B. The Court shall hear testimony concerning the circumstances that give rise to the juvenile complaint.
- C. Burdens of Proof
  1. Juvenile Offender
    - a) If the counts of the juvenile complaint alleging offenses under Section 12.216 are proven beyond a reasonable doubt, the Court shall find that the juvenile is a juvenile offender and schedule a disposition hearing.
  2. Juvenile in Need of Supervision

- a) If the status offense allegations of the juvenile complaint are sustained by clear and convincing evidence, the Court shall find that the juvenile is a juvenile in need of supervision and schedule a disposition hearing.
- D. A finding that the juvenile is a juvenile offender or a juvenile in need of supervision shall constitute a final order for purposes of appeal.

**12.512 Trial Continuances.** Continuances of a trial may be granted:

- A. Upon a motion of the juvenile for good cause shown;
- B. Upon a motion of the Tribal prosecutor that material evidence or witnesses are unavailable, a finding by the Court that the Tribal prosecutor has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence or witnesses will become available; or
- C. Any time the Court may deem a continuance appropriate under the circumstances.

**12.513 Pre-disposition Report.**

- A. The juvenile probation officer shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of, and assistance to the juvenile, designed to resolve the problems presented in the juvenile complaint.
- B. The report shall contain a detailed explanation of the necessity for the proposed disposition and its benefits to the juvenile.
- C. Preference shall be given to the disposition alternatives that are listed in Section 12.515 of this Code. The alternative least restrictive of the juvenile's freedom, consistent with the interests of the Tribe, shall be selected.
- D. If the report recommends placement of the juvenile somewhere other than with the juvenile's parent(s), guardian, or custodian, it shall state the specific reasons underlying its placement recommendation.
- E. The juvenile probation officer shall review the pre-disposition report with the Court, the juvenile's legal representative, and the Tribal prosecutor prior to the disposition hearing.

**12.514 Disposition Hearing.**

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

**12.515**

**Disposition Alternatives.** The dispositional focus of a youth depends upon whether the youth is found to be a juvenile offender as defined in section 12.216 or a juvenile in need of supervision as defined in section 12.217. The dispositional focus of a youth found to be a juvenile offender is the reformation and rehabilitation of the offender as well as the reintegration of the juvenile offender into the community. The dispositional focus of a youth deemed to be a juvenile in need of supervision is to pursue the best interest of the youth while strengthening family and community solutions to the youth misconduct.

- A. If a juvenile has been found to be a juvenile offender or a juvenile in need of supervision, the Court may make any one or more of the following dispositions set forth below, for any term, until the juvenile reaches the age of twenty (20):
  - 1. Place the juvenile on probation subject to conditions set by the Court, for a period of time not to exceed ninety (90) days;
  - 2. Place the juvenile in a detention and/or a treatment facility with an agency designated by the Court, for a period of time not to exceed ninety (90) days;
  - 3. Order the juvenile to perform community service work at the direction of the juvenile probation officer;

4. Order the juvenile to pay restitution, including costs related to detention, or to provide restorative services to the injured party or parties. The Court may access the minor's child welfare payment or, if applicable, the adult per capita payment to provide restitution upon the motion of the Tribal prosecutor or an aggrieved party based upon proper proofs offered at an evidentiary hearing;
  5. Order any other measure the Court deems necessary and proper to correct the behavior of the juvenile and to insure the safety of the community.
- B. he Court shall select the alternative(s) that is/are least restrictive of the juvenile's freedom and is/are consistent with the interests of the community. The restrictions placed on the juvenile must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.
- C. The disposition orders shall be reviewed at the discretion of the Court, but at least once every six (6) months.

**12.216 Modification of Disposition Order**

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

disposition unless it finds by a preponderance of the evidence that the violation occurred.

**12.517 Probation Violation.**

- A. **Issuance of Summons; Warrant or Pick Up Order.** If the Court finds probable cause to believe that a juvenile has violated a condition of probation, the Court may:
1. issue a summons for the juvenile to appear for arraignment on the alleged violation, or
  2. issue a warrant or pick up order for the juvenile. A juvenile who is taken into custody must promptly be brought before the Court for arraignment on the alleged violation.
- B. **Arraignment on The Charge.** At the arraignment on the alleged probation violation, the Court must:
1. insure that the juvenile receives written notice of the alleged violation;
  2. advise the juvenile that:
    - a) the juvenile has a right to contest the charge at a hearing, and
    - b) the juvenile is entitled to a lawyer's assistance at the hearing and at all subsequent Court proceedings;
  3. determine what form of release, if any, is appropriate; and
  4. set a reasonably prompt hearing date or postpone the hearing.
- C. **Scheduling or Postponement of Hearing.**
1. The hearing of a juvenile held in custody must be held within twelve (12) days after the arraignment or the Court must order the juvenile released from that custody pending the hearing.
  2. If the alleged violation is based on a juvenile offense that is a basis for a separate prosecution, the Court may postpone the hearing for the outcome of that prosecution.

D. **Continuing Duty To Advise Of Right To Assistance Of Lawyer.** Even if a juvenile who is charged with a probation violation has waived the assistance of a lawyer during the underlying juvenile offender or juvenile in need of supervision proceeding, the Court must advise the juvenile offender or juvenile in need of supervision of the right to the assistance of a lawyer, pursuant to section 12.404 of this Code, at all subsequent proceedings resulting from the juvenile's alleged probation violation.

E. **The Probation Violation Hearing.**

1. **Conduct Of The Hearing.**

- a) The evidence against the juvenile must be disclosed to the juvenile;
- b) The juvenile has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses;
- c) The Court may consider only evidence that is relevant to the violation alleged, but it need not apply the rules of evidence except those pertaining to privileges;
- d) The Tribe has the burden of proving a violation by a preponderance of the evidence;
- e) There is no right to a jury.

2. **Judicial Findings.** At the conclusion of the hearing the Court must make findings.

F. **Guilty Pleas.** With the consent of the Court, the juvenile may, at the arraignment or afterward, plead guilty to the violation(s). Before accepting a guilty plea, the Court, speaking directly to the juvenile and receiving the juvenile's response, must:

1. advise the juvenile that by pleading guilty the juvenile is giving up the right to a contested hearing and, if the juvenile is proceeding without legal representation, the right to a lawyer's assistance, pursuant to section 12.404 of this Code;
2. advise the juvenile of the maximum possible sentence for the offense;
3. ascertain that the plea is understandingly, voluntarily, and knowingly made by the juvenile; and

4. establish factual support for a finding that the juvenile is guilty of the alleged violation.
- G. **Sentencing.** If the Court finds that the juvenile has violated a condition of probation, or if juvenile pleads guilty to a violation, the Court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of detention. The Court may not sentence the juvenile to detention without having considered a current pre-disposition report.
- H. **Review.** The juvenile has a right to appeal, as set forth in section 12.314 of this Code, from a sentence of detention given under 12.517G.

## **CHAPTER 12.6 PARENTAL RESPONSIBILITY**

### **12.604 Parental Responsibility**

- A. The parent of any juvenile has a continuous responsibility to exercise reasonable control and supervision over the juvenile and prevent the juvenile from committing or participating in the commission of any delinquent act.
- B. The parental responsibility to exercise reasonable control includes, but not limited, to the following duties:
  1. To keep drugs out of the home and out of the possession of the juvenile, except those drugs duly prescribed by a licensed physician or other authorized medical professional;
  2. To keep firearms out of the possession of the juvenile except those used for hunting in accordance with applicable Tribal, local and state law governing juveniles hunting under the supervision of an adult;
  3. To know the curfew law of the Tribe and require the juvenile to observe the curfew laws;
  4. To require the juvenile to attend regular school sessions and to prevent the juvenile from being absent from school without parental or school permission;
  5. To prevent the juvenile from maliciously or willfully damaging, defacing or destroying real or personal property belonging to

others, including that belonging to any governmental entity of the Tribe;

6. To prevent the juvenile from engaging in theft of property or keeping in his or her possession property known to be stolen;
7. To ensure the juvenile adheres to the rules of safety and regulation regarding use of any four or two-wheeled recreational vehicles; and
8. To make reasonable efforts to prevent the juvenile from possession or consumption of alcohol.

**12.602 Notification of Parent and Tribal Court.** If a juvenile is arrested or detained by Tribal Law Enforcement, Tribal Law Enforcement shall notify the juvenile's parent(s), guardian, or custodian and the Tribal Court as soon as reasonably possible. Tribal Law Enforcement shall maintain a record of their notification efforts.

**12.603 Violation and Penalty.**

- A. If the juvenile of a parent residing within the jurisdiction of the Tribe commits a delinquent act, the parent shall be guilty of a violation of this Section if:
  1. It is proven that any action, word or non-exercise of parental responsibility by the parent encouraged, caused or allowed to occur the commission of the delinquent act by the juvenile; or
  2. It is proven that the parent knew or reasonably should have known that the juvenile was likely to commit a delinquent act, but failed to take timely and appropriate action to prevent the commission of the delinquent act by the juvenile. If at any time within forty-five (45) days following the notice provided in section 12.602. above, the juvenile to whom said notice was made commits a delinquent act as provided in this article, it shall be presumed that the juvenile committed the delinquent act with the knowledge, allowance, permission or sufferance of the parent.
- B. Any person in violation of any subsection of this Chapter 12.6 shall be subject to a fine not to exceed five hundred (\$500) at the discretion of the Court.

- C. Parent(s) of a juvenile taken into custody and detained under Chapter 12.5, may be liable for any cost associated with the detention or shelter care of such juvenile as set forth in section 12.507C herein.

**12.604**      **Recovery of Damages from Parent(s).** If an unemancipated juvenile, who resides with his/her parent(s), willfully and maliciously causes bodily harm to another or damage to any real, personal, or mixed property of another, such harmed person may recover reasonable compensatory damages in Tribal Court against such juvenile's parent(s).

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#### LEGISLATIVE HISTORY

Title XII-Juvenile Code. Enacted December 13, 2006 by Resolution 07-034. Section 12.308 amended November 3, 2010 by Resolution 11-013.